

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated December 23, 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 his impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that:

- the appellant has a severe physical or mental impairment;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act* (EAPWDA), Section 2

*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), Section 2

## PART E – Summary of Facts

The appellant consented to the attendance of a ministry observer at the hearing.

The evidence before the ministry at the time of the reconsideration decision included the Person With Disabilities (PWD) Application comprised of the applicant information dated May 28, 2013 which did not include a self-report by the appellant, a physician report (PR) dated May 29, 2013 and an assessor report (AR) dated June 13, 2013, both completed by the appellant's psychiatrist who has known the appellant for approximately 2 years. The evidence also included the appellant's Request for Reconsideration dated November 23, 2013.

### **Diagnoses**

The appellant has been diagnosed by his psychiatrist with mood disorders and anxiety disorders, with onset in October 2007. The psychiatrist noted significant features of social and agoraphobia. There was no diagnosis included in the PR of any health conditions other than the mental disorders.

### **Physical Impairment**

In the PR, the appellant's psychiatrist reported that:

- The appellant does not require any prosthesis or aid for his impairment.
- In terms of functional skills, the appellant can walk 4 or more blocks and climb 5 or more steps unaided and has no limitations with lifting and remaining seated.

In the AR, the appellant's psychiatrist indicated that:

- The appellant is assessed as independent with all mobility and physical ability, including walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding.
- The section of the AR relating to assistance provided through the use of assistive devices is not applicable to the appellant.

### **Mental Impairment**

In the PR, the appellant's psychiatrist reported that:

- The appellant has "...long standing history of depression with complicating features of social and agoraphobia such that prior to initial assessment in 2011, had rarely left home for 4 years. Has also been unemployed for same time."
- With respect to the degree and course of impairment, the appellant "...has improved considerably and can now leave the house, although he remains unemployed."
- There are difficulties with communication, with the cause indicated as "other" and a note: "sometimes when depression worsens, there is difficulty communicating."
- There are significant deficits with cognitive and emotional functioning in the areas of executive, emotional disturbance, motivation, and impulse control (note: "rarely though"). The psychiatrist added: "Main deficits relate to decreased motivation, decreased initiative and mood maintenance."
- In the additional comments: "...prior to the initial assessment, was essentially housebound. Depressive symptoms complicated by social and agoraphobia. In spite of treatment there are remaining difficulties with social phobia, dealing with crowds, wavering initiative, periods of anxiety/ mood; however, has generally been stable and improved."

In the AR, the psychiatrist indicated that:

- The appellant has a good ability to communicate in all areas, including speaking, reading,

writing and hearing.

- For cognitive and emotional functioning, there is a major impact to the appellant's daily functioning in the area of "other emotional or mental problems" described as "prior to use of meds and psychotherapy and regular treatment, was basically housebound for 3 to 4 years."
- There are moderate impacts to cognitive and emotional functioning in the areas of emotion and motivation as well as minimal impacts to bodily functions, impulse control, and executive. There are no impacts indicated in the remaining 8 areas of functioning.
- The appellant "sleeps well with medication. Anxiety and depression better with meds but there are still problems."

### **Daily Living Activities (DLA)**

In the PR, the psychiatrist indicated that the appellant has not been prescribed any medication and/or treatment that interfere with his daily living activities.

In the AR, the psychiatrist reported that:

- The impairments that impact the appellant's ability to manage DLA are: "Difficulties with depression and anxiety impairing ability to be with people or seek work."
- The appellant is independent in all tasks of several DLA, including moving about indoors and outdoors, personal care, shopping, and managing his medications.
- For basic housekeeping, no assessment is provided but a note provided with respect to laundry and housekeeping: "sis-in-law does it."
- For meals, the appellant is independent in 3 of 4 tasks with no assessment for meal planning but a note added: "parents do shopping."
- For paying rent a bills, the appellant is independent with banking but he "doesn't do" budgeting and paying rent and bills is "not applicable."
- For managing transportation, the appellant is independent with getting in and out of a vehicle, with no assessment for using public transit and using transit schedules and arranging transportation with the note: "avoids because of anxiety."
- In terms of social functioning, the appellant is independent in 3 of 5 aspects, namely making appropriate social decisions, developing and maintaining relationships, and securing assistance from others.
- There is no assessment for interacting appropriately with others with a note: "experiences anxiety in social context" and for dealing appropriately with unexpected demands, with a note: "little experience, unlikely."
- The appellant has good functioning in his immediate social network and marginal functioning in his extended social network with a note added: "presently very dependent on parents."

### **Need for Help**

The psychiatrist reported that the help required for DLA is provided by the appellant's family with a note: "has meals cooked, is driven to appointments, has laundry done." The section of the report indicating assistance provided through the use of assistive devices is marked "not applicable."

In his Notice of Appeal, the appellant wrote that:

- He is totally inhibited from performing DLA.
- The psychiatrist did not understand how to complete the original application form and therefore interpreted the questions incorrectly.
- The evidence now available supports his ability to perform DLA is extremely affected by his

mental condition.

Prior to the hearing, the appellant provided additional documents as follows:

- 1) Note dated January 16, 2014 from the psychiatrist who completed the reports for the PWD application, in which he wrote that:
  - The level of assistance required with laundry, housekeeping, grocery shopping or finances is related to apathy and agoraphobia, i.e. a functional impairment from a diagnosed medical condition.
  - His restriction in mobility is secondary to agoraphobia.
  - With respect to making social decisions and maintaining relationships, he remains very socially isolated secondary to his psychiatric condition.
  - He remains quite handicapped by his agoraphobic state.
  - It will be important that there be telephone communication with the ministry regarding the appellant.
- 2) Memo dated January 29, 2014 from a psychologist who has treated the appellant since 2010 and has seen him for a total of 14 sessions, in which he wrote that:
  - The appellant stated that he feels extremely anxious whenever he leaves his house and he often cannot leave his room for days at a time.
  - The appellant reported that he requires significant support with most ADL's [activities of daily living] and that he tends to stay up all night (in his room) and sleep during the day.
  - With respect to diagnosis, the appellant easily meets the DSM-V diagnostic criteria for both Agoraphobia and Panic Disorder.
  - The psychologist concurs with the psychiatrist's assessment that the appellant's functional impairment relating to DLA (e.g. laundry, housekeeping, groceries, finances) and restriction to mobility are secondary to apathy and agoraphobia.
  - He also agrees with the psychiatrist's opinion that this disorder profoundly affects the appellant's ability to make social decisions and maintain relationships, resulting in chronic social isolation.
  - The appellant is profoundly handicapped by his disorder and has been unable to make any real progress despite abundant support from his parents.
  - In his clinical opinion, the appellant's prognosis is unclear but with extensive treatment he may be able to acquire some rudimentary life skills.
  - It is his clinical opinion that the appellant displays a long-standing pattern of severe anxiety related to Agoraphobia and Panic Disorder and for that reason he [is] severely disabled with respect to his ability to lead a normal, independent life.

At the hearing, the psychiatrist stated that:

- He already completed the reports included with the PWD application, and he did so to the best of his ability. He answered the questions as best as he could.
- The appellant's parents met with him and expressed that they felt the questions in the forms were not understood.
- The appellant was referred to him by his general practitioner (GP) in 2011 and, at that time, the appellant was severely debilitated by mental illness and he had been housebound for 4 years.
- He wrote a letter to the appellant's GP on December 5, 2011 and had diagnosed significant depression. He recommended that the appellant continue psychiatric treatment and also see a psychologist, who the appellant is still seeing for help.
- The appellant has gained some benefit from the medications that he prescribed. His

energy and mood improved and his anxiety diminished but it did not disappear. His irritability went down, he became more motivated, and he went on the occasional trip with a small group of people. He started going out of the house.

- In May of 2012, the appellant went to his cabin for a couple of weeks by himself and he said that he was talking to people. In June 2012 he was looking at a job possibility. At that time, the appellant said he thought he was 95% improved since the previous year.
- In June 2012 another medication was added along with the anti-depressants that the appellant takes. He takes his medications regularly.
- He has been resistant to treatment in some ways. Over time, his medications have been increased and he has improved but he is still highly agoraphobic. He still has symptoms of anxiety. He could not take public transit, for example.
- The appellant's activity level is still very limited as he only goes to his doctor appointments or to his cabin or, in the company of his parents, on various trips. He does not get out of the house in a way that one would expect for someone his age. He is still anxious and depressed.
- Looking at the impacts to cognitive and emotional functioning, some of the impacts would be worse when the appellant is experiencing increased depression or anxiety, which happens at least once per month and, at times, once per week, or "fairly often."
- For impulse control, in the last year the appellant has had two violent outbursts of hostility where he was out of control from an anger point of view, to the point where his mother was fearful. At these times, the impact would be moderate to major. Depending on his mood state, the appellant's insight and judgment would also have a moderate to major impact.
- For consciousness, for example, although he does not lose consciousness, he may be confused in his thinking when he is more depressed. Emotion would have more of a major impact than a moderate impact during these times. His executive functioning has either a minimal impact or moderate when his mood is lower. Likewise, his motivation has a moderate impact but sometimes there would be a major impact.
- On the other hand, he was applying for a job in June 2012, so his attention/concentration was good at that time. It would be poor if he was depressed. There have been no problems with the appellant's memory, motor activity, language, and no psychotic symptoms.
- For his assessment of the appellant's ability with daily living activities, he asked the appellant about basic housekeeping and he said that his sister-in-law does it. The impact is related to the appellant's apathy and agoraphobia when he is very depressed.
- Regarding the frequency of help needed by the appellant, it must be kept in mind that he does go for two weeks on his own to his cabin and he manages on his own. He is not sure how often the appellant is alone at his cabin.
- In January 2013, the appellant still had anxiety in large groups. He sometimes gets nightmares from traumatic experiences in his childhood and was having difficulty sleeping.
- In March 2013, he prescribed sleeping pills and the appellant stopped taking them because he felt too drugged and his mood was "up and down." He found that he was fine one moment and then irritable the next.
- In April 2013 the appellant said he had gone to his cabin for two weeks on his own, that he was not as irritable. He complained of exhaustion. He did not see the appellant over the summer of 2013 because the appellant was away at his cabin over this time.

- Looking at social functioning, the degree of supervision required by the appellant is periodic as he needs a companion, which is often his parents, most of the time but he also goes on trips in a small group and to his cabin where he stays alone. He is OK with a limited number of people, as long as they are people he is comfortable with.

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

- The "cabin" is a property on a lake which is very isolated except for some neighbours who are "life-long" friends of the family, with whom the appellant is very comfortable. The appellant and his parents will go up to the property together and there have been some times when the appellant decides to stay there alone. Even getting in the vehicle to travel to the cabin can take a while but, once he is there he relaxes. When the appellant is there, he seems to have "normal behavior" but there is no one else around.
- He can seem "fine" at the cabin and feed himself but he may not do the laundry or keep the place clean. His parents see each activity as "small steps" and do not push. Getting out the front door can sometimes be a "big deal." His mother cooks meals and freezes them so that the appellant only needs to re-heat them. If she did not leave these meals for him, the appellant would not eat.
- The appellant can go days without showering or brushing his teeth. He feels that he is a bit better than he used to be, but "it is still hard."
- His parents realized that the appellant might have made much more improvement if he had been seeing the psychologist on a regular basis. At least he no longer eats all of his meals in his bedroom.
- The appellant has a hard time getting out in the community and even sitting in the waiting room at the doctor's office or for other appointments is "a big thing."
- Agoraphobia is a fear of going outside, which makes it very difficult for the appellant to function. He might be able to re-heat a meal and feed himself but he cannot get out to the grocery store to get more food and, therefore, cannot take care of himself.
- The job that the appellant applied for in June 2012 was with one of the men in the small group of friends who has a business. The appellant is very intelligent and excels in his exams. He took an online training course for the job and did well. The appellant had an interview but he was not offered a job after it was discovered that he is taking anti-depressant medications.
- The appellant will go to the homes of the men from a small social group.
- The episodes of increased anxiety and depression are unpredictable. It has the potential to occur every day. It can be triggered by something like his dog running away, since he is very attached to his dog.
- The appellant feels he has no skills and no ability and he is highly dependent on his parents. His siblings are not dependable and he has considered that if his parents "both go", he has nothing to fall back on. He has tried so hard to get assistance because then he might have something.

The ministry did not object to the admissibility of the psychiatrist's Note dated January 16, 2014 or his oral testimony, or the psychologist's Memo dated January 29, 2014. The panel admitted the additional documentary and oral evidence as further detail of the appellant's diagnosed conditions and, therefore, in support of the information and records before the ministry on reconsideration, pursuant to section 22(4)(b) 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, 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 his 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.

### **Severe Physical Impairment**

The appellant did not maintain a position that he has a severe physical impairment.

The ministry's position is that the medical practitioner does not provide a diagnosis of a physical condition contributing to the appellant's impairment. The ministry argued that, in terms of physical functioning, the psychiatrist indicated that the appellant can walk 4 or more blocks unaided on a flat surface, climb 5 or more steps unaided, with no limitations with lifting or remaining seated. The ministry argued that, in the AR, the psychiatrist indicated that the appellant is independently able to manage all areas of mobility and physical ability.

### **Panel Decision**

The medical practitioner, the appellant's psychiatrist of approximately 2 years, did not diagnose a physical health condition. In terms of functional skills, the appellant is assessed by the psychiatrist as able to walk 4 or more blocks and climb 5 or more steps unaided and as having no limitations with lifting and remaining seated. The appellant is assessed as independent with all mobility and physical ability, including walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding. The section of the AR relating to assistance provided through the use of assistive devices is not applicable to the appellant. Given the absence of a diagnosis and there being no restrictions reported to the appellant's physical functioning, the panel finds that the ministry reasonably determined that the evidence 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 evidence of the impacts from his depression and anxiety, including social and agoraphobia and panic attacks. The advocate argued that these conditions are affecting the appellant's day-to-day functioning significantly.

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe mental impairment. The psychiatrist reported that the appellant has improved with treatment and is now able to leave the house, although he remains unemployed, and the ministry argued that employability is not a criterion for assessing eligibility for the PWD designation. The ministry argued that the psychiatrist reported significant deficits to cognitive and emotional functioning in the areas of executive, emotional disturbance, motivation and impulse control and, when assessing related



impacts indicated one major impact relating to a period of 3 to 4 years which occurred in the past. The ministry argued that the psychiatrist identified moderate impacts in the areas of emotion and memory, and minimal impacts in the areas of bodily functions (with the comment "sleeps well with medications"), impulse control and executive, with no impacts to the remaining areas. The ministry argued that the psychiatrist noted that the appellant experiences anxiety when interacting with others and that he has little experience and is unlikely to deal appropriately with unexpected demands but otherwise does not require support/supervision with making appropriate social decisions, developing and maintaining relationships, and securing assistance from others. The ministry argued that the information provided by the medical practitioner in the PWD application does not establish that the appellant has a mental disorder that causes a severe impairment to his emotional and cognitive functioning.

#### *Panel Decision*

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 psychiatrist diagnosed mood disorders and anxiety disorders, with onset in October 2007, and noted significant features of social and agoraphobia. The psychiatrist reported in the PR that the appellant has "...long standing history of depression with complicating features of social and agoraphobia such that prior to initial assessment in 2011, had rarely left home for 4 years. Has also been unemployed for same time." With respect to the degree and course of impairment, the psychiatrist again commented that the appellant has improved considerably and can now leave the house, although he remains unemployed. In the AR, the impairments that impact the appellant's ability to manage DLA are: "Difficulties with depression and anxiety impairing ability to be with people or seek work." For an impairment to be a "severe impairment," section 2 of the EAPWDA requires that the ministry must be satisfied that the evidence demonstrates restrictions to a specified degree in certain specified areas of daily functioning. The legislation reads that for PWD designation, the minister must be satisfied that "the person has a severe mental or physical impairment that .... directly and significantly restricts the person's ability to perform [prescribed] daily living activities and as a result of those restrictions, the person requires help [an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform those activities.]" As ability to search for, accept or continue in employment is not listed as one of prescribed DLA, the panel finds that the ministry reasonably held that employability is not a factor in assessing eligibility for PWD designation.

The psychiatrist reported in the PR that there are significant deficits with cognitive and emotional functioning in the areas of executive, emotional disturbance, motivation, and impulse control (note: "rarely though") and added: "...main deficits relate to decreased motivation, decreased initiative and mood maintenance." In the AR, the psychiatrist indicated a major impact to the appellant's cognitive and emotional functioning in the area of "other emotional or mental problems" described as "prior to use of meds and psychotherapy and regular treatment, was basically housebound for 3 to 4 years." Moderate impacts were reported in the areas of emotion and motivation, as well as minimal impacts to bodily functions, impulse control, and executive, and no impacts in the remaining 8 areas of functioning. The psychiatrist noted that the appellant "sleeps well with medication. Anxiety and depression better with meds but there are still problems."

At the hearing, the psychiatrist stated that he had answered the questions in the PR and AR to the best of his ability. He stated that the appellant experiences periods of lowered mood and increased anxiety at least once per month and sometimes once per week and, at these times, the impacts to his cognitive and emotional functioning are greater. During the periods of exacerbated mood and/or anxiety, the appellant is assessed with major impacts in emotion, impulse control, insight and judgment, and motivation, and a moderate impact in executive functioning. The psychiatrist also stated that the appellant applied for a job in June 2012, so his attention/ concentration was good at that time but would be "poor" when depressed, and he confirmed that there have been no problems with the appellant's memory, motor activity, language, and no psychotic symptoms.

In terms of the frequency of the exacerbations to the appellant's mood and anxiety, the appellant's mother stated that they are unpredictable and could potentially occur every day. Regarding impulse control, the psychiatrist stated that there have been two outbursts in the past year and, in the AR, noted that these occur "rarely." In the additional comments to the PR, the psychiatrist reported that "...in spite of treatment there are remaining difficulties with social phobia, dealing with crowds, wavering initiative, periods of anxiety/ mood; however, has generally been stable and improved." The psychiatrist reported in the PR that the appellant has difficulties with communication, with the cause indicated as "other" and a note: "sometimes when depression worsens, there is difficulty communicating."

In terms of social functioning, the psychiatrist assessed the appellant in the AR as being independent in 3 of 5 aspects, namely making appropriate social decisions, developing and maintaining relationships, and securing assistance from others. In his Note dated January 16, 2014, the psychiatrist commented that, with respect to making social decisions and maintaining relationships, the appellant "...remains very socially isolated secondary to his psychiatric condition." In the Memo dated January 29, 2014, the psychologist who has also been treating the appellant wrote that he agrees with the psychiatrist's opinion that the appellant's disorder profoundly affects his ability to make social decisions and maintain relationships, resulting in chronic social isolation. The psychologist also wrote that the appellant is profoundly handicapped by his disorder and has been unable to make any real progress despite abundant support from his parents. As the psychiatrist assessed the appellant as independent in these areas of social functioning and is of the opinion that the appellant is generally stable and improved, the panel has placed less weight on the evidence from the psychologist as possibly not being fully aware of the psychiatrist's opinion in these areas. While there was no assessment provided in the AR for interacting appropriately with others and for dealing appropriately with unexpected demands, the psychiatrist stated on the hearing that the appellant requires periodic support or supervision in these areas.

The psychiatrist assessed the appellant with good functioning in his immediate social network and marginal functioning in his extended social network, with a note that the appellant is "presently very dependent on parents." The psychiatrist stated at the hearing that, with treatment, the appellant has greatly improved from the time of his initial assessment, the appellant considers that he has improved by 95% over the period of a year, and the appellant is able to go out of the house and interact in small groups, albeit with long-time friends of the family. The panel finds that the evidence demonstrates that the appellant's condition is generally stable and improved with "periods of anxiety/ mood" at least once per month at which times the impacts to cognitive and emotional functioning are exacerbated. The panel finds that the ministry reasonably concluded that, overall, the impacts assessed to social and cognitive/emotional functioning remain in a moderate range and there is not sufficient evidence to establish a severe mental impairment, pursuant to section 2(2) of the EAPWDA.

**Restrictions in the ability to perform DLA**

The appellant's position is that his mental impairment directly and significantly restricts his ability to perform DLA on an ongoing basis to the point that he requires the significant assistance of another person, namely his parents.

The ministry's position is that the appellant is able to manage the majority of his DLA independently or with little help from others and the information from the prescribed professional does not establish that his impairment significantly restricts DLA either continuously or periodically for extended periods. The ministry argued that the psychiatrist indicated that the appellant's sister-in-law does his laundry and housekeeping, his parents do the grocery shopping, and the appellant does not do budgeting or paying rent or bills; however, there is no explanation about whether this level of assistance is related to a functional impairment arising from the appellant's diagnosed medical conditions.

***Panel Decision***

Section 2(2)(b) of the EAPWDA requires that a prescribed professional provide an opinion that an applicant's severe impairment directly and significantly restricts his DLA, continuously or periodically for extended periods. In this case, the appellant's psychiatrist is the prescribed professional. DLA are defined in section 2(1) of the EAPWDR and are also listed in the PR and, with additional details, in the AR. Therefore, a prescribed professional completing any of these forms has the opportunity to directly indicate which, if any, DLA are significantly restricted by the appellant's impairments, continuously or periodically for extended periods.

In the appellant's circumstances, the psychiatrist reported that the appellant is independent in all tasks of several DLA, including personal care, shopping, and managing medications. Although the psychiatrist indicated in the AR that the appellant is independent as well with moving about indoors and outdoors, in the note dated January 16, 2014, he clarified that there is a restriction in outdoor mobility secondary to agoraphobia. The appellant stated that he can go days without showering or brushing his teeth; however, there were no restrictions to personal care reported by the psychiatrist as the prescribed professional. The appellant's mother stated that the appellant could not go to the store to get more food; however, there were no restrictions to the tasks of shopping reported by the psychiatrist except a note under the DLA meals that his parents do the shopping.

In the AR, there is no assessment provided for the DLA of basic housekeeping and the psychiatrist stated on the hearing that he asked the appellant who stated that his sister-in-law does it. For meals, the appellant is independent in 3 of 4 tasks with no assessment provided for meal planning. The appellant stated that he only re-heats meals prepared for him by his mother, while the psychiatrist assessed the appellant as independent with the tasks of food preparation, cooking and safe storage of food. For paying rent a bills, the appellant is independent with banking but he "doesn't do" budgeting and paying rent and bills is "not applicable." For managing transportation, the appellant is independent with getting in and out of a vehicle, with no assessment for using public transit and using transit schedules and arranging transportation with the note: "avoids because of anxiety." The psychiatrist stated at the hearing that the appellant could not take public transit as a result of his anxiety and agoraphobia. In his note dated January 16, 2014, the psychiatrist confirmed that the level of assistance required with laundry, housekeeping, grocery shopping and finances is related to apathy and agoraphobia, i.e. a functional impairment from a diagnosed medical condition.

For those DLA which relate to a mental impairment, the appellant is assessed as independent with making decision about personal activities, care or finances, and requiring periodic support or supervision with interacting with others effectively. At the hearing, the psychiatrist clarified that while the appellant has a companion with him most of the time, he also interacts by himself at times in small groups. The appellant is assessed by the psychiatrist as having difficulty with communication "sometimes when depression worsens." The panel finds that the evidence demonstrates that the "periods of anxiety/ mood" occur at least once per month, but otherwise the appellant's condition is generally stable and improved and he is assessed as having a good ability to communicate in all areas, including speaking, reading, writing and hearing.

The evidence of the psychiatrist also demonstrates that the appellant is independent with the "mental" tasks of managing his banking and filling/refilling prescriptions, taking medications as directed, with safe handling and storage of medications as well as with reading prices and labels and making appropriate choices when shopping. 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 his ability to manage his 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 he requires the significant assistance of another person to perform DLA.

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

### **Panel Decision**

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

The evidence of the psychiatrist, as a prescribed professional, is that the help required with DLA is provided by family, specifically the appellant's parents. The psychiatrist wrote that the appellant: "has meals cooked, is driven to appointments, has laundry done." The section of the report indicating assistance provided through the use of assistive devices is marked "not applicable" to the appellant. 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.