APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the "ministry") reconsideration decision of May 30, 2014, which found that the appellant did not meet three of five statutory requirements of section 2 of the Employment and Assistance for Persons With Disabilities Act ("EAPWDA") for designation as a person with disabilities ("PWD"). The ministry found that the appellant met the age requirement and that in the opinion of medical practitioner the appellant's 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 that
- as a result of those restrictions, the appellant requires the significant help or supervision of another person, an assistive device, or the services of an assistance animal.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act ("EAPWDA"), section 2
Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"), section 2

PART E – Summary of Facts

The ministry presented an observer for training purposes only and the panel chair asked the appellant whether she had any objections to have a ministry observer attend the hearing to which she replied no objection.

The information before the ministry at the time of reconsideration included the following:

- The appellant's application for designation as a PWD dated December 5, 2013 which did not include a self-report (SR).
- An assessor's report (AR) completed by a psychiatrist dated November 27, 2011.
- A physician's report (PR) dated July 12, 2013.
- A Medical Report - Employability form dated July 12, 2013 completed by the appellant's physician, reported that the appellant has Labile hypertension and chronic low back strain as primary medical conditions and Agitated depression and personality issues as secondary medical conditions and that her overall medical condition is moderate. Under restrictions specific to the medical conditions; it is indicated that the appellant is unable to lift, bend, push and/or pull.
- Letters and Medical Reports from physicians with comments as follows:
  1. January 20, 2005. Impression - adjustment disorder with depressed and anxious mood secondary to difficult psychosocial stressors; threat to family home, financial issues and family relationship concerns – encourage her strongly to get back into group therapy.
  2. September 12, 2007. Follow Up - back pain is mechanical low back pain – treatment is conservative; exercise and weight loss, swimming, walking and stretching – no further surgical tissue.
  3. September 20, 2007. Follow Up - 7 months post-surgery and appellant remains functionally very limited – needs encouragement to be more active – a multidisciplinary occupational rehabilitation program is indicated and no medical restrictions were identified that would prevent participation – appellant has strong opinions about her treatment – anticipated that she will need lots of reassurance.
  4. August 12, 2008. Cardiac assessment – stress test did not reveal any significant myocardial ischemia although she was quite physically deconditioned – cardiovascular examination was unremarkable – suggested statin therapy for primary prevention of atherosclerotic disease and target LDL cholesterol.
  5. November 4, 2008. Mental Exam Final Diagnosis - adjustment disorder with anxious and depressed mood.
  6. May 5, 2010. Impression and Plan - suffers from chronic mechanical low back pain since a long ago injury with subsequent surgery that provided some relief for a short time - difficult to know where pain is coming from as her presentation is wide spread – talked about correcting secondary problems such as mood and sleep disturbances but she did not want to try any medications for personal reasons – supportive of a pool exercise program – medications taken include Alprazolam, Atacand and Oxycocet.
  7. March 29, 2012. Results - had endovenous laser procedure on March 20, 2012 – no complications – follow-up and duplex examination showed no reflux and no compressibility of the treated vein – should have a good, long lasting outcome.
  8. Last Year Contacts with Patient dated June 18, 2011. Details of 13 visits – medications reviewed and repeated times 3 months.
- Results from the appellant's Medical Imaging Report dated October 19, 2009 indicated that there is a shallow right paracentral disc protrusion at L1-2, unchanged since May 2007 and no disc recurrence, central stenosis or perineural scarring.
- The appellant's Medical Record dated July 13, 2013. Usual Medications – Amlodipine, Alprazolam, Emtec, Eclosone, Oxycocet and Furosemide.

- The appellant's Request For Reconsideration, dated April 17, 2014 which included:
  a. An advocate prepared form completed by the appellant's physician dated May 9, 2014
  b. An advocate prepared form completed by the appellant's psychiatrist dated May 13, 2014.
  c. A submission by the appellant's advocate dated May 20, 2014 which includes a request that the panel consider all presented information and broadly interpret the legislation pursuant to section 8 of the Interpretation Act.

In the Notice of Appeal dated June 12, 2014, the appellant wrote that the ministry erred by not correctly applying the legislation to the facts of her disability.

Diagnosis

In the PR, the physician – who has seen the appellant more than 10 times in the last 12 months and has been her physician for 34 years - diagnosed the appellant with generalized Anxiety disorder, Personality disorder, Chronic low back pain, bilateral Varicose Veins and Post-Traumatic Stress disorder (PTSD).

In response to the question; Has the applicant been prescribed any medication and/or treatments that interfere with her ability to perform DLA? The physician indicated no.

In response to the question; Does the applicant require any prostheses or aids for her impairment? The physician indicated no.

The AR was completed by a psychiatrist on November 27, 2011 who indicated that she has been the appellant's psychiatrist on and off since 2004, has provided crisis and supportive therapy and done assessments for her family doctor. The assessor did not note anything when asked to respond to, "What are the appellant's mental or physical impairments that impact his/her ability to manage Daily Living activities?"

Physical Impairment

- In terms of Functional Skills, the physician reported that the appellant can walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, can lift 5 to 15 pounds, and makes no comment about any limitation to remain seated. No difficulties with communication were noted.
- In the AR, under Mobility and Physical Ability, the assessor noted that the appellant is independent with respect to walking indoors and standing, but that she needs continuous assistance from another person or unable with walking outdoors, climbing stairs, lifting, and carrying/holding. The explanation given is needs support, balance problems and limited to short periods. Communication was good for speaking, reading, writing and hearing was reported as satisfactory.
- In the advocate prepared form, rather than tick off what has been written, the physician made the following notes: under Basic Mobility – deconditioning- if appellant would go to aqua swim, she could do better; under Sitting, (able to sit for less than ½ hour because of chronic back pain) - apparently so - she could be referred to a neurologist; under Standing – it has not been established that the appellant is unable to stand in one position for more than 5 minutes; under Climbing Stairs – the appellant needs to have an updated MRI; Lifting , Carrying and Bending had no comments by the physician.
- In the advocate prepared form, the appellant's psychiatrist ticked off all boxes for the following restrictions: Basic Mobility, Sitting, Standing, Climbing Stairs, Lifting, Carrying and Bending.
- The psychiatrist wrote "I am not her family MD - to the best of my knowledge all of these are accurate".

Mental Impairment

- In the PR, the physician indicated that the appellant has significant deficits with cognitive and emotional

function in areas of emotional disturbance, motivation and impulse control.

- The two sections in the AR that are to be completed only for applicants with an identified mental impairment or brain injury contained the following:
  - Under Cognitive and Emotional Functioning, the psychiatrist reported a major impact for 5 of 14 items – bodily functions(sleep disturbance), consciousness, emotion, impulse control and other emotional or mental problems, (flashbacks and nightmares).
  - 2 moderate impacts - attention/concentration and motivation, 5 minimal impacts – insight and judgment, executive, memory, motor activity and language and 2 with no impact indicated on - psychotic symptoms and other neuropsychological problems.
  - Additional comments provided by the psychiatrist indicated; severe anxiety causes her to want to hide/isolate herself, avoid situations and avoid dealing with issues - physically and emotionally drained by the anxiety.
  - In the advocate prepared form, rather than tick off what has been written, the physician made the following notes: under Emotional Control, Very Anxious – longstanding personality and anxiety issues – has seen psychiatrists - started group therapy; under Motivation – if a major problem, needs to be referred back to psychiatrist; under Her Memory is good – chronic depression – overweight – lack of conditioning; under Public Transportation – agoraphobia and panic episodes; under Communication, Appropriate Social Interaction, Developing and Maintaining Relationships and Accessing Social Support – emotional and personality issues.
- In the advocate prepared form, the appellant's psychiatrist ticked off all boxes for the following restrictions: Emotional Control, Motivation, Her Memory is good, Fatigue, Attention/Concentration, Using Public Transportation, Communication, Appropriate Social Interaction, Developing and Maintaining Relationships and Accessing Social Support.
- The psychiatrist wrote "I am not her family MD - to the best of my knowledge all of these are accurate".
- Under Social Functioning; the appellant was described as requiring periodic support to be able to make appropriate social decisions and continuous support to develop and maintain relationships, interact appropriately with others, able to deal appropriately with unexpected demands and able to secure assistance from others. She was also reported as having marginal functioning with her immediate social network and very disrupted functioning with her extended social networks. A comment indicated "quite isolative – not much community".

Daily Living Activities

- In the PR, the physician reported that the appellant's impairments do not directly restrict her ability to perform 10 of the 10 listed DLA: Personal self-care, Meal preparation, Management of medications, Basic housework, Daily shopping, Mobility inside the home, Mobility outside the home, Use of transportation, Management of finances and Social functioning. Added is that the appellant does not need assistance from another person, equipment and assistance animals.
- In the AR, the psychiatrist indicated that the appellant: under Personal Care, independently manages 3 of 8 aspects of DLA specifically; toileting, feeding self and regulate diet, she requires periodic assistance for grooming and continuous assistance for the remaining 4 aspects; dressing, bathing, transfers in/out of bed and transfers on/off chair. Under Basic Housekeeping, she requires continuous assistance in both aspects; laundry and basic housekeeping. Under Shopping she independently manages reading prices and labels, making appropriate choices and paying for purchases; she requires continuous assistance for going to and from stores (transportation) and requires an assistive device for carrying purchases home. Under Meals the appellant independently manages safe storage of food whereas she requires periodic assistance with meal planning and continuous assistance with food preparation and cooking (limited to short periods of standing). Under Pay Rent and Bills, the appellant independently manages all 3 aspects of DLA; banking, budgeting and paying rent and bills. Under Medications, the appellant independently manages filling/refilling prescriptions and safe handling

and storage whereas with taking as directed she requires continuous assistance (prompts and reminders). Under transportation, the appellant independently manages using transit schedules and arranging transportation and requires continuous assistance getting in and out of a vehicle and for using public transit (anxiety).

- In the advocate prepared form, the appellant's physician noted where indicated, as a result of the above restrictions, the following assistance is required: under Personal Care - the appellant needs to get back to psychiatry department and group therapy; under Shower Bars - yes; under Refilling Prescriptions - fine no problem; Under Assessing Banking Services, (requires assistance, avoids lineups, cannot go to the bank when many people are there) – as above; under Meal Preparation and cooking, Basic Housework and Laundry – I think the appellant should be able to do this; Daily Shopping - she is in a relationship with a significant other who is capable; under Transportation – she seems to need this; under Support for coping with Mental Health Conditions , Support to Build Social Network and Support for completing tasks such as completing forms, writing a letter, appropriate communications – all of this is evidence that the appellant has been lost to follow up by department of psychiatry.
- The appellant's physician noted under comments in the advocate prepared form that this is a well written, exhaustive and cogent description of this 59 year old patient's physical problems and issues re: feeling, thinking and behaving.
- In the advocate prepared form, the appellant's psychiatrist ticked off each statement where indicated, as a result of the above restrictions, assistance is required for; Personal Care, Shower Bars, Refilling Prescriptions, Assessing Banking Services, Meal Preparation, Basic Housework, Laundry, Daily Shopping, Transportation, Support for Coping with Mental Health Conditions, Support to Build Social Networks and Support for completing tasks.

Help Required with DLA

- In the PR, it is noted that the appellant does not require assistance with DLA.
- In the AR, it is noted that the appellant needs an anxiety companion, home help and ideally would be in group therapy, have a peer support worker and a life coach/therapist. A bath aid to get in and out of the tub would be beneficial.

Oral Testimony

At the hearing, the appellant's advocate presented a letter from the appellant's physician dated July 3, 2014, as well as a copy of information from a Mental Health website that she requested the panel accept as evidence.

The physician's letter reported the appellant's diagnoses as generalized anxiety disorder, personality disorder, severe chronic low back pain, bilateral varicose veins and post-traumatic stress disorder. "The sum of these conditions result in severe limitations to her daily living activities and need of help. The appellant has severe back pain for which she is prescribed oxycodone daily every 8 to 2 hours as needed. She is deconditioned because of inactivity which is related to her pain. This significantly limits her ability to walk, stand, bend, sit, climb stairs and lift and carry etc." It is highly recommended that she be supplied with shower bars and bath chair which would enable her to have better personal care. "She has long standing personality and anxiety issues and has been seen by a psychiatrist and has attended group therapy. It is further stated that the physician supports and respects the psychiatrist's professional opinion relating to the appellant's mental health conditions and limitation.

After having time to review the appellant's new information, the ministry representative objected to the admission of this new information stating that it would add information that was not available at the time of reconsideration and not allow the ministry to seek further clarification.

At the hearing, the appellant testified that;

- the PR was completed without her input,
- the appellant's physician has an aversion to check off lists,
- the psychiatrist is available to the appellant when she needs a consultation,
- she saw the psychiatrist twice in the last year the most recent 2 months ago, this does not include the time when the check off list was given to the psychiatrist,
- the psychiatrist did take time to interview the appellant in regards to the advocate prepared form,
- she rents a room from a widowed man who is 85 years old who helps her with DLA such as getting dressed, getting up from chairs/bed, providing her with transportation, etc.

The ministry relied on its reconsideration decision and submitted no new information.

Admissibility of New Information

The letter dated July 3, 2014 from the appellant's physician and the appellant's testimony have provided additional information regarding the appellant's impairments and how her daily living activities are affected. This information provides additional detail with respect to issues addressed in the original PWD application forms. Accordingly, the panel has admitted this new information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the Employment and Assistance Act.

The copy of information from a Mental Health website was accepted for information purposes only.

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PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant does not have a severe physical or mental impairment, and that in the opinion of a prescribed professional the appellant's impairments do not directly and significantly restrict her from performing DLA either continuously or periodically for extended periods, and that as a result of those restrictions the appellant does not require help to perform DLA?

The relevant legislation is as follows:

EAPWDA:
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.

EAPWDR section 2(1):
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.

(2) For the purposes of the Act, "prescribed professional" means a person who is authorized under an enactment to practice the profession of
(a) medical practitioner,
(b) registered psychologist,
(c) registered nurse or registered psychiatric nurse,
(d) occupational therapist,

(e) physical therapist,
(f) social worker,
(g) chiropractor, or
(h) nurse practitioner.

Severe Physical Impairment

The appellant's position is that she does have a severe physical impairment due to degenerative changes to the lower spine which have deteriorated and she is in greater pain now resulting in greater physical restrictions with daily living activities. Her severe chronic back pain limits her ability to bend, stand, walk, climb stairs, lift and carry and hold. The physician indicated in his letter dated July 3, 2014 that the appellant has severe back pain for which she is prescribed oxycodone daily every 8 to 2 hours as needed. She is deconditioned because of inactivity which is related to her pain. The appellant argues that her physician has supported a severe impairment as he wrote regarding her diagnoses that "each item cannot be considered severe but the sum totals of the conditions = SEVERE LIMITATIONS". Additionally, the physician wrote in the advocate prepared form that this is a well written, exhaustive and cogent description of this 59 year old patient's physical problems and issues re: feeling, thinking and behaving.

The ministry's position, as set out in its reconsideration decision, is that the appellant's functional skills as reported by the physician are that the appellant can walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided and can lift 5 to 15 pounds and there is no indication of how long she can remain seated. The assessor noted that the appellant requires continuous assistance with walking outdoors, climbing stairs, lifting, carrying and holding. Walking indoors and standing are reported to be independent. The assessor further noted that the appellant needs support and has balance problems and that her lifting, carrying and holding are limited to short periods. The ministry argues that the assessor's statements vary significantly from those made by the appellant's primary caregiver who has known the appellant for 34 years and therefore, more weight must be given to the statements made by the physician regarding the appellant's physical functioning.

The submission at reconsideration was guided by the advocates in design and the ministry argues that the appellant's physician remained strong that in his position these areas were not continuously restricted and chose not to check off the boxes completed with advocacy and made his own comments as the statements prepared by the advocates indicated continuous restrictions in all basic mobility, sitting, standing, climbing stairs, lifting, carrying and holding and bending. The ministry noted that the appellant's psychiatrist has also been asked these questions regarding restrictions to the appellant's mobility and has checked off every box set out by the advocate indicating continuous restrictions in basic mobility, sitting, standing, climbing stairs, lifting, carrying and holding and bending. The psychiatrist wrote "I am not her family MD - to the best of my knowledge all of these are accurate" and as these questions are not regarding the appellant's conditions which are treated by the psychiatrist, the ministry places more weight to the comments made by the appellant's physician who has known her for 34 years and sees her frequently for follow-up care. The ministry noted that remedial measures in the form of analgesics would be expected to ameliorate the appellant's low back pain and allow for more physical functionality and that her physician has indicated that more follow-up may be required, that the appellant could be referred to a neurologist and should have an updated MRI of her back.

These statements lead the minister to believe that all chronic pain management methods have not been tried and that there may be a more effective alternative in allowing for better functionality. The ministry determined that while the appellant experiences limitations to her physical functioning particularly in the areas of sitting, climbing stairs, lifting and carrying and holding over 15 lbs., the assessments provided speak to a moderate degree of physical impairment.

Panel Decision

The diagnosis of a medical condition is not itself determinative of a severe impairment. Accordingly, to assess the severity of an impairment one must consider the nature of the impairment and its impact on the appellant's ability to manage her DLA as evidenced by functional skill limitations, the restrictions to DLA, and the degree of independence in performing DLA.

The determination of severity of impairment is at the discretion of the minister – the ministry must be "satisfied" that the statutory criteria for granting PWD designation are fulfilled. In making its determination the ministry must act reasonably and consider all the relevant evidence, including that of the appellant. While the legislation is clear that the fundamental basis for the analysis is the evidence from prescribed professionals, the professional evidence has to be weighed and assessed like any other evidence.

In the appellant's case, the PR reported her diagnoses as Chronic low back pain and bilateral Varicose Veins. Under Functional Skills, it is indicated that the appellant can walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, can lift 5 to 15 pounds, and no comment is made about any limitation to remain seated. In the AR, under Mobility and Physical Ability, the assessor noted that the appellant is independent with respect to walking indoors and standing, but that she needs continuous assistance from another person or unable with walking outdoors, climbing stairs, lifting, and carrying/holding. While the appellant's diagnoses of Chronic low back pain and bilateral Varicose Veins for which she has undergone surgery may limit her ability to function; the evidence does not establish that the symptoms restrict the appellant's ability to function independently, effectively, appropriately or for a reasonable duration.

The panel finds that the limitations to physical functioning reported in the AR are not consistent with the functional skills reported by the appellant's general practitioner in the PR. The panel has placed greater weight on the evidence of the general practitioner because: the general practitioner is the appellant's long term treating physician for physical ailment (the psychiatrist acknowledges not treating the appellant other than in the capacity as a psychiatrist); the general practitioner has access to and indicates he relied on extensive medical records including consultations, test results, and his own records; and the general practitioner's detailed comments on the advocate prepared document demonstrates that he has thoughtfully considered the questions. The information provided by the physician respecting physical Functional Skills is not reflective of a severe impairment of daily functioning and while the appellant's diagnoses of Chronic low back pain and bilateral Varicose Veins for which she has undergone surgery may limit her ability to function; the evidence does not establish that the symptoms restrict the appellant's ability to function independently, effectively, appropriately or for a reasonable duration..

Based on the evidence, the panel finds that the ministry reasonably determined that the information provided did not establish a severe physical impairment.

Severe Mental Impairment

The appellant's position is that she does have significant mental health issues that are reported on by both her physician and psychiatrist who has seen her on and off since 2004, at the request of her physician and at times when she required consultation, as recently as 2 months ago. The physician indicated that the appellant has significant deficits with cognitive and emotional function in areas of emotional disturbance, motivation and impulse control. The appellant argues that her physician has supported a severe impairment as he wrote regarding her diagnoses that "each item cannot be considered severe but the sum totals of the conditions = SEVERE LIMITATIONS". Additionally, the physician wrote in the advocate prepared form that this is a well written, exhaustive and cogent description of this 59 year old patient's physical problems and issues re: feeling, thinking and behaving. Further, the appellant's psychiatrist, under Cognitive and Emotional Functioning has indicated 5 major, 2 moderate and 5 minimal impacts out of 14 items on daily functioning as a

result of her severe mental impairments which cause the appellant to want to hide, isolate herself, avoid situations and avoid dealing with issues. The appellant is physically and emotionally drained by her severe anxiety. In the physician's letter dated July 3, 2014, it is stated that he supports and respects the psychiatrist's professional opinion that she provided in relating to this patient's mental health conditions and limitation.

The ministry's position is that the appellant's physician reports that she has significant deficits with cognitive and emotional functions in the areas of emotional disturbance, motivation and impulse control and the appellant's psychiatrist reported that these deficits cause major impacts to her cognitive and emotional functioning in the areas of body functions (sleep disturbance), consciousness, emotion, impulse control and other emotional or mental problems (flashbacks and nightmares). Moderate impacts are reported with attention/concentration and motivation and minimal impacts are reported with insight and judgment, executive, memory, motor activity and language. There are no psychotic symptoms or other neuropsychological problems. The psychiatrist noted that the appellant has severe anxiety which causes the appellant to hide and isolate herself, avoid situations or dealing with issues and that she is physically and emotionally drained by anxiety. No difficulties in communication were noted by the physician while the psychiatrist reported speaking, reading and writing are good and hearing is satisfactory.

Under Social functioning it is noted to "see attachments" in the initial application by the appellant's physician. The attached documents describe a close attachment to the appellant's physician, daughter and grandchild. The overview of the appellant's mental status exam indicated that the appellant is well groomed, quite emotional and somewhat dramatic in presentation but otherwise cooperative, attentive and orientated. The appellant's mood appears anxious, upset and tearful while she is not reported to have the appearance or symptoms of clinical depression, is not suicidal, is not psychotic, and cognitively intact. Her intelligence is assessed to be in the average range, with insight assessed to be fair. The psychiatrist has reported in the assessor section that the ability to maintain relationships, interact appropriately with others, dealing appropriately with unexpected demands and securing assistance from others are all continuously supported while making appropriate social decisions is noted to be periodically supported. Noted is that the appellant's phobia interferes with her ability to engage in interpersonal relationships. No description has been provided of the degree and duration of periodic support required and no description has been provided of the nature of continuous support/supervision being provided making it not possible to determine significant support/supervision on an ongoing basis.

In the advocate prepared form where all statements note continuous restrictions, the appellant's physician chose not to check all of the boxes and to report individually making the following notations; under Emotional Control - long time personality and anxiety issues - has seen psychiatrists - has started group therapy, under Motivation - if it becomes a major problem needs to be referred back to a psychiatrist, under Memory Fatigue – chronic depression, overweight, lack of conditioning, under Attention/Concentration - no comments, under Using Public Transportation – agoraphobia, panic episodes and under Communication/Appropriate Social Interaction/ Developing and Maintaining Relationships/ and Accessing Social Support – [appear to state] emotion and personality issues.

The ministry determined that the appellant's psychiatrist had checked off all noted areas which indicated that all mobility and mental functioning is continuously restricted with the exceptions of the appellant's memory and refilling prescriptions. This level of severity is not supported by the appellant's primary care physician who she sees on a regular basis and is in a better position to describe the appellant's overall functioning over the appellant's lifetime better than the psychiatrist who has seen the appellant on and off since 2004 during times of personal crises.

In reviewing impacts to the appellant's cognitive and emotional functioning reflected in ability to manage DLA, the ministry finds those that involve the ability to make decisions about personal activities, care or finances and relating to communicating or interacting with others are only somewhat restricted. Therefore the ministry finds

that the information provided does not establish a severe mental impairment.

Panel Decision

In the appellant's case, while the physician reported her diagnoses as generalized Anxiety disorder, Personality disorder and PTSD, the PR also indicated that the impairment does not directly restrict the appellant's ability to perform DLA. The PR has not reported that the appellant has been prescribed any medication and/or treatments that interfere with her ability to perform DLA. Information from the PR respecting the appellant's mental functioning is that she has 3 significant deficits with cognitive and emotional function; emotional disturbance, motivation and impulse control.

Under Cognitive and Emotional Functioning, the psychiatrist reported a major impact for 5 of 14 items – bodily functions (sleep disturbance), consciousness, emotion, impulse control and other emotional or mental problems, (flashbacks and nightmares); 2 moderate impacts - attention/concentration and motivation; 5 minimal impacts – insight and judgment, executive, memory, motor activity and language; and 2 with no impact indicated on - psychotic symptoms and other neuropsychological problems. Additional comments provided by the psychiatrist indicated; severe anxiety causes her to want to hide/isolate herself, avoid situations and avoid dealing with issues - physically and emotionally drained by the anxiety.

In the physician's letter dated July 3, 2014, it is indicated that the appellant has severe back pain for which she is prescribed oxycodone daily every 8 to 2 hours as needed. The physician also stated that he supports and respects the psychiatrist's professional opinion that she provided in relating to this patient's mental health conditions and limitation.

The panel finds that there are similarities with the physician's and psychiatrist diagnoses specifically; generalized anxiety and personality disorders and post-traumatic stress disorder as well as with the appellant's reported cognitive and emotional functioning. The PR indicated significant deficits with Emotional disturbance, Motivation and Impulse control while the AR noted out of 5 major impacts, Bodily functions (sleep disturbance), Emotion, Impulse control and Other emotional or mental problems (flash backs and nightmares).

Section 2(1)(b) of the EAPWDR prescribes two DLA that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (social functioning).

Under Social Functioning; the appellant was described as requiring periodic support to be able to make appropriate social decisions and continuous support to develop and maintain relationships, interact appropriately with others, able to deal appropriately with unexpected demands and able to secure assistance from others. She was also reported as having marginal functioning with her immediate social network and very disrupted functioning with her extended social networks. A comment indicated "quite isolative – not much community".

The evidence indicates that the appellant is not significantly restricted with respect to decision making in that she independently manages the decision making aspects of manage personal finances (banking and budgeting), daily shopping (making appropriate choices), and meal preparation (meal planning, she needs periodic assistance). In regards to managing personal medication, it is unclear if the appellant is unable or unwilling to manage this aspect of her care since her psychiatrist stated that the appellant refused to take her medication. The panel notes that the only medication referred to recently and directly is oxycodone to be taken as needed for back pain. Also the assessor indicates that the appellant independently manages filling/refilling and storing medications safely. The appellant's overall communication has been rated as good by both the physician and psychiatrist. With social functioning (appropriate social decisions) she does need continuous assistance due to her anxiety.

In view of the above, the panel concludes that while the evidence establishes that the appellant has severe limitations to her cognitive and emotional functioning in terms of social functioning; the evidence also establishes that the appellant manages her own decision making including the decision-making aspects of the other DLA as described above. Therefore, the panel finds that the ministry has reasonably determined that a severe mental impairment was not established.

Significant Restrictions to DLA

The appellant's position is that she is restricted with daily living activities due to her significant physical and mental impairments and continuous assistance (most or all the time) is required for dressing, bathing, transfers in/out of bed, transfers on/off chairs, laundry, basic housekeeping, going to and from stores, carrying purchases home, food preparation, cooking, taking medication as directed getting in and out of a vehicle, using public transit, being able to develop and maintain relationships, interacting appropriately with others, being able to deal appropriately with unexpected demands and being able to secure assistance from others. The appellant is also noted to require periodic support with grooming, meal planning and appropriate social decisions.

The ministry's position is that based on the information provided by the appellant's physician, the appellant is not restricted in her ability to manage all DLA; whereas the appellant's psychiatrist has reported continuous assistance with dressing, bathing, transfers in and out of bed, laundry, basic housekeeping, going to and from stores, food preparation, cooking, taking medications as directed, getting in and out of a vehicle and using public transit. The psychiatrist has not provided any information or description of the assistance the appellant is receiving from another person to complete any of these activities. The AR notes that the appellant is unable to bend to put on shoes/socks/pants/underwear and unable to use the tub or shower freely. This is not supported by the physician who states the appellant needs support to help roll out of bed or chair and that she supports herself with her arms which does not indicate assistance from another person. The psychiatrist reported that the appellant cannot bend to put the wash in and out due to back pain and pain down her legs yet no description is provided about what assistance she is receiving and this is not supported by the appellant's physician. Continuous assistance is reported for laundry and basic housekeeping which would be required presumably with lifting over 5-15 lbs. and therefore cannot be a continuous restriction. Going to and from stores and carrying purchases home requires continuous assistance and the use of a assistive device yet it is not clear why the appellant cannot go shopping on her own as she can walk 4+ blocks and lift 5 to 15 lbs.

In the submission provided at reconsideration with the assistance of the advocate, the appellant's primary care physician chose not to check off all the boxes regarding DLA and prepared thoughtful responses which far outweigh the form completed by the psychiatrist, who had chosen to check all the boxes without comment.

The appellant's physician has reported that he has not prescribed any medication and/or treatments that interfere with her ability to perform DLA and that she does not require any prostheses or aids for her impairment to assist with DLA.

The ministry has determined that Social Functioning would also appear to be more functional than what has been described by the psychiatrist as the appellant's physician has reported a "significant other" as part of the appellant's life and therefore statements like requiring an "anxiety companion" or home help or needing continuous support to develop relationships would appear to indicate that the appellant's psychiatrist is not as aware of the appellant's overall social functioning as her primary care physician. Therefore the ministry will give more weight on the comments from the physician who noted in the form at reconsideration that the appellant is emotional and has personality issues, but overall believes she is capable.

The ministry relies on the medical opinion and expertize from the physician and other health professionals to determine that the appellant's impairment significantly restricts her ability to perform daily living activities

continuously or periodically for extended periods. The ministry makes the decision regarding Persons with Disabilities eligibility based on physical, mental and daily living assessments provided by the medical practitioner. Although the ministry acknowledges that the appellant has certain limitations that result from her medical conditions, particularly housekeeping and managing public transportation, it finds the information provided does not establish that a severe impairment significantly restricts the appellant's ability to perform daily living activities continuously or periodically for extended periods; therefore, not meeting the legislative criteria.

Panel Decision

The legislation – Section 2(2)(b)(i) of the EAPWDA – requires the minister to substantially assess direct and significant restrictions of DLA in consideration of the opinion of a prescribed professional. This doesn't mean that other evidence – such as that from the appellant - shouldn't be factored in as required to provide clarification of the professional evidence, but the legislative language makes it clear that the prescribed professional's opinion is fundamental to the ministry's determination as to whether it is "satisfied". In the appellant's case, the prescribed professionals have supplied little in the way of narrative to provide detail of the degree of restriction to DLA.

The legislation requires that a severe impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. The term "directly" means that there must be a causal link between the severe impairment and the restriction. There is also a component related to time or duration. The direct and significant restriction may be either continuous or periodic. If it is periodic it must be for an extended time. Inherently, any analysis of periodicity must also include consideration of the frequency. In circumstances where the evidence indicates that a restriction arises periodically, it is entirely appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

The evidence provided in the PR indicated that the appellant's impairments do not directly restrict her ability to perform any of the following legislated DLA: Personal self-care, Meal preparation, Management of medications, Basic housework, Daily shopping, Mobility inside and outside the home, Use of transportation and Management of finances. The PR did not address Social Functioning while the AR noted that the appellant was described as requiring periodic support to be able to make appropriate social decisions and continuous support to develop and maintain relationships, interact appropriately with others, able to deal appropriately with unexpected demands and able to secure assistance from others. She was also reported as having marginal functioning with her immediate social network and very disrupted functioning with her extended social networks. A comment indicated "quite isolative – not much community". Additionally, the physician has not reported that the appellant has been prescribed any medication and/or treatments that interfere with her ability to perform DLA.

In the AR, the psychiatrist indicated that the appellant: under Personal Care, independently manages 3 of 8 aspects of DLA specifically; toileting, feeding self and regulate diet, she requires periodic assistance for grooming and continuous assistance for the remaining 4 aspects; dressing, bathing, transfers in/out of bed and transfers on/off chair. Under Basic Housekeeping, she requires continuous assistance in both aspects; laundry and basic housekeeping. Under Shopping she independently manages reading prices and labels, making appropriate choices and paying for purchases; she requires continuous assistance for going to and from stores (requires transportation) and requires an assistive device for carrying purchases home. Under Meals the appellant independently manages safe storage of food whereas she requires periodic assistance with meal planning and continuous assistance with food preparation and cooking (limited to short periods of standing). Under Pay Rent and Bills, the appellant independently manages all 3 aspects of DLA; banking, budgeting and paying rent and bills. Under Medications, the appellant independently manages filling/refilling prescriptions and safe handling and storage whereas with taking as directed she requires continuous assistance (prompts and

reminders). Under transportation, the appellant independently manages using transit schedules and arranging transportation and requires continuous assistance getting in and out of a vehicle and for using public transit (anxiety).

The appellant stated that she has difficulty dressing, bathing, transfers in/out of bed, transfers on/off chairs, laundry, basic housekeeping, going to and from stores, carrying purchases home, food preparation, cooking, taking medication as directed getting in and out of a vehicle, using public transit, being able to develop and maintain relationships, interacting appropriately with others, being able to deal appropriately with unexpected demands and being able to secure assistance from others. The appellant is also noted to require periodic support with grooming, meal planning and appropriate social decisions.

The onus is on the appellant to prove on the balance of probabilities that she satisfies the legislative criteria with respect to direct and severe restrictions in her ability to manage her DLA independently. In the panel's view, having placed greater weight on the general practitioner's evidence respecting the appellant's physical functional skills and physical ability to perform DLA, the panel finds that while the evidence indicates that the appellant has some difficulty with her DLA due to her chronic back pain and more specifically in the area of Social Functioning due to her "social phobia"; the ministry reasonably determined that it does not establish that in the opinion of a prescribed professional her impairments directly and significantly restrict her ability to manage her DLA either continuously or periodically for extended periods. Accordingly, the panel finds that the ministry reasonably found that this legislative criterion is not satisfied.

Help with DLA

The appellant's position is that she requires help daily which has been confirmed by the prescribed professionals that include for her physical impairment home help, domestic supports, a bath chair and shower bars and for her mental impairment an anxiety companion, group therapy, a peer support worker and a life coach/ therapist.

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

Panel Decision

Finding that a severe impairment directly and significantly restricts a person's ability to manage her DLA either continuously or periodically for an extended period is a precondition to a person requiring "help" as defined by section 2(3)(b) of the EAPWDA.

In the PR, it is noted that the appellant does not require aids or prostheses for her impairment. In the AR, it is noted that the appellant needs home help, domestic supports, a bath chair and shower bars and for her mental impairment an anxiety companion, group therapy, a peer support worker and a life coach/ therapist. In the AR, the prescribed professional indicated that the appellant does not have an assistance animal. The panel finds that the ministry reasonably concluded that since it has not been established that the appellant's DLA are significantly restricted, it could not be determined that the appellant requires help with DLA as defined by the legislation.

Conclusion

The panel acknowledges that the appellant's medical conditions affect her ability to function. However, having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision finding the appellant ineligible for PWD designation is reasonably supported by the evidence. The panel therefore confirms the ministry's decision.