

## 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 9 May 2014 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 parties, this 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 09 December 2013. The Application contained:
  - A Physician Report (PR) dated 9 September 2013, completed by the appellant's general practitioner (GP) who did not indicate how long he has known the appellant and has seen her 2-10 times in the past year.
  - An Assessor Report (AR) of the same date completed by the same GP.
  - A Self Report (SR) dated 19 August 2013 prepared by the appellant's advocate and signed by the appellant to confirm its accuracy.
  - A Progress Note by a health authority mental health services unit reporting on a telephone interview with the appellant dated 17 August 2012.
2. The appellant's Request for Reconsideration, dated 18 March 2014, to which was attached a submission prepared by another advocate, reviewing the evidence and going to argument, and a letter of support from the appellant's kinesiologist dated 25 April 2014.

In the PR, the GP diagnoses the appellant's impairments as anxiety and panic attacks and chronic arm pain (both onset many years ago).

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.

### Severity/health history

#### *Physical impairment*

PR:

Under health history, the GP writes:

"Her arm pain is chronic. She sees various healers and alternative practitioners to help her. She does not seek conventional medical help."

Under addition comments, the GP writes:

"She does not wish or seek out any conventional medical assistance. I am therefore not able to offer her much in the way of assistance."

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

The GP indicates that the appellant does not require any prostheses or aids for her impairment.

As to functional skills, the GP reports that the appellant can walk 4+ blocks, climb 5+ steps, can lift 5-15 lbs. with her left arm and nothing with her right arm, and has no limitations as to how long she can

remain seated.

### *Mental impairment*

PR:

Under health history, the GP writes:

“She is awaiting art therapy which has helped her before.”

“She has anxiety and panic attacks.”

Under additional comments, the GP writes:

“Had anxiety for 5 months – every day. Then stopped being anxious for 1 month. Her anxiety is ongoing. It is continual and has chronic anxiety. Prognosis – no cure expected.”

The GP indicates that the appellant has no difficulties with communication. The GP comments: “Problems writing due to R arm/hand pain.”

The GP assesses the appellant with significant deficits with cognitive and emotional function in the areas of consciousness (confusion), executive (when anxious), emotional disturbance (anxiety), motivation and attention or sustained concentration (when anxious).

AR:

The GP assesses the appellant’s ability in speaking, reading, writing and hearing as good, commenting “If not in a panic attack – unable to function.”

### Ability to perform DLA

AR:

The GP reports that the appellant lives with her daughter.

Regarding mobility and physical ability, the GP provides the following assessments: independent for walking indoors, walking outdoors, climbing stairs and standing; continuous assistance from another person or unable for lifting and carrying and holding (the GP comments: “can lift with L arm, not R arm”).

With regard to cognitive and emotional functioning, the GP assesses the appellant's mental impairment as having a major impact on daily functioning in the areas of consciousness, emotion (anxiety) and attention/concentration. The GP assesses a moderate impact in the area of bodily functions and a minimal impact in the areas of impulse control, executive, motivation, motor activity, language, and psychotic symptoms. No impact is reported in the area of insight and judgment, other neuropsychological problems or other emotional or mental problems. The GP comments: “If anxious – unable to eat – daily – lasts 1 hour. Scrubbing floor excessively. Note: major impact when she suffers severe anxiety and panic attacks. For the last six months this is for 1 hour at least every day.”

The GP assesses the assistance required for managing DLA as follows (the GP's comments in parentheses):

- Personal care – independent but taking significantly longer than typical for dressing (when R

arm flares up), same for grooming and bathing (may take up to 3x longer than normal), same for toileting, same for feeding self and regulating diet (has to use L arm at times. Very hard for her). Independent for transfers in/out of bed and transfers on/off of chair

- Basic housekeeping – both independent and continuous assistance from another person required for laundry and basic housekeeping (daughter assists all the time).
- Shopping – independent for going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases (as long as not [in] bad anxiety); continuous assistance from another person or unable for carrying purchases home (someone else carries for her).
- Meals – independent for meal planning and safe storage of food; continuous assistance from another person or unable for food preparation and cooking (daughter does).
- Pay rent and bills – independent in all aspects.
- Medications – independent in all aspects.
- Transportation – independent for getting in and out of vehicle, using transit schedules and arranging transportation; takes significantly longer than typical for using public transit (Not if anxious. She has stated she cannot use transit 3-4x/week).

With respect to social functioning the GP assesses the appellant as independent for making appropriate social decisions, developing and maintaining relationships, and securing assistance from others; she requires periodic support/supervision for interacting appropriately with others and dealing appropriately with unexpected demands. The GP comments: "Problematic when anxious. At times needs help from her daughter or others."

The GP assesses the impact of her mental impairment on the appellant's relationship with her immediate and extended social networks as very disrupted functioning, commenting: "when in panic – otherwise OK")

#### Help provided/required

PR:

The GP indicates that the appellant does not require any prostheses or aids for her impairment.

AR:

The GP indicates that help provided for DLA is provided by family and friends.

The GP does not indicate that the appellant routinely uses any assistive device; nor does she have an assistance animal.

#### Self report

In her SR, the following information is provided:

- The appellant suffers from frequent pain caused by chronic candida that is exacerbated by a resistance to the conventional antibiotics usually prescribed to cure it. She is also plagued by extreme dysmenorrhea, a chronic, painful menstrual condition.
- She also has chronic pain due to an injury to her dominant, right, arm. This originated with a dislocated and broken elbow 19 years ago. This painful condition (dysesthesia and paresthesia) now extends to her shoulder and neck. In spite of two surgeries, physiotherapy

and acupuncture, this neuropathic pain continues unabated. And irritable bowel and periodic bouts of colitis complicate and further compromise her physical well-being.

- Coupled with these physical ailments, the appellant suffers from severe social anxieties and panic attacks, which cause her to mentally crash regularly. She first began extended therapy for anxiety disorders over 20 years ago, but this treatment seems to have yielded only limited success and she still describes her mental health as precarious. These panic attacks have grown worse in recent years; now they are intense, almost daily occurrences. She is barely able to function when overwhelmed by these attacks. When these panic attacks occur the appellant may experience intense fatigue and lethargy, extreme irritability, nausea, dizziness poor concentration and focus. Chronic sleep disturbance also accompanies these anxieties. When anxieties occur, debilitating depression and black moods may result. Her appetite also becomes abnormally low at times
- The appellant has not found significant relief for her physical pain and anxiety through standard medications/pharmaceuticals and psychotherapies to date. Her current medications include analgesic and anti-anxiety prescriptions drugs. She believes that these may even make her more sick. She has had almost total adverse reactions to antibiotics. She has been drawn to various non-conventional medical treatments, experimenting with a range of natural healers and alternative products. To better cope with her pervasive anxieties, she seeks “quiet environments.” Although she has no choice but to avoid crowds when anxiety strikes, she can still function fairly well in one-to-one relationships and relies on close friends in these debilitating situations.
- She has little problem with basic mobility. However the pain she experiences makes it impossible to undertake and complete numerous day-to-day tasks. Where she is most physically handicapped is in the area of lifting, carrying and climbing, due to the intense pain in her arm neck and shoulder. She has considerable difficulty doing any activity that involves the use of her right arm, such as climbing stairs using a handrail, lifting and carrying groceries, bicycling, writing, computing, and preparing food.
- Her physical limitations also extend to such activities as grooming, bathing, toileting and feeding herself. Even transferring from a sitting position to a standing position is difficult because of the limited range of motion in her right arm. Laundry and housekeeping take much longer to accomplish and often require the help of another person. She needs occasional help with shopping, especially for carrying groceries home. She will also avoid crowds, such as those commonly found in food stores, banks and buses and on city streets, when panic attacks occur. She also requires and seeks out “support persons” to help her deal appropriately with unexpected demands when frequent anxieties occur.
- She is separated from her husband. She cares for her oldest daughter who has a mental health condition, and has another daughter who lives independently in another city.
- She wishes to return to the fulfilling art therapy program she attended.

The Progress Note by a health authority mental health services unit reporting on a telephone interview with the appellant reported that she stated that she has a history of depression and anxiety and that mental illness run in the family. She said that she was prescribed psychotropic medications but has never taken them as she is hypersensitive to medication. She has had therapy with mental health services before, including art therapy and would like to be referred back to art therapy as she found it tremendously beneficial. She stated that she would like some counseling to help her cope when she is overwhelmed. She said that she was having a period right then and feels very sensitive and weepy. Disposition: the appellant stated that she will attend an orientation at the health authority clinic in

order to get connected with a doctor involved with an anxiety support group and with an art therapy program.

In her letter of support, the appellant's kinesiologist writes:

"I have been working consistently for the past few years with [the appellant] in an attempt to address her severe levels of anxiety as well as chronic structural pain. Both of these conditions have greatly affected her ability to lead a normal life & function effectively on a day-to-day basis."

Information submitted on appeal

In her Notice of Appeal, dated 30 May 2014, the appellant writes that she suffers from chronic pain, chronic anxiety, ongoing chronic candida, severe disabilities concerning PMS, as well as exhaustion. She feels daily activity and her ability to function on a daily basis are severely challenged – she feels incapable of independent daily functioning.

Before the hearing, the appellant submitted a Medical Certificate from her GP dated 27 June 2014. The GP states that "It is my medical opinion that [the appellant] meets the criteria for persons with disabilities. She has been my patient since 2004. Please reconsider the decision to deny her this designation."

The appellant also submitted a letter dated Thursday, 30 June 2014, in which she refers to her GP's opinion and reviews her medical conditions. She states that her severe anxiety does not "happen" for just one hour at a time. It is predominant in the days leading up to her period (PMS) and can last from 3-9 days. Her severe anxiety has also lasted up to five months at the time, something that her GP noted in the original application. She writes that she also suffers from chronic candida, which on its own is severely disabling. Her GP has attempted to treat this condition but, due to her severe allergies to antibiotics, she has been forced to treat it through a constant diet in which she does not eat sugar, dairy, wheat, rye, oats, barley and yeast. So she has a very restricted diet and this on its own warrants extra special needs. She feels that she has no choice but to heal her illness in a non-medical, non-traditional way. Her GP has been empathetic and supportive in this approach.

In an e-mail dated 7 July 2014 the ministry stated that its submission will be the reconsideration summary provided in the Record of Ministry Decision.

The ministry did not object to the admissibility of the information provided by the appellant and her GP on appeal. The panel finds that the information in the letter from the GP and the appellant's submission is in support of the information and records before the ministry at reconsideration, as it was offered to corroborate information provided in the original PWD Designation Application. Accordingly, the panel admits this evidence under section 22(4) 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 GP) identify the impairment and confirm that impairment will continue for at least two years.

In the discussion below concerning the severity of the appellant's impairments, the panel has drawn upon the ministry's definition of "impairment" as provided in the PR. 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]." 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 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. The panel finds that a "medical certificate," such as the one submitted by the appellant's GP on appeal, is not in itself sufficient to satisfy the minister that the appellant meets the PWD criteria and that the ministry must assess all the evidence and not supplant its decision-making role.

### **Physical impairment**

In the reconsideration decision, the ministry notes that the GP has indicated that the appellant is able to walk 4+ blocks, climb 5+ steps unaided and lift 5-15 lbs with L arm (R arm nothing) and has no sitting limitation. She is independently able to walk indoors and outdoors, to climb stairs and stand. Continuous help is required to lift/carry/hold with the right arm and she lifts with her left arm. No assistive devices are routinely used to help compensate for her impairment. The ministry states that functional skill limitations are not significantly restricted aside from lifting with her right arm. The ministry notes that while chronic arm pain is reported, there is no underlying medical condition reported by the physician and no remedial measures described. The ministry suggests that chronic pain is responsive to medical therapy, including analgesics, which may ameliorate her pain and allow for better functioning of her right arm and hand. The position of the ministry is that it is not satisfied that the information provided is evidence of a severe physical impairment.



The appellant's position is that her GP has stated that in his opinion the appellant meets the criteria for PWD designation, thus indicating that she has a severe impairment. In the submission at reconsideration, the appellant's advocate argued that the information provided by the appellant in the SR has not been considered, let alone given considerable weight, as required by the BC Supreme Court in *Hudson*. When read with the PR and PR, there is ample evidence to establish that the appellant has a severe physical impairment.

### *Panel findings*

The GP has diagnosed the appellant with chronic pain in her right, dominant, arm. In the SR, the appellant also refers to a diagnosis of candida and extreme dysmenorrhea – which she describes as a chronic, painful menstrual condition which also affects her mental health. However this, as well as candida, was not confirmed by her medical practitioner in the PR. No restrictions as a result of this impairment are reported for any aspect of mobility: she can walk 4+ blocks unaided, climb 5+ steps (though unable to use a handrail on the right side), with no limitations as to remaining seated and she is assessed as independent for standing. The evidence is that the major impact is in her inability to lift and carry and hold with her right arm, though this is compensated by her ability to lift 5 to 15 lbs. with her left arm. The resulting restrictions to the DLA requiring physical effort, as reported by the GP in the AR, are that she is independent in all aspects of personal care, though these may take 3x longer than normal; independent for basic housekeeping, with the GP reporting that the appellant's daughter helps her all time, all aspects of shopping except carrying purchases home where continuous help is required; and meal preparation and cooking, with the daughter doing this for her. In the AR, the GP mentions that the appellant takes significantly longer than typical for dressing when her right arm flares up, but, as the ministry notes, no information is provided as to how often these flare-ups occur. No information is provided as to the type or extent of help provided by the daughter for basic housekeeping, and it is difficult to assess the degree of restriction for this DLA considering the GP's comment in the context of social functioning: "scrubbing floors excessively." The panel notes that the SR states that the appellant has "considerable difficulty doing any activity of daily living that involves the use of her right arm – such as.... chopping, preparing food, stirring and manipulating kitchen implements while cooking," with no mention of her daughter's help, indicating to the panel that she does these tasks, albeit with difficulty, and does not rely entirely on her daughter for all aspects of meal preparation all the time, as implied by the GP, who has not described or confirmed the level of difficulty the appellant experiences for these tasks.

While considering the ministry's statement that "chronic pain is responsive to medical therapy including analgesics..." as speculative and not necessarily universal, the panel finds that, after taking into account the appellant's mobility and her lifting/carrying/holding ability with her left arm and based on all the available evidence, that the ministry was reasonable in determining that a severe physical impairment had not been established.

### *Mental impairment.*

In the reconsideration decision, the ministry reviews the GP's assessments in the PR and AR, referring to the GP's report of several deficits to cognitive and emotional functioning. The ministry notes that impacts on daily functioning are mostly minimal with one moderate impact on bodily functions and three major impacts on consciousness, emotion and attention/concentration. The

ministry also notes the GP's comments "if anxious – unable to eat – [illegible]. One hour scrubbing floor excessively. Note: major impact when suffers severe anxiety and panic attacks, for the last six months, this is for 1 hour at least every day." The ministry also refers to the appellant's SR, in which she includes the use of analgesic and anti-anxiety medications. The ministry concludes that the narrative is not supportive of a severe mental health condition that significantly limits the appellant's ability to function either continuously or periodically for extended periods. The ministry was not satisfied that the information provided is evidence of a severe mental impairment. The ministry also referred to the submission prepared by the appellant's advocate at reconsideration, noting that the submission reiterates information found in the original application, including the SR, describing her medical conditions and difficulties performing regular daily activities. The ministry states that the diagnoses described in the SR have not been confirmed by a medical practitioner nor has any new information from a prescribed professional being provided with her Request for Reconsideration.

The appellant's position is that, considering all the evidence as set out in the PR, AR and her SR, as well as from her kinesiologist, the information provided demonstrates that her anxiety and panic attacks significantly restrict her daily functioning, thereby establishing a severe mental impairment.

### *Panel findings*

The GP has diagnosed the appellant with anxiety and panic attacks. The evidence is that the anxiety can last for periods of up to 5-6 months and the panic attacks can occur daily and last for about 1 hour. In her submission on appeal, the appellant refers to PMS (premenstrual syndrome), which she states makes her anxiety more severe and can last for 3-9 days a month. This condition has not been confirmed by the GP.

The GP has indicated that the appellant has significant deficits with cognitive and emotional function in the areas of consciousness (confusion), executive (when anxious), emotional disturbance (anxiety) motivation and attention or sustained concentration (when anxious). Ability to communicate is assessed as good, except during a panic attack (and noting difficulties with writing because of her right arm pain). The GP has identified major impacts in the areas of consciousness, emotion and attention/concentration and a moderate impact for bodily functions, noting that these impacts are major during a panic attack. Similarly, the GP has indicated that the appellant's relationship with her immediate and extended social networks is very disrupted when she is in panic attack, "otherwise OK." The GP assesses the appellant independent for making appropriate social decisions, developing and maintaining relationships and securing assistance from others, noting that this may be problematic when anxious. He assesses the appellant requiring periodic support supervision for interacting appropriately with others and dealing appropriately with unexpected demands, but no information as to the degree and duration of such support/supervision is given. Based on the information provided by the GP, which suggests that during her extended periods of anxiety the appellant can manage her daily living except for an hour or so per day when experiencing a panic attack, the panel finds that the ministry was reasonable in determining that the information provided did not establish a severe mental impairment.

### **Significant restrictions in the ability to perform DLA.**

The ministry, in its reconsideration decision, reviewed the information provided by the GP in the AR, noting that many activities are performed independently and continuous help is required for laundry,

basic housekeeping, carrying purchases home, food preparation and cooking. The ministry refers to the GP's comment relating to personal care taking up to 3x longer than normal "when R arm flares up," noting that there is no indication of the frequency or duration of her flare-ups of right arm pain. The ministry notes that the appellant is independently able to perform 3 of 5 aspects of social functioning with periodic support/supervision required to interact appropriately with others and to deal appropriately with unexpected demands, explained as "problematic when anxious," and at times needs help from her daughter or others. Functioning in immediate and extended social networks can be very disruptive "when in panic, otherwise OK." The ministry concludes that, as the majority of DLA are performed independently or require little help from others with tasks requiring use of both hands when her right arm is painful, the information from the appellant's prescribed professional does not establish that impairment significantly restricts DLA either continuously or periodically for extended periods.

The position of the appellant is that the information provided by the GP, when read with the SR, clearly demonstrates that her impairments significantly restrict her ability to perform DLA on an ongoing basis.

#### *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 mental or physical impairment, a criterion which has not been established in this appeal. This DLA criterion must also be considered in terms of the preceding legislative language of section 2 of the *EAPWDA*, 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 that professional that would satisfy the minister of 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.

In terms of restrictions resulting from the appellant's physical impairment of right arm pain. The GP has assessed the appellant as independent for moving about indoors or outdoors, except for lifting/carrying/holding with her right arm. He has also assessed her as independent for all aspects of personal care and basic housekeeping and shopping, except for carrying purchases home, managing personal finances and managing personal medications, and using and transportation (difficulties with using public transit arise from her mental impairment). Continuous assistance from her daughter for housekeeping, carrying purchases home and food preparation and cooking are reported as being required, but as noted above under severity of physical impairment, it is unclear as to the nature and extent of this help.

As to restrictions attributable to the appellant's mental impairment of anxiety and panic attacks, the GP has indicated some restriction concerning using public transit when anxious. No restrictions are reported for the aspects of the DLA applicable to a person with a mental or physical impairment, such as in the areas of meal planning, regulating diet, paying rent and bills and managing medications. With regard to the two DLA applicable only to a person with a mental impairment, for the DLA to make decisions about personal activities, care or finances, the GP has assessed the appellant as independent in three of the five decision-making areas – making appropriate social decisions,

developing and maintaining relationships, and securing assistance from others, though noting “problematic when anxious.” Periodic support/supervision is required for interacting appropriately with others and dealing appropriately with unexpected demands, but no description is provided of the degree and duration of such support/supervision. In terms of the DLA to relate to, communicate or interact with others effectively, the GP assesses the appellant's ability to communicate as good, except when she has panic attacks and notes her difficulty with writing due to her right arm pain. Her relationship with her immediate and extended social networks is described as very disrupted functioning but this is when in panic attack, “otherwise OK.” The evidence suggests that the most acute impacts are when the appellant experiences panic attacks – these occur episodically, not continuously or periodically for an extended period.

On the basis of the foregoing, and as a severe mental or physical impairment has not been established, the panel finds the ministry was reasonable in determining that the information from the appellant's prescribed professional does not establish that either mental or physical impairment directly and significantly restricts DLA either continuously or periodically for extended periods.

### **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 position of the appellant is that she requires the significant help from others, in particular from her daughter for cooking and housework and from her network of “support persons” to help her deal with unexpected demand when her anxiety overwhelms her.

### ***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. While the evidence is that the appellant benefits from the help of her daughter and others for some DLA, the panel finds that the ministry reasonably determined that since it has not been established that DLA are directly and significantly restricted, it cannot be determined that help is required as provided under section 2(2)(b)(ii) of the EAPWDA.

### **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 reasonably supported by the evidence. The panel therefore confirms the ministry's decision.