APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated August 22, 2014 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that her impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that:

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

PART D – Relevant Legislation

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

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

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PART E – Summary of Facts

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 April 4, 2014, a physician report (PR) and an assessor report (AR) both dated December 11, 2013 and completed by a psychiatrist with the Sleep Disorders Program who had known the appellant for approximately 1 year.

The evidence also included the following:
1) Outpatient Clinic Report dated November 13, 2012;
2) Consultation Request dated May 1, 2013;
3) Results Review Report- Outpatient Clinic Note dated June 13, 2013;
4) Hospital Discharge Summary for the appellant dated July 4, 2013;
5) Letter dated August 12, 2014 from the psychiatrist who completed the PR and AR; and,
6) Request for Reconsideration dated July 29, 2014.

Diagnoses
In the PR, the appellant was diagnosed by the psychiatrist with bipolar 2 disorder, with onset of early 2012, and circadian rhythm sleep disorder, delayed sleep phase type, with onset in her teenage years.

Mental Impairment
In the PR, the appellant's psychiatrist reported that:
- In terms of health history, the appellant's bipolar disorder has been difficult to treat and a number of medications have been tried. "Her mood has improved but (is) not stable enough to permit any employment yet. She has chronic suicidal thoughts. She has significant mood swings. She is chronically fatigued. Her sleep schedule is very abnormal... Her appetite is diminished. Concentration is impaired. It can be effortful even to go to the grocery store. She spends most of her time isolating at home."
- The appellant does not have difficulties with communication.
- A checklist indicates significant deficits with the appellant's cognitive and emotional function in the areas of executive, emotional disturbance, motivation, impulse control, and attention or sustained concentration. The psychiatrist wrote "related to bipolar and sleep disorder."
- A checklist indicates that the appellant is not restricted with her social functioning.
- In the additional comments, the psychiatrist wrote that the appellant has been hospitalized for bipolar disorder and to see the enclosed documents (Hospital Discharge Summary, Outpatient Clinic Report, and Results Review Report).

In the AR, the psychiatrist indicated that:
- The appellant has a good ability to communicate in all areas.
- There is a major impact in 2 of 14 listed areas of cognitive and emotional functioning, namely bodily functions and emotion. There is a moderate impact in the areas of consciousness with a note "fatigue", as well as attention/concentration and executive. A minimal impact is reported to impulse control and no impact in the remaining 7 areas of functioning. The psychiatrist wrote that "so far, her bipolar disorder has not been adequately controlled."

In her self-report, the appellant wrote that:
- She experiences both small-scale and large-scale mood swings. She can become "livid" during the day or go two weeks or so "feeling utterly worthless" without cause and the next

two (weeks) she is "extremely excitable."

- She has a minimum sleep requirement of 10 hours or more and her schedule continually rotates and it is not controllable.
- She finds small tasks difficult or impossible. She has long periods of sadness when her appetite drops, she sleeps even longer (12 or more hours), has no drive, exhaustion, suicidal thoughts and an empty life outlook.
- If she does not sleep when and how long her body tells her to, she cannot think straight, move properly or remember things, and "it's like sleepwalking."
- The cycle and constant change of sleep time "has the biggest impact." It is "a big deal" to plan ahead to set appointments and hard to even get groceries because for a week she is asleep during most store's open hours. She cannot form many relationships, attend events, or travel on public transportation.

In the Consultation Request dated May 1, 2013, the psychiatrist indicated:

- She has been seeing the appellant since November 2012 to try to shift her sleep schedule. This has been fraught with difficulty as anything but small shifts in her sleep schedule tend to cause sleep schedule fragmentation. In addition, sleep schedule shifts tend to cause unexplained sleepiness during her "daytime hours" and changes in her mood.
- In February, after making some adjustments to her sleep cycle, the appellant started to experience increasing sensations of emptiness and dips in her mood every 2 to 3 days; whereas they would previously occur about once every month.
- She appeared more fragile. Her concentration was slightly decreased, but there was no change in her appetite.
- Various medications have been tried but appeared to exacerbate the appellant's mood. The psychiatrist began to wonder about a bipolar diathesis and referred the appellant for a diagnosis of her mood symptoms.

In the Results Review Report- Outpatient Clinic Note dated June 13, 2013, the physician provided an impression of Bipolar 2 disorder, currently euthymic.

In the Hospital Discharge Summary dated July 4, 2013, the physician reported:

- The appellant was certified by her psychiatrist whilst at a Sleep Disorders appointment secondary to emerging active suicidal ideation in the context of a parent-child conflict. She had been thinking about hanging herself and made some initial efforts in researching this. It was felt that she would benefit from an emergency admission for her safety.

In the letter dated August 12, 2014, the psychiatrist reported:

- In her opinion, the appellant suffers from a severe mental impairment in terms of the impact on her daily life.
- First, she suffers from bipolar disorder and, although this is significantly better controlled than in the past, it currently manifests as about one week of depressive symptoms per month. During those times, she feels worthless, irritable, tired and unmotivated, with reduced appetite and concentration.
- The appellant chronically socially isolates herself at home.
- Second, the appellant suffers from a sleep disorder which manifests as a progressive delay in her sleep schedule of an hour to an hour and a half each day, so that each day she will fall asleep and arise later than the previous day. This condition is chronic.

- It is hard to predict what her wake or sleep hours will be the following week or month.
- If the appellant attends an appointment during her usual sleeping hours, she can be sleepy with impaired concentration during the appointment/ that day, and her sleep schedule in the following days can become more disrupted, resulting in fatigue and sleepiness.
- Disrupting her sleep schedule in this way can also cause a relapse of her mood.

Physical Impairment
In the PR, the appellant's psychiatrist reported that:
- The appellant does not require an aid for her impairment.
- Functional skills are not limited, as the appellant can walk 4 or more blocks, climb 5 or more steps and has no limitation with lifting or remaining seated.

In the AR, the psychiatrist indicated that:
- The appellant is independent in all aspects of mobility and physical ability.

Daily Living Activities (DLA)
In the PR, the psychiatrist indicated that:
- The appellant has not been prescribed any medications and/or treatments that interfere with her daily living activities.
- The appellant is continuously restricted with daily shopping, with a note added: "fatigue, decreased motivation."
- There is no assessment indicated for the DLA of basic housework.
- The appellant is not restricted with the remaining listed DLA, namely: personal self care, meal preparation, management of her medications, mobility inside and outside the home, use of transportation, management of finances and social functioning.

In the AR, the psychiatrist reported that:
- The appellant is independent with moving about indoors.
- The appellant is independently able to perform every task of the listed DLA, namely: personal care, basic housekeeping, shopping, meals, paying rent and bills, managing medications and use of transportation.
- The appellant is independent in 4 aspects of social functioning, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, and securing assistance from others. The appellant requires a range of periodic to continuous support/ supervision in dealing appropriately with unexpected demands, with the note added: "difficult to deal with stress as impacts mood and sleep."
- The appellant's level of functioning with her immediate social networks is not assessed but the psychiatrist noted "little in person social contact." The appellant is assessed with good functioning in her extended social networks.

In the letter dated August 12, 2014, the psychiatrist reported:
- The appellant's bipolar symptoms lead to a significant reduction in her level of activity; sometimes not showering for days, finding it difficult to follow through with cooking, and neglecting the household chores and shopping for food. These tasks can take significantly longer than normal to perform.
- The appellant's mother, with whom the appellant lives, has to assist with the cooking, chores and shopping during those times.

- The unconventional waking hours as a result of the appellant's sleep disorder can make daily functioning very challenging as most activities and appointments happen during daytime hours.

Need for Help
In the PR, when asked what assistance the appellant needs with DLA, the psychiatrist wrote "none."

The psychiatrist reported in the AR that the appellant lives with her mother who "provides emotional support and housing."

In her Notice of Appeal dated August 22, 2014, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that, based on the facts of her case, it was (not) reasonable to deny the PWD designation.

Prior to the hearing, the appellant provided an additional document, namely a letter dated October 6, 2014 from the psychiatrist that completed the PR and the AR. The psychiatrist wrote that she has a special interest in sleep disorders and has seen the appellant at the Sleep Disorders Program regularly since late 2012. She believes that her letter of August 12, 2014 most accurately describes the appellant's functioning. The psychiatrist wrote that when she filled out the PWD form in December 2013 she was not fully aware of the impact of her disorder on her functioning.

At the hearing, the appellant and her advocate stated:
- The appellant has a sleep disorder which is rare and has been difficult to treat. The psychiatrist in the Sleep Disorders Program has been seeing the appellant regularly for over a year.
- The appellant experiences her bipolar disorder primarily as cycles of depression. The cycle occurs about every 3 weeks.
- During her depressive cycle, the appellant has very low mood with many suicidal thoughts, "horrible" thoughts, and she does not eat during the day. She has no appetite and very little motivation. She is too tired and exhausted to perform routine chores.
- If she is awake when the stores are open, she will "skip shopping" because she cannot face going out in public. She is not motivated to take care of her hygiene. This occurs for about a week.
- Her circadian rhythm sleep disorder causes her "body clock" to cycle forward by one hour each day.
- When she is awake through the night, it is impossible to do anything in the community because everything is closed. When she has to attend an appointment, it can "throw everything off" and she will sleep for up to 18 hours the next period.
- She needs about 12 hours of sleep or she is "like a zombie" and cannot function properly. She cannot remember anything and "wonders what to do next."
- She has tried treatments, such as light therapy, which have not helped.
- The sleep medications prescribed by her psychiatrist have made her mood worse. The treatments do not interact well with her bipolar disorder since it sets off her cycle earlier than it should.
- The appellant woke up at 3:00 a.m. today and she will go to bed at 3:00 p.m. this afternoon. Tomorrow, she will wake up at 4:00 a.m. and need to get to bed by 4:00 p.m. This daily shift continues until her schedule has completely circled the clock.
- Her condition began when she was in high school and she would fall asleep in her classes. It seems to be getting worse because the shift is getting closer to an hour and a half each day.

- The problem is that her mood and sleep disorders are inter-connected and neither condition has been addressed by the treatments. The psychiatrist wrote that the appellant's bipolar disorder has not been adequately controlled.
- She has had crises in the past, including being forcefully put in the psychiatric ward for 3 days and sent for a mental health assessment. She feels nervous about her situation because she knows "if something bad happens" when she is depressed it "becomes dangerous" and she might end up back in the hospital.

Admissibility of New Information

The ministry did not object to the admissibility of the October 6, 2014 letter and did not raise an objection to the admissibility of the oral testimony on behalf of the appellant. As this information provides additional detail regarding the appellant's impairments, as addressed in the original PWD application, the panel has admitted this additional 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 ministry relied on its reconsideration decision, as summarized at the hearing.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a person with disabilities (PWD), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the appellant does not have a severe mental or physical impairment and that her 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 directly advance a position that she has a severe physical impairment.

The ministry's position is that there is not sufficient information from the psychiatrist to confirm that the appellant has a severe physical impairment. The ministry argued that, in terms of physical functioning, the functional skills are within normal limits and mobility and physical abilities are performed independently.

Panel Decision

The psychiatrist, who has known the appellant for approximately one year, has diagnosed the appellant with circadian rhythm sleep disorder, delayed sleep phase type. The appellant does not require an aid for her impairment and her functional skills are not limited, as the appellant can walk 4 or more blocks, climb 5 or more steps and has no limitation with lifting or remaining seated. The appellant has been assessed by the psychiatrist as being independent in all aspects of mobility and physical ability. The panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment, pursuant to 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 her diagnosed bipolar 2 and circadian rhythm sleep disorders, delayed sleep phase type. The advocate argued that the psychiatrist indicated in her October 6, 2014 letter that the impacts to the appellant's functioning are most accurately described in her August 12, 2014 letter and, therefore, this evidence should be given more weight than that in the PR and AR. The advocate highlighted the psychiatrist's opinion as expressed in the August 12, 2014 letter, which is that the appellant suffers from a severe mental impairment in terms of the impact on her daily life. The advocate argued that the appellant's two disorders are inter-related which makes them difficult to treat and that neither condition has been adequately controlled to date.

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe mental impairment. The ministry argued that the psychiatrist assessed the appellant with significant deficits in her cognitive and emotional functioning in 5 areas but reported that the impacts were mostly moderate with two major impacts on bodily functions and emotion and the majority of aspects show no impact. The ministry argued that the appellant's communication is good, with no difficulty, and the appellant is independent in 4 of 5 areas of social functioning, with some variance in the ability to deal appropriately with unexpected demands described as "difficult to deal with stress as

impacts mood and sleep."

Panel Decision
A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a "severe" impairment. An "impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively.

To assess the severity of an impairment, the ministry must consider both the nature of the impairment and the extent of its impact on daily functioning as evidenced by functional skill limitations and the degree to which performing DLA is restricted. In making its determination the ministry must consider all the relevant evidence, including that of the appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a prescribed professional – in this case, the appellant's psychiatrist.

In the PR, the psychiatrist diagnosed the appellant with bipolar 2 disorder and circadian rhythm sleep disorder, delayed sleep phase type. In terms of health history, the psychiatrist wrote that the appellant's bipolar disorder has been difficult to treat and a number of medications have been tried. "Her mood has improved but (is) not stable enough to permit any employment yet. She has chronic suicidal thoughts. She has significant mood swings. She is chronically fatigued. Her sleep schedule is very abnormal... Her appetite is diminished. Concentration is impaired. It can be effortful even to go to the grocery store. She spends most of her time isolating at home." In the Consultation Request dated May 1, 2013, the psychiatrist described the inter-relatedness of the appellant's two conditions and wrote that she has been seeing the appellant since November 2012 to try to shift her sleep schedule. This has been fraught with difficulty as anything but small shifts in her sleep schedule tend to cause sleep schedule fragmentation. In addition, sleep schedule shifts tend to cause unexplained sleepiness during her "daytime hours" and changes in her mood. In February, after making some adjustments to her sleep cycle, the appellant started to experience increasing sensations of emptiness and dips in her mood every 2 to 3 days; whereas they would previously occur about once every month.

In the PR, the psychiatrist reported that the appellant has significant deficits in her cognitive and emotional function in the areas of executive, emotional disturbance, motivation, impulse control, and attention or sustained concentration, which are "related to bipolar and sleep disorder." While the ministry pointed out that the assessment by the psychiatrist in the AR is that the impacts to daily functioning were mostly moderate with two major impacts on bodily functions and emotion and the majority of aspects show no impact, the psychiatrist wrote in the additional comments to the PR that the appellant has been hospitalized for bipolar disorder and referred to the enclosed Hospital Discharge Summary. The Hospital Discharge Summary dated July 4, 2013, described the deterioration in the appellant's mood to the extent that she was certified by her psychiatrist whilst at a Sleep Disorders appointment secondary to emerging active suicidal ideation. The appellant had been thinking about hanging herself and made some initial efforts in researching this and it was felt that she would benefit from an emergency admission for her safety.

In her self- report, the appellant wrote that she has a minimum sleep requirement of 10 hours or more and her schedule continually rotates and it is not controllable. If she does not sleep when and how long her body tells her to, she cannot think straight, move properly or remember things, and "it's like sleepwalking." She also wrote that she has long periods of sadness when her appetite drops, she sleeps even longer (12 or more hours), has "no drive", exhaustion, suicidal thoughts and an empty life

outlook. At the hearing, the appellant stated that she has had crises in the past, including being certified by her psychiatrist, and she feels nervous about her situation because she knows "if something bad happens" when she is depressed it "becomes dangerous" and she might end up back in the hospital.

In her letter dated October 6, 2014, the psychiatrist wrote that she believes that when she filled out the PWD form in December 2013 she was not fully aware of the impact of the appellant's disorder on her functioning and her letter of August 12, 2014 most accurately describes the appellant's functioning. In the letter dated August 12, 2014, the psychiatrist provided her opinion that the appellant suffers from a severe mental impairment in terms of the impact on her daily life. While her bipolar disorder is significantly better controlled than in the past, it currently manifests as about one week of depressive symptoms per month. During those times, the appellant feels worthless, irritable, tired and unmotivated, with reduced appetite and concentration and the appellant chronically socially isolates herself at home. With the appellant's sleep disorder, if the appellant attends an appointment during her usual sleeping hours, she can be sleepy with impaired concentration during the appointment/ that day, and her sleep schedule in the following days can become more disrupted, resulting in fatigue and sleepiness. Disrupting her sleep schedule in this way can also cause a relapse of her mood.

The panel finds that the ministry did not place sufficient weight on the information in the psychiatrist's August 12, 2014 letter, particularly in view of the psychiatrist's statement that this information most accurately describes the appellant's functioning, and her opinion that the appellant suffers from a severe mental impairment given the impact on her daily life. In consideration of the appellant's hospitalization as a result of deterioration in her mood, the psychiatrist's description of the close inter-connectedness between the bipolar and sleep disorders and that these have not been adequately controlled to date, as well as the appellant's description of her precarious mental condition, the panel finds that the ministry was unreasonable in concluding that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

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

The ministry's position is that the information from the prescribed professional does not establish that impairment significantly restricts DLA either continuously or periodically for extended periods. The ministry argued that the psychiatrist reported no restrictions to 9 of 10 DLA including social functioning and daily shopping is continuously restricted by fatigue and decreased motivation. The ministry argued that the psychiatrist assessed all activities as being performed independently, including 4 out of 5 areas of social functioning.

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 her DLA, continuously or periodically for extended periods. In this case, the 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 these forms has the opportunity to 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 in the PR that the appellant has not been prescribed any medications and/or treatments that interfere with her DLA and she is continuously restricted with one of the listed DLA, namely daily shopping as a result of "fatigue, decreased motivation." There is no assessment indicated for the DLA of basic housework and the appellant is not restricted with the remaining listed DLA, namely: personal self care, meal preparation, management of her medications, mobility inside and outside the home, use of transportation, management of finances and social functioning. In the AR, the psychiatrist also assessed the appellant as independent in all tasks of each listed DLA, with the exception of one aspect of social functioning. The appellant requires a range of periodic to continuous support/ supervision in dealing appropriately with unexpected demands, with the explanation: "difficult to deal with stress as impacts mood and sleep," but no further description provide of the extent of support required. The appellant's level of functioning with her immediate social networks is not assessed and the psychiatrist noted "little in person social contact," although the appellant is assessed with good functioning in her extended social networks.

In the letter dated August 12, 2014, the psychiatrist reported that the appellant's bipolar symptoms lead to a significant reduction in her level of activity, that she sometimes does not shower for days, she finds it difficult to follow through with cooking, and neglects the household chores and shopping for food. These tasks can take significantly longer than normal to perform. The appellant's mother, with whom the appellant lives, has to assist with the cooking, chores and shopping during those times. The psychiatrist also wrote that the unconventional waking hours as a result of the appellant's sleep disorder can make daily functioning very challenging as most activities and appointments happen during daytime hours.

With respect to the 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), the available evidence indicates that the appellant is not significantly restricted in either. With respect to decision making, the psychiatrist reported in the AR that the appellant independently manages her finances (banking, budgeting, pay rent and bills) and her medications (taking as directed and safe handling). She is also reported as independent in the decision-making components of the DLA of daily shopping (making appropriate choices), meal preparation (meal planning and food storage) and transportation (using transit schedules and arranging transportation).

Regarding the DLA of social functioning, the appellant is assessed as independently able to develop and maintain relationships, to interact appropriately with others, and to secure assistance from others. The appellant is assessed with a good ability to communicate in all areas. Given the absence of reported impacts to the appellant's mental or social functioning, and little detail on the extent of noted restrictions to the DLA of personal care, cooking and 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 her ability to manage her DLA either continuously or periodically for extended periods, thereby not satisfying the legislative criterion of Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

The appellant's position is that she requires the significant assistance of another person to perform

DLA.

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

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.

In the PR, when asked what assistance the appellant needs with DLA, the psychiatrist wrote "none." The psychiatrist reported in the AR that the appellant lives with her mother who "provides emotional support and housing." 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.