

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated January 5, 2015 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

## PART E – Summary of Facts

The appellant objected to the ministry attending the hearing via telephone. She stated that she had requested an accommodation of her disability, in her Notices of Appeal and in electronic communication with the Tribunal office, by having all participants attend either in person or via video conference. The appellant is deaf and stated that she is at a disadvantage when she cannot hear or see the ministry representative and must rely solely on the interpretation by the ASL interpreter. The appellant stated that, for her, it was like an “invisible” person being in the room because she could not establish eye contact and this made her feel “very stressed out.” The appellant noted that video conferencing equipment was available in the hearing room.

The panel determined that the ministry’s request to attend the hearing via telephone was previously considered and approved by the Tribunal and, as the appellant had the assistance of both an advocate and an ASL [American Sign Language] interpreter at the hearing, an adequate hearing could be conducted.

The evidence before the ministry at the time of the reconsideration decision included the Person With Disabilities (PWD) Application comprised of the applicant information and self-report dated August 7, 2014, a physician report (PR) and an assessor report (AR) both dated August 30, 2014 and completed by a general practitioner who has known the appellant since 1997.

The evidence also included the following:

- 1) Letter dated October 18, 2000 from a physician who is a specialist in otolaryngology, head & neck surgery to the appellant’s general practitioner;
- 2) Letter dated February 20, 2008 from another physician who is a specialist in otolaryngology, head & neck surgery to the appellant’s general practitioner;
- 3) Letter dated September 10, 2014 from a registered social worker to the ministry “as an elaboration on the assessor portion of the PWD designation application”; and,
- 4) Request for Reconsideration dated December 17, 2014 with attached documents, namely:
  - Adiogram report dated February 19, 2013;
  - Letter dated February 21, 2013 from a registered hearing instrument practitioner ‘To whom it may concern’; and,
  - Letter dated December 17, 2014 from a registered social worker to the ministry.

In her Notice of Appeal dated January 12, 2015, the appellant expressed her disagreement with the ministry’s reconsideration decision and wrote that she has a physical “ears” impairment with a lack of services. In an email dated January 23, 2015 referred to by the appellant as her second Notice of Appeal, the appellant wrote that she requests an oral in person and that she requires an ASL interpreter and also video conference for panel members not attending in person.

Prior to the hearing, the appellant provided an additional letter from her general practitioner dated February 7, 2015.

### ***Diagnoses***

In the PR, the appellant was diagnosed by the general practitioner with deafness, with an onset at birth. In the letter dated February 7, 2015, the general practitioner wrote that, upon review of the appellant’s situation at a recent office visit, it is clear that the appellant has further diagnoses under the mental disorder category which are strong contributing factors in the restriction in her ability to function. The general practitioner added diagnoses of mood disorder and substance-related disorder.

**Physical Impairment**

In the PR, the general practitioner reported that:

- In terms of health history, the appellant has “profound sensori-neural hearing loss (since birth) due to Rh factor incompatibility.”
- For functional skills, the appellant can walk 4 or more blocks unaided, climb 5 or more steps, has no limitation with lifting and can remain seated 2 to 3 hours.
- The appellant does not require an aid for her impairment.
- The appellant is not restricted with mobility inside or outside the home.

In the AR, the general practitioner indicated that:

- The appellant is independent with all aspects of mobility and physical ability, namely: walking indoors, walking outdoors, climbing stairs, standing, lifting and carrying and holding.
- In the section of the AR relating to assistance provided through the use of assistive devices, the general practitioner identified communication devices and interpretive services as being routinely used by the appellant. Asked to provide detail of the equipment used, the general practitioner wrote: video relay service CRTC across Canada September 2015.

Asked to describe her disability in her self-report, the appellant wrote: “profound deafness, hypertension.”

In the letters from 2000 and 2008, the otolaryngology specialists wrote:

- The appellant has a severe hearing loss which dates back her newborn period. She signs, does some lip reading, and speaks remarkably well.
- CT and MRI tests were being arranged to diagnose more recent concerns.

In the letter dated February 21, 2013, the hearing instrument practitioner wrote that:

- The appellant presents with a profound sensori-neural hearing loss in both ears. This is an auditory-nerve problem which prevents the normal transmission of auditory input to the hearing centers of the brain.
- As she has had this hearing loss since birth, she has never developed the ability to understand the spoken word. This, combined with the auditory nerve problems, makes ear surgeries not appropriate, nor would they improve her hearing and understanding.

In the letter dated December 17, 2014, the social worker wrote that:

- The appellant has profound hearing loss, high blood pressure, Crohn’s disease, and ongoing problems with chronic pain in her neck and shoulder.
- Physically, the appellant has constant pain, from mild to moderate, that furthers problems with concentration and focusing on tasks required of her. This is due to always having to focus on others’ mouths so she can try to lip read.
- Her Crohn’s disease causes frequent diarrhea and constant and significant pain. She always has to be close to a washroom.

In the letter dated February 7, 2015, the general practitioner wrote that:

- The appellant has had significant medical issues including post-operative pulmonary embolism in 2011, hypertension and a possible diagnosis of Crohn’s disease.

***Mental Impairment***

In the PR, the general practitioner reported that:

- The appellant has difficulties with communication “related to deafness- sign language.”
- The appellant does not have any significant deficits in her cognitive and emotional functioning.
- The appellant is restricted with social functioning on a continuous basis, described as: “communication issues. Unable to use telephone, uses sign language.” Asked to comment regarding the degree of restriction, the general practitioner wrote: “marked with phone (unable).”

In the AR, the general practitioner indicated that:

- The appellant has a satisfactory ability to communicate in speaking, reading and writing. The appellant is unable to hear.
- For the section of the AR assessing impacts to cognitive and emotional functioning for an applicant with an identified mental impairment or brain injury, the general practitioner noted “N/A”, or not applicable to the appellant.
- The section of the AR for assessing impacts to areas of social functioning has also been marked as not applicable to the appellant.

In the letter dated September 10, 2014, a social worker wrote that:

- She is writing the letter as an elaboration to the assessor portion of the PWD designation application, in particular regard to the appellant’s social functioning.
- She has met with the appellant on more than one occasion and it is quite clear that her social functioning is impacted by her living with deafness.
- Her ability to develop and maintain relationships is impacted negatively by her inability to communicate with those who do not speak ASL. Further, it is a great challenge for her to interact fully with those around her who do not speak ASL. This is quite frustrating and creates barriers when trying to secure the assistance that she is seeking.
- Relationships with the appellant’s immediate and extended social networks are minimal. Isolation is a real concern as few people speak ASL in a great enough capacity to carry on conversation. This is particularly the case in extended social networks and trying to navigate through different social systems.

In the letter dated December 17, 2014, the social worker wrote that:

- The appellant has depression and anxiety.
- The appellant cannot communicate with others as her communication is with ASL.
- The appellant lives in a world of isolation because it is hard for her to socialize with others unless they communicate as well with sign language.
- Her deafness is permanent and this contributes considerably to her depression.
- The appellant sees a mental health therapist through the hospital once a week for her depression and anxiety.

In the letter dated February 7, 2015, the general practitioner wrote that:

- Upon review of the appellant’s situation at a recent office visit on February 6, 2015, it is clear that the appellant has further diagnosis (sic) under the mental disorder category which are strong contributing factors in the restriction in her ability to function.
- The appellant has a history of significant life trauma and she has ongoing stress with negative

involvement with the deaf community.

- The appellant has a history of ongoing conflict with family members and a profound loss with the death of her mother, with whom she was very close.
- Over the years, she has had a chronically depressed mood and frequent suicidal thoughts.
- The appellant has trialed anti-depressants with only limited benefit and is currently on one prescription medication. She has difficulty accessing mental health services due to lack of funding for interpretive services.
- The appellant has significant anxiety in regards to her medical issues.
- The appellant also has a history of substance-related disorders, particularly in regards to alcohol abuse and prescription drug abuse of a sleeping medication. There is a strong family history of alcoholism.
- It is his opinion that the combination of the mood disorder and substance-related disorder causes a significant restriction in the appellant's ability to function on a chronic basis.
- If a reapplication is required with inclusion of these noted diagnoses on the disability form, he would be glad to provide that in the future.

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

In the PR, the general practitioner indicated that:

- The appellant has not been prescribed any medications and/or treatments that interfere with her DLA.
- The appellant is not restricted with the DLA of 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 appellant is continuously restricted with social functioning.
- Asked to describe the nature and extent of the assistance required by the appellant with DLA, the general practitioner wrote: "interpreter for some appointments, especially medical, courses, legal, other meetings."

In the AR, the general practitioner reported that:

- The appellant is independent with moving about indoors and outdoors.
- The appellant is independently able to perform every task of the listed DLA, namely: personal care (dressing, grooming, bathing, toileting, feeding self, regulate diet, transfers in/out of bed and on/off of chair), basic housekeeping, shopping (going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, carrying purchases home), meals (meal planning, food preparation, cooking, safe storage of food), paying rent and bills (banking, budgeting, paying rent and bills), medications (filling/refilling prescriptions, taking as directed, safe handling and storage) and transportation (getting in and out of a vehicle, using public transit, using transit schedules and arranging transportation).

In the letter dated December 17, 2014, the social worker wrote that:

- The appellant has difficulty with shopping, banking and picking up prescriptions because she cannot communicate effectively because she cannot hear others effectively and others have difficulty understanding her needs.
- The appellant requires an assistive device called a hearing aid.
- Due to her Crohn's disease, she always has to be close to a washroom that further impacts her ability to complete tasks and daily living requirements such as shopping, banking, etc. She is unable to take the bus both because of the Crohn's disease and because of her inability to

adequately hear.

- The appellant needs help to complete many of her DLA. She is unable to use a phone and relies on others. She misses out on important information, such as physicians' information.
- The appellant definitely struggles with many DLA and qualifies for PWD designation.

### ***Need for Help***

In the PR, when asked what assistance the appellant needs with DLA, the general practitioner responded that an interpreter is required for some appointments, especially medical, courses, legal and other meetings. The general practitioner reported in the AR that the appellant lives alone help required for DLA is provided by health authority professionals, described as: "professional interpreter/ translator used as previously described" and weekly counseling in the hospital.

In the section of the AR relating to assistance provided through the use of assistive devices, the general practitioner identified communication devices and interpretive services as being routinely used by the appellant. Asked to provide detail of the equipment used, the general practitioner wrote: video relay service CRTC across Canada September 2015.

At the hearing, the appellant's advocate stated that:

- She has known the appellant for 16 years.
- The appellant is profoundly deaf and there are many things that she does not understand, especially when there is a new process, which she found intimidating and not user-friendly. An example of her misunderstanding is in the appellant's response to the question about "accommodation due to a disability" on the Notice of Appeal, to which the appellant responded that she needs dental work and other items.
- The letters continually refer to contact by telephone, which is not an option for the appellant.
- The appellant went to her doctor with the PWD application, which she wanted to submit on the basis of her deafness and the challenges she faces as a result. She was the only person in her home that was deaf and there has been a cumulative effect for her.
- She believes that the appellant's other medical issues can all be considered under the "umbrella" of her main condition of being profoundly deaf. A large part of her ability to function is complicated by her deafness. Services are not available to her unless she pays privately. Essentially, deafness is her global impairment.
- The appellant's mother, who was her "life line", passed away over 2 years ago. Her mother made many of the telephone calls and set up appointments and helped her to understand what was happening in the hearing world.
- When she met the appellant, she was working but was subsequently dismissed from her position as a result of her inability to hear. The other staff was unwilling to learn to communicate effectively with her.
- It has been very difficult for the appellant to be non-hearing in our hearing community and her vibrance has deteriorated over the years. The appellant is now drinking alcohol whenever she can and she also misuses prescribed medications. Suicide is never far from her thoughts. The appellant has told her that she "would be OK being with her mom and dad."
- The appellant does not have a university education and she struggles to understand written materials. English grammatical structure is different from sign language.
- The appellant has moods that swing up and down and whereas she was a well-known person in the deaf community, she is now in hiding and is isolated from the deaf community.
- The appellant was raped in the past and she did not receive therapy or professional support.

Her friends helped her. She only recently succeeded in getting funding for an ASL interpreter for her medical doctor appointments, but this service will still not be provided for optometrist, dental or alcohol-related appointments.

- The appellant's doctor realized that the ministry did not get the complete picture of the appellant's difficulties. The doctor makes reference in his letter to the appellant's mental health conditions. She is being treated for depression and there is little to alleviate her recurring bouts of depression other than by medication changes. There is no access to support groups because there is no interpretation provided.
- The appellant experiences sleep difficulties, which have become common in her day-to-day existence.
- The appellant had to come forward with her "story" to have her case adequately considered. She has become reliant on food banks but she is still not "down and out for the count" every day. Without supports, she is in "a place of darkness" and difficulty. No one has even heard that she needs help filling out forms. Her writing is not always understandable.
- The appellant has submitted hundreds of applications for jobs and nothing has come of it.

At the hearing, the appellant stated that:

- Most of the time she feels that she has had enough of the government system and all the barriers she faces being deaf. Her mother was in hospital after suffering a stroke and she was not provided reasonable access to information. She did not even really know what a stroke was. Her mother's best friend called the hospital to get information for the appellant but they would not release any information to her. She has fought with Interior Health because she wanted a way to get information about her mother's condition. After her mother passed away, no access was provided to a grief support group because they would not pay for an interpreter for her.
- She needs to have access to counseling and dental care.
- She had a pulmonary embolism in 2011 that was very frightening and she is afraid that will recur and affect her like her mother was affected.
- She tried to run for municipal council but she discovered that there was not equal access through Elections BC and no interpreters were provided.
- The reference by her doctor to video relay service across Canada is a proposed service which is supposed to be available in September 2015 but there is no guarantee that it will be ready then.
- There are so many services, including group counseling, and courses offered that are not accessible to her because interpretation is not provided.
- She has been dealing with mental health issues for approximately 10 years since she was previously dealing with her father's alcoholism. These conditions have become much worse recently.
- It was very hard for her to open up about these issues for the PWD application but she realized that she needed to. She also did not talk to her doctor about her other physical issues like pain in her knees and the trouble she has with cleaning because she cannot kneel.
- She has hearing aids but they are very old, about 30 years old. Although they do not provide her with full hearing, they allow her to hear loud noises, such as sirens and dogs barking, to alert her to danger. Her hearing aids need to be replaced.

The ministry relied on its reconsideration decision, as summarized at the hearing.

***Admissibility of New Information***

As the ministry did not have a copy of the general practitioner's letter dated February 7, 2015, it was read by the advocate verbatim at the hearing. The ministry objected to the admissibility of the new information as a copy of the letter was not provided to him and it was not information available to the ministry at reconsideration. The panel noted that the letter was faxed to the ministry prior to the hearing, on February 12, 2015.

The general practitioner who completed the PR and the AR elaborates in the letter on the appellant's mental and physical impairments and how they impact her ability to function and is consistent with and tends to corroborate the information that the ministry had at reconsideration. At reconsideration, a social worker wrote in the December 17, 2014 letter that the appellant also has depression, anxiety, high blood pressure, Crohns disease, and ongoing problems with chronic pain in her neck and shoulder. Therefore, the panel has admitted this letter 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*.



## 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 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) 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.

Section 2(2) of the EAPWDR defines prescribed profession as follows:

- (2) For the purposes of the Act, "**prescribed professional**" means a person who is
- (a) authorized under an enactment to practise the profession of
    - (i) medical practitioner,
    - (ii) registered psychologist,
    - (iii) registered nurse or registered psychiatric nurse,
    - (iv) occupational therapist,
    - (v) physical therapist,
    - (vi) social worker,
    - (vii) chiropractor, or
    - (viii) nurse practitioner, or
  - (b) acting in the course of the person's employment as a school psychologist by
    - (i) an authority, as that term is defined in section 1 (1) of the Independent School Act, or
    - (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the School Act,
 if qualifications in psychology are a condition of such employment.

### **Severe Physical Impairment**

The appellant's position is that a severe physical impairment is established by her profound deafness, which she argued is a global impairment that impacts a large part of her ability to function and an umbrella under which her other medical conditions should be considered. The advocate argued that the appellant also has high blood pressure, frequent diarrhea and constant pain from Crohn's disease, and ongoing problems with mild to moderate chronic pain in her neck and shoulder. The advocate argued that the appellant has had significant medical issues, including post-operative pulmonary embolism in 2011, and that the appellant experiences anxiety and stress due to an inability to obtain timely and appropriate medical information and services as a result of her deafness.

The ministry's position is that there is not sufficient information from the general practitioner to confirm that the appellant has a severe physical impairment. The ministry argued that the general practitioner only diagnosed deafness and, in terms of physical functioning, he indicated that the appellant can walk 4 or more blocks and climb 5 or more steps unaided, has no limitation with lifting and can remain seated 2 to 3 hours, remaining independent in all areas of mobility and physical abilities. While the ministry acknowledged that deafness is an impairment, the ministry argued that the general practitioner does not indicate that the appellant's impairment impacts her ability to manage her DLA.

***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 the ability to perform 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 general practitioner as well as the registered social workers.

The general practitioner, who has known the appellant for over 15 years, diagnosed the appellant in the PR with deafness from birth. In terms of health history, the general practitioner wrote in the PR that the appellant has “profound sensori-neural hearing loss (since birth) due to Rh factor incompatibility.” Asked to describe her disability in her self-report included with the PWD application, the appellant wrote: “profound deafness, hypertension.” In the letter dated December 17, 2014, a social worker wrote that the appellant has profound hearing loss, high blood pressure, frequent diarrhea and constant pain due to Crohn’s disease, and ongoing problems with chronic pain in her neck and shoulder. The social worker wrote that the appellant has constant pain, from mild to moderate, that furthers problems with concentration and focusing on tasks required of her. This is due to always having to focus on others’ mouths so she can try to lip read. In the letter dated February 7, 2015, the general practitioner wrote that the appellant has had significant medical issues including post-operative pulmonary embolism in 2011, hypertension and a possible diagnosis of Crohn’s disease. Even though he had an opportunity to do so in his letter, the general practitioner did not change his assessment of the appellant’s physical functioning as described in the PR and AR.

In assessing her functional skills in the PR, the general practitioner reported that the appellant can walk 4 or more blocks unaided, climb 5 or more steps, has no limitation with lifting and can remain seated 2 to 3 hours. The appellant does not require an aid for her impairment and she is not restricted with mobility inside or outside the home. In the AR, the general practitioner indicated that the appellant is independent with all aspects of mobility and physical ability. The general practitioner identified communication devices and interpretive services as being routinely used by the appellant as assistive devices. At the hearing, the appellant stated that she has hearing aids but they are about 30 years old. Her hearing aids allow her to hear loud noises, such as sirens and dogs barking, to alert her to danger and they need to be replaced.

The panel finds that although the evidence demonstrates that the appellant suffers with profound deafness as well as other medical conditions, her physical functioning as assessed by her long-time general practitioner remains unrestricted and independent. The appellant’s impairment has not translated into significant restrictions to her ability to manage DLA, as discussed in more detail in these reasons for decision under the heading “Restrictions in the Ability to Perform DLA.” Considering all of the evidence currently available, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

**Severe Mental Impairment**

The appellant’s position is that a severe mental impairment is established by the evidence of the impacts from her mood disorder and substance-related disorder as compounded by her physical

impairment of deafness.

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe mental impairment. The ministry argued that while the general practitioner assessed the appellant with difficulties in communication related to deafness, he also indicates that her ability to speak, read and write are satisfactory. The ministry argued that the general practitioner reported that the appellant does not have any significant deficits in her cognitive and emotional functioning, and that the sections of the report detailing impacts to cognitive, emotional and social functioning are not applicable to the appellant.

#### *Panel Decision*

Although the general practitioner did not diagnose a mental health condition in the PR, this was explained by the appellant at the hearing as being a result of her reluctance to disclose her mental health conditions as part of the PWD application process. She stated at the hearing that she has been dealing with mental health concerns for about 10 years. In the letter dated February 7, 2015, the general practitioner wrote that the appellant has further diagnoses under the mental disorder category which are strong contributing factors in the restriction in her ability to function. The general practitioner added diagnoses of mood disorder and substance-related disorder. The general practitioner wrote that the appellant has had a chronically depressed mood over the years and frequent suicidal thoughts. At the hearing, the advocate stated that suicide is never far from the appellant's thoughts as the appellant has told her that she "would be OK being with her mom and dad." The general practitioner reported that the appellant has trialed anti-depressants with only limited benefit and is currently on one prescription medication. The general practitioner wrote that the appellant has difficulty accessing mental health services due to lack of funding for interpretive services. The appellant also has a history of substance-related disorders, particularly in regards to alcohol abuse and prescription drug abuse of a sleeping medication.

A social worker wrote in a letter dated December 17, 2014, that the appellant's deafness is permanent and this contributes considerably to her depression. The social worker wrote that the appellant sees a mental health therapist through the hospital once a week for her depression and anxiety. However, in the PR the general practitioner reported that the appellant does not have any significant deficits in her cognitive and emotional functioning and the section of the AR relating to impacts to cognitive and emotional functioning is marked as not applicable to the appellant.

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 evidence does not clearly indicate that the appellant is significantly restricted in either. With respect to the decision making DLA, the general practitioner reported in both the PR and the AR that the appellant independently manages her finances (budgeting and paying 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), transportation (using transit schedules and arranging transportation) and with no assessment of her ability to make appropriate social decisions as part of her social functioning.

Regarding the DLA of social functioning, the appellant is assessed by the general practitioner as restricted on a continuous basis with social functioning described as "communication issues" since she is unable to use a telephone and uses sign language. The degree of restriction is described by

the general practitioner as “marked with phone (unable)” and the assistance required is an “interpreter for some appointments, especially medical, courses, legal, other meetings.” The advocate stated at the hearing that the appellant does not have a university education and she struggles to understand written materials. However, the general practitioner reported in the AR that the appellant has a satisfactory ability to communicate in all other areas, including speaking, reading and writing.

Although the general practitioner did not complete the assessment of the impacts to the appellant’s social functioning in the AR, a social worker provided a letter dated September 10, 2014 as an elaboration. The social worker wrote that she has met with the appellant on more than one occasion and it is quite clear that her social functioning is impacted by her living with deafness. The social worker indicated that the appellant’s ability to develop and maintain relationships is impacted negatively by her inability to communicate with those who do not speak ASL and that it is a great challenge for her to interact fully with those around her who do not speak ASL. This is quite frustrating and creates barriers when trying to secure the assistance that she is seeking. The social worker wrote that relationships with the appellant’s immediate and extended social networks are minimal and isolation is a real concern as few people speak ASL in a great enough capacity to carry on conversation. However, the social worker did not indicate whether the appellant requires support or supervision in these aspects of social functioning and, if so, the degree of support or supervision required.

In his letter dated February 7, 2015, the general practitioner wrote that if a reapplication is required with inclusion of the diagnoses of mood disorder and substance-related disorder on the disability form, he would be glad to provide that in the future. However, given the absence of currently available evidence regarding specific reported impacts to the appellant’s mental or social functioning, the panel finds that the ministry reasonably determined 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 physical and mental impairments directly and significantly restrict her ability to perform DLA on an ongoing basis to the extent that she requires the significant assistance of another person and the use of assistive devices.

The ministry’s position is that the information from the prescribed professionals does not establish that impairment significantly restricts DLA either continuously or periodically for extended periods. The ministry acknowledged that the appellant is restricted in her communication skills due to her hearing impairment, but argued that the general practitioner indicated that she can independently manage all of her DLA.

#### ***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 general practitioner and the social workers are the prescribed professionals. 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 general practitioner reported in the PR that the appellant has not been prescribed any medications and/or treatments that interfere with her DLA and she is not restricted with any of the listed DLA, with the exception of social functioning. She is not restricted with 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 appellant is continuously restricted with social functioning described as "communication issues, unable to use telephone, uses sign language." Asked to describe the nature and extent of the assistance required by the appellant with DLA, the general practitioner wrote: "interpreter for some appointments." With respect to the two DLA that are specific to mental impairment – decision making and social functioning, the available evidence indicates that the appellant is not significantly restricted in either, as previously discussed.

In assessing the degree of assistance required with each DLA, the general practitioner indicated in the AR that the appellant is independent with moving about indoors and outdoors and with all tasks of all the listed DLA. In his letter dated February 7, 2015, the general practitioner wrote that it is his opinion that the combination of the mood disorder and substance-related disorder causes a significant restriction in the appellant's ability to function on a chronic basis. However, the general practitioner did not take the opportunity to change his previous assessment of complete independence with all but one DLA.

In the letter dated December 17, 2014, the social worker wrote that the appellant has difficulty with shopping, banking and picking up prescriptions because she cannot communicate effectively since she cannot hear and others have difficulty understanding her needs. Due to her Crohn's disease, the appellant always has to be close to a washroom that further impacts her ability to complete tasks and daily living requirements such as shopping, banking, etc. She is unable to take the bus both because of the Crohn's disease and because of her inability to adequately hear. The social worker wrote that the appellant needs help to complete many of her DLA. While the social worker described the appellant's difficulty with some tasks of DLA, including shopping, banking and using public transportation, there is no detail provided of the extent of assistance required by the appellant.

The panel finds that the evidence demonstrates that the appellant manages most of her DLA without assistance and there is insufficient information to allow the ministry to determine that the assistance that is required is continuous or periodic for extended periods of time. Therefore, the panel finds that the ministry reasonably concluded that there is not enough evidence from the prescribed professionals 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 or assistive devices 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. The ministry acknowledged that the prescribed professionals indicate that the appellant requires the uses of communication devices.

***Panel Decision***

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

The general practitioner reported in the AR that the appellant lives alone and help required for DLA is provided by health authority professionals, described as a professional interpreter/ translator and weekly counseling in the hospital. In the PR, when asked what assistance the appellant needs with DLA, the general practitioner responded that an interpreter is required for some appointments, especially medical, courses, legal and other meetings.

In the section of the AR relating to assistance provided through the use of assistive devices, the general practitioner identified communication devices and interpretive services as being routinely used by the appellant. Asked to provide detail of the equipment used, the general practitioner wrote: video relay service CRTC across Canada September 2015, which the appellant clarified at the hearing refers to a service proposed for the future and not currently available. In the letter dated December 17, 2014, the social worker wrote that the appellant requires an assistive device called a hearing aid. The appellant stated at the hearing that she has hearing aids but they are 30 years old and need to be replaced.

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.