

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated May 12, 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 evidence before the ministry at the time of the reconsideration decision included the Person With Disabilities (PWD) Application comprised of the applicant information dated February 13, 2015, with the self-report not completed by the appellant, a physician report (PR) dated February 16, 2015 completed by a psychiatrist who has known the appellant since January 27, 2015 and has seen her 11 or more times in that period, and an assessor report (AR) dated February 17, 2015 completed by a registered social worker who has known the appellant for the same period of time.

The evidence also included the appellant's Request for Reconsideration dated May 5, 2015.

### ***Diagnoses***

In the PR, the appellant was diagnosed by the psychiatrist with unspecified schizophrenia spectrum disorder with a date of onset in January 2015. Regarding the degree and course of impairment, the psychiatrist confirmed that her impairment is likely to continue for 2 years or more and wrote "illness likely chronic, requiring long-term medication to minimize psychosis and maximize functioning."

### ***Physical Impairment***

In the PR, the psychiatrist reported that:

- The appellant does not require an aid for her impairment.
- The appellant is not restricted in her functional skills as she can walk 4 or more blocks unaided, she can climb 5 or more steps, and she has no limitation with lifting or remaining seated.

In the AR, the social worker indicated that:

- The appellant is independent in all areas of mobility and physical ability, specifically walking indoors and outdoors, climbing stairs, lifting and carrying and holding.
- In the section of the AR relating to assistance provided through the use of assistive devices, the social worker did not identify any of the listed items.

### ***Mental Impairment***

In the PR, the psychiatrist reported :

- In terms of health history, the appellant presented to hospital with acute onset of persecutory delusions and her "insight into illness fluctuates. Psychoses impairs functioning because difficulty interacting with others, difficulty with concentration, risk of violence."
- The appellant has cognitive difficulties with communication, described as: "very concrete thinking."
- The appellant has significant deficits in her cognitive and emotional functioning in the areas of executive, perceptual psychomotor, psychotic symptoms, emotional disturbance, attention or sustained concentration. The psychiatrist did not provide any comments to describe these impacts in more detail.
- The appellant is restricted with her social functioning, although it is not indicated whether the restriction is continuous or periodic, and the psychiatrist commented "impaired interaction with others, paranoid, impaired judgment, impaired insight" and "difficulty with social interaction secondary to psychosis, paranoia."

In the AR, the social worker indicated:

- The appellant has a satisfactory ability to communicate in speaking, reading, writing and

hearing, with no further explanation or description provided.

- 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 social worker indicated a major impact in the areas of insight and judgment. The appellant has moderate impacts to consciousness, emotion, executive, and psychotic symptoms. There are minimal or no impacts in the remaining 9 listed areas of functioning. The social worker wrote that the “impact of illness is episodic in nature.”
- The appellant requires periodic support/supervision in 4 of 5 listed areas of social functioning, specifically making appropriate social decisions, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The appellant is independent in the area of developing and maintaining relationships. There is no explanation or description provided by the social worker regarding how much or how often the support/supervision is required by the appellant.
- The appellant has good functioning in her immediate social network, with the comment that “family reports applicant doesn’t always seek assistance when needed,” and she also has good functioning in her extended social networks, which is described as “building manager is source of support.”
- Asked to describe the support/supervision required which would help maintain the appellant in the community, the social worker wrote “engagement with mental health team and Ministry of Children and Family Development (MCFD).

In her Request for Reconsideration, the appellant wrote:

- She must take daily medication that makes her drowsy.
- Daily stress is taking its toll on her as she is in severe financial crisis and trying to get her children back.

### ***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 ability to perform DLA.
- The appellant is restricted with the DLA of basic housework, management of finances and social functioning, but it is not indicated whether these restrictions are continuous or periodic. It is unknown whether the appellant is restricted with the DLA of management of medications.
- The appellant is not restricted with the DLA of personal self care, meal preparation, daily shopping, mobility inside and outside the home, or use of transportation.
- Regarding the degree of restriction, the psychiatrist left this section incomplete.

In the AR, the social worker reported that:

- The appellant is independently able to perform every task of several listed DLA, namely: personal care (dressing, grooming, bathing, toileting, feeding self, and transfers in/out of bed and on/off chair), basic housekeeping (including laundry), shopping (going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home), meals (meal planning, food preparation, cooking, safe storage of food), 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).
- The appellant is independently able to perform one task of the DLA pay rent and bills,

specifically banking, but requires periodic assistance with budgeting and paying rent and bills. The social worker did not provide an explanation or description of the periodic assistance required.

In her Request for Reconsideration, the appellant wrote:

- She currently has no income.
- She must take daily medication that makes her drowsy.
- Her children have been taken into care by the MCFD due to her condition.
- She has been under doctor's orders not to work, which affects her ability to control and have money.
- She has recently been allowed back to work on a very limited basis, which affects her ability to obtain steady employment, and creates poverty issues.

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

In the PR, in response to a request to describe the assistance the appellant needs with DLA, the psychiatrist wrote: "financial supports, mental health team, occupational therapy."

In the AR, the social worker reported that the help required for DLA is provided by family, health authority professionals, community service agencies and other, described as "building manager is source of support, as is mental health team and MCFD." In the section of the AR relating to assistance provided through the use of assistive devices, the social worker did not identify any of the listed items as being applicable.

### ***Additional Information***

In her Notice of Appeal dated May 26, 2015, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that she would like an opportunity to provide additional information from her doctor to be added to her appeal.

Prior to the hearing, the appellant provided a letter dated June 11, 2015 in which a psychiatrist wrote:

- The appellant was admitted to hospital in January 2015 due to a psychotic episode and she stayed in hospital 3 weeks to be started on treatment.
- Her impairment from her psychotic disorder was severe enough that her children were apprehended and taken into care. She had a severe impairment in social functioning and difficulty interacting with family, friends, and others.
- She was discharged from hospital on a combination of antipsychotic and tranquilizer to help control her symptoms, and she is expected to take these medications for at least 2 years.
- Since her discharge from hospital, she has been seen at the mental health team on a weekly basis for follow up support.
- The prescribed medications have interfered with her ability to perform daily living activities due to excessive daytime sedation, 20 lb. weight gain and development of Type 2 Diabetes.
- They are in the process of switching her to a new antipsychotic medication to which she appears to be developing akathisia, or restlessness. She will require ongoing bi-weekly visits in order to find the right medication to manage her symptoms for the foreseeable future.
- The appellant has required a small army of helpers to help her perform her daily living

activities restricted by her psychotic disorder. She has required the help of a resource worker in addition to social workers from MCFD and a case manager with the mental health team.

- The appellant has required assistance with regard to managing her finances and her creditors, to update her resume and perform job search as well as to keep her fridge stocked with food.
- Due to the appellant's difficulties with multi-tasking and decreased stress and frustration tolerance, her children remain in care and she is presently limited to weekend visits with supervision.
- The appellant's difficulties with social functioning, daily decision making and other complex executive functions continue to be impaired on a continuous basis.
- The appellant has recently obtained a part-time job; however, the psychiatrist is not optimistic that she will be able to keep this job as she is having difficulty with cognitive functions such as remembering, and learning, as well as keeping up with her co-workers in terms of the pace of work.
- The appellant is suffering from a severe mental impairment that significantly restricts her abilities to perform her ADL's [activities of daily living] and she also requires ongoing, significant help from numerous persons to perform these ADL's.

At the hearing, the appellant stated:

- She is losing her memory and this is affecting her job. She is very slow now. She used to be the "fastest." Her supervisor talked to her about being slow. She works 5 hours per day, 4 days per week.
- She saw the psychiatrist who completed the PR for the PWD application several times when she was in hospital. She was then referred to mental health and the psychiatrist who wrote the letter dated June 11, 2015.
- She feels very restless and cannot sit still. She needs to get up and walk around. Sometimes she has trouble sleeping because she needs to get up and walk around.
- She has diabetes and high blood pressure now.
- The church raises money and gives it to her. They do this when she needs it.
- Her friend took her shopping once and sometimes gives her \$20 or some groceries. Her friends help her "not too much", about once or twice a week.
- She meets once a week with people from mental health and the psychiatrist, and she also meets with a social worker with MCFD.

At the hearing, the appellant's advocate stated:

- The psychiatrist who wrote the letter dated June 11, 2015 met with the appellant after she came out of the hospital in February 2015 and there have been many changes since that time.
- Since the appellant was released from hospital, the doctor has been better able to analyze her impairment and how it is impacting her daily living activities.
- The appellant is working very hard at getting her children back and they recently met with MCFD and the hope is that her children will be returned to the appellant's care and that they will never be brought into care again. Her children currently visit with her on weekends. She is a very devoted mother and has been cooking for her children and taking them food even while they are in care.
- The appellant has both physical and mental impairments. The physical impairment has developed as a result of the medications.

- The appellant forgot about the hearing appointment due to problems with her memory, which shows she has difficulty getting to important appointments.
- As a result of her medications, the appellant is experiencing restlessness. She has also developed diabetes. She started taking her medications in January 2015.
- The additional doctor's letter is an up-to-date snapshot of the appellant's circumstances.
- The doctor is trying to find the medications that will stabilize the appellant's conditions without all of the side effects that she has been experiencing. They have been adjusting the dosage because of the restlessness, which is disrupting her sleep. Her condition is still changing.
- Regarding her daily living activities, she has difficulty with the financial aspect, such as dealing with creditors and making sure the rent is paid. She has been unaware of the requirement to submit a stub to the ministry and she has needed assistance with walking through the paper work. She is also trying to find affordable housing.
- The appellant has needed help with getting resources like food for her children. She gets help from her church, friends, and social workers with the MCFD. They try to supplement her income for purchasing food.
- The appellant has a group of support workers that are trying to help reduce the stress around finances as they are concerned about her becoming overwhelmed. She needs more stability with her finances. In the past, the appellant has been prepared to work 24/7 at minimum wage jobs just to pay the rent and have enough for food for her children.
- The appellant is being monitored and is on medications so the likelihood of episodes with her condition is diminished quite a bit. It is likely that she will not have future episodic events, as had been described by the social worker in the AR.

The ministry relied on its reconsideration decision as summarized at the hearing and did not provide any additional evidence.

***Admissibility of Additional Information***

The ministry did not object to the admissibility of the additional, June 11, 2015, letter from the psychiatrist and did not raise an objection to the oral testimony on behalf of the appellant, which contained corroborating information about the impact of the appellant's medical condition diagnosed at reconsideration. The panel admits this 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)(b) 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 she has a severe physical impairment as a result of the side effects from her medications, which have caused her to develop Type 2 Diabetes and to gain 20 lbs.

The ministry's position is that there is not sufficient information from the psychiatrist and social worker to confirm that the appellant has a severe physical impairment. The ministry argued that the psychiatrist assessed the appellant as unrestricted in her functional skills and the social worker indicated that the appellant is independent in all aspects of her mobility and physical ability.

### ***Panel Decision***

The only diagnosis by the psychiatrist is for unspecified schizophrenia spectrum disorder, for which he emphasized the impacts regarding a mental impairment rather than a physical impairment. The appellant stated in her Request for Reconsideration that her medications make her "drowsy" and the psychiatrist wrote in his June 11, 2015 letter that the appellant has been impacted by "excessive day time sedation, 20 lb. weight gain and development of Type 2 Diabetes." The psychiatrist stated that the appellant's medications are being switched and the appellant appears to be developing akathisia, or restlessness. The advocate stated at the hearing that the psychiatrist has been adjusting the dosage of the appellant's medication because of the restlessness, which is disrupting



her sleep, and her condition is still changing.

The appellant stated at the hearing that she has been managing with part-time employment for 4 days per week, 5 hours per day, but her supervisor recently told her that she is “slow” in performing her duties. In the psychiatrist’s letter dated June 11, 2015, he wrote that the appellant has recently obtained a part-time job and she is having difficulty keeping up with her co-workers in terms of the pace of work, but he did not provide an assessment of the appellant’s basic physical functioning that differed from that in the PWD application. In terms of impacts to the physical functioning, the psychiatrist reported in the PR that the appellant does not require an aid for her impairment and she can walk 4 or more blocks unaided, climb 5 or more steps, and has no limitations in her ability to lift or to remain seated. In the AR, the social worker also assessed the appellant as being independent with all areas of mobility and physical ability. Given the absence of an assessment of specific impacts to the appellant’s physical functioning, 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 diagnosis of unspecified schizophrenia spectrum disorder. The appellant argued, through her advocate, that the appellant’s impairment from her psychotic disorder was severe enough that her children were apprehended and taken into care. The appellant argued that the psychiatrist wrote that the appellant had a severe impairment in social functioning and difficulty interacting with family, friends, and others. The appellant argued that she was discharged from hospital on a combination of antipsychotic and tranquilizer to help control her symptoms, and the prescribed medications have interfered with her ability to perform daily living activities due to excessive daytime sedation, 20 lb. weight gain and development of Type 2 Diabetes. The appellant argued that her psychiatrist wrote in the June 11, 2015 letter that she will require ongoing bi-weekly visits in order to find the right medication to manage her symptoms for the foreseeable future. The appellant argued that her psychiatrist confirmed in the letter that her difficulties with social functioning, daily decision making and other complex executive functions continue to be impaired on a continuous basis.

The ministry acknowledges that the appellant has a serious medical condition but the ministry’s position is that there is insufficient evidence to establish that the appellant has a severe mental impairment. The ministry acknowledged that the psychiatrist assessed significant deficits to the appellant’s cognitive and emotional functioning, but argued that the impacts assessed by the social worker are mostly moderate. The ministry pointed out that while the psychiatrist indicated that the appellant has difficulties with communication, the social worker reported that she has a satisfactory ability to speak, read, write and hear. The ministry pointed out that the appellant emphasized her inability to get steady employment and argued that the PWD application is not intended to assess employability or vocational abilities as employability is not an eligibility criterion for designation as a PWD.

### ***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 psychiatrists and the social worker.

In the PR, the psychiatrist diagnosed the appellant with unspecified schizophrenia spectrum disorder with a date of onset in January 2015 and wrote that the appellant’s “illness likely chronic, requiring long-term medication to minimize psychosis and maximize functioning.” In terms of health history, the psychiatrist wrote in the PR that the appellant presented to hospital with acute onset of persecutory delusions and her “insight into illness fluctuates. Psychoses impairs functioning because difficulty interacting with others, difficulty with concentration, risk of violence.” At that time, the psychiatrist assessed the appellant with significant deficits to her cognitive and emotional functioning in the areas of executive, perceptual psychomotor, psychotic symptoms, emotional disturbance, attention or sustained concentration, but the psychiatrist did not provide any comments to describe these impacts in further detail. In the AR, the social worker indicated that there is a major impact in the areas of insight and judgment and moderate impacts to consciousness, emotion, executive, and psychotic symptoms, with minimal or no impacts in the remaining 9 listed areas of functioning. The social worker wrote that the “impact of illness is episodic in nature.”

The advocate stated at the hearing that the appellant is currently being monitored and is on medications so the likelihood of episodes with her condition is diminished quite a bit. It is likely that she will not have future episodic events, as had been described in the PWD application. The advocate stated that the psychiatrist met with the appellant upon her release from hospital and that her situation has changed very much since then and she is trying very hard to have her children returned to her care from the MCFD. While the psychiatrist wrote in the June 11, 2015 letter that due to the appellant’s difficulties with multi-tasking and decreased stress and frustration tolerance, her children remain in care, the advocate stated that she and the appellant recently met with MCFD and her children are likely to be soon returned to her. The appellant has recently obtained a part-time job; however the psychiatrist wrote he is not optimistic that the appellant will be able to keep this job as she is having difficulty with cognitive functions such as remembering and learning. The appellant stated at the hearing that she is still working 20 hours per week but her supervisor recently talked to her about being “slow” performing her duties. As for maintaining part-time work or securing full-time work, the panel finds that the ministry reasonably concluded that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in Section 2 of the EAPWDR.

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 establish that the appellant is significantly restricted in either. Regarding decision making, the social worker reported in the AR that the appellant independently manages the decision-making components of the DLA personal care (regulate diet), shopping (make appropriate choices), meal preparation (meal planning and safe storage of food), managing her medications (take as directed and safe handling and storage) and transportation (using transit schedules and arranging transportation). While the appellant requires periodic assistance with the decision-making component of the DLA “pay rent and bills” (including budgeting), there is no indication of how often or how long the appellant requires this assistance. As well, the appellant stated at the hearing that the help she receives is mostly additional funds from her

friends and the church as well as food from friends and the MCFD, as opposed to making decisions in these tasks. The advocate stated that the appellant also requires some help dealing with creditors, making sure the rent is paid, and with processing paper work. The social worker reported in the AR that the appellant requires periodic support/supervision with making appropriate social decisions; however, she did not provide an explanation or description of how often or for how long the appellant requires this support/supervision. Asked to describe the support/supervision that would help to maintain the appellant in the community, the social worker wrote: "engagement with mental health team and MCFD." At the hearing, the appellant stated that she meets once a week with the mental health team and once a week with a social worker from the MCFD.

Regarding the DLA of social functioning, the psychiatrist reported in the PR that the appellant is restricted with her social functioning, although it is not indicated whether the restriction is continuous or periodic, and the psychiatrist commented "impaired interaction with others, paranoid, impaired judgment, impaired insight" and "difficulty with social interaction secondary to psychosis, paranoia." In the AR, the appellant is assessed as requiring periodic support/supervision with interacting appropriately with others and securing assistance from others and wrote "family reports applicant doesn't always seek assistance when needed"; however, the social worker did not elaborate with details of how often or for how long the appellant requires this support or supervision. The appellant is assessed as being independent in the area of developing and maintaining relationships and she has good functioning in both her immediate and extended social networks. Although the psychiatrist reported in the PR that the appellant has cognitive difficulties with communication, described as: "very concrete thinking," the social worker indicated that the appellant has a satisfactory ability to communicate in all areas (speaking, reading, writing and hearing), with no further explanation or description provided. While the psychiatrist wrote in the June 11, 2015 letter that the appellant's difficulties with social functioning, daily decision making and other complex executive functions continue to be impaired on a continuous basis, no further explanation or specific detail of these difficulties is provided.

Given the lack of detail in the evidence, which demonstrates mostly moderate impacts to the appellant's cognitive, emotional and 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 such that she requires the significant assistance of others, including a resource worker and social workers, her psychiatrist and the mental health team, and her family and friends.

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 wrote that the majority of the listed tasks of DLA are performed independently by the appellant and for those tasks that require periodic support/supervision, the prescribed professionals have not provided sufficient information to establish that there is a significant restriction in the appellant's ability to perform these activities.

### ***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 psychiatrists and the social worker 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 either continuously or periodically for extended periods.

In the appellant's circumstances, the psychiatrist indicated in the PR that the appellant has not been prescribed any medications and/or treatments that interfere with her ability to perform DLA. In her Request for Reconsideration, the appellant wrote that she must take daily medication that makes her drowsy. The advocate explained at the hearing that the PWD application was completed upon the appellant's release from her 3-week stay in hospital and the medications began to cause side effects and have been subsequently changed by the psychiatrist, that the dosage is being adjusted and that the appellant's condition is still in flux. In the letter dated June 11, 2015, the psychiatrist wrote that the prescribed medications have interfered with the appellant's ability to perform her DLA due to excessive daytime sedation, 20 lb. weight gain and development of Type 2 Diabetes. They are in the process of switching her to a new antipsychotic medication to which she appears to be developing akathisia, or restlessness. In describing the impacts to the appellant's DLA, the psychiatrist wrote that the appellant has required a small army of helpers to help her perform her DLA restricted by her psychotic disorder. The appellant has required assistance with regard to managing her finances and her creditors, to update her resume and perform job search as well as to keep her fridge stocked with food.

In the PR, the psychiatrist reported that the appellant is restricted with the DLA of basic housework, management of finances and social functioning, but it is not indicated whether these restrictions are continuous or periodic. It is unknown whether the appellant is restricted with the DLA of management of medications. At the hearing, the appellant and the advocate both stated that the appellant has been compliant with her medications and does not have difficulty taking them as directed. In the PR, the psychiatrist indicated that the appellant is not restricted with the DLA of personal self care, meal preparation, daily shopping, mobility inside and outside the home, or use of transportation.

In the AR, the social worker reported that the appellant is independently able to perform every task of most of the listed DLA, namely: mobility inside and outside the home, personal care, basic housekeeping, shopping, meals, medications, and transportation. With respect to the finances DLA, the appellant is independently able to perform one task, specifically banking, while requiring periodic assistance with budgeting and paying rent and bills. The social worker did not provide an explanation or description of how often or for how long the periodic assistance is required by the appellant. At the hearing, the advocate stated that the appellant has difficulty with the financial aspect of DLA, such as dealing with creditors and making sure the rent is paid. The appellant has been unaware of the requirement to submit a stub to the ministry and she has needed assistance with walking through the paper work. The appellant stated that the help she receives is mostly additional funds or groceries from her friends and the church, as opposed to assistance with making decisions about budgeting or paying her rent and bills. As discussed under the severity of mental impairment, 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.

The panel finds that the evidence demonstrates that the appellant is mostly independent with her DLA and that the ministry reasonably determined that there is insufficient information to allow the ministry to determine that the periodic assistance required for tasks of the finances DLA or social

functioning is required 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 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 argued that no assistive devices are required and the appellant does not require the services of an assistance animal.

### **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, in response to a request to describe the assistance the appellant needs with DLA, the psychiatrist wrote: "financial supports, mental health team, occupational therapy." In the AR, the social worker reported that the help required for DLA is provided by family, health authority professionals, community service agencies and other, described as "building manager is source of support, as is mental health team and MCFD." In the section of the AR relating to assistance provided through the use of assistive devices, the social worker did not identify any of the listed items as being applicable.

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 under Section 2 of the EAPWDA, was reasonably supported by the evidence and therefore confirms the decision.