

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated May 4, 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 did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

While the evidence before the ministry at the time of the reconsideration decision necessarily included the Person With Disabilities (PWD) Application, this was omitted from the Appeal Record. The ministry provided a submission on the appeal that included the PWD Application, which the panel admits pursuant to Section 22(4)(a) of the *Employment and Assistance Act* as part of the information and records that were before the ministry at reconsideration.

The PWD Application was comprised of the applicant information and self-report dated November 26, 2014, a physician report (PR) dated December 24, 2014 completed by a general practitioner who has known the appellant for 6 months, and an assessor report (AR) dated December 29, 2014 and completed by a nurse practitioner who has known the appellant for 2 months. Asked to describe the approaches and information sources used to complete the AR, the nurse practitioner indicated only an office interview with the appellant. The nurse also indicated on the form that she did not complete section B, #1 and 2 of the AR, but that the appellant filled in this part.

The evidence also included an additional page of handwritten comments by the appellant dated December 23, 2014 and the appellant's Request for Reconsideration dated April 2, 2015.

### **Diagnoses**

In the PR, the appellant was diagnosed by the general practitioner with depression/adjustment reaction with an onset of October 2014, anxiety with poor coping skills and Borderline Personality with an onset of 1999, substance-related disorder (using Nabilone, Hydromorphine and Marijuana) with an onset of October 2014, labral tear of right hip with an onset of August 2013, Irritable Bowel disorder for years, Jejuna Intussusceptions, GERD and Urticarial Vasculitis for 4 years.

### **Physical Impairment**

In the PR, the general practitioner reported that:

- Regarding health history, the appellant tore her right anterior superior labrum of the hip in 2013 and has suffered pain, insomnia, loss of income and ability to tolerate much walking or activities since. She takes meds to allow her to do the dishes. The pain increases as the day wears on. "She was here in the office today and is walking normally enough without a limp. She is however unable to sit normally square to the chair." She has to sit with the right buttock raised up off the seat. She continually rubs her right hip when she is sitting. The pain is interfering with and prevents sleep. She is worn down as a result and is more stressed and emotional.
- The appellant does not require an aid for her impairment.
- Regarding the degree and course of impairment, the general practitioner wrote that the appellant "needs to rest and do less with her right hip to allow the labral tear to heal. This is notoriously slow and may take another year or 2 to accomplish. Surgery might be helpful but difficult to get a surgeon to do as this surgery is generally not that successful."
- For functional skills, the appellant can walk 1 to 2 blocks unaided, climb 5 or more steps, lift 2 to 7 kg. (5 to 15 lbs.), and remain seated 1 to 2 hours.
- The appellant is restricted with mobility inside and outside the home. Regarding the degree of restriction, the general practitioner wrote: "she has back and right hip pain with all activities and

is present even with rest sitting.”

In the AR, the nurse practitioner indicated that:

- The appellant is independent with all areas of mobility and physical ability, specifically walking indoors and outdoors, climbing stairs (which she does “slowly”), lifting and carrying and holding.
- In the section of the AR relating to assistance provided through the use of assistive devices, the nurse practitioner identified splints (“back”) and wrote that she “uses an over-the-counter back brace at times.”

In her self-report, including the additional page dated December 23, 2014, the appellant wrote:

- She has Urticarial Vasculitis diagnosed by biopsy and this is an auto-immune condition that causes her to break out in hives and inflames her blood vessels. She also has Nodular Scleritis which is an auto-immune condition of her mini blood vessels in her eyes. A spine specialist has diagnosed scoliosis. A CT Scan shows a bulging herniated disc. She has GERD and a lateral tear in her right hip shown on an MRI. She has high cholesterol and Jejuna Intussusceptions. She also has IBS [Irritable Bowel Syndrome] causing chronic digestive problems and (illegible).
- These conditions affect her ability to enjoy social physical activities and prevent her from being “an active sports mom.”
- It affects her sitting comfortably in any position for more than 5 to 15 minutes.
- She is sore and stiff when she wakes and she needs time for her muscles to “loosen up.”
- She often has days of nausea and she experiences frequent loose bowel movements.
- She has a hard time walking, bending over, or getting up. She has pain in many areas of her body. She has severe muscle discomfort, burning and aching.
- Some days, she has “good days.”
- She tends to have a few successful months, then it “comes back.” The hives she gets are triggered by stress and heat that cause her skin to burn in the affected area.
- Since she has been on a lower dose of medication, she is feeling her limitations. If she does not walk “super slow,” she will have more pain in the evening. Too many trips out in a day cause more pain that the pain meds will not tolerate.

In her Request for Reconsideration, the appellant wrote that she was in a recent car accident.

### ***Mental Impairment***

In the PR, the general practitioner reported:

- In terms of health history, the appellant’s “thoughts are erratic and distractible as if she has attention deficit as well.”
- The appellant has no difficulties with communication and the general practitioner wrote: “distractible and agitated. Tends to act out if she doesn’t get her way and becomes frustrated.”
- The appellant has significant deficits in her cognitive and emotional functioning in the areas of executive, emotional disturbance, impulse control, motor activity, and attention or sustained concentration, and under comments indicated “depressed and frustrated. Used to working, having cash, and looking after her children.”
- She is restricted in social functioning but there is no indication whether the restrictions are continuous or periodic.

- In the additional comments, that the appellant has “a lot of emotional lability and financial instability... She is irritable and distractible. Examples are- she lost her mailbox key and couldn’t get her welfare check. She has been fighting with her boyfriend and that has brought a lot of disorganization. Child protection service was called in to assess because of her behaviours but they felt the children were currently not at risk.”

In the AR, the nurse practitioner indicated:

- 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 nurse practitioner did not complete this section.
- For the section of the AR assessing impacts to social functioning for an applicant with an identified mental impairment, including brain injury, the nurse practitioner started to complete this section and then her comments are crossed out.

In her self-report, including Section B, #1 & 2 of the AR and the additional page dated December 23, 2014, the appellant wrote that:

- Emotionally she is not doing well and needs to explore healing modalities to deal with trust issues and PTSD [post traumatic stress disorder] attacks. If she works, she will “fall to pieces.”
- She needs financial support so she can rest, stress free.
- She has a satisfactory ability to communicate in speaking and a good ability with reading, writing and hearing and she “is having trouble conveying herself properly and fear is preventing her from being relaxed, fear of not being trusted.”
- She is struggling emotionally accepting her new limitations since being told 6 months no physical activity, so she is having “up and down” days.

In her Request for Reconsideration, the appellant wrote that she was self-destructive, was in a recent car accident and was depressed.

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

In the PR, the general practitioner indicated that:

- The appellant has not been prescribed any medication and/or treatments that interfere with her ability to perform DLA.
- In response to the question whether the impairment directly restricts the appellant’s ability to perform DLA, the general practitioner indicated “no” and yet responded “yes” to restrictions in several of the listed DLA, specifically: personal self care, meal preparation, management of medications, basic housework, mobility inside and outside the home, use of transportation, management of finances, and social functioning.
- There was no indication of the degree of restriction, whether continuous or periodic, with any of these DLA.
- For the daily shopping DLA, the general practitioner did not indicate either “yes” or “no,” but marked “periodic” regarding the degree of restriction. The general practitioner wrote: “pains increase with the day and limits the activities she’s willing to do” and “she has back and right hip pain with all activities and is present even at rest sitting.”

In the AR, the nurse practitioner 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), shopping (going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home), paying rent and bills (including banking and budgeting), 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 requires periodic assistance with the DLA basic housekeeping (including laundry), with the comment added that she “had to take laundry to Laundromat, had friend lift and carry.”
- The appellant requires periodic assistance with the tasks of food preparation and cooking for the DLA meals, while remaining independent with the tasks of meal planning and safe storage of food. Additional comments provided by the nurse practitioner are that the appellant “gets kids to cook.”

In her self-report, the appellant wrote:

- Her disability affects her ability to drive for long periods of time.
- She has an extremely hard time getting ready in the a.m. since she is so sore and stiff when she wakes up and she needs time before her muscles “loosen up.”
- Her hip prevents her from lifting, dancing, softball and this is going to get to her “big time” emotionally. If she works, she will “fall to pieces.”
- She is having an extremely hard time cleaning her house.
- She is struggling and needs financial support so she can rest stress free (lack of money stress) and she is “willing to attempt a slow integration into the work field.”

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

In the PR, in response to a request to describe the assistance the appellant needs with DLA, the general practitioner wrote: “sometimes gets boyfriend to help with getting the groceries home to her children.” In the AR, the nurse practitioner did not identify any of the categories of people from whom the appellant receives help and wrote “housekeeper- one time only.” In the section of the AR relating to assistance provided through the use of assistive devices, the nurse practitioner identified splints and wrote “back” and “she uses an over-the-counter back brace at times.”

### ***Additional Information***

In her Notice of Appeal dated May 29, 2015, the appellant expressed her disagreement with the ministry’s reconsideration decision and attached her handwritten comments which she titled “Exhibits #1, 2 and 3.” Also attached was a letter dated May 21, 2015 to the appellant from a concussion clinic regarding treatment for the concussion she recently sustained. In her comments, the appellant wrote that:

- She is struggling daily with pain.
- She is suffering from cognitive difficulties due to a car accident which occurred in February 2015. She has whiplash, concussion with past concussion syndrome, and muscle pain.
- Her nurse practitioner is not advocating for her enough.
- She has physiotherapy 2 times per week, she needs massage therapy and she is participating in counseling 2 times a week and attending classes at her pain clinic.
- She had to “give up voluntary care” to her child because she is unable to meet her physical needs and/or financial.
- She has troubles with her eyes (vision), hip (seeing a surgeon), herniated disc, urticarial vasculitis, Nodular Scleritis of her eyes, headaches, muscle spasms and anxiety.

- She is waiting to see a rheumatologist, neurologist, gastroenterologist, and dermatologist.
- She was in the hospital 5 out of 8 days and wonders how she can manage a job or business.
- She needs help while she works at healing her body, mind and spirit.

The ministry relied on its reconsideration decision as summarized at the hearing and clarified that, although she is not aware of the details, an error had occurred in the reasons for the ministry's decision dated May 4, 2015 and the information set out in the analysis for each of the criteria did not relate to the appellant's circumstances. As soon as the ministry became aware of this error, the ministry supplied the appellant with the corrected reasons that supported the same conclusions on each of the legislative criteria. Asked to provide legislative authority for the panel to consider an amended reconsideration decision, the ministry was not aware of any such provision.

The ministry also provided a submission that included:

- 1) Fax sheet dated June 2, 2015 attaching an amended decision and noting that the outcome of the decision has not changed; however, some of the content has been amended;
- 2) Letter dated June 1, 2015 to the appellant in which the ministry advised the appellant that she had been denied the PWD designation;
- 3) Reasons for the ministry's decision dated June 1, 2015; and,
- 4) Copies of the Request for Reconsideration, the original decision summary, the PWD application and the appellant's additional page dated December 23, 2014.

#### ***Admissibility of Additional Information***

The ministry did not object to the admissibility of the information in the appellant's Notice of Appeal but requested that the panel ascribe little weight since the letter relates to injuries sustained after the date of the reconsideration decision and it is not clear if some of the appellant's comments relate to these injuries or her previous medical conditions. As the appellant referred to her car accident in her Request for 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*.

With respect to the additional information provided by the ministry, the panel admits the copies of the Request for Reconsideration, the original decision summary, the PWD application and the appellant's additional page dated December 23, 2014 pursuant to Section 22(4)(a) of the *Employment and Assistance Act* as part of the information and records that were before the ministry at reconsideration.

The panel considered the ministry's submission of the amended reasons dated June 1, 2015 as part of the ministry's argument in support of the conclusions reached, after an analysis of the appellant's PWD application, on each of the necessary legislative criteria for granting of the PWD designation. If the conclusions in the decision dated June 1, 2015 had differed with the conclusions with respect to any of the criteria in the May 4, 2015 decision, the panel would not have had the jurisdiction under Section 24 of the *Employment and Assistance Act* to consider a new, amended reconsideration decision.

## 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 impacts from a number of medical conditions, including Urticarial Vasculitis which is an auto-immune condition that causes her to break out in hives and inflames her blood vessels, Nodular Scleritis which is an auto-immune condition of her mini blood vessels in her eyes, scoliosis and a bulging herniated disc, GERD, a lateral tear in her right hip, high cholesterol, Jejuna Intussusceptions, IBS, as well as from injuries sustained in a recent car accident. The appellant wrote in her self-report that these conditions affect her ability to enjoy social and physical activities. The appellant wrote that her disability affects her sitting comfortably in any position for more than 5 to 15 minutes, she has a hard time walking, bending over, or getting up. The appellant wrote that she has pain in many areas of her body, she has severe muscle discomfort, burning and aching. The appellant also wrote that some days, she has "good days," that she tends to have a few successful months, then it "comes back;" the hives she gets are triggered by stress and heat that cause her skin to burn in the affected area. The appellant wrote that since she has been on a lower dose of medication, she is feeling her limitations and if she does not walk "super slow," she will have more pain in the evening. In her Notice of Appeal, the appellant wrote that she was in a car accident in February 2015 and she has whiplash, concussion with past concussion syndrome, and muscle pain, her nurse practitioner is not advocating for her enough, and she is waiting to see a number of specialists.



The ministry's position, as set out in the reasons dated June 1, 2015, is that while it is acknowledged that the appellant has a physical impairment, there is not sufficient information from the general practitioner and the nurse practitioner to confirm that the appellant has a severe physical impairment. The ministry wrote that the general practitioner assessed the appellant as able to walk 1 to 2 blocks unaided, climb 5 or more steps, lift 5 to 15 lbs, and remain seated for 1 to 2 hours and the nurse practitioner reported that the appellant is independent with all mobility and physical ability, although she climbs stairs "slowly." The general practitioner indicated that the appellant does not require an aid for her impairment and the nurse practitioner identified a splint for back as an assistive device used by the appellant and wrote that "she uses an over-the-counter back brace at times."

#### *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 and the nurse practitioner.

In the PR, the general practitioner, who had known the appellant for six months, diagnosed the appellant with labral tear of right hip with an onset of August 2013, Irritable Bowel disorder for years, Jejuna Intussusceptions, GERD and Urticarial Vasculitis for 4 years. The general practitioner wrote that the appellant tore her right anterior superior labrum of the hip in 2013 and has suffered pain, insomnia, loss of income and her ability to tolerate much walking or activities since; however, the general practitioner also noted that "...she was here in the office today and is walking normally enough without a limp; she is however unable to sit normally square to the chair." Regarding the degree and course of impairment, the general practitioner wrote that the appellant "needs to rest and do less with her right hip to allow the labral tear to heal. This is notoriously slow and may take another year or 2 to accomplish; surgery might be helpful but difficult to get a surgeon to do as this surgery is generally not that successful." The general practitioner reported in the PR that the appellant does not require an aid for her impairment and his assessment of the appellant's functional skills include an ability to walk 1 to 2 blocks unaided, climb 5 or more steps, lift 5 to 15 lbs., and remain seated 1 to 2 hours. The general practitioner also reported that the appellant is restricted with mobility inside and outside the home and, regarding the degree of restriction, that "...she has back and right hip pain with all activities and is present even with rest sitting."

In the AR, the nurse practitioner reported that the appellant is independent with all aspects of mobility and physical ability, specifically with walking indoors and walking outdoors, climbing stairs, standing, lifting and carrying and holding. While the nurse practitioner identified splints ("back") as an assistive device used by the appellant, she wrote that the appellant "uses an over-the-counter back brace at times." The appellant wrote in her self report that some days, she has "good days," but she did not clarify how often she experiences good or bad days. In her Notice of Appeal, the appellant wrote that she is struggling daily with pain, but she also detailed injuries sustained during a car accident which occurred in February 2015, including whiplash, concussion with past concussion syndrome, and

muscle pain, which have not been confirmed by a medical practitioner. Also, as discussed in more detail in these reasons for decision under the heading “Restrictions in the Ability to Perform DLA”, the limitations to the appellant’s physical functioning have not translated into significant restrictions to her ability to manage DLA. Given the absence of an assessment of significant 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 depression/adjustment reaction. The appellant wrote in her self report that she is not doing well and needs to explore healing modalities to deal with trust issues and PTSD attacks. The appellant wrote that she needs financial support so she can rest, stress free. The appellant indicated in the AR that she has a satisfactory ability to communicate in speaking and a good ability with reading, writing and hearing and “she is having trouble conveying herself properly and fear is preventing her from being relaxed, fear of not being trusted.” The appellant wrote that she is struggling emotionally accepting her new limitations since being told 6 months no physical activity, so she is having “up and down” days. In her Notice of Appeal, the appellant wrote that she is suffering from cognitive difficulties due to a car accident which occurred in February 2015 and she had to give up care of a child as she is unable to meet the child’s physical and/or financial needs.

The ministry’s position, as set out in the reasons dated June 1, 2015, is that there is insufficient evidence to establish that the appellant has a severe mental impairment. The ministry acknowledged that the general practitioner assessed significant deficits to the appellant’s cognitive and emotional functioning, but argued that the nurse practitioner did not indicate any impacts in the AR. The ministry pointed out that while the general practitioner reported that the appellant has no difficulties with communication, and the appellant indicated that she has a satisfactory ability to speak, and a good ability to read, write and hear. The ministry pointed out that the section of the AR completed by the appellant is considered as her self-report and not a report of the required health professional, specifically the nurse practitioner.

### *Panel Decision*

The general practitioner diagnosed the appellant with depression/adjustment reaction with an onset of October 2014, anxiety with poor coping skills and Borderline Personality with an onset of 1999, and substance-related disorder (using Nabilone, Hydromorphine and Marijuana) with an onset of October 2014 and wrote in the PR that the appellant’s “thoughts are erratic and distractible as if she has attention deficit as well.” There are significant deficits reported to the appellant’s cognitive and emotional functioning in the areas of executive, emotional disturbance, impulse control, motor activity, and attention or sustained concentration, and the appellant is “depressed and frustrated; used to working, having cash, and looking after her children.” In the AR, the nurse practitioner did not complete the section of the AR assessing impacts to cognitive and emotional functioning for an applicant with an identified mental impairment or brain injury.

In the additional comments to the PR, the general practitioner wrote that the appellant has “a lot of emotional lability and financial instability... She is irritable and distractible... child protection service was called in to assess because of her behaviours, but they felt the children were currently not at risk.” In her Notice of Appeal, the appellant wrote that she had to “give up voluntary care” because she is unable to meet the child’s physical and/or financial needs. The appellant wrote in her self-

report that she is not doing well emotionally and needs to explore healing modalities to deal with trust issues and PTSD attacks and, if she works, she will “fall to pieces.” As for searching for work and/or working, 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 the decision making DLA, the nurse practitioner reported in the AR that the appellant independently manages the decision-making components of the DLA personal care (regulate diet), shopping (making appropriate choices), meals (meal planning and safe storage of food), “pay rent and bills” (including budgeting), medications (taking as directed and safe handling and storage), and transportation (using transit schedules and arranging transportation). The nurse practitioner did not complete the section of the AR assessing impacts to social functioning, including the ability to make appropriate social decisions.

Regarding the DLA of social functioning, the appellant is assessed by the general practitioner in the PR as being restricted, with no indication if the restrictions are continuous or periodic. In the PR, the general practitioner reported that the appellant has no difficulties with communication and wrote: “distractible and agitated; tends to act out if she doesn’t get her way and becomes frustrated.” In her self-report, the appellant indicated that she has a satisfactory ability to communicate in speaking and a good ability with reading, writing and hearing and wrote she “is having trouble conveying herself properly and fear is preventing her from being relaxed, fear of not being trusted.”

The appellant also wrote that she is struggling emotionally accepting her new limitations so she is having “up and down” days, but she did not elaborate or provide further information regarding the frequency of her ‘down’ or ‘bad’ days. Given the absence of evidence of impacts to the appellant’s cognitive, emotional and social functioning and no description by the general practitioner or a mental health specialist of how these impacts affect daily functioning or contribute to exacerbations to the appellant’s conditions, 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, including counseling services, her boyfriend, and her children.

The ministry’s position, as set out in the reasons dated June 1, 2015, 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 assistance, the nurse practitioner has 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 general practitioner and the nurse practitioner 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 general practitioner reported in the PR that the appellant has not been prescribed medications and/or treatments that interfere with her DLA. In the PR, while the general practitioner indicated that the appellant's impairment does not restrict her ability to perform DLA, he also assessed the appellant as being restricted with several listed DLA, specifically: personal self care, meal preparation, management of medications, basic housework, mobility inside and outside the home, use of transportation, management of finances, and social functioning. For daily shopping, the general practitioner did not indicate restrictions but marked "periodic" and commented that "...pains increase with the day and limits the activities she's willing to do." Asked to describe the assistance the appellant needs with DLA, the general practitioner wrote "sometimes gets boyfriend to help with getting the groceries home to her children."

In the AR, the nurse practitioner reported that the appellant independently perform several listed DLA, namely: walking indoors and outdoors, personal care, shopping, paying rent and bills, medications, and transportation. The appellant requires periodic assistance with the DLA basic housekeeping (including laundry), with the comment added by the nurse practitioner that she "had to take laundry to Laundromat, had friend lift and carry." In her self-report, the appellant wrote that she has an extremely hard time getting ready in the a.m. since she is so sore and stiff when she wakes up and she needs time before her muscles "loosen up" and she is having an extremely hard time cleaning her house. The nurse practitioner reported that the appellant requires periodic assistance with the tasks of food preparation and cooking for the DLA meals (note: "gets kids to cook"), while remaining independent with the tasks of meal planning and safe storage of food. 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 while the appellant is assessed with undefined restrictions with her DLA, she manages most of her DLA without assistance and that the ministry reasonably determined that there is insufficient information to allow the ministry to determine that the periodic assistance that is required for a few tasks 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 or an assistive device to perform DLA.

The ministry's position, as set out in the reasons dated June 1, 2015, 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 or an assistive device.

***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 general practitioner wrote: "sometimes gets boyfriend to help with getting the groceries home to her children." In the AR, the nurse practitioner did not identify any of the categories of people from whom the appellant receives help and wrote "housekeeper- one time only" and "patient wants light housekeeping as she finds it painful to do chores and cleaning." In the section of the AR relating to assistance provided through the use of assistive devices, the nurse practitioner identified splints and wrote "back" and "she uses an over-the-counter back brace at times." As previously discussed, the appellant did not elaborate or provide further information regarding the frequency of her 'down' or 'bad' days.

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 a reasonable application of the applicable enactment in the appellant's circumstances and therefore confirms the decision.