PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the Ministry) reconsideration decision dated June 1, 2016, 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 ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the applicant information and self-report dated December 21, 2015, a physician report (PR) and an assessor report (AR) both dated December 31, 2015 and completed by a general practitioner who has known the appellant for over 25 years.

The evidence also included the following documents:

1) Hospital history and physical report dated January 17, 2015;
2) Hospital psychiatric discharge summaries dated May 20, 2015 and June 2, 2015; and,
3) Request for Reconsideration dated May 20, 2016 with written submission by a social worker.

Diagnoses

In the PR, the appellant was diagnosed by the general practitioner with Hepatitis C "stable", depression/bipolar illness "since 1980's, last manic episode December 2014," and "low back pain secondary to fall" with date of onset as query 1999. In the AR, the general practitioner described the appellant's impairments that impact her ability to manage daily living activities as: "…mental condition as she recovers from severe psychotic state resulting from bipolar illness."

Physical Impairment

In the PR and AR, the general practitioner reported that:

- The appellant does not require any prostheses or aid for her impairment.
- For functional skills, the appellant can walk 4 or more blocks unaided, climb 5 or more steps unaided, lift 7 to 16 kg (15 to 35 lbs), and has no limitation with remaining seated.
- The appellant is independently able to perform all areas of mobility and physical ability, specifically walking indoors and 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 did not identify any of the listed items.

Mental Impairment

In the PR and AR, the general practitioner reported:

- In terms of health history, she is "usually able to work as had no recurrence of bipolar-manic illness in over 20 years. Recent breakdown- cause unknown- December 2014 required hospitalization for severe psychotic episode. Patient has been unable to work since. Medication compliant but side effects are significant still."
- The appellant has no difficulties with communication.
- The appellant has significant deficits in her cognitive and emotional functioning in the areas of executive, memory, emotional disturbance, and attention or sustained concentration. The general practitioner wrote: "due to illness and treatments currently used."
- In the additional comments, the general practitioner wrote that the appellant "had a severe psychotic episode and is only now starting to recover in a satisfactory manner."
- The appellant has a good ability to communicate in all areas, specifically with speaking, reading, writing, and hearing.
- For the section of the AR assessing impacts to cognitive and emotional functioning, the social

worker indicated no major impacts, with moderate impacts in the areas of consciousness, emotion, attention/concentration, executive and motor activity. There are minimal or no impacts in the remaining 9 areas of functioning, including a minimal impact to memory. The general practitioner did not add any comments regarding these impacts.

- For the section of the AR assessing impacts to social functioning, the general practitioner reported that the appellant is independent in all 5 areas, specifically: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others.
- The appellant has good functioning in her immediate and extended social networks.

In her self-report, the appellant wrote that:

- She was diagnosed with bipolar disorder in 2015 and she was hospitalized three times in 2015, taking months to recover enough so she could go home.
- She has tremendous anxiety, trouble speaking, and feeling like she cannot breathe.
- The anxiety is so strong many days that she will not leave the house. She will pull over when driving because of panic.
- Her speech is stuttered and it is hard to get a sentence out. Some days are worse.
- She tries to breathe to help calm herself.
- She has had hallucinations that seem like they are happening and she takes medicine to help these.
- The disorder has changed her life for the worse, making it hard to get through the day.

In the hospital psychiatric discharge summaries dated May 20, 2015 and June 2, 2015, the physician wrote that:

- The appellant was admitted April 25, 2015 and discharged to her daughter May 13, 2015, [3 week admission].
- The appellant again recovered very rapidly from a manic episode. She has an unusual course of illness in that she has been so well without prophylactic treatment for so long and yet at the same time appears to develop manic symptoms extremely rapidly even as she recovers relatively rapidly.
- It is likely the appellant will need prophylactic medication at least for a few years given the two recent manic episodes.

In the written submission dated May 20, 2016, the social worker wrote that:

- She has been working with the appellant since November 2015, more than 11 visits, and feels the appellant meets the criteria for duration, severity and is significantly and severely mentally restricted in her ability to perform a range of daily living activities due to mental illness and, of course, due to the “unpredictability of bipolar disorder.”
- The general practitioner has treated the appellant for her physical needs while she and the appellant’s psychiatrist have treated the appellant’s mental illness.
- She and the psychiatrist have concluded that there is also a moderate impact to the appellant’s cognitive and emotional functioning in the area of motivation.
- The Personal Health Questionnaire (PHQ) and GAD7 assessments identified a severe level of mood impairment, including disordered sleeping and a severe and prolonged effect on motivation/initiative.
- The appellant was involuntarily admitted to hospital twice in 2015, once in January 2015 and again after a significant recurrence requiring admission due to the severity and length of the

episode.

Daily Living Activities (DLA)

In the PR and AR, the general practitioner indicated that:

- The appellant has been prescribed anti-psychotic medications that interfere with her ability to perform DLA. The anticipated duration for one is permanent and the other is uncertain.
- The appellant is independently able to move about indoors and outdoors.
- The appellant is independently able to perform every task of every listed DLA, specifically: personal care, basic housekeeping, shopping, meals, pay rent and bills, medications, transportation and social functioning.
- In the additional information, the general practitioner wrote that the appellant is "physically intact with chronic low back problem."

In the written submission dated May 20, 2016, the social worker wrote that:

- She feels the appellant meets the criteria for duration, severity and is significantly and severely mentally restricted in her ability to perform a range of DLA due to mental illness and, of course, due to the "unpredictability of bipolar disorder."

Need for Help

In the AR, the general practitioner indicated that the help required for DLA is provided by family and friends and that she is followed by mental health services and psychiatry. In the section of the AR relating to assistance provided through the use of assistive devices, the general practitioner did not identify any of the listed items as being required.

Additional Information

In her Notice of Appeal dated June 10, 2016, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that she is severely impaired and she is mentally impaired because of her bipolar and her back has pain all the time.

Prior to the hearing, the appellant provided a the following additional documents:

1) Undated letter in which the general practitioner who completed the PR and the AR wrote that:

- His care of the appellant has focused on her physical health. He relies on the appellant and the professionals at mental health to provide information about her mental health.
- While he stated in the PWD application that the appellant was hospitalized in December of 2014, she was actually hospitalized twice in 2015, in February to March and in April to May.
- Upon further consideration of the mental health records and the appellant's statement, he can see that the appellant's ability to perform certain DLA would be restricted periodically for extended periods.
- During her times of hospitalization her ability to function was significantly limited, and reports have been provided about the appellant's condition when she was hospitalized. She could not function sufficiently to make meals, shop, use public transportation, or move about safely outdoors.
- Since her hospitalization, the appellant's heightened anxiety has continued to limit her ability to function. She is significantly limited in her ability to interact with people, particularly in groups. The symptoms appear when she is in a car causing her to avoid traffic.
- She is able to live in the community with medication and supports from mental health (case worker and psychiatrist).

2) Statement dated June 22, 2016 in which the appellant wrote that:

- She is limited in her ability to interact with people. This means that anything involving being out in the world is significantly affected including shopping, using transportation and moving about outdoors. Since her release from hospital, she often stays home for 10 days in a row. She tends to isolate. When she is in a social situation, it feels like she cannot breathe.
- She needs help because of her condition. Her son checks on her every day. She also has regular contact with her mental health worker and psychiatrist. She cannot deal with groups of people.
- Her first admission to hospital was for 6 weeks, she experienced another manic episode and was admitted to a psychiatric centre for around 6 weeks. [hospital psychiatric discharge summaries shows 3 weeks]
- The repercussions of her condition plague her every day. Her behavior does not appear as bizarre to the outside world as it did when she was hospitalized, but the restrictions it imposes on her life are still significant.
- Her hands tremble from the medication. She stammers in her speech in other than one-on-one situations.
- She experiences heightened anxiety on the road, both as a driver and passenger.

3) Statement dated June 22, 2016 in which the general practitioner agreed that the description of the appellant's life is credible in light of what he knows of her condition. He agrees with the appellant's statement and the statement by the social worker dated May 20, 2016.

4) Letter dated June 29, 2016 in which the social worker wrote that:

- In the psychiatrist's last report dated February 24, 2016 he noted that the appellant is "still experiencing some low grade panic attacks" and that her sleep is "disturbed." Overall, he noted that the appellant "is not doing a whole lot right now." From this report and her previous assessments, it is reasonable to state that the appellant is limited in her capacity to function sufficiently to participate in DLA.
- The appellant has informed her that she relies on daily support from family members to prompt and assist her in carrying out DLA and to support her emotional and social functioning.
- One family member attends the appellant's home on a regular basis (2 to 4 times per week) to ensure that she has been able to attend to daily needs such as preparing and eating meals, and house cleaning tasks such as vacuuming and laundry and to further ensure that she is not isolated and that she experiences some social connection.
- Another family member assists and supports the appellant in carrying out DLA by talking on the phone with her on a regular basis (3 to 4 times per week) and prompting her to pay her bills, make appointments, and generally assist in reminding and motivating her to carry out these DLA. This level of support is necessary for the appellant to carry out daily living, social and emotional activities and suggest that the appellant experiences significant limitations.

The ministry relied on its reconsideration decision.

At the hearing, the appellant and her advocate stated that:

- The general practitioner is not an expert on mental health issues and relied on the mental health professionals to treat the appellant in this area while he focused on her physical health.
- The appellant experienced two prolonged and traumatic episodes, resulting in hospitalization, that have ongoing limiting effects today and into the future.
- The general practitioner made a couple of errors, regarding the year of the appellant's hospitalizations, which was '2015' and not '2014,' and he was also mistaken about the effect of

her condition on social functioning.
- The records from the hospital admissions are relevant and should be considered.
- The appellant will be taking prophylactic medications for a few years and there is ongoing involvement with mental health services and psychiatry.

Admissibility of Additional Information

The panel considered the information in the letters from the general practitioner and social worker and the statement by the appellant as corroborating the previous information from the social worker and the appellant regarding the appellant's medical conditions diagnosed in the PWD application, which was before the ministry at reconsideration. Therefore, the panel admitted this additional information as being in support of information and records that were before the ministry at the time of the 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 did not advance a position that she has a severe physical impairment, although her advocate pointed out that the general practitioner reported the appellant has “low back pain secondary to fall” and that her low back pain is chronic.

The ministry's position, as set out in the reconsideration decision, is that there is insufficient evidence to establish that the appellant has a severe physical impairment. The ministry wrote that the general practitioner reported functional skills in the high range of functioning and the appellant is independent in all aspects of mobility and physical ability.

Panel Decision

In the PR, the general practitioner, who has known the appellant for more than 20 years, diagnosed the appellant with Hepatitis C, described as “stable,” and “low back pain secondary to fall” with date of onset as query 1999.

The general practitioner reported that the appellant has a high degree of functioning in her functional skills, and she remains independent with all aspects of mobility and physical ability. In the PR, he

indicated that the appellant can walk 4 or more blocks unaided, climb 5 or more steps unaided, lift 7 to 16 kg (15 to 35 lbs) and has no limitation with remaining seated. The additional information provided by the general practitioner in his statements and the social worker in her written submission dated May 20, 2016 and her letter dated June 29, 2016 did not elaborate on the appellant's physical condition.

Given the level of independent physical functioning reported by the general practitioner, who confirmed that he focused on care for the appellant's physical health, 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 impacts from her depression/bipolar illness "since 1980's" as set out in the hospital reports and the information from the social worker and the more recent information from the general practitioner. The appellant argued, through her advocate, that the general practitioner reported that there are 5 moderate impacts to the appellant's cognitive and emotional functioning and the social worker indicated that the appellant also experiences a moderate impact in the area of motivation. The appellant argued that there is no legislative requirement to assess the appellant as having a major impact in functioning or for comments to be added to the assessment and, in the appellant's case, a total of 6 domains of functioning have a moderate impact, which taken cumulatively meet the criteria for severe and significant impacts to functioning. The appellant argued that the social worker, who is a prescribed professional, reported that a moderate impact on executive functioning produces a significant and severe effect on many levels of functioning as this is the primary purpose of the neuro function and includes primary and foundational functions such as planning, organizing, problem solving, sequencing and abstract thinking. The advocate argued that the appellant had two lengthy and traumatic admissions to hospital in 2015 on an involuntary basis, has been treated by four different psychiatrists, and is currently being followed by mental health services and psychiatry. The advocate argued that more weight should be placed on the evidence of the social worker, as also informed by the psychiatrist, as they are the mental health experts.

The ministry's position, as set out in the reconsideration decision, is that there is insufficient evidence to establish that the appellant has a severe mental impairment. The ministry argued that although the general practitioner reported deficits with cognitive and emotional functioning in the areas of executive, emotional disturbance, and attention or sustained concentration, he indicated moderate impacts to these areas and minimal impact in the area of memory. The ministry argued that the appellant has no major impacts to cognitive and emotional functioning, she has a good ability to communicate in all areas, and she is independent in all listed areas of social functioning, with good functioning in both her immediate and extended social networks and these assessments are more in keeping with a moderate degree of impairment of mental functioning.

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 social worker.

The general practitioner diagnosed the appellant with depression/bipolar illness since the 1980's and, in the AR, he described the appellant's impairments that impact her ability to manage daily living activities as: "…mental condition as she recovers from severe psychotic state resulting from bipolar illness." In terms of health history, that general practitioner wrote that the appellant's recent breakdown required hospitalization for a "severe psychotic episode," the appellant has been unable to work since, and while she is compliant with medication, the side effects are "significant still." In her self-report, the appellant wrote that she has tremendous anxiety, trouble speaking, and a feeling like she cannot breathe. The appellant wrote that the anxiety is so strong many days that she will not leave the house and she will pull over when driving because of panic. She has had hallucinations that seem like they are happening and she takes medicine to help these. The appellant wrote that the disorder has changed her life for the worse, making it hard to get through the day.

The general practitioner reported that the appellant has significant deficits in her cognitive and emotional functioning in the areas of executive, memory, emotional disturbance, and attention or sustained concentration and wrote: "due to illness and treatments currently used." In assessing the impacts to daily functioning, the general practitioner indicated in the AR that there are no major impacts to functioning, but moderate impacts in the areas of consciousness, emotion, attention/concentration, executive and motor activity. The social worker who has been working with the appellant since November 2015 wrote, in her written submission dated May 20, 2016 as elaborated on in her letter dated June 29, 2016, that she and the appellant's psychiatrist have concluded that there is also a moderate impact to the appellant's cognitive and emotional functioning in the area of motivation. The social worker indicated that the PHQ and GAD7 assessments identified a severe level of mood impairment, including disordered sleeping and a severe and prolonged effect on motivation/initiative. The social worker reported that a moderate impact on executive functioning produces a significant and severe effect on many levels of functioning as this is the primary purpose of the neuro function and includes primary and foundational functions such as planning, organizing, problem solving, sequencing and abstract thinking. The social worker indicated that the appellant was involuntarily admitted to hospital twice in 2015, once in January 2015 and again after a significant recurrence requiring admission due to the severity and length of the episode.

In the hospital psychiatric discharge summaries dated May 20, 2015 and June 2, 2015, the physician wrote that the appellant has an unusual course of illness in that she has been so well without prophylactic treatment for so long and yet at the same time appears to develop manic symptoms extremely rapidly even as she recovers relatively rapidly. The physician reported that it is likely the appellant will need prophylactic medication at least for a few years given the two recent manic episodes.

In his updated letter provided on the appellant, the general practitioner wrote that, since her hospitalization, the appellant's heightened anxiety has continued to limit her ability to function. She is significantly limited in her ability to interact with people, particularly in groups, and the symptoms appear when she is in a car causing her to avoid traffic. The general practitioner wrote that the appellant is able to live in the community with medication and supports from mental health (case worker and psychiatrist). In her letter dated June 29, 2016, the social worker referred to the

psychiatrist's last report dated February 24, 2016 and stated that he noted the appellant is "still experiencing some low grade panic attacks" and that her sleep is "disturbed."

In considering the additional information provided by the social worker through her detailed assessments, and as informed by the psychiatrist as a mental health expert, the panel notes significant impacts to the appellant's cognitive and emotional functioning in several areas, especially with the persistent heightened anxiety, and finds that the ministry's determination that a severe mental impairment was not established under Section 2(2) of the EAPWDA was not reasonable.

Restrictions in the ability to perform DLA

The appellant's position is that her mental disorder severely impairs her so that her ability to perform DLA is significantly restricted to the point that she requires significant help and support from other people. The appellant argued, through her advocate, that the general practitioner acknowledged in his letter provided on the appeal that his care of the appellant has focused on her physical health and that he relies on the appellant and the professionals at mental health to provide information about her mental health. The advocate argued that the general practitioner wrote that, upon further consideration of the mental health records and the appellant's statement, he can see that the appellant's ability to perform certain DLA would be restricted periodically for extended periods. The advocate argued that the general practitioner also provided a statement dated June 22, 2016 in which he agreed with the appellant's statement and the statement by the social worker dated May 20, 2016.

The advocate argued that the appellant wrote that she is limited in her ability to interact with people, which means that anything involving being out in the world is significantly affected including shopping, using transportation and moving about outdoors. The advocate argued that in the psychiatrist's report dated February 24, 2016 he noted that overall the appellant "is not doing a whole lot right now" and the social worker stated that it is reasonable to conclude that the appellant is limited in her capacity to function sufficiently to participate in DLA. The advocate argued that the social worker reported that the appellant relies on daily support from family members to prompt and assist her in carrying out DLA and to support her emotional and social functioning. The advocate argued that one family member attends the appellant's home on a regular basis (2 to 4 times per week) to ensure that she has been able to attend to daily needs such as preparing and eating meals, and house cleaning tasks and to further ensure that she is not isolated, and another family member assists and supports the appellant in carrying out DLA by talking on the phone with her on a regular basis (3 to 4 times per week) and prompting her to pay her bills, make appointments, and generally assist in reminding and motivating her to carry out these DLA. The advocate argued that the social worker reported that this level of support is necessary for the appellant to carry out daily living, social and emotional activities and suggests that the appellant experiences significant limitations.

The ministry's position, as set out in the reconsideration decision, 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 although the general practitioner indicated in the PR that the appellant is prescribed medications that interfere with her ability to perform DLA, he also indicated in the AR that the appellant is independent with all listed areas of DLA.

Panel Decision

Section 2(2) of the EAPWDA requires that a severe impairment directly and significantly restricts the appellant's ability to perform the prescribed DLA either continuously or periodically for extended

periods. The term “directly” means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration. The direct and significant restriction may be either continuous or periodic. If it is periodic it must be for an extended time.

In the appellant’s circumstances, the general practitioner reported in the PR that the appellant has been prescribed anti-psychotic medications that interfere with her ability to perform DLA, with the anticipated duration for one being “permanent” and the other is “uncertain.” The general practitioner also reported that the appellant is independently able to move about indoors and outdoors and to independently perform every task of every listed DLA, specifically: personal care, basic housekeeping, shopping, meals, pay rent and bills, medications, and transportation. In the additional information to the AR, the general practitioner wrote that the appellant is “physically intact with chronic low back problem.” Given an opportunity to modify his assessment of the appellant’s ability to perform DLA in his letter provided on the appeal, the general practitioner wrote that, upon further consideration of the mental health records and the appellant’s statement, he can see that the appellant’s ability to perform “certain” DLA would be restricted periodically for extended periods. The general practitioner wrote that, during her times of hospitalization, the appellant could not function sufficiently to make meals, shop, use public transportation, or move about safely outdoors. However, the general practitioner also wrote in the PR that the appellant is “usually able to work as had no recurrence of bipolar-manic illness in over 20 years,” and there was no evidence provided on the appeal of further hospitalizations since the two in 2015 in January and again in April. The general practitioner concluded that the appellant is able to live in the community with medication and supports from mental health (case worker and psychiatrist).

In her letter dated June 29, 2016, the social worker referred to the psychiatrist’s last report dated February 24, 2016 in which he noted that the appellant “is not doing a whole lot right now” and the social worker wrote that from this report and her previous assessments, it is reasonable to assert that the appellant is limited in her capacity to function sufficiently to participate in DLA. The appellant has informed her that she relies on daily support from family members to prompt and assist her in carrying out DLA. One family member attends the appellant’s home on a regular basis (2 to 4 times per week) to ensure that she has been able to attend to daily needs such as preparing and eating meals, and house cleaning tasks and to further ensure that she is not isolated. Another family member assists and supports the appellant in carrying out DLA by talking on the phone with her on a regular basis (3 to 4 times per week) and prompting her to pay her bills, make appointments, and generally assist in reminding and motivating her to carry out these DLA. While the social worker wrote that this level of support is necessary for the appellant to carry out DLA and suggests that the appellant experiences significant limitations, there is no detail provided of the level of restriction or the frequency and duration of the assistance required with particular tasks of DLA, other than prompting and reminders, to allow a determination that these DLA are directly and significantly restricted either continuously, or periodically for extended periods.

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), there is little evidence to establish that the appellant is significantly restricted in either. Regarding the decision making DLA, the general practitioner reported in the AR that the appellant independently manages all decision-making components of DLA, specifically: personal care (regulate diet), shopping (making appropriate choices and paying for purchases), 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). As well, the general practitioner reported in the AR that the appellant independently makes appropriate social decisions. The general practitioner did not change his assessment of the appellant's decision-making ability in his updated letter, or through his endorsement of the statement by the appellant and the social worker.

Regarding the DLA of social functioning, the general practitioner assessed the appellant in the AR as independent in all aspects, including developing and maintaining relationships and interacting appropriately with others, with good functioning in both her immediate and extended social networks. In his letter provided on the appeal, the general practitioner wrote that, since her hospitalization, the appellant's heightened anxiety has continued to limit her ability to function and she is significantly limited in her ability to interact with people, particularly in groups. The general practitioner wrote that the appellant's symptoms of heightened anxiety appear when she is in a car causing her to avoid traffic. In her statement dated June 22, 2016, the appellant wrote that she is limited in her ability to interact with people and this means that anything involving being out in the world is significantly affected including shopping, using transportation and moving about outdoors. The appellant wrote that she tends to isolate and, when she is in a social situation, it feels like she cannot breathe. The appellant wrote that she needs help because of her condition and her son checks on her every day and she also has regular contact with her mental health worker and psychiatrist. In his statement dated June 22, 2016, the general practitioner agreed with the appellant's statement and that of the social worker dated May 20, 2016; however, while the appellant concludes that her ability to perform some DLA is "significantly affected," there is no detail provided of the level of restriction or the frequency and duration of the assistance required with particular tasks of DLA, other than regular contact from others, to allow a determination that these DLA are directly and significantly restricted either continuously or periodically for extended periods.

The general practitioner further reported in the PR and the AR that the appellant has no difficulties with communication, with a good ability to communicate in all areas, specifically with speaking, reading, writing, and hearing. The appellant wrote in her statement dated June 22, 2016 that she stammers in her speech in other than one-on-one situations.

Given the lack of description and explanation regarding how often and how long the appellant experiences restrictions and the associated degree of assistance required, as well as the lack of evidence to establish significant restrictions with the two DLA specific to mental impairment, 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, specifically her family and counseling through mental health services and psychiatry as the health authority professionals.

The ministry's position, as set out in the reconsideration decision, 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 AR, the general practitioner indicated that the help required for DLA is provided by family and friends and that she is followed by mental health services and psychiatry. In the section of the AR relating to assistance provided through the use of assistive devices, the general practitioner did not identify any of the listed items.

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.