PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated July 14, 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 original hearing date was adjourned to provide the appellant with a further opportunity to arrange for the attendance of the psychiatrist as her advocate. The psychiatrist did not attend the hearing, advising the appellant that she had provided all the information in her reports, and the appellant indicated that she wished to proceed and to represent herself.

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 February 25, 2016, a physician report (PR) dated February 17, 2016 completed by a psychiatrist who has known the appellant since November 2014 and an assessor report (AR) dated February 18, 2016 and completed by a registered nurse who has seen the appellant 2 to 10 times in the last year.

The evidence also included the following documents:

1) Psychiatry Consult Report dated November 5, 2014 by the psychiatrist who completed the PR;
2) Progress Note dated January 6, 2016 completed by the psychiatrist who also completed the PR;
3) Final Report dated June 15, 2016 by the psychiatrist who completed the PR;
4) Letter dated June 16, 2016 from the psychiatrist who completed the PR; and,
5) Request for Reconsideration dated June 29, 2016.

Diagnoses

In the PR, the psychiatrist diagnosed the appellant with Generalized Anxiety Disorder (GAD)-moderate, trichotillomania, cluster B & C personality traits, Post Traumatic Stress Disorder (PTSD)-civilian-related, all with onsets in 2007.

Physical Impairment

In the PR, the psychiatrist reported that:

- The appellant does not require any prostheses or aid for her impairment.
- For functional skills, it is unknown how far the appellant can walk unaided, how many stairs she can climb unaided, how much weight she can lift, and how long she can remain seated.

In the AR, the registered nurse reported that:

- 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 nurse did not identify any of the listed items.

In her self-report, the appellant wrote that lack of sleep often causes headaches and once in a while very debilitating migraines.

In her Request for Reconsideration, the appellant wrote that she requested that the psychiatrist submit relevant information to her file.

Mental Impairment

In the PR, the psychiatrist reported:

- In terms of health history, refer to the Psychiatry Consult Report dated November 5, 2014 and the Progress Note dated January 6, 2016; the appellant "…suffers from significant anxiety and PTSD related to past abuse, which affect her daily functioning."
- Regarding the degree and course of impairment, the psychiatrist wrote: "chronic fluctuating course- outcome will majorly depend on patient's adaptive skill-building, level of stress, and social support."
- The appellant has cognitive difficulties with communication, specifically: "…forgetfulness, difficulty focusing, decision making."
- The appellant has significant deficits in her cognitive and emotional functioning in the areas of executive, memory, emotional disturbance, motivation, impulse control, and attention or sustained concentration. The psychiatrist wrote that the appellant has "…difficulty with depressive mood secondary to anxiety."
- In the additional comments to the PR, the psychiatrist wrote that she will continue to provide the appellant with medication management and psychotherapy (cognitive behavior and dialectical behavior).

In the AR, the nurse reported that:

- 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 nurse indicated major impacts in emotion, impulse control, insight and judgment, and motor activity, as well as a moderate impact in "other emotional or mental problems (e.g. hostility, explain below)", with no further explanation provided by the nurse. There are minimal or no impacts assessed in the remaining 9 areas of functioning, including no impact to memory and minimal impact in the areas of executive, motivation and attention or sustained concentration.
- For the section of the AR assessing impacts to social functioning, the nurse reported that the appellant is independently able to make appropriate social decisions (note: "client has put herself in situations that could be dangerous to self; client uses social media for relationships"), develop and maintain relationships, interact appropriately with others and secure assistance from others. The appellant requires periodic support/supervision with her ability to deal appropriately with unexpected demands. No further explanation or description was provided of the support or supervision required by the appellant.
- The appellant has very disrupted functioning in her immediate social network (note: "client has been in conflict with family support") and marginal functioning in her extended social networks (note: "client has few close friends and only attends community engagements to meet needs").
- Asked to describe the support/supervision required which would help maintain the appellant in the community, the nurse did not comment.
- In the additional information, the nurse wrote that the appellant's "impulsive behaviors due to her anxiety and personality disorders creates an unstable environment to which applicant often has trouble problem solving through."

In her self-report, the appellant wrote that:

- She barely eats and rarely sleeps due to obsessive and intrusive thoughts.
- She has social anxiety and going downtown causes major distress.

- She has PTSD from a previous abusive relationship that triggers anxiety attacks in public where she breaks down and cries.

In her Request for Reconsideration, the appellant wrote that she requested that the psychiatrist submit relevant information to her file.

In the Psychiatry Consult Report dated November 5, 2014, the psychiatrist wrote that:

- The appellant presented with significant symptoms of anxiety and some symptoms of depression and symptoms of PTSD.
- Her strong positive prognosis factors include her abstinence of any substance use and she is motivated and intelligent and adamant to pursue a treatment, and she is compliant to her medications.

In the Progress Note dated January 6, 2016, the psychiatrist indicated that:

- The appellant seemed to be responding reasonably well to the combination of SSRI agent and mood stabilizer in context of borderline personality traits.
- The appellant makes close parallels about her trichotillomania urges and urges of erratic shopping online behavior in the context of life stress and stressful circumstances.
- The appellant seemed to be looking for immediate changes and quick fixes and her anxiety fluctuates drastically, depends on life and financial circumstances.

In the Final Report dated June 15, 2016, the psychiatrist wrote that:

- The appellant continued on SSRI agent in combination with neuroleptics to address some of her issues with anxiety. She stated that she experienced at least 30 to 40% relief on the medications, and reasonable relaxation throughout the day when she has anxiety episodes and helps with initial insomnia.
- Regarding her PTSD, the appellant will get more education about the medication recommended.
- She believes that the appellant suffers from her anxiety, PTSD and trichotillomania significantly and, as a consequence, she experienced a lot of depression. The appellant's functioning is significantly impaired and she is socially isolated and is "not able to think about getting back to work at this point."
- She believes that the appellant's life circumstances play a huge role in how she experiences her day-to-day mental state.

Daily Living Activities (DLA)

In the PR, the psychiatrist indicated that:

- The appellant has been prescribed medications that interfere with her ability to perform DLA.
- It is unknown whether the appellant's impairment directly restricts her ability to perform DLA.
- With respect to social functioning, "…due to significant anxiety, patient has difficulty with social situations, money management due to impulsivity."

In the AR, the nurse reported that:

- The appellant is independently able to perform every task of most listed DLA, specifically: personal care, basic housekeeping, meals, and transportation.
- The appellant is independent with most tasks of the DLA shopping (going to and from stores, reading prices and labels and carrying purchases home), with no assessment provided for the

tasks of making appropriate choices and paying for purchases. Rather, the nurse wrote that "client is very impulsive" and "client spends beyond her means and is in chronic financial stress."
- The appellant is independent with most tasks of the DLA "pay rent and bills" (including banking), with no assessment for the task of budgeting. Rather, the nurse wrote that "client does not manage money well."
- For the medication DLA, the appellant is independent with filling/refilling prescriptions and safe handling and storage, and no assessment is provided for taking medications as directed. The nurse wrote that "medication compliance has been an issue."

Need for Help

The psychiatrist wrote in the PR that the appellant attended group therapy in the spring of 2015 for generalized anxiety. In the AR, the nurse indicated that the help required for DLA is provided by family. In the section of the AR relating to assistance provided through the use of assistive devices, the nurse did not identify any of the listed items.

Additional Information submitted after reconsideration

In her Notice of Appeal dated July 19, 2016, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that her designations are life threatening in her opinion and she would like a chance to explain her situation in full.

The hearing

The ministry relied on its reconsideration decision.

At the hearing, the appellant stated that:
- Since she was a teenager, she has a history of anxiety and compulsive behavior. When she became an adult, she was involved in an abusive relationship that subsequently resulted in a diagnosis of PTSD.
- She would hide from her abusive partner when he was in a rage. Her partner assaulted her and she attempted suicide. She left after a few years, but the damage was done.
- She experiences a dark depression that is triggered by random life situations.
- In 2014 she became a single mother. She experienced post-partum depression and the nurse overseeing her case introduced her to the psychiatrist who has been teaching her methods to cope with GAD, PTSD and post-partum depression and also finding medications that will help.
- She still experiences recurring depressive episodes.
- Her fear and anxiety can be easily triggered. For example, she was driving and stopped at a red light. Her window was down and a panhandler approached her and she became so flustered and felt 'ambushed' and could only focus on one thing at a time. She panicked and accelerated when the light had already cycled and returned to red and she could have easily been hit by proceeding into the intersection.
- Her anxiety impacts her eating and her sleeping. She will have constant intrusive thoughts. For example, if she cannot see her dog, she will start thinking that he got out somehow and is missing and that she will have to make up posters to try to find him, instead of just checking to see if he is in another room.
- Her driving ability, energy level, personality and her health are all affected by her conditions.
- For her ability to perform DLA, it varies every day based on uncontrollable factors. For example, it used to take her 3 hours to get ready to leave the house but, with the psychiatrist's

help, they have the time down to about 1 ½ hours to get ready, but that is still much longer than the normal time to get ready.

- She can use the telephone and quickly book appointments with professionals.
- She is facing possible bankruptcy and this is another source of stress. She is not able to afford a vehicle. If she tries to use public transit, she gets light-headed and feels nauseous. She took public transit during the time she was with her abuser so this has become a "trigger" for her. She starts thinking about who might be on the bus and all the negative things that might occur and she starts to hyperventilate.
- The psychiatrist has been working with her to develop people skills so she is not so scared around men. She is trying to help her develop time management skills so she does not need to apply so much make-up to go out and so it will not take her so much time to get ready.
- She has thought she has seen her past abuser's vehicle in the community and she has panicked and gone home. Once she saw him and felt that he was following her and that she was being stalked.
- The psychiatrist wrote a note dated April 1, 2016 that the appellant "needs a dog for therapeutic benefit to deal with mental health issues," which allowed her to bring her dog into the rental unit that did not allow pets. She uses the dog to relieve her symptoms of anxiety.
- Her fear of going out into public impacts her ability to do her DLA.
- Her anxiety sometimes causes her to forget how to do something simple, even something like walking. She feels like she is always in crisis mode and a car going full speed all the time will wear out quickly.
- She sees the psychiatrist once every 2 weeks. She wishes she could see her more because things come up at different times, such as dealing with possible bankruptcy.
- Her friendships and dwindling because of her symptoms. Her long-standing friends understand when she "disappears" by not being in contact for a couple of months and then she comes back. New people do not understand the time she takes to "reset."
- She has gone through a couple different medications and they have to keep adjusting them and this is also hard on her. They have not tried medications for PTSD since the psychiatrist has said she is not ready to deal with the PTSD yet since she needs to be more stable. The medications have helped her so that she no longer feels suicidal.
- Because of all her diagnoses, she is "not given enough cards to deal with life situations." She has good days and bad days during a week. For example, if she is driving to work and she gets cut off, she "freaks out" and it is like a switch gets flipped and "goes to the max" and she thinks about all the negative things that can happen. They explored the possibility that she may be bipolar because of the swings in mood but her "manic" periods only last for a few minutes and not days.
- Her mental state is a "10" and this dribbles into her physical condition since she gets headaches, nausea, confusion and it is hard for her to concentrate.
- She last took a group therapy class in March 2016. She has tried to use apps for anxiety and courses on her computer. She sometimes calls the crisis line for help.
- She and her mother had a falling out and the appellant has been "on her own" since that time. Her family helped her after the birth of her child and when she was experiencing post partum depression but they do not help her now. She lives with a room-mate and the appellant relies on her dog for therapy. She brushes his coat and this helps her.
- Her "community engagements" as referred to by the nurse in the AR, are dropping off her child at the day care 3 days per week, the anxiety groups she attended, and appointments with the psychiatrist. The psychiatrist gives her homework and reading to do between their

appointments. The appellant only leaves her house when she needs to.

- She always makes sure that her child is clothed and fed. The psychiatrist arranged for day care for her child for half the day to give the appellant a break. Sometimes the child's paternal grandparents give her clothes and occasionally will buy her diapers but, otherwise, the appellant takes care of her needs. The child stays overnight with her grandparents about once a month. Even when she is depressed, the appellant manages to take care of her child.

Admissibility of Additional Information

The panel considered most of the appellant's oral testimony as corroborating the previous information from the appellant regarding the impacts of her 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.* The panel did not admit the information the appellant provided about the psychiatrist endorsing the use of a dog for therapy in a note dated April 1, 2016 because the use of an assistance animal was not assessed or referred to in any of the documents submitted at reconsideration and, therefore, was not in support of information and records that were before the ministry at the time of reconsideration.

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 her mental health conditions also cause physical impacts since she experiences lack of sleep, which often causes headaches and once in a while very debilitating migraines, and her anxiety makes her feel nauseous .

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 psychologist did not diagnose a physical impairment and did not provide an assessment of functional skills.

Panel Decision

In the PR, the psychiatrist diagnosed the appellant with conditions in the mental disorder diagnostic category and did not identify a physical health condition. In her self-report, the appellant wrote that lack of sleep often causes headaches and once in a while very debilitating migraines. At the hearing, the appellant stated that her mental state is a "10" and this dribbles into her physical condition since she gets headaches, nausea, confusion and it is hard for her to concentrate. However, there was no specific diagnosis by the psychiatrist other than those that fall within the mental disorder diagnostic

category.

The psychiatrist reported in the PR that the appellant it is unknown how far the appellant can walk unaided, how many stairs she can climb unaided, how much weight she can lift, and how long she can remain seated. The psychiatrist indicated that the appellant does not require any prostheses or aid for her impairment and, in the AR, the registered nurse reported that 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.

Given the level of independent physical functioning reported by the psychiatrist and the registered nurse, 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 GAD, trichotillomania, cluster B & C personality traits, and PTSD. The appellant wrote in her self-report that she barely eats and rarely sleeps due to obsessive and intrusive thoughts. The appellant argued that she has social anxiety and going downtown causes major distress, and she has PTSD from a previous abusive relationship that triggers anxiety attacks in public where she breaks down and cries. The appellant also argued at the hearing that she experiences a dark depression that is triggered by random life situations.

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 wrote that although the psychiatrist reported deficits with cognitive and emotional functioning in the areas of executive, memory, emotional disturbance, motivation, impulse control and attention or sustained concentration, the nurse indicated in the AR that there was 'no impact' or 'minimal impact', to executive, memory motivation and attention or sustained concentration and, overall, the assessments speak to a moderate rather than a severe impairment. The ministry wrote that the psychiatrist did not provide an assessment of restrictions to the appellant's DLA and, in the letter dated June 15, 2016, indicated that the appellant's symptoms are being managed to some extent by medication and coping tools. The ministry wrote that the nurse indicated in the AR that the appellant manages all aspects of social functioning independently, with the exception of dealing appropriately with unexpected demands, and that the nurse does not describe the support/supervision the appellant requires to maintain her in the community.

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 psychiatrist and nurse.

The psychiatrist diagnosed the appellant with GAD- moderate, Trichotillomania, cluster B & C personality traits, PTSD- civilian-related, all with onsets in 2007. In terms of health history, the psychiatrist wrote that the appellant "…suffers from significant anxiety and PTSD related to past abuse, which affect her daily functioning" and referred to the Psychiatry Consult Report dated November 5, 2014 and the Progress Note dated January 6, 2016. In the Psychiatry Consult Report dated November 5, 2014, the psychiatrist wrote that the appellant presented with significant symptoms of anxiety, some symptoms of depression, and symptoms of PTSD. The psychiatrist noted that the appellant's "strong positive prognosis factors" include her compliance to her medications. In the Progress Note dated January 6, 2016, the psychiatrist indicated that the appellant seemed to be responding reasonably well to the combination of SSRI agent and mood stabilizer in context of borderline personality traits. The psychiatrist reported that the appellant makes close parallels about her trichotillomania urges and urges of erratic shopping online behavior in the context of life stress and stressful circumstances. The psychiatrist wrote that the appellant seemed to be looking for immediate changes and quick fixes, and her anxiety fluctuates drastically, depends on life and financial circumstances. In the PR, regarding the degree and course of impairment, the psychiatrist wrote: "…chronic fluctuating course- outcome will majorly depend on patient's adaptive skill-building, level of stress, and social support."

In the Final Report dated June 15, 2016, the psychiatrist wrote that the appellant continued on SSRI agent in combination with neuroleptics to address some of her issues with anxiety. She wrote that the appellant experienced at least 30 to 40% relief on the medications. The psychiatrist reported that, regarding her PTSD, the appellant will get more education about the medication recommended. At the hearing, the appellant stated that they have not tried the medication for PTSD because the psychiatrist said that she was not ready to deal with the PTSD yet, that she needs to be more stable. The psychiatrist wrote in the Final Report that she believes that the appellant suffers from her anxiety, PTSD and trichotillomania significantly and, as a consequence, she experienced a lot of depression. The psychiatrist wrote that the appellant's functioning is significantly impaired and she is socially isolated and is "…not able to think about getting back to work at this point." As for finding work and/or working, the panel notes 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.

In her self-report, the appellant wrote that she barely eats and rarely sleeps due to obsessive and intrusive thoughts. At the hearing, the appellant stated that as a result of all her diagnoses, she feels that she is "not given enough cards to deal with life situations." The appellant stated that she has good days and bad days during a week. For example, if she is driving to work and she gets cut off, she "freaks out" and it is like a switch gets flipped and "goes to the max" and she thinks about all the negative things that can happen. The psychiatrist reported in the PR that the appellant has significant deficits in her cognitive and emotional functioning in the areas of executive, memory, emotional disturbance, motivation, impulse control, and attention or sustained concentration, and wrote that the appellant has "…difficulty with depressive mood secondary to anxiety." However, in assessing the impacts to daily functioning, the nurse indicated in the AR that there are major impacts in emotion, impulse control, insight and judgment, as well as in motor activity. In contrast, in the PR the psychiatrist did not assess a significant deficit with motor activity. In the AR, the nurse assessed a moderate impact in "other emotional or mental problems (e.g. hostility, explain below)", with no further explanation or description provided. The nurse assessed minimal or no impacts in the remaining 9 areas of functioning, including no impact to memory and minimal impact in the other areas identified by the psychiatrist as areas of significant deficit, specifically executive, motivation and attention or sustained concentration.

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 nurse reported in the AR that the appellant independently manages most decision-making components of DLA, specifically: personal care (regulate diet), meals (meal planning and safe storage of food), "pay rent and bills," medications (safe handling and storage), and transportation (using transit schedules and arranging transportation). The nurse did not provide assessment for many decision-making components of DLA, namely: for shopping (making appropriate choices and paying for purchases), commenting that the appellant is "very impulsive" and "spends beyond her means," for budgeting (note: "client does not manage money well"), but the nurse did not indicate that the appellant requires either periodic or continuous assistance with these tasks. The appellant stated at the hearing that she is facing possible bankruptcy, which may indicate that she has been unable to manage these tasks without assistance; however, her possible bankruptcy was not mentioned by either the psychiatrist or the nurse. In the AR, the nurse did not provide an assessment for the task of taking medications as directed, and commented that the appellant's "medication compliance has been an issue." However, the psychiatrist reported in the Psychiatry Consult Report dated November 5, 2014 that the appellant's "strong positive prognosis factors" include her compliance to her medications. The nurse indicated that the appellant is independent with making appropriate social decisions, commenting that the appellant "…has put herself in situations that could be dangerous to self; client uses social media for relationships."

Regarding the DLA of social functioning, the psychiatrist reported in the PR that it is unknown whether the appellant is restricted with social functioning, and commented that "…due to significant anxiety, patient has difficulty with social situations, money management due to impulsivity." In the AR, the nurse assessed the appellant as independent with developing and maintaining relationships and interacting appropriately with others, with very disrupted functioning in her immediate social networks (note: "client has been in conflict with family support") and marginal functioning in her extended social networks (note: "client has few closed friends and only attends community engagements to meet needs"). Asked to describe the support/supervision required which would help maintain the appellant in the community, the nurse did not comment. At the hearing, the appellant clarified that the community engagements include dropping off her child at the day care 3 days per week, the anxiety groups she attended, and appointments with the psychiatrist. The appellant stated that she only leaves her house when she needs to. The psychiatrist further reported in the PR that the appellant has no difficulties with communication, although she commented "…forgetfulness, difficulty focusing, decision-making" and, in the AR, the nurse indicated that appellant has a good ability to communicate in all areas, specifically with speaking, reading, writing, and hearing.

Given the fluctuating nature of the appellant's impairment, as reported by the psychiatrist and the appellant, and a lack of detail regarding the frequency and duration of exacerbations to her condition, as well as the inconsistencies in the reports by the psychiatrist and the nurse of the degree of impact to cognitive, emotional and social functioning as a result of her mental health conditions, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Significant restrictions in the ability to perform DLA

The appellant's position is that her physical and mental impairments severely impair her and her ability to perform DLA is significantly restricted to the point that she requires significant help and

support from other people, specifically from mental health professionals.

The ministry's position, as set out in the reconsideration decision, is that the information from the prescribed professional does not establish that impairment significantly restricts DLA either continuously or periodically for extended periods. The ministry wrote that the nurse indicated in the AR that the appellant is independent with most listed areas of DLA and for those few tasks that she is not independent a specific assessment has not been provided other than comments indicating some difficulty with tasks. The ministry argued that the information provided by the psychiatrist, which was provided in addition to the PR, does not speak to the appellant's ability to manage specific DLA.

Panel Decision

Section 2(2)(b) of the EAPWDA requires that the ministry be satisfied that a prescribed professional has provided an opinion that an applicant's severe impairment directly and significantly restricts her DLA, continuously or periodically for extended periods. In this case, the psychiatrist and the nurse 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, the 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 reported in the PR that the appellant has been prescribed medications that interfere with her ability to perform DLA. The psychiatrist also reported that it is unknown whether the appellant's impairment directly restricts her ability to perform DLA and indicated that it is unknown whether there are any restrictions with the listed DLA, including social functioning. With respect to social functioning, the psychiatrist wrote that "…due to significant anxiety, patient has difficulty with social situations, money management due to impulsivity." In the AR, the nurse reported that the appellant is independently able to perform every task of most listed DLA, specifically move about indoors and outdoors, personal care, basic housekeeping, meals, and transportation. The appellant is independent with most tasks of the DLA shopping (going to and from stores, reading prices and labels and carrying purchases home), with no assessment provided for the tasks of making appropriate choices and paying for purchases. Rather, the nurse wrote that "client is very impulsive" and "client spends beyond her means and is in chronic financial stress." The appellant is independent with most tasks of the DLA "pay rent and bills" (including banking), with no assessment for the task of budgeting. Rather, the nurse wrote that "client does not manage money well." For the medication DLA, the appellant is independent with filling/refilling prescriptions and safe handling and storage, and no assessment is provided for taking medications as directed. The nurse wrote that "medication compliance has been an issue." As previously discussed, there were inconsistencies between the reports of medication compliance between the psychiatrist and the nurse and the evidence does not clearly indicate that the appellant is significantly restricted in either DLA specific to mental impairment, namely decision making or social functioning.

Given the lack of assessment by the psychiatrist regarding restrictions to DLA and the report by the nurse of independence with most tasks, 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 mental health 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.

The psychiatrist wrote in the PR that the appellant attended group therapy in the spring of 2015 for generalized anxiety. In the AR, the nurse indicated that the help required for DLA is provided by family. At the hearing, the appellant stated that she had a falling out with her mother and has not been helped by her family for some time. She relies on support through meetings with the psychiatrist, the group therapy sessions, a crisis line, and other self-help resources. In the section of the AR relating to assistance provided through the use of assistive devices, the nurse 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 reasonably supported by the evidence and therefore confirms the decision. The appellant's appeal, therefore, is not successful.