PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 02 August 2016 that denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in the *Employment and Assistance for Persons with Disabilities Act*, section 2. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

(i) directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

(ii) as a result of those restrictions, she requires help to perform those activities.

The ministry determined that the appellant satisfied the other 2 criteria: she has reached 18 years of age and her impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) – section 2
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – section 2

PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 20 January 2016. The Application contained:
   - A Self Report (SR) completed by the appellant as part of her Request for Reconsideration.
   - A Physician Report (PR) dated 05 March 2015, completed by medical practitioner specializing in psychiatry (the psychiatrist), who had seen the appellant once.
   - An Assessor Report (AR) dated 20 January 2016, completed by the appellant's general practitioner (GP), who has known the appellant for 8 months and seen her 2-10 times in that period.
2. The appellant's signed Request for Reconsideration dated 18 July 2016, to which was attached the results of a CT scan ordered by the GP of the spine lumbar dated 27 June 2016.

In the PR, the psychologist lists the following diagnoses related to the appellant's impairment, all with onset 2005: major depression, duration recurrent; generalized anxiety with agoraphobia; and multiple injuries from accident 2005.

The panel will first summarize the evidence from the PR, the AR and the CT scan relating to the appellant's impairments as it relates to the PWD criteria at issue in this appeal.

Severity/health history

Physical impairment

PR:
Under Health History, the psychiatrist writes:

> "[The appellant] has struggled with acute or chronic mood & anxiety difficulties since her motor vehicle accident in 2005 when she was hit by an impaired driver and had significant physical injury. She has impaired mobility & discomfort evident in walking."

Under Degree and Course of Impairment the psychiatrist indicates that the impairment is likely to continue for two or more years, commenting: "Lifelong vulnerability to worsening on baseline, heightened anxiety & physical discomfort. Medication and therapy have helped somewhat but not completely."

As to functional skills, the psychiatrist indicates "unknown" for how far the appellant can walk unaided, how many steps she can climb unaided, and how much she can lift. The psychiatrist reports that there are no limitations for how long the appellant can remain seated.

The psychologist indicates that the appellant has not been prescribed any medication that interferes with her ability to perform DLA.

The psychiatrist indicates that the appellant requires a prosthesis or device to compensate for her impairment, commenting: "Unclear at present with physical impairment. Please see report in assessor section."

AR:
The GP in the space provided does not describe the appellant's impairment.

The GP assesses the appellant as independent for all aspects of mobility and physical ability – walking indoors, walking outdoors, climbing stairs, standing, lifting and carrying and holding – commenting: "Back pain, chronic but admits can walk as far as she needs to, takes over counter analgesics."

CT scan:
Conclusion: "Marked rotoscoliosis of upper intermediate lumbar spine convex to left. Very severe OA at left L5-S1 apophyseal joint and severe OA at right L1-2 apophyseal joint. Moderate OA at several other apophyseal joints. Narrowing of all cervical discs. No fractures."

Mental impairment

PR:
Under Health History, the psychiatrist writes:

> "Her mood is subject to depression when her tendencies towards anxiety even leaving her place of residence are significant. Her appetite, sleep, motivation & energy level are all affected & she isolates rather than going out if it all possible. She is a proud lady that has difficulty accepting help & does her best to be self-sufficient even to our own detriment but has allowed herself to accept some support in light of a worsening of recent difficulties and inability to cope with any consistent physical and mental demands of work."

The psychiatrist assesses the appellant as having no difficulties with communications.

The psychiatrist indicates that the appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance, motivation, motor activity, attention or sustained concentration, and memory.

AR:
The GP assesses the appellant's ability to communicate as good for speaking, reading, writing and hearing.

Regarding cognitive and emotional functioning, the GP indicates that the appellant's mental impairment restricts or impacts her functioning as follows:

- Major impact – emotion and motivation.
- Moderate impact – attention/concentration, executive, memory and motor activity.
- Minimal impact – none.
- No impact – impulse control, insight and judgement, language, psychotic symptoms and other neuropsychological problems.

In providing additional comments, the GP writes: "Chronic anxiety/depression, chronic mechanical low back pain, persistent financial stress are all contributing to her isolation and her ability to rehabilitate herself with counselling and physio[therapy] and physical activity.

Ability to perform DLA

PR:
The psychiatrist indicates that the appellant's impairment directly restricts her ability to perform DLA.

The psychiatrist indicates that the appellant's activity is restricted on a continuous basis for the following DLA: basic housework, daily shopping, mobility inside the home, mobility outside the home and social functioning. The psychiatrist indicates that the appellant is restricted for the following DLA on a periodic basis: personal self care and meal preparation (commenting: "with worsening of mood"), The psychiatrist assesses the appellant as independent for management of medications, use of transportation and management of finances.

In commenting on how social functioning is impacted, the psychiatrist states: "Anxiety socially has acute or chronic impact on her ability to leave home & be in public."

AR:
The GP reports that the appellant lives with family or friends.

The GP assesses the assistance required for managing DLA as follows (the SW's comments in parentheses):

- Personal care – periodic assistance from another person required for dressing and grooming; independent for bathing, toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off chair.
- Basic housekeeping – periodic assistance from another person required for laundry and basic housekeeping.
- Shopping – periodic assistance from another person for going to and from stores and making appropriate choices; independent for reading prices and labels, paying for purchases, and carrying purchases home.
- Meals – independent in all aspects (unknown).
- Pay rent and bills – independent in all aspects.
- Medications – independent in all aspects.
- Transportation – independent for getting/out of a vehicle; periodic assistance from another person required for using public transit and using transit schedules and arranging transportation.

The GP provides additional comments: "Periodic means when her depression/anxiety is severe she is unable to perform most tasks" and "If she finds her depression accelerating, unable to leave the house. Back pain when severe preludes her from accessing public transit."

With respect to social functioning, the GP assesses the appellant as requiring periodic support/supervision for making appropriate social decisions, ability to develop and maintain relationships, interacting appropriately with others, ability to deal appropriately with unexpected demands, and ability to secure assistance from others. The GP comments: "Please see psychiatric report, physician report."

The GP assesses the impact of the appellant's impairment on her immediate social networks and on her extended social network as marginal functioning.

In providing additional comments under social functioning, the GP writes: “Financial constraints are causing more stress and anxiety.”

Help provided/required

PR:
With regard to assistance needed with DLA, the psychiatrist states: “See assessor section for any recommendation for physical compromise.”

AR:

Respecting assistance required for social functioning, the GP states: “Regular contact with psychiatrist. Regular medications.’

The GP states that with regard to assistance provided by other people “really has no one helping @ this point.” He goes on to comment: “Financial viability would relieve a lot of stress and controlling depression/anxiety all would allow her to participate in community activity and counselling.”

In terms of assistance provided through the use of assistive devices, the GP states: “None that I am aware of.”

Self report

In her SR, completed as part of her reconsideration submission, the appellant writes:

> “Constant pain all the time, unable to sit any longer than 15 to 20 mins. I have to lay down most of the time. Walking is hard for me, but I force myself to walk even if it is a block. When I sit my lower spine is in my waist which causes a lot of pain. I cannot stand still as it puts pressure on my spine. I become depressed over the fact I cannot accomplish anything. It takes a long time to clean house that I manage where some things like vacuuming can take a few days due to pain.”

Notice of Appeal

The appellant's Notice of Appeal is dated 12 August 2016. Under Reasons, she writes: “Incapable of working.”

The hearing

At the hearing, the appellant’s advocate presented argument in support of the appellant’s application, disputing the ministry’s decision (see Part F, Reasons for Panel Decision, below).

In answer to questions, the appellant stated that:

- She lives in a 32-foot trailer. She sleeps on her couch, as the coils in her bed’s mattress aggravate the pain in her back.
- She doesn’t sleep well at night – usually just 3-4 hours, then she has to get up and may not

get back to sleep for the rest of the night.

- She is in pain all the time. When she sits, her lower spine puts pressure on her waist, causing pain. She tends to seize up if she sits too long.
- She can only walk a quarter of a block before she has to stop and take a rest. At the most, she can barely walk a block. She used to enjoy walking, but does not go for walks anymore.
- She rarely leaves her house, sometimes maybe only once a month.
- She never uses public transit, because she cannot walk as far as the bus stop.
- She never uses a broom to sweep her floor, as she finds the sweeping motion painful. She can handle a vacuum cleaner for a couple of minutes to clean her small carpet.
- Food preparation and cooking are difficult, as she cannot stand for very long, so it takes her a long time to make a meal.
- She can drive her car to the store, but carrying groceries to her car is difficult.
- Since her accident in 2005, she worked for a couple of years working looking after children for a charitable organization. Since then, she has tried construction jobs, but these did not last long. The last time she worked was over a year ago, but that didn't work out. She feels that because of her medical conditions, no one will hire her.
- She has attended a mental health clinic in the past, but now cannot afford the gas to drive there.
- She has no one to help her on a regular basis. A couple of weeks ago, a friend came to visit and was kind enough to clean her trailer for her.

The ministry stood by its position at reconsideration.

Admissibility of new information

The panel finds that the information provided by the appellant in her testimony at the hearing is in support of the information and records before the ministry at reconsideration, as it tends to corroborate and clarify the information in the appellant's SR. The panel therefore admits the appellant's testimony as evidence pursuant to section 22(4) of the *Employment and Assistance Act.*

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry decision that determined that the appellant did not meet three of the five statutory requirements of Section 2 of the *EAPWDA* for designation as a person with disabilities (PWD) is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. The ministry found that the appellant met the age requirement and that, in the opinion of a medical practitioner, 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 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.

The following section of the *EAPWDA* applies to this appeal:

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 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.

The following section of the EAPWDR applies to this appeal:

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.

(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.

The positions of the parties

The appellant's position

The position of the appellant was explained by her advocate at the hearing. The advocate noted that the psychiatrist focuses her assessment on the appellant's mental faculties and not as much on the physical, but supports there are both mental and physical impairments. While the psychiatrist at the time of the application had only met the appellant one time, her initial assessment does not undermine her professional ability to assess an applicant for the purposes of the PWD legislation. The advocate submitted that the legislation does not speak to a requirement of a history of contact by the medical practitioner with the applicant.

The psychiatrist confirms that the appellant has mental and physical impairments: major depressive disorder – recurrent, generalized anxiety disorder, agoraphobia, and multiple injuries due to a motor vehicle accident in 2005. The advocate noted that the appellant's description of her disabilities mirrors that of the psychiatrist's assessment. In confirming the degree and course of the appellant's impairment as continuing for two or more years, the psychiatrist wrote: "Lifelong vulnerability to worsening on baseline, heightened anxiety and physical discomfort. Medication and therapy have helped somewhat but not completely." The psychiatrist also reported that social functioning requires continuous assistance due to "Socially her acute or chronic impact on her ability to leave home and be in public." The advocate explained that the term "chronic" means impairments are long-lasting or recurrent – persistent and lasting medical conditions, while the term "acute" means that the

impairments are short duration and of a recent onset. The advocate interpreted this to mean that the depression and anxiety are chronic and the agoraphobia in acute. The advocate argued that the psychiatrist supports that the mental health impairments primarily impact the appellant's ability to perform DLA but the physical pain stemming from an MVA in 2005 also impacts her ability to perform DLA. The psychiatrist also wrote: “Impaired mobility and discomfort is evident in walking.”

Turning to the GPs evidence in the AR, the advocate noted that the GP focused her attention more on the physical disabilities of her patient, but does support that the appellant has impacts to daily functioning due to mental impairment as she supports a major impact of emotion and motivation. The GP also advised the ministry to read the psychiatrist's report – this appears to show support for the psychiatrist’s assessments.

The advocate pointed out that both the psychiatrist and the GP support that the appellant's mental health is impacted by memory issues, chronic depression, chronic anxiety, motivation, motor activity and attention or sustained concentration. The only area of mental health issues on which the the doctors disagree is that the GP supports that the appellant's executive thinking is impaired as well. The advocate argued that the assessments of both doctors when read together support one another in regard to a severe mental impairment.

The advocate stated that it is correct that the GP did fill in the PR with an assessment that appears to be unsupportive of the appellant requiring assistance with DLA, but the GP does write the following: “Periodic means when her depression/anxiety is severe she is unable to perform most tasks.” The advocate submitted that as the GP is not treating the appellant primarily for mental health issues, as this is being performed by mental health professionals, the GP may not have an idea of the times each month that agoraphobia, anxiety and depression are severe to the point that she is unable to perform most tasks. Additionally, the appellant may not have disclosed to the GP what she disclosed to the psychiatrist, as the nature of her relationships with the two doctors are different, so the application may be read as uneven.

The advocate noted that the appellant, in her SR, supplies several pieces of information of her restrictions in regard to DLA, including being in pain all the time, unable to sit longer than 15-20 minutes, having to lie down most the time, walking is hard for her, she forces herself to walk even one block and she becomes depressed over this.

The advocate noted that in the PR the psychiatrist supports that the appellant's impairments restrict her ability to perform 7 DLA, with 2 being periodic and 5 being continuous need for assistance. The GP in turn confirms that the appellant's impairments restrict her ability to perform most DLA periodically, writing: “Low back pain… back pain when severe precludes accessing public transit…” Thus both the psychiatrist and the GP support that the appellant requires assistance with DLA.

The advocate argued that the evidence of the physician and assessor must be read in their entirety and in a broad way. In *Hudson [2009 BCSC 1461]*, the court found that an application for PWD was sufficient if either of the medical practitioner or the assessor confirms that the person’s severe impairment directly and significantly restricts their ability to perform DLA. There is no statutory requirement for confirmation from both. The advocate submitted that both prescribed professionals have determined an impairment directly restricting most if not all DLA and the resulting need for help, as required by the legislation.

The ministry's position

In the reconsideration decision, the ministry found that the appellant's PWD application was "somewhat problematic" as the PR was completed by the psychiatrist with whom she had just met. While the ministry recognized that the legislation does not require the applicant to have a long-standing history with the professionals who complete the application, it does require the minister be satisfied that a severe impairment exists. While the psychiatrist's assessment has been taken into account, the ministry's questions the accuracy of her information given the limited understanding she would no doubt have after only one visit. The ministry has considered the likelihood that the information she provided is more so a reiteration of the impairments the appellant reported to her rather than a direct reflection of her medical opinion.

Regarding the severity of physical impairment, the ministry notes that the psychiatrist, in describing the severity of her impairments, writes that she experiences "impaired mobility and discomfort evident in walking." The ministry also noted that results of the CT scan of the lumbar spine and the appellant's self-report submitted at reconsideration. While the ministry recognized the significance of this information, the ministry also considered the information provided by the GP in the AR. In particular, the ministry noted that the GP indicated that the appellant is independent in all categories of mobility and physical ability, with the comment that her back pain is chronic but she admits that she can walk as far as she needs to and that she takes over-the-counter analgesics. The ministry also noted that, when asked if the appellant required any assistive aids for her impairment, the GP wrote "None that I am aware of." The ministry commented that if the appellant's physical impairments were considered severe, it would be expected that the GP would recommend at least a basic aide such as a grab bar for the bathroom or a walker and that he would have indicated that she takes significantly longer to perform some of her physical functioning such as climbing stairs or walking.

The ministry also referred to the assessments by the GP of the appellant's ability to perform DLA, with no assessments that she requires continuous assistance in any categories of DLA and while the GP indicates that the appellant requires periodic assistance in a few areas DLA, the GP has commented that "Periodic means when her depression/anxiety is severe she is unable to perform most tasks." The ministry remarked that it would be expected that if her physical impairments were severe, the GP would relate her limitations with basic housekeeping, for example, to her physical issues rather than her mental health issues. The ministry also noted that when asked if the appellant requires help and none is available what assistance would be necessary, the GP writes that financial security would relieve a lot of stress. The ministry explained that it would be expected that if her physical impairment was severe, the GPA would recommend some basic help, such as someone to grocery shop with to help her carry groceries/push the buggy etc.

While the minister acknowledges that the appellant experiences some degree of restriction due to her impairment, the ministry is not satisfied that the combination of her functional skills, mobility and physical abilities exhibits a severe impairment.

As to the severity of the appellant's mental impairment, the ministry noted that the appellant had been diagnosed with major depressive disorder and generalized anxiety with agoraphobia. The ministry noted discrepancies when comparing the information provided by the psychiatrist and the GP. For example, the psychiatrist indicates that she requires continuous assistance with social functioning,

explaining that her social anxiety impacts her ability to leave her home and be in public; however, the GP indicates that she is periodically restricted in social functioning and her functioning with both her immediate and extended social networks is marginal – not “very disrupted.” The ministry also noted other inconsistencies between the assessments provided in PR by the psychiatrist and those in the AR by the GP. The ministry noted that the GP indicates that she used the psychiatrist's information as an information source when completing the AR. Given that the GP completed the AR over a month before the psychiatrist completed the PR, it is expected that the GP had other information provided by the psychiatrist when completing the assessor section. [At the hearing, the ministry representative acknowledged that the ministry had misread the date of when the psychiatrist completed the PR (March 2015 instead 2016 as stated in the reconsideration decision) and that therefore that the PR had been completed before the AR.]

The ministry also noted that the GP identified only two major impacted areas (emotion and motivation) of the appellant's cognitive and emotional functioning on daily functioning.

Considering that the GP has known the appellant for eight months and the psychiatrist had only one visit with her, the ministry gave more weight to the information provided by the GP. Although the psychiatrist has expertise in the mental health field, it is also noted that GP indicates she used information provided by the psychiatrist to complete the application. The ministry acknowledges that the appellant experiences a degree of depression and anxiety secondary to her physical impairments and that they impact her. However, based collectively on the information provided, the ministry is not satisfied that the appellant has a severe mental impairment.

Regarding restrictions in the appellant's ability to perform DLA, as explained at the outset of the decision the ministry placed more weight on the GP’s assessments, given that the GP has known the appellant for eight months while the psychiatrist had met her only once. The GP indicates that the appellant is independent in a large majority of her DLA and is not continuously restricted in any of the DLA categories. Although the GP indicates that the appellant is periodically restricted with a few areas of her DLA, the GP writes “Periodic means when her depression/anxiety is severe she is unable to perform most tasks.” However, the GP does not explain how often this occurs. The ministry explained that legislation requires that to be eligible for PWD designation the restrictions must be both significant and either continuous or periodic for extended periods. in order . While the ministry acknowledges that legislation does not specifically require the frequency and duration of her restrictions to be explained, the ministry finds such information valuable in determining the significance of the restrictions.

Therefore, while acknowledging that the appellant has certain limitations as a result of her medical conditions, the ministry finds of the information provided does not establish that an impairment significantly restricts DLA continuously or periodically for extended periods.

With respect to the help required criterion, the position of the ministry is that as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required.

Panel decision

Severity of impairment

A diagnosis of a serious medical condition does not in itself determine PWD eligibility. Under the legislation, eligibility for PWD hinges on an "impairment" and its severity. An "impairment" is more than a diagnosed medical condition. An impairment is a medical condition that results in restrictions to a person's ability to function independently, appropriately, effectively or for a reasonable duration.

To assess the severity of impairment one must consider 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. The legislation makes it clear that the determination of severity is at the discretion of the minister, taking into account all of the evidence. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a medical practitioner and a prescribed professional – in this case, the appellant's psychiatrist and GP.

The legislation requires that for PWD designation, the minister must be "satisfied" that the person has a severe mental or physical impairment. For the minister to be "satisfied" that the person's impairment is severe, the panel considers it reasonable for the ministry to expect that the information provided presents a clear and complete picture of the nature and extent of the impacts of the person's medical conditions on daily functioning.

Physical impairment

In the PR, the psychiatrist diagnosed the appellant with multiple injuries from an accident in 2005, without describing the nature of these injuries or their current status. Under Health History, the psychiatrist describes the appellant's physical condition as: "She has impaired mobility & discomfort evident in walking." Giver the opportunity to assess in more detail her functional skills, the psychiatrist indicates "unknown" for how far the appellant can walk unaided, how many steps she can climb unaided, and how much she can lift, and contradicts the appellant statement in her SR and at the hearing that she can only sit for 15-20 minutes, reporting instead that there are no limitations for how long the appellant can remain seated.

In the AR, the GP did not provide a description of the appellant's impairments, and assessed the appellant as independent in all aspects of mobility and physical ability (walking, standing, lifting, etc.) commenting only that "Back pain, chronic but admits can walk as far as she needs to, takes over counter analgesics."

In terms of the impact of the appellant's physical condition on her ability to perform DLA requiring physical effort, the GP assessed the need for period assistance from another person for a number of aspects of some DLA (dressing grooming, laundry and basic housekeeping, going to and from stores and making appropriate choices and using public transit). It is unclear, however, whether these assessment reflect the appellant's physical condition as opposed to her mental health situation, as the GP commented: "Periodic means when her depression/anxiety is severe she is unable to perform most tasks."

The CT scan, ordered by the GP, found: "Marked rotoscoliosis of upper intermediate lumbar spine convex to left. Very severe OA at left L5-S1 apophyseal joint and severe OA at right L1-2 apophyseal joint. Moderate OA at several other apophyseal joints. Narrowing of all cervical discs. No fractures."

However, the GP has not provided any narrative that would explain how these abnormalities would be expected to restrict the appellant's ability to function effectively or independently.

In terms of the need for assistive devices, the psychiatrist wrote: "Unclear at present with physical impairment. Please see report in assessor section." However, in the AR, In terms of the assistance required by using assistive devices, the GP wrote: "None that I am aware of." As argued by the ministry, it would be expected that if the appellant's physical impairment were considered severe, the GP would recommend some basic aid, such as a cane or walker.

While the appellant in her SR and in her testimony at the hearing has described how she has pain all the time, is unable to sit longer than 15-20 minutes, has to lie down most the time, and that walking even 1 block is hard for her, none of this information has been confirmed by either of her medical practitioners/prescribed professionals.

Giver the lack of detail reported by the psychiatrist and GP regarding restrictions to the appellant's physical functioning (and in the case of remaining seated, an assessment that conflicts with the appellant's testimony), the panel finds the ministry was reasonable in determining that a severe physical impairment had not been established.

Mental impairment

In the PR, the psychiatrist diagnosis the appellant with major depression, duration recurrent and generalized anxiety with agoraphobia. Under Health History, the psychiatrist explains: "Her mood is subject to depression when her tendencies towards anxiety even leaving her place of residence are significant. Her appetite, sleep, motivation & energy level are all affected & she isolates rather than going out if it all possible." The psychiatrist indicates that the appellant has significant cognitive and emotional deficits in 5 areas: emotion, motivation, motor activity, attention or sustained concentration and memory.

In terms of the impact of the appellant's mental health condition on daily functioning, neither the psychiatrist nor the GP indicates that the appellant has any difficulty with communication. The psychiatrist indicates that the appellant is continuously restricted with social functioning, commenting: "Anxiety socially has acute or chronic impact on her ability to leave home & be in public," but does not explain which impacts are acute and which are ongoing/chronic or describe how often and for how long the appellant is acutely impacted. The GP indicates that the appellant's mental impairment has a major impact on daily functioning in 2 areas — emotion and motivation — and a moderate impact in 4 areas — attention/concentration, executive, memory and motor activity. However, again the GP provides no commentary with any details or examples that would enable the ministry to assess the significance of these impacts by describing how, how often, to what extent or under what circumstances these impacts restrict the appellant's daily functioning.

As to the extent to which the appellant's mental health condition restricts her ability to perform the 2 DLA applicable to a mental impairment — make decisions about personal activities, care or finances and relate to, communicate or interact with others effectively — the GP assesses the appellant as requiring periodic support/supervision for the listed social decision-making abilities (making social decisions, etc.), but does not explain the nature of the support or its frequency or duration, except to mention the need for "Regular contact with psychologist" (something not mentioned by the

psychiatrist herself). In terms of other decision-making, the panel notes that GP assesses the appellant as independent in several other decision-making aspects of DLA, such as personal care, meals, paying rent and bills, medications, while requiring requiring periodic assistance from another person for making appropriate choices while shopping and using transit schedules. The GP assesses the appellant's relationship with her immediate and extended social networks as "marginal" functioning — as the ministry notes, not "disrupted functioning" — without any commentary.

While the GP assesses the appellant as requiring periodic assistance from another person with some aspects of 4 of the DLA applicable to a person with either or both a mental or physical impairment, explaining: "Periodic means when her depression/anxiety is severe she is unable to perform most tasks," As noted by the ministry, the GP does not provide any information of the frequency or duration of these episodes.

Considering the lack of information provided by the prescribed professional on the impact of the appellant's mental health condition on her daily functioning, the panel finds that the ministry was reasonable in determining that a severe mental impairment had not been established.

Direct and significant restrictions in the ability to perform DLA

The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be a result of a severe impairment, a criterion that has not been established in this appeal. The legislation – section 2(2)(b)(i) of the *EAPWDA* – requires the minister to assess direct and significant restrictions of DLA in consideration of the opinion of a prescribed professional, in this case the appellant's psychiatrist and GP. This does not mean that other evidence should not be factored in as required to provide clarification of the professional evidence, but the legislative language makes it clear that the prescribed professional's evidence is fundamental to the ministry's determination as to whether it is "satisfied."

In the reconsideration decision, the ministry found that the PR was "somewhat problematic" and gave little weight to the psychiatrist's assessments of restrictions in appellant's ability to perform DLA. The ministry based this decision on the psychiatrist having met the appellant only once at the time of completing the form. The panel finds the ministry was reasonable in giving little weight to these assessments, not so much because the psychiatrist had met the appellant only once, because that could depend on the length of the meeting, but due to lack of knowledge of the appellant's physical impairment demonstrated by the psychiatrist in the PR. For instance, the psychiatrist did not describe the nature of the injuries suffered by the appellant in the 2005 accident and their current status, indicated as "unknown" her abilities to walk, climb stairs and lift, while giving an assessment of her ability to remain seated that was in direct conflict with that given by the appellant in her SR and in her testimony at the hearing. In her SR, the appellant focused on her physical limitations, stating that: "I become depressed over the fact I cannot accomplish anything." The panel understands this to mean that her physical limitations are a major factor contributing to her depression. Given the above, it is therefore difficult to place much weight on the psychiatriat's assessments of the appellant's ability to perform any of the DLA requiring physical effort.

The panel also notes that the section in the PR relating to ability to perform DLA asks only whether the activity is restricted, either continuously or periodically, but does not seek any information as to the degree of restriction – i.e. whether the impairment "significantly" restricts the ability to perform a

particular DLA. Instead, the PR asks the physician to provide additional comments regarding the degree of restriction. In this case, the GP did not provide a response. By comparison, the section in the AR goes into more detail, giving two or more sub-activities for each DLA and seeking information as to the degree of restriction for every sub-activity, either in terms of periodic or continuous help required, the use of assistive devices or whether the task takes significantly long than typical.

As discussed above in considering the impact on the appellant's physical and mental impairments on daily functioning, the GP has assessed her as independent in all aspects of mobility and physical ability (the DLA of moving about indoors and outdoors). Additionally, the GP did not assess the appellant as requiring continuous assistance from another person for all other DLA applicable to a person with a physical or mental impairment. The appellant is reported as requiring periodic assistance for the 2 aspects of basic housekeeping and a few of the aspects of personal care, shopping and transportation. In terms of the decision-making and relating to others DLA applicable to a person with a mental impairment, the GP assesses the appellant as requiring periodic support/supervision for all the listed aspects of social decision-making and having marginal functioning with her immediate social networks. However, as noted above, the GP has not provided any information on the nature, frequency or duration of such periodic assistance or support supervision, and the GP also reports the appellant as independently managing the decision-making aspects of the DLA personal care, meals, paying rent and bills, and medications. As the ministry points out, this lack of detail makes it difficult to determine whether the degree of restriction in performing DLA is “significant.”

Considering that a severe physical or mental impairment has not been established and the extent to which the appellant has been assessed as independent or requiring only unspecified periodic assistance, the panel finds that the ministry was reasonable in determining that it had not been established that in the opinion of the prescribed professionals the appellant's impairments directly and significantly restricted her ability to perform DLA either continuously or periodically for extended periods.

Help with DLA

Section 2(2)(b)(ii) of the *EAPWDA* requires that, as a result of being directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods, a person must also requires help to perform those activities. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. 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 GP noted the appellant’s need for more financial security; while increased benefits are an outcome of PWD designation, financial considerations are not a criterion for designation. The GP also noted that the appellant might benefit from regular contact with the psychiatrist or from regular counseling. However, as the ministry reasonably determined that direct and significant restrictions in the appellant’s ability to perform DLA have not been established, the panel finds that the ministry reasonably concluded that under section 2(2)(b)(ii) of the *EAPWDA* it cannot be determined that the appellant requires help to perform DLA.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was reasonably supported by the evidence, and therefore confirms the decision. The appellant is thus not successful on appeal.