

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated August 16, 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 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 April 7, 2016, a physician report (PR) dated April 13, 2016 and an undated assessor report (AR), both completed by a general practitioner (GP) who has known the appellant for 13 months and who has seen the appellant 2 to 10 times in the last year.

The evidence also included the appellant's Request for Reconsideration dated July 29, 2016.

### ***Diagnoses***

In the PR, the GP diagnosed the appellant with Post Traumatic Stress Disorder (PTSD), depression, anxiety, chronic neck pain and chronic headache, all with an onset in 2002. Asked to describe the appellant's mental or physical impairments that impact her ability to perform daily living activities, the GP wrote: "poor concentration and levels of motivation."

### ***Physical Impairment***

In the PR and AR, the GP 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 stairs unaided, lift under 2 kg. (under 5 lbs.), and remain seated for 1 to 2 hours.
- The appellant is independently able to perform many areas of mobility and physical ability, specifically walking indoors and walking outdoors, climbing stairs, and standing. She takes significantly longer than typical with lifting and carrying and holding, with the comment: "cannot lift and carry more than 5 lbs. due to chronic neck pain."
- In the section of the AR relating to assistance provided through the use of assistive devices, the GP marked the section "N/A," or not applicable.

In her self-report, the appellant wrote that:

- She cannot lift heavy things. Lifting over 5 lbs. makes the strain on her neck, which causes headaches.
- She can walk a ways but cannot walk with heavy grocery bags.

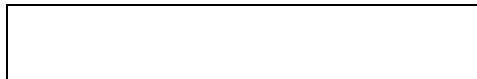
In her Request for Reconsideration, the appellant wrote that:

- Her kidney started to shut down and has "20% function."
- She has suffered burns to her torso.
- She has suffered several head injuries over the years.
- Her liver function is at 20% and she is "drained."

### ***Mental Impairment***

In the PR and AR, the GP reported:

- In terms of health history, the appellant's anxiety increases in public places, she has lack of concentration, poor memory and poor decision-making.
- Regarding the degree and course of impairment, the GP wrote: "unknown."
- No assessment of difficulties with communication.
- 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 GP did not provide any comments.



- In the AR, 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 GP indicated major impacts in emotion, impulse control, insight and judgment, attention/concentration, executive, memory, and motivation. There are minimal or no impacts assessed in the remaining 7 areas of functioning. The GP did not provide any further comments.

In her self-report, the appellant wrote that:

- She gets confused and has high anxiety. She has PTSD, compulsive behavior, difficulty processing information and depression.
- She gets overwhelmed with everyday living.
- She makes quick decisions without putting thought to her situation.
- She gets confused with many things and has memory problems.

In her Request for Reconsideration, the appellant wrote that:

- During her childhood, she experienced sexual, physical and mental abuse.
- She was taken to a psychiatrist when she was a child following violence towards a cousin.
- She went to prison for violence against her family.
- She experienced several traumatic experiences when she was growing up.
- She has been to the psych ward at the hospital many times. She has attempted suicide several times. In the past 4 months, she was in the psychiatric unit at the hospital twice.
- She hates to have strangers around her, and she will “pass out” in big crowds. She does not like being touched.

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

In the PR and AR, the GP indicated that:

- The appellant has not been prescribed any medication and/or treatments that interfere with her ability to perform DLA.
- The appellant is not restricted with the DLA personal self care, meal preparation, management of medications mobility inside and outside the home, and management of finances.
- The appellant’s impairment directly restricts her ability to perform DLA, particularly periodic restrictions with the DLA basic housework and daily shopping and the comment that “...housework and daily shopping periodically limited depending on mood and motivation.
- The appellant has continuous restrictions with use of transportation and social functioning and, with respect to social functioning, she is “...anxious when in public and around people, poor impulse control.”
- In the AR, the appellant is independently able to perform every task of most listed DLA, specifically: move about indoors and outdoors, personal care, pay rent and bills, and medications.
- The appellant takes significantly longer than typical with basic housekeeping (including laundry) as “...neck pain exacerbates with house work, also no motivation.”
- The appellant is independent with most tasks of the DLA shopping (going to and from stores, reading prices and labels, making appropriate choices and paying for purchases), and takes significantly longer with carrying purchases home. The GP noted that the appellant cannot carry more than 5 lbs. of shopping bags.”
- For the meals DLA, the appellant takes significantly longer than typical with the tasks of meal



planning, food preparation and cooking, and she is independent with safe storage of food.

- Regarding the DLA transportation, the appellant requires continuous assistance from another person with the tasks of using public transit and using transit schedules and arranging transportation, and the GP commented that her “anxiety increases with public transportation”. The appellant is independent with getting in and out of a vehicle.
- For the section of the AR assessing impacts to social functioning, the GP reported that the appellant requires continuous support/supervision in all areas, specifically: to make appropriate social decisions, develop and maintain relationships, interact appropriately with others, deal appropriately with unexpected demands, and secure assistance from others. No further explanation or description was provided of the support or supervision required by the appellant.
- There is no assessment for the appellant’s functioning in her immediate social networks and she has very disrupted functioning in her extended social networks. There are no comments provided by the GP.
- Asked to describe the support/supervision required which would help maintain the appellant in the community, the GP did not comment.

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

The GP wrote in the PR that the assistance needed with DLA is “N/A” or not applicable. In the AR, the GP did not indicate that anyone provides help required for DLA. In the section of the AR relating to assistance provided through the use of assistive devices, the GP did not identify any of the listed items and wrote “N/A” or not applicable.

### ***Additional Information submitted after reconsideration***

In her Notice of Appeal dated August 19, 2016, the appellant expressed her disagreement with the ministry’s reconsideration decision and wrote that with physical and mental conditions, it is very hard for her to learn, remember. Physical labour is very difficult for her.

Prior to the hearing, the appellant provided a letter dated August 26, 2016 in which a friend wrote that:

- She is a volunteer in the prisons and met the appellant approximately 4 or 5 years ago when the appellant was incarcerated.
- Once the appellant was released on probation, she helped her integrate back into society. The appellant started out doing well but she gets overwhelmed easily and shuts down. She broke the conditions of her probation and went back to prison.
- Once released, she moved in with her for the weekend while they search for housing. The appellant “could not function AT ALL.” [emphasis included] She could not process ads in the newspaper or on-line and just sat staring at her.
- The appellant has plans and dreams but cannot fulfill them even in the slightest degree. With her brain injury, she cannot complete what she starts. She totally shuts down when there is too much to think about.
- In the spring, the appellant was admitted onto the Psych ward at the hospital and she was in a psychotic state. The appellant was hearing voices, thinking people were going to kill her and was concerned that neighbours were hacking her computer.
- The appellant cannot live a “normal” life. She loves to volunteer because when it’s too much she can walk away for a while and this cannot be done with a regular job.

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The ministry relied on its reconsideration decision, as summarized at the hearing. At the hearing, the ministry also stated that:

- There is a new, simpler PWD application that is now used for those who are in receipt of the CPP Disability benefits.
- Since the appellant is in receipt of CPP Disability benefits in excess of the amount she would receive in income assistance, she is not eligible for income assistance and received her last ministry cheque for shelter in June 2015; however, the appellant may be eligible for diet allowances, or other supplements, and is encouraged to investigate these options.
- The ministry staff reviews the application and completes the reconsideration and only occasionally consults with doctors.
- Having reviewed the appellant's previous PWD application, the doctor at that time had also diagnosed an acquired brain injury and Hepatitis C, and it is not clear why these have not been included in the appellant's current application.

At the hearing, the appellant stated that:

- She suffers from real anxiety and she cannot live on her own anymore. She gets very confused and has a hard time figuring things out. She has voices in her head that make her confused since they "natter away" in her brain.
- Her auntie helps her with cooking since she has forgotten things on the stove. She attends a cooking class at the mental health clubhouse. She enjoys cooking but she cannot remember the ingredients. She needs someone around her when she is cooking.
- She has a hard time being around people and leaving her house. She is afraid to get on the bus. She has a hard time focusing on anything.
- After her head injury in 2002, she tried to look for employment but it did not go well. She does not understand why she was denied PWD designation since she cannot work.
- It is hard for her to cope with something like the neighbours yelling at each other. The yelling and screaming upsets her.
- She moved to her current community in a hurry because the voices in her head were trying to find her and want to hurt her. She had to get near her family so they could help her. Her brother got her some clothes.
- The voices have been telling her that they know where she is. The voices review the day and tell her how stupid she is.
- She has a new psychiatrist who she will be seeing later today. She has been trying so hard. She's going to groups and she puts effort into that.
- She was in the Psych ward at the hospital in April and the voices have been getting louder.
- Her brother gave her earphones so she can listen to music and get some sleep.
- She thinks she must have arthritis down her spine because she cannot run since it causes a headache. She has to wear a neck brace when travelling in a car because the vibrations cause "really bad headaches."
- She has two fractures in her skull and an acquired brain injury. She cannot walk far and she cannot lift both arms over her head or she becomes nauseous or passes out.
- She had to stop taking the medication given to her for the headaches because they made her suicidal. She has tried to commit suicide a few times, when the voices are bad.
- She cannot carry a big bag of groceries. Her auntie knows how hard it is for her.
- She does not know what type of work she could do. She cannot perform duties at home. She just wants to sleep, so she wonders what work duties she could perform. She has watched clerks at a fast food store and knows she could never memorize the items since she forgets

everything at home. She tried a couple of jobs in the past but she could not remember tasks and got fired.

- She has thoughts all day about doing things but, by the end of the day, nothing gets done.
- Her auntie takes her out walking. She always babbles to herself so she wonders who would hire her.
- She saw her family doctor about 6 times. She thought her doctor would send everything in to the ministry as part of her application. She had a psychiatric evaluation in April and she was prescribed medications and all that information should be in the reports. She also had an MRI scan and she thought the report would have been included. A social worker at the hospital helped her put together the documents and said they would be reviewed by a board of doctors. Her family doctor knew she was in the hospital and she thought the psychiatrist she saw would have sent the report to her doctor.
- In her new community, she has been seeing a nurse practitioner through mental health services.
- She thought the ministry would be able to see all her medical information “on the computer.”
- She currently lives with a couple because she knows she cannot live alone.
- She feels her medications are not strong enough because she still hears the voices.
- Although she had written about her liver function being decreased in her Request for Reconsideration, she meant to refer to her kidney function, which has not been good and there has been a lot of blood in her urine. She is seeing a doctor about that and more tests have been ordered.
- When she applied for CPP Disability benefits, she was approved over the phone. In 2004, she was found to be permanently disabled. The ministry has only helped with the cost of her medications.

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

The ministry did not object to the admissibility of the letter dated August 26, 2016. The panel considered the letter and 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 from the ministry regarding the previous diagnoses of an acquired brain injury and Hepatitis C as this was not part of the information and records before the ministry at 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:

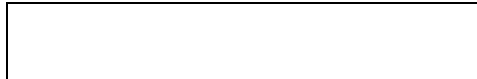
### **Definitions for Act**

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 she cannot lift over 5 lbs. as this strains her neck, which causes headaches. The appellant argued that she can walk a ways but she cannot walk with heavy grocery bags. At the hearing, the appellant stated that she believes she must have arthritis in her spine because she cannot run since it will cause a headache and she has to wear a neck brace when travelling in a car because the vibrations cause "really bad headaches." The appellant stated that she has suffered several head injuries over the years and has two fractures in her skull and an acquired brain injury and she cannot lift both arms over her head or she becomes nauseous or passes out. In her Request for Reconsideration, the appellant also wrote that her kidney started to shut down and has "20% function" and she is "drained" and, at the hearing, stated that she is seeing a doctor and having more tests done.

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 GP reported that the appellant does not require an aid for her impairment and she is independent with mobility and physical abilities with the exception of lifting and carrying and holding, which take her longer and she cannot lift more than 5 lbs.



### *Panel Decision*

In the PR, the GP diagnosed the appellant with chronic neck pain and chronic headache. While the appellant stated that she has possible arthritis in her spine, an acquired brain injury, and a loss of kidney function, these conditions were not diagnosed or discussed by the GP in either the PR or the AR. The appellant stated at the hearing that she must wear a neck brace when travelling in a vehicle, but the GP reported in the PR that the appellant does not require any aid for her impairment. In assessing the appellant's functional skills, the GP reported that the appellant can walk 4 or more blocks unaided, climb 5 or more stairs unaided, lift under 5 lbs., and remain seated for 1 to 2 hours. In the AR, the GP indicated that the appellant is independently able to perform many areas of mobility and physical ability, specifically walking indoors and walking outdoors, climbing stairs, and standing.

The GP reported that the appellant takes significantly longer than typical with lifting and carrying and holding, with the comment: "...cannot lift and carry more than 5 lbs. due to chronic neck pain," but there is no indication of how much longer it takes the appellant. The appellant stated at the hearing that she had an MRI scan done and she thought the report would have been forwarded to the ministry; however, no report was received to show the cause of the appellant's chronic neck pain and chronic headaches. At the hearing, the appellant stated that she has taken medications to help with her headaches but she found that the medications made her suicidal and she had to stop taking them.

Given the level of independent physical functioning reported by the GP, with the exception of a limitation to lifting and carrying/holding more than 5 lbs., and the absence of evidence to show the cause of the chronic neck pain and headaches, 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 PTSD, depression, and anxiety. The appellant wrote in her self-report that she gets confused and has high anxiety. The appellant also wrote that she has PTSD, compulsive behavior, difficulty processing information and depression. The appellant wrote that she gets overwhelmed with everyday living, she makes quick decisions without putting thought to her situation, and she gets confused with many things and has memory problems. In her Request for Reconsideration, the appellant wrote of experiencing childhood sexual, physical and mental abuse, several traumatic experiences, early psychiatric intervention, and incarceration for violence against her family. The appellant wrote that she has been to the psych ward at the hospital many times, she has attempted suicide several times and, in the past 4 months, she was in the psychiatric unit at the hospital twice. The appellant wrote that she hates to have strangers around her, she will "pass out" in big crowds, and she does not like to be touched. At the hearing, the appellant stated that she had a psychiatric evaluation in April and she was prescribed medications and she thought all of that information was available to the ministry.

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 the GP does not indicate that the appellant has any difficulties with communication, does not indicate if the appellant's mental impairment impacts her relationships with her immediate social network, and does not indicate that the appellant requires help in order to maintain 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 GP.

The GP, who has known the appellant for 13 months and, according to the appellant, saw her 6 times, diagnosed the appellant with PTSD, depression, and anxiety and wrote that the appellant’s anxiety increases in public places, she has lack of concentration, poor memory and poor decision-making. The GP reported that the appellant has significant deficits in 6 areas of cognitive and emotional functioning, specifically in the areas of executive, memory, emotional disturbance, motivation, impulse control, and attention or sustained concentration. In assessing impacts to daily cognitive and emotional functioning, the GP indicated major impacts in all identified areas, namely emotion, impulse control, attention/concentration, executive, memory, and motivation, as well as in the area of insight and judgment.

The appellant wrote in her self-report that she gets confused, has high anxiety, compulsive behavior, difficulty processing information and depression. The appellant wrote that she gets overwhelmed with everyday living, she makes quick decisions without putting thought to her situation, and she gets confused with many things and has memory problems. In her Request for Reconsideration, the appellant wrote of experiencing childhood sexual, physical and mental abuse, several traumatic experiences, early psychiatric intervention, and incarceration for violence against her family. The appellant wrote that she has been to the psych ward at the hospital many times, she has attempted suicide several times and, in the past 4 months, she was in the psychiatric unit at the hospital twice. The appellant wrote that she hates to have strangers around her, she will “pass out” in big crowds, and she does not like to be touched. At the hearing, the appellant stated that she had a psychiatric evaluation in April and she was prescribed medications and, while she thought all of that information was available to the ministry, the ministry stated that only the information in the record was available to the ministry at reconsideration and there was no information provided on the appeal from mental health services. At the hearing, the appellant stated that she is meeting with a new psychiatrist and that she believes her medications will need to be increased because she still hears the voices in her head and they are getting louder.

In the letter dated August 26, 2016, a prison volunteer who has known the appellant for about 4 or 5 years wrote that once the appellant was released from prison, the appellant “...could not function AT ALL.” The volunteer wrote that the appellant could not process ads in the newspaper or on-line and just sat staring at her. The volunteer wrote that the appellant has plans and dreams but cannot fulfill them even in the slightest degree since she cannot complete what she starts and she totally shuts down when there is too much to think about. The volunteer confirmed that, in the spring, the appellant was admitted onto the Psych ward at the hospital and she observed the appellant in a psychotic state, hearing voices and thinking people were going to kill her. The volunteer wrote that the appellant cannot live a “normal” life.

Considering the GP's assessment of major impacts in 7 of a total 14 areas of cognitive and emotional functioning, along with the information from the appellant about her recent hospitalization in the psychiatric unit, which was confirmed by the prison volunteer who has known the appellant for several years and recently observed the appellant in a psychotic state, the panel finds that the ministry unreasonably 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 and her family.

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 acknowledged that the appellant has certain limitations resulting from neck pain and motivation; however, the ministry wrote that how much longer it takes to manage has not been described as requested in the PWD application, making it difficult to determine if they represent a significant restriction to the appellant's overall level of functioning.

*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 GP is the prescribed professional. 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 GP reported in the PR that the appellant has not been prescribed medications that interfere with her ability to perform DLA. In the PR, the GP reported that the appellant is not restricted with the DLA personal self care, meal preparation, management of medications, mobility inside and outside the home, and management of finances. Likewise, in the AR, the GP indicated that the appellant is independently able to perform every task of most listed DLA, specifically: personal care, medications, move about indoors and outdoors, and pay rent and bills. For the meals DLA, although the GP reported that the appellant is not restricted in this area, the GP assessed the appellant as taking significantly longer than typical with the tasks of meal planning, food preparation and cooking, and being independent with safe storage of food. There were no further comments provided by the GP to explain this discrepancy.

In the AR, when asked to describe the appellant's mental or physical impairments that impact her ability to perform DLA, the GP wrote: "...poor concentration and levels of motivation." In the PR, the GP indicated that there are periodic restrictions with the DLA basic housework and daily shopping and the comment that "...housework and daily shopping periodically limited depending on mood and motivation." In the AR, however, the GP reported that the appellant takes significantly longer than typical with basic housekeeping (including laundry) as "...neck pain exacerbates with house work, also no motivation." The appellant is also assessed in the AR as being independent with most tasks

of the DLA shopping (going to and from stores, reading prices and labels, making appropriate choices and paying for purchases), and taking significantly longer with carrying purchases home. The GP noted that the appellant cannot carry more than 5 lbs. of shopping bags.

For the DLA transportation, the GP reported in the PR that the appellant has continuous restrictions with use of transportation and, in the AR, that the appellant requires continuous assistance from another person with the tasks of using public transit and using transit schedules and arranging transportation, and the GP commented that her “anxiety increases with public transportation”. The appellant is assessed as being independent with getting in and out of a vehicle.

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 GP reported in the AR that the appellant independently manages most decision-making components of DLA, specifically: personal care (regulate diet), shopping (making appropriate choices), meals (safe storage of food), “pay rent and bills” (including budgeting), and medications (taking as directed and safe handling and storage). The GP indicated that the appellant takes significantly longer than typical with meal planning and requires continuous assistance with using transit schedules and arranging transportation (comment: “anxiety increases”), as well as continuous support/supervision with making appropriate social decisions, with no further comments to explain how much longer it takes the appellant with meal planning or the nature of the support and supervision required with making appropriate social decisions.

Regarding the DLA of social functioning, the GP reported in the PR that the appellant has continuous restrictions as she is “...anxious when in public and around people, poor impulse control.” For the section of the AR assessing impacts to social functioning, the GP reported that the appellant requires continuous support/supervision in developing and maintaining relationships, interacting appropriately with others, and securing assistance from others. However, the GP did not provide an explanation or description of the support or supervision required by the appellant, and there was no assessment given by the GP for the appellant’s functioning in her immediate social networks. Although the GP assessed ‘very disrupted’ functioning in the appellant’s extended social network, the GP did not provide any explanatory comments and, when asked to describe the support/supervision required which would help maintain the appellant in the community, the GP again did not comment. In the letter dated August 26, 2016, the prison volunteer wrote that the appellant “loves to volunteer” because “when it’s too much” she can walk away for a while, which indicates the appellant has periods of independent social functioning. In the PR, the GP did not provide an assessment of any difficulties to communication and, in the AR, reported that the appellant has a good ability to communicate in all areas, specifically with speaking, reading, writing, and hearing.

At the hearing, the appellant emphasized her difficulties with finding and keeping a job in the past and her belief that, given the combination of physical and mental health challenges, which include impaired memory and motivation and struggles with hearing voices, she is unemployable. In the letter dated August 26, 2016, the prison volunteer did not discuss the appellant’s ability to perform specific DLA and wrote that the appellant loves to volunteer because “when it’s too much, she can walk away for a while” and noted that this cannot be done with a “regular job.” 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.

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Given the report by the GP of independence with most tasks of DLA, an absence of detail regarding how long it takes her with some tasks of DLA, as well as the lack of evidence to establish significant restrictions with the two DLA specific to mental impairment, including no description of the nature of support/supervision required with social functioning, the panel finds that the ministry reasonably concluded that there is not enough evidence from the prescribed professional 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 and her family.

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 GP wrote in the PR that the assistance needed with DLA is not applicable. In the AR, the GP did not indicate that anyone provides help required for DLA. In the section of the AR relating to assistance provided through the use of assistive devices, the GP did not identify any of the listed items and wrote that this section is not applicable. At the hearing, the appellant stated that her auntie helps her with cooking, her brother has helped find clothing, and that she attends a clubhouse operated through mental health services and she is seeing a new psychiatrist.

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.