PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated September 9, 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

With the oral consent of the appellant, a ministry observer attended but did not participate in the hearing.

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 March 31, 2016, a physician report (PR) dated April 13, 2016 and an assessor report (AR), both dated March 17, 2016 and completed by a general practitioner (GP) who has known the appellant since 2013 and who has seen the appellant 2 to 10 times in the last year.

The evidence also included the appellant's Request for Reconsideration with attached letter dated August 30, 2016 prepared by an advocate and signed by the GP who completed the PR and AR ("the advocate-prepared letter").

Diagnoses

In the PR, the GP diagnosed the appellant with mood disorders- MDE [Major Depressive Episode] and GAD [Generalized Anxiety Disorder], both with an onset in June 1996. Asked to describe the appellant's mental or physical impairments that impact her ability to perform daily living activities, the GP wrote: "mood is low +++, bad concentration, memory bad."

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, and has no limitations with lifting or remaining seated.
- The appellant is independently able to perform all areas of mobility and physical ability, specifically walking indoors and walking outdoors, climbing stairs, standing, lifting and carrying and holding. The GP commented "function fair."
- 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 as being required by the appellant.

Mental Impairment

In the PR and AR, the GP reported:

- In terms of health history, the appellant "…has problems with concentration, can't focus on a subject, anxiety, loss of confidence in herself. Motivation is lacking and she has anxiety that impairs her performance."
- Regarding the degree and course of impairment, the GP wrote that the appellant "…has been suffering from depression since 1996 on and off. It is thus likely that she will have problems with depression for the next 2 years."
- The appellant has no difficulties with communication.
- The appellant has significant deficits in her cognitive and emotional functioning in the areas of memory, emotional disturbance, motivation, and attention or sustained concentration. The GP commented that the appellant's "…depression is currently bad and she is very emotional, motivation decreased, concentration decreased and memory decreased."
- In the AR, the appellant has a good ability to communicate in all areas, specifically with speaking, reading, writing, and hearing. The GP commented: "function fair."
- For the section of the AR assessing impacts to cognitive and emotional functioning, the GP

indicated no major impacts, with moderate impacts in emotion, attention/concentration, and motivation. There are no impacts assessed in the remaining 11 areas of functioning, including memory. The GP did not provide any further comments.

In her self-report, the appellant wrote that:

- She has huge anxiety when leaving her house.
- "Life is to (sic) much to handle."
- She has depression.

In the advocate-prepared letter, the GP indicated that:

- He agreed that the appellant states her reading and speaking are satisfactory to poor. She has no focus or retention when reading and she often has a family member speak for her as her anxiety in unfamiliar situations is too high. The GP wrote: "It is possible."
- He agreed that the appellant states there is a major impact on her daily functioning in the areas of bodily functions (*her sleep is disrupted and hygiene is neglected*) and wrote "possible, but in May she was sleeping well", emotion (*lives in a constant state of sadness, feels so overwhelmed and anxious she rarely leaves her home*), motivation (*spends most days alone and has no desire to do anything or see anyone*) and wrote "possible but lives with [name]," executive function (*she cannot plan, feels scattered and disorganized, the simplest tasks are overwhelming and she has family that helps her*), and language (*difficulty expressing herself*) and wrote "possible."
- He disagreed that in his professional medical opinion knowing the appellant over the past 5 years that her depression is severe. He wrote: "…if her depression was: mood: 8/10 on May 8, 2016, then she was fairly well controlled at that stage and although she may need help she would probably be fairly self-sufficient. That doesn't mean that she can't do without support."

Daily Living Activities (DLA)

In the PR and AR, the GP indicated that:

- The appellant has been prescribed medication that interferes with her ability to perform DLA and "…will probably be on the medication long term- at least one year."
- In the AR, the appellant is independently able to perform every task of all listed DLA, specifically: move about indoors and outdoors (note: "function fair"), personal care, basic housekeeping, shopping, meals, pay rent and bills, medications, and transportation.
- For the section of the AR assessing impacts to social functioning, the GP reported that the appellant is independent in all aspects, specifically: to make appropriate social decisions, develop and maintain relationships, interact appropriately with others, deal appropriately with unexpected demands, and secure assistance from others.
- The appellant's functioning in her immediate and extended social networks is assessed as marginal. 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 wrote: "…counseling re: lifestyle and decisions re: friends and future planning."

In the advocate-prepared letter, the GP indicated that:

- He agree that the appellant states most days she wears her pajamas and has no interest or desire to get dressed and wrote "…this is possible, but on May 8, 2016 she reported to the psychiatrist that her mood was 8/10."

- He agreed that the appellant states she showers once a week as she is not motivated to do it more often and wrote: “again possible.”
- He agreed that the appellant states she only does her laundry once a month, that she knows it should be done more often but does not have the desire and wrote “it is possible.”
- He neither agreed nor disagreed that the appellant states that depression has taken away her ability to push herself to get basic housekeeping tasks done. He wrote “…possible, but her mood she reported as 8/10 on May 8, 2016.”
- He agreed that the appellant states her roommate does most of the shopping as her anxiety takes over at just the thought of leaving the house, and he wrote “possible.”
- He agreed that the appellant states her roommate does most of the cooking as she lacks the desire to prepare or cook regular meals, and he wrote “possible.”
- He agreed that the appellant states she is not able to use public transit due to anxiety as she is afraid of being in a confined space and around people she does not know, and he wrote “possible.”
- He agreed that the appellant does not participate in social activities, she stays home and isolates herself, and he wrote “possible.”
- He disagreed that in his professional medical opinion knowing the appellant over the past 5 years that as a result of her severe depression she has significant restrictions with her ADL’s and requires support/supervision or help most of the time with her ADL’s, as noted. He wrote: “…if her depression was: mood: 8/10 on May 8, 2016, then she was fairly well controlled at that stage and although she may need help she would probably be fairly self-sufficient. That doesn’t mean that she can’t do without support.”

Need for Help

In the AR, the GP indicated that the appellant’s family 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.

Additional Information submitted after reconsideration

In her Notice of Appeal dated September 19, 2016, the appellant expressed her disagreement with the ministry’s reconsideration decision and wrote that:

- She is having horrible anxiety since her family member died who had helped her, and now she feels depressed.
- She finds it almost impossible to leave her house on a daily basis.
- Her family has to help her with shopping, house cleaning, and trips to the pharmacy.
- She is unable to clean as she cannot get out of bed and when she does it is all the effort she has to sit on the couch.
- She does not agree with the GP and he does not seem interested to hear how she feels. On May 8, 2016 she was asked how she felt on a scale of 1 to 10 and she said “8” since she thought it related to that day.
- The GP said she has a severe mood disorder.

The ministry relied on its reconsideration decision, as summarized at the hearing.

At the hearing, the appellant stated that:

- She understands the ministry decision because her doctor was not behind her, but she does have a big anxiety disorder and it takes everything she has to be able to leave her house.

- She hears voices and she wants to hurt herself. It has not only been the time she has known the GP, over the last 5 years, that she has experienced depression, but it has been the last 20 years, and it got worse when she moved to her current community.
- Her house has not been cleaned for a month or two. She does not shop, she eats very little and she only leaves her house for doctor appointments that she has to attend.
- Her doctor "got mad" at her for the statements in the advocate-prepared letter, including that he had filled out the PR and AR at home. She does not do well with confrontation and she was upset. She feels that her doctor doesn't really care and he said he would not mind if she found another doctor.
- She keeps getting medications and she wonders how many she will need to take so she will stop hurting herself and for her to be able to walk out of the door to her house with no anxiety.
- For a typical day, she gets up and might have a cup of coffee and then lies on her couch in her living room with the blinds closed and the lights off.
- She had some weekly counseling sessions where she was given modules to work through and an opportunity to talk about specific issues.
- She asked her doctor a few times to see a psychiatrist because she needs help. She saw the psychiatrist once and was told that she has "way too much going on" and she needs to see a counselor. She had not considered asking the psychiatrist to complete the PR rather than her GP. She is still on the wait-list for additional counseling and she has another appointment with the psychiatrist this month. She understood that the psychiatrist would send a report to her GP and thought that the GP may have included that.
- Help is provided to her by her family and friends. They do the shopping for her and clean her house.
- Although she reported that her mood was 8/10, as referred to by her doctor, she was not smiling, laughing and joking. She has "been the same forever" and she does not leave her house.

Admissibility of Additional Information

The ministry did not raise an objection to the admissibility of the information in the appellant's Notice of Appeal or in her oral testimony. The panel considered the information in the Notice of Appeal 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.*

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.

The positions of the parties

Appellant's position

The appellant's position is that she has a severe mental impairment as her doctor diagnosed her with a severe mood disorder, she has suffered with depression and anxiety for 20 years, and she has attended counseling and is seeing a psychiatrist. The appellant argued that she finds it almost impossible to leave her house on a daily basis and when she was asked how she felt on a scale of 1 to 10 and she said "8," she thought it related to that day and she was not smiling, laughing and joking. The appellant's position is that her severe mental impairment directly and significantly restricts her ability to perform DLA on an ongoing basis and her family has to help her with shopping, house cleaning, and trips to the pharmacy.

Ministry's position

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe physical or mental impairment as required by Section 2(2) of the EAPWDA. The ministry wrote that although the GP indicated significant deficits with cognitive and emotional functioning in the areas of memory, emotional disturbance, motivation and attention/sustained concentration, he reported moderate impacts in these areas and no impact to memory. The ministry argued that the

information from the GP in the advocate-prepared letter that there are major impacts to the appellant's daily functioning in the two areas of emotion and executive function, without the qualification that this is "possible," does not establish a severe impairment of mental functioning.

As to DLA, the ministry's position is that the information from the prescribed professional does not establish that the appellant's impairment significantly restricts her DLA either continuously or periodically for extended periods of time. The ministry noted that in the advocate-prepared letter the GP disagreed with the statement that, as a result of severe depression, the appellant has significant restrictions with her ADL's and requires support/supervision or help most of the time with her ADL's. The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required.

Panel Decision

Severe Physical Impairment

Given the absence of a diagnosis in the PR other than mental disorders and the appellant's level of independent physical functioning reported by the GP, which was not disputed by the appellant, 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

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 since 2012, diagnosed the appellant with MDE and GAD and wrote that the appellant "…has problems with concentration, can't focus on a subject, anxiety, loss of confidence in herself. Motivation is lacking and she has anxiety that impairs her performance" and she "…has been suffering from depression since 1996 on and off." The GP reported that the appellant has significant deficits in her cognitive and emotional functioning in the areas of memory, emotional disturbance, motivation, and attention or sustained concentration and commented that the appellant's "…depression is currently bad and she is very emotional, motivation decreased, concentration decreased and memory decreased." However, in the section of the AR for assessing impacts to cognitive and emotional functioning, the GP indicated no major impacts to functioning, with moderate impacts in emotion, attention/concentration, and motivation, and no impact to memory. The GP did not provide any further comments to explain this discrepancy.

In the advocate-prepared letter, the GP agreed that it is "possible" there is a major impact on the appellant's daily functioning in the areas of bodily functions, "…but in May she was sleeping well," and motivation, "… but lives with [name]," as well as in the area of language. The panel finds that the ministry was reasonable to conclude that the GP has only agreed that the appellant may

experience these deficits and his use of the term “possible” does not establish that the appellant is currently experiencing these deficits. The GP agreed that there is a major impact on the appellant’s daily functioning in the areas of emotion, which was assessed in the AR as a moderate impact, and executive function, which had not previously been identified as an area of deficit and had been assessed in the AR as having no impact on daily functioning. There is no explanation provided by the GP for the change in his assessment in these areas, or a description of possible periodic exacerbation in the appellant’s condition.

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 all decision-making components of DLA, specifically: personal care (regulate diet), shopping (making appropriate choices and paying for purchases), meals (meal planning and safe storage of food), “pay rent and bills” (including budgeting), medications (taking as directed and safe handling and storage), and transportation (using transit schedules and arranging transportation). The GP indicated in the AR that the appellant is also independent with making appropriate social decisions. While the GP agreed in the advocate-prepared letter that it is “possible” that there may be more impacts to the appellant’s DLA, there was no detail of impacts to the decision-making aspects of DLA.

Regarding the DLA of social functioning, the GP reported that the appellant is independent with developing and maintain relationships, interacting appropriately with others, and securing assistance from others. Although the GP assessed ‘marginal’ functioning in the appellant’s immediate and extended social network, he 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 wrote “…counseling re: lifestyle and decisions re: friends and future planning.” In the advocate-prepared letter, the GP agreed that it is possible that the appellant does not participate in social activities and she stays home and isolates herself. The appellant stated at the hearing that she finds it almost impossible to leave her house except for required doctor appointments, indicating a reduced level of social functioning that has not been reflected in the information from the GP. In the PR, the GP reported no 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. In the advocate-prepared letter, the GP agreed that it is “possible” that the appellant’s reading and speaking are satisfactory to poor, with no explanation provided for the potential change in his assessment.

In the advocate-prepared letter, the GP disagreed with the conclusion that, in his professional medical opinion knowing the appellant over the past 5 years, her depression is severe. He wrote: “…if her depression was: mood: 8/10 on May 8, 2016, then she was fairly well controlled at that stage and although she may need help she would probably be fairly self-sufficient. That doesn’t mean that she can’t do without support.” In her Notice of Appeal, the appellant wrote that when she was asked how she felt on a scale of 1 to 10 and she said “8,” she thought the question related specifically to that day. At the hearing, the appellant stated that she was “not smiling, laughing and joking” and she has “been the same forever” and she does not leave her house.

With the disagreement by the GP with the conclusion that the appellant’s depression is severe, and the absence of consistent evidence of impacts to the appellant’s cognitive, emotional, and social functioning, or an explanation of possible periodic exacerbations to her condition, 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

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 been prescribed medications that interfere with her ability to perform DLA and wrote that she "…will probably be on the medication long term- at least one year." However, in the AR, the GP reported that the appellant is independently able to perform every task of all listed DLA without interference, specifically: move about indoors and outdoors (note: "function fair"), personal care, basic housekeeping, shopping, meals, pay rent and bills, medications, and transportation.

In the advocate-prepared letter, the GP agreed that it is possible that the appellant experiences impacts to aspects of her DLA, but he also questioned these impacts since the appellant reported to the psychiatrist on May 8, 2016 that her mood was rated at 8 on a scale of 1 to 10. The GP indicated possible impacts to several tasks of DLA due to lack of motivation or anxiety, specifically: dressing, bathing (showering), laundry, basic housekeeping, shopping, cooking and using public transit. In her Notice of Appeal, the appellant wrote that her family has to help her with shopping, house cleaning, and trips to the pharmacy and she cannot get out of bed and, when she does, it is all the effort she has to sit on the couch. However, the GP also disagreed with the statement that, in his professional medical opinion, the appellant has significant restrictions with her ADL's and requires support/supervision or help most of the time with her ADL's. He wrote: "…if her depression was: mood: 8/10 on May 8, 2016, then she was fairly well controlled at that stage and although she may need help she would probably be fairly self-sufficient. That doesn't mean that she can't do without support." As previously discussed, the evidence does not indicate that the appellant is significantly restricted in either DLA specific to mental impairment, namely decision-making or social functioning.

Given the report by the GP, as the prescribed professional, of independence with DLA, including the lack of evidence to establish significant restrictions with the decision-making DLA and the social functioning DLA specific to mental impairment, 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

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

In the AR, the GP indicated that the appellant's family 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.

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.