

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 21 September 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 his ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

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

The ministry determined that the appellant satisfied the other 2 criteria: he has reached 18 years of age and his 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 11 February 2016. The Application contained:
 - A Self Report (SR) completed by the appellant.
 - A Physician Report (PR) dated 17 February 2016, completed by a specialist in psychiatry (the psychiatrist), who has known the appellant for 2 years and seen him 2-10 times over the past year.
 - An Assessor Report (AR) dated 29 April 2016, completed by a registered nurse (RN) who has known the appellant for 6 months and seen him 2-10 times in that period..
2. The appellant's Request for Reconsideration submitted on 01 September 2016.

In the PR, the psychiatrist diagnoses the appellant with anxiety disorder NOS, dysthymia, avoidant personality disorder, and R/6 borderline personality disorder. Onset for all these conditions is given as "years."

The panel will first summarize the evidence from the PR and the AR as it relates to the PWD criteria at issue in this appeal.

[Panel note: the psychiatrist and RN provided no commentary/explanation/description except as set out below.]

Severity/health history

Physical impairment

PR:

Regarding functional skills, the psychiatrist reports that the appellant can walk 4+ blocks unaided, can climb 5+ steps unaided, there are no limitations to lifting, and it is unknown for how long he can remain seated.

The psychiatrist indicates that the appellant has not been prescribed medication and/or treatments that interfere with his ability to perform DLA. He also indicates that the appellant does not require any prostheses or aids for his impairment.

AR:

Regarding mobility and physical ability, the RN assesses the appellant as independent for all listed activities: walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding.

Mental impairment

PR:

Under Health History, the psychiatrist writes:

"He suffers from a severe mental illness that impairs his ability to have employment. His anxiety and avoidance (to lower anxiety) are severe that it impacts on ADL's, interpersonal relationships, ability to motivate himself to get to even essential appointments."

Under Degree and Course of Impairment the psychiatrist indicates that the impairment is likely to continue for two or more years, commenting, "This is a long-standing mental health issue which does not respond to medications. Our next goal is to start the day program for socialization and anxiety groups."

The psychiatrist does not indicate whether the appellant has difficulties with communication, though marks "Cognitive" as a cause.

The psychiatrist indicates that the appellant has significant deficits with cognitive and emotional function. He indicates that these deficits are in the following areas: executive, memory, emotional disturbance, motivation, and attention or sustained concentration.

AR:

The RN assesses the appellant's ability to communicate as satisfactory for all listed aspects: speaking, reading, writing, and hearing.

Regarding cognitive and emotional functioning, the RN indicates that the appellant's mental impairment has the following impacts:

- Major impact: emotion.
- Moderate impact: insight and judgment, attention/concentration, executive, memory, and motivation.
- Minimal impact: bodily functions, consciousness, impulse control, motor activity, language, and psychotic symptoms.
- No impact: other neuropsychological problems, and other emotional or mental problems.

Ability to perform DLA

PR:

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

The psychiatrist assesses the appellant as restricted in his ability to perform the following DLA on a continuous basis: personal self care, mobility outside the home, and use of transportation. The psychiatrist assesses the appellant as independent for meal preparation, management of medications, basic housework, daily shopping, mobility inside the home, and management of finances.

The psychiatrist provides no assessment with regard to social functioning, but comments, "avoids social interactions because of severe anxiety."

AR:

The RN assesses the assistance required for managing DLA as follows:

- Personal care – independent for all aspects.
- Basic housekeeping – periodic assistance from another person required for laundry and basic housekeeping.
- Shopping – independence in all aspects.

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- Meals – periodic assistance from another person required for meal planning, food preparation, cooking, and safe storage of food.
 - Pay rent and bills – periodic assistance from another person required for banking, budgeting, and paying rent and bills.
 - Medications – periodic assistance from another person required for filling/refilling prescriptions, taking as directed, and safe handling and storage.
 - Transportation – independent for all aspects.

With respect to social functioning, the RN assesses the appellant as independent for making appropriate social decisions and interacting appropriately with others. The RN assesses the appellant as requiring periodic support/supervision for ability to develop and maintain relationships (comment: “withdrawn, socially isolative”), dealing appropriately with unexpected demands, and for securing assistance from others (comment: “family”).

The RN assesses the impact of the appellant's mental impairment on his immediate social and extended social networks as marginal functioning.

In commenting on the support/supervision indicated above that would help maintain him in the community, the RN writes, “Client requires psychiatric care and care management from a mental health centre.”

Help provided/required

PR:

The psychiatrist indicates that the appellant does not require any prostheses or aids to compensate for her impairment.

AR:

The RN indicates that help is provided to the appellant by family, friends, health authority professionals, and community service agencies.

The RN indicates “N/A” as to whether that the appellant requires any of the listed aids to compensate for his impairment.

Self report

In describing his disability, the appellant writes that it is mainly characterized by depression and anxiety, with long periods of lethargy, apathy, and general malaise, punctuated by crippling anxiety and panic attacks, both spontaneously and in response to social and important/seemingly important situations. He has occasional bouts of hyperactivity and restlessness, usually insomnia.

As to how his disability affects his life and his ability to take care of himself, the appellant writes that on the average day he lacks the motivation to take basic care of himself or even leave his bed. He struggles to leave the house unless faced with something like a doctor’s appointment, which he often ends up rescheduling due to anxiety. The idea of being outside/away from home for very long generally triggers anxiety or full-blown panic attacks, leading to him usually hiding under the covers for hours instead, or the use of alcohol. This is mainly why he has been

incapable of working. He usually called in sick far too often or in some cases literally hiding while at work and failing to do his job.

The general apathy he has towards keeping himself healthy is made worse by being diabetic. He takes poor care of his glucose levels and eats heavily as a coping mechanism.

Periods of hyperactivity have slowed down considerably since he was in his late teens, but still show up as multiple daylong periods of being awake, often completely inverting his personality as he spends a week or more staying out, going to friends' houses, spending money recklessly, not eating, and ignoring any appointments or responsibilities. He has ended up going for long walks and sleeping outside, or planning ridiculous moves to other towns or even other countries, despite having no money.

He has tried many times to "suck it up" and behave as a neuro-typical person. He is incapable of this and admits that he must humbly request the help he needs.

Request for Reconsideration

Under Reasons, the appellant writes:

"My mental state is unpredictable and confusing, and keeps me from consistently being able to leave the house, to manage confrontation and conversation, make phone calls or appointments. I'm unable to responsibly fulfill obligations and plans/appointments. I have regular panic attacks and unpredictable & irrational mood swings. I do not consider myself capable of acquiring and holding a job. I want to be independent and not rely on my father to be a caregiver and supply my housing and medical supplies and emergency funds and be on the hook for essentially my entire life. I'm comfortable admitting that I need help and that I consider myself mentally unable to work. If necessary I am fully willing to discuss this orally to a tribunal. My psychiatrist listed me as having "severe mental illness" that is the cause of my "inability to work." If I am unable to keep up with hygiene, unable to regularly leave the home or speak to strangers or keep a schedule, how am I going to keep a job?"

The balance of the appellant's reconsideration submission goes to argument (see Part F, Reasons for Panel Decision, below).

Notice of Appeal

The appellant's Notice of Appeal is dated 30 September 2016. Under Reasons for Appeal, he requests an extension to provide supporting documentation.

The hearing

At the hearing, the appellant was accompanied and assisted by his health authority caseworker, the RN who completed the AR. Both remarked that the issue was not any physical problem, but the effects of the appellant's mental illness on his daily life. They reviewed the assessments in the AR, commenting as follows:

Under cognitive and emotional functioning:

- Bodily functions: the appellant stated that the impact was greater than minimal, as his general apathy led to poor diet inconsistent with his diabetes, and general neglect of his hygiene, particularly brushing his teeth.
- Impulse control: the appellant thought that the impact was more than minimal, as demonstrated by his failure to resist his tendency to stay isolated
- Insight and judgment: the appellant said that the impact was more than moderate, considering his diabetes and poor attention to managing his diet, with all that implied for

his future physical health.

- Attention/concentration, executive, memory and motivation: the RN stated that he would be inclined to reassess these impacts as major rather than moderate, considering the appellant's difficulties in focusing on any task at hand and the short-term memory problems that are commonly associated with depression.
- Language: the RN noted that when the appellant is overly anxious he tends to stutter.
- Psychotic symptoms: the RN and the appellant thought that the assessment should be greater than minimal impact, as when the appellant is in panic mode his thinking becomes disorganized.

Under Daily Living Activities:

- Personal care – for bathing, the appellant remarked that because of his apathy he will go days without taking a shower.
- Basic housekeeping – for laundry, the appellant stated that he regularly needs help: he will wash some clothes, then won't bother to fold them and put them away properly; he has many outfits, but most of them are dirty and he will only bother to wear a couple of them day in and day out.
- Shopping – the appellant stated that the assessments for the listed tasks are out of date. When the AR was completed, he was living next door to a grocery store and could go there quickly no matter how he was dressed. As he does not drive, he now needs a ride to and from a store if he can manage to motivate himself to do any shopping.
- Meals – the appellant stated that his father does most of the meal planning, food preparation and cooking, as left to himself his meals would mainly consist of high sugar carbohydrates, not the kind of diet he needs to manage his diabetes.
- Medications – the RN stated that the appellant has a history of not adjusting well to changes in medication prescribed for his mental health.

In answer to a question, the appellant stated that he has Type I diabetes, diagnosed when he was 9 years old. He used to see an endocrinologist, but stopped going to appointments because it was too much, considering all his other appointments relating to his mental illness. He now has a general practitioner, who he hopes will refer him to another endocrinologist. He has an insulin pump, but it does not work very well because of his diet.

The ministry stood by its position at reconsideration.

Admissibility of additional information

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence the information and records that were before the minister when the decision being appealed was made and “oral or written testimony in support of the information and records” before the minister when the decision being appealed was made. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA - to determine whether the ministry's reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant. That is, panels are limited to determining if the ministry's decision is reasonable and are not to assume the role of decision-makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.



In this case, much of the testimony of the appellant and the RN at the hearing tends to be information that would indicate a higher degree of mental impairment than that which was set out in the AR that before the ministry at reconsideration, for reasons that were also not before the ministry. The panel therefore finds that this information is not in support of the information and records before the ministry at reconsideration as it goes beyond the assessments provided in the AR and therefore cannot be said to corroborate or substantiate those assessments. In accordance with sections 22(4) and 24 of the EAA, the panel therefore does not admit this information as evidence – i.e. will not take this information into account in the panel's decision.

The panel accepts the balance of the testimony of the appellant and the RN as argument.

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, his 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 is in a prescribed class of persons or 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 sections 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;

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- (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.

Alternative grounds for designation under section 2 of Act

- 2.1** The following classes of persons are prescribed for the purposes of section 2 (2) [*persons with disabilities*] of the Act:
- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
 - (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
 - (c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the [Community Living Authority Act](#);
 - (d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the [Community Living Authority Act](#) to assist that family in caring for the person;
 - (e) a person who is considered to be disabled under section 42 (2) of the [Canada Pension Plan](#) (Canada).

Severity of impairment

Physical impairment

Panel decision.

The appellant does not argue that he has a severe physical impairment. The psychiatrist has not provided a diagnosis of a physical impairment. The psychiatrist did not indicate that the appellant had any limitations with regard to functional skills requiring physical effort (can walk 4+ blocks unaided, etc.) and the RN assessed the appellant as independent in all listed aspects of mobility and physical functioning. Neither the psychiatrist nor the RN noted the requirement for an assistive device to compensate for any physical impairment. Accordingly, the panel finds that the ministry was reasonable in determining that a severe impairment of the appellant's physical functioning had not been established.

Mental impairment

The appellant's position

The appellant's position, as stated at the hearing and as set out in his Request for Reconsideration, is that, quoting section 2(2) of the EAPEDA, "In my opinion [section 2(2)] has already been decided and recorded in my existing PWD booklet by my psychiatrist [name]. He is a legal "health professional" and his decision that I require/qualify for disability benefits seems like exactly what the Assistance for Persons with Disabilities Act is asking for."

The ministry's position

In the reconsideration decision, the ministry reviewed the information provided by the psychiatrist in the PR and by the RN in the AR, and noted the following:

- The ministry referred to the psychiatrist's statement under Health History that the appellant "suffers from a severe mental illness that impairs his ability to have employment. His anxiety and avoidance (to lower anxiety) are severe that it impacts on ADL's, interpersonal relationships, ability to motivate himself to get to even essential appointments." The ministry noted that the psychiatrist does not describe the severity of impacts to daily living activities, interpersonal relationships, and motivation. The ministry also notes that for the purposes of determining eligibility for PWD designation an applicant's employability or ability to work is not taken into consideration.
- The psychiatrist does not indicate whether the appellant has difficulties with communication, but does indicate a "cognitive" cause, while the RN indicates that the appellant has satisfactory ability with all listed areas of communication.
- Although the psychiatrist indicates significant deficits in cognitive and emotional functioning in the areas of executive, memory, motivation, and attention/sustained concentration, in the AR the RN indicates moderate impacts to cognitive and emotional functioning in these areas.
- While the psychiatrist states that the appellant "avoids social interactions because of severe anxiety," no description is provided regarding the frequency or duration of his avoidance of social interactions
- A review of the RN's assessments of the impacts of cognitive and emotional functioning in the listed areas shows that the RN indicated major impacts to one area, moderate impacts to the five areas, and minimal impacts to six areas, with no impact in two areas. The ministry found that the cumulative impact to cognitive and emotional functioning, as indicated by these assessments, is indicative of moderate as opposed to a severe impairment of mental functioning.
- With regard to social functioning, the RN did not describe the frequency or duration of the periodic support/supervision the appellant requires being able to develop/maintain relationships, being able to deal appropriately with unexpected demands, and being able to secure assistance from others. The ministry also noted that although the RN indicates that the appellant has marginal functioning with his immediate social network, he also indicates that he is provided assistance by family and friends. Further the RN reported no safety issues with regards to social functioning. Therefore the ministry found it difficult to establish a severe impairment of mental functioning based on the RNs assessments of social functioning

Upon review, the ministry acknowledged that the appellant is currently experiencing limitations to his cognitive and emotional functioning due to his diagnosed mental health conditions. However based on the assessments provided, the ministry found that the appellant has a moderate as opposed to a severe impairment of mental functioning.

Panel decision

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 RN. 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 by the medical practitioner and prescribed professional presents a comprehensive overview of the nature and extent of the impacts of the person’s medical conditions on daily functioning, not only with the “check mark” assessments sought in the PR and AR forms, but through providing the explanations, descriptions or examples in the space provided.

In the PR, the psychiatrist diagnoses the appellant with anxiety disorder NOS, dysthymia, and avoidant personality disorder. Under Health History, where the medical professional is asked to indicate the severity of the medical conditions relevant to the person’s impairment, he describes the appellant as suffering “from a severe mental illness that impairs his ability to have employment. His anxiety and avoidance (to lower anxiety) are severe that it impacts on ADL’s, interpersonal relationships, ability to motivate himself to get to even essential appointments.” As the ministry pointed out, employability or ability to work is not taken into consideration in determining PWD designation. Further, apart from the example of not being able to motivate himself to get to even essential appointments, the psychiatrist has not taken the opportunity to describe the degree of the impacts on DLA, interpersonal relationships and ability to motivate himself and how and to what extent these result in restrictions in the appellant’s ability to function independently, appropriately or effectively.

In his self-report, the appellant writes that on the average day he lacks the motivation to take basic care of himself or even leave his bed. He struggles to leave the house if he is faced with something like a doctor’s appointment. The idea of being outside/away from home for very long generally triggers anxiety or full-blown panic attacks, leading to him usually hiding under the covers for hours instead, or the use of alcohol. In the panel’s view, however, this description by the appellant of the degree of impact of his mental illness on his ability to function appropriately or effectively has not

been confirmed by the psychiatrist or reflected in the PR..

In the PR, the psychiatrist indicates that the appellant has significant deficits with cognitive and emotional functioning in 5 areas: executive, memory, emotional disturbance, motivation, and attention or sustained concentration. The psychiatrist provided no commentary as to how, how often, in what way, or to what extent these deficits restricted the appellant's daily functioning. And as the ministry noted, in 4 of these areas, the RN in the PR assess the impacts of these areas on daily functioning as "moderate."

The panel notes another area of confusion or contradiction in the PR, also identified by the ministry: the psychiatrist does not indicate whether the appellant has difficulties with communication, though marks "Cognitive" as a cause, without any further explanation, while the RN assesses the appellant's ability to communicate as satisfactory for the listed aspects of speaking, reading, writing, and hearing.

In the PR, under DLA, the psychiatrist provides no assessment with regard to social functioning, but comments, "avoids social interactions because of severe anxiety." As the ministry notes, the psychiatrist does not provide a description of the frequency or duration of the appellant's avoidance of social interactions, making it difficult for the ministry to assess the degree to which the appellant's mental health condition restricts his ability to interact with others effectively or appropriately.

For a discussion on the information provided by the prescribed professionals relating to the degree that appellant's mental health condition restricts his ability to perform DLA, including the 2 social functioning DLA applicable to a person with a severe mental impairment, see below under "Direct and significant restrictions in the ability to perform DLA."

Taking into account the inconsistencies noted by the ministry between the information provided by the psychiatrist in the PR and that by the RN in the AR, and considering the lack, as discussed above, of explanation/description/examples provided in the PR, the panel finds the ministry was reasonable in determining that the information provided did not establish a severe mental impairment.

Direct and significant restrictions in the ability to perform DLA

The appellant's position

The position of the appellant is that the RN, his prescribed professional, has provided an opinion that his severe mental impairment restricts him in performing the DLA of basic housekeeping, meals, paying rent and bills, and medications to the point where periodic assistance from another person is required. The RN has also assessed him with requiring periodic support/supervision for developing and maintaining relationships, dealing appropriately with unexpected demands, and securing assistance from others. Given the extent of the help he requires, it is unreasonable for the ministry to have concluded that his mental illness does not directly result in a significant restriction in his ability to perform DLA on an ongoing basis.

The ministry's position

In the reconsideration decision, the ministry reviewed the assessments of the restrictions in the appellant's ability to perform DLA as provided by the psychiatrist in the PR and by the RN in the AR (see *Ability to perform DLA* in Part E above). The ministry noted that although the RN indicates

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restrictions with the DLA of basic housekeeping, meals, paying rent and bills, and medications, in the PR the psychiatrist indicates that the appellant is not restricted in performing these same DLA. The ministry also noted that the RN does not describe the frequency or duration of the periodic assistance from another person the appellant requires for the DLA for which he assessed the appellant is restricted. Therefore, the ministry finds it difficult to establish significant restrictions to daily living activities based on the RNs assessments.

Based on the information provided, the ministry found that there was not enough evidence to confirm that the appellant has a severe impairment that significantly restricts his ability to perform DLA either continuously or periodically for extended periods.

Panel decision

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 GP or SW. 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.” And for the minister to be “satisfied,” it is reasonable for the ministry to expect that a prescribed professional provides a clear picture of the degree to which the ability to perform DLA is restricted in order for the ministry to determine whether the restrictions are “significant.”

In the AR, for the DLA applicable to a person with a severe mental and/or physical impairment, the RN assessed the appellant as independent for all aspects of mobility and physical ability (the DLA of moving about indoors and outdoors) and for all aspects of the DLA of personal care, shopping, and transportation. He assessed the appellant as requiring periodic assistance from another person for the DLA of basic housekeeping, meals, paying rent and bills, and medications. The panel notes however that in providing these latter assessments, the RN provided no explanation/description regarding the nature or extent of the assistance required or the frequency and duration of such assistance -- information that the panel considers essential for the ministry to be able to confirm whether, in the opinion the prescribed professional, the ability to perform DLA is significantly restricted.

In addition to the above DLA, there are 2 somewhat overlapping DLA (the social functioning” DLA) applicable to a person with a severe mental impairment: make decisions about personal activities, care or finances and relate to, communicate or interact with others effectively.

Regarding the decision-making DLA, the RN assessed the appellant as independent for all aspects of personal care, making appropriate choices within the DLA of shopping, and requiring the periodic assistance of another person for meal planning within the DLA of meals, and for all aspects and paying rent and bills and medications. The RN assessed the appellant as independent with regard to making appropriate social decisions and requiring periodic support/supervision for dealing appropriately with unexpected demands.

In terms of the DLA of relating to others effectively, the RN assessed the appellant’s ability to communicate as satisfactory, and independent for interacting appropriately with others, The RN

assessed the appellant as requiring periodic support/supervision for developing and maintaining relationships and securing assistance from others, while assessing the impacts of the appellant's relationship with his immediate social network and extended social networks as marginal functioning.

Again, the panel notes that in making these assessments relating to the social functioning DLA, the RN provided no explanation or description regarding the periodic assistance or supports/supervision.

Considering that a severe impairment has not been established, and taking into account the assessments reviewed above, the panel finds that the ministry was reasonable in determining that the information provided does not establish that in the opinion of a prescribed professional the appellant's ability to perform DLA are directly and significantly restricted either continuously or periodically for extended periods.

Help with DLA

The appellant's position

The appellant's position is that he requires help from his family, friend and health care professionals to be able to cope with his mental illness.

The ministry's position

The ministry noted the aids listed by the GP in his letter at reconsideration. 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

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 require 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.

While the appellant benefits from the assistance of family, friends and health care professionals, 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.