PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated February 21, 2017 that found that the appellant did not meet two 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 she has a severe mental impairment that, in the opinion of a medical practitioner, 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 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 Person With Disabilities (PWD) Application comprised of the applicant information and self-report dated September 20, 2016, a physician report (PR) and an assessor report (AR) both dated September 13, 2016 completed by a general practitioner (GP) who has known the appellant for more than 8 years and has seen her 2 to 10 times in the last year.

The appellant's Request for Reconsideration dated January 31, 2017 with attached submission dated January 30, 2017 included argument by the appellant and her advocate and will be discussed below in Part F- Reasons for Panel Decision.

Diagnoses

In the PR, the appellant was diagnosed by the GP with depression and anxiety and adjustment disorder, multi-joint osteoarthritis, hidradenitis suppurativa (HS), morbid obesity, hypertension, hypothyroid, and sleep apnea. In the AR, when asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the GP wrote to see the diagnoses page in the PR.

Physical Impairment

In the PR and AR, the GP reported that:

- In terms of health history, the appellant had "…corrective eye surgery 1990/1992, breast reduction 1995, ongoing severe abscess formation (starting 1992) on multiple parts of the body requiring frequent I & D [incision and drainage], continuous wound care, ongoing/frequent skin infections. Patient with significant reduction in mobility because of multi-joint spinal osteoarthritis… Patient with chronic pain/ fatigue. 2007 right ACL [anterior cruciate ligament] /MCL [medial collateral ligament]/PCL [posterior cruciate ligament] reconstruction."
- The appellant requires an aid for her impairment, specifically a CPAP machine and "cane/ hiking stick occasionally."
- For functional skills, the appellant can walk 2 to 4 blocks unaided, climb 5 or more steps unaided, lift 2 to 7 kg. (5 to 15 lbs.), and remain seated less than 1 hour.
- The appellant is independent with walking indoors, and requires periodic assistance from another person and takes significantly longer than typical with walking outdoors. She requires continuous assistance from another person and takes significantly longer than typical with climbing stairs, with the comment by the GP that she uses the elevator and handrails. The appellant requires periodic assistance from another person with standing and the GP commented: "frequent sitting down." For lifting and carrying and holding, the appellant requires periodic assistance from another person and takes significantly longer, with a note by the GP: "help from other people."
- In the section of the AR relating to assistance provided through the use of assistive devices, the GP indicated a cane and a CPAP machine are used by the appellant.

In her self-report and her Request for Reconsideration, the appellant wrote that:

- She has multiple health and disability issues and her doctor has completed the application with only the most debilitating conditions. She also has Duane's syndrome, hyperhidrosis, cervical cancer with cone biopsy and removal, moderate incontinence, asthma with puffers, gout, severe sleep apnea, acid reflux, calcific tendonitis of the left and right shoulder rotator cuffs, and left knee Baker's cyst.

- Over the last 5 years, most of her conditions have gotten progressively worse.
- She is a carrier of resistant staph bacteria and with the HS she suffers a great deal of pain and numerous skin infections. She has 2nd degree HS with tunneling.
- Her arthritis makes physical activity painful and time-consuming. She has difficulty with mobility and DLA requiring physical exertion. The physical pain and lack of mobility contribute to her depression and anxiety.
- She had a cardiac event requiring a stay in hospital and she has to see a cardiologist.
- She has a referral to the specialist for her back and knee and she recently had a CT scan of her lower spine.
- She has had a surgical consult for her skin in the past but surgical intervention is not recommended at this time.

Daily Living Activities (DLA)

In the PR, the GP report included:

- In terms of health history, the appellant has "…ongoing severe abscess formation (starting 1992) on multiple parts of the body requiring frequent incision and drainage, continuous wound care, ongoing/frequent skin infections. Patient with significant reduction in mobility because of multi-joint/ spinal osteoarthritis. Depression/anxiety onset as teenager, already on maximum medical therapy, hospitalized twice; currently under the care of a psychiatrist; patient with chronic pain/fatigue."
- The appellant has been prescribed medications that interfere with her ability to perform DLA, specifically an anti-depressant medication causing nausea and pain medication causing constipation. The anticipated duration of the medications is "lifelong."
- For functional skills, the appellant is able to walk 2 to 4 blocks unaided on a flat surface and climb 5 or more stairs unaided.
- The appellant has no difficulties with communication.
- The appellant is assessed as having a good ability to communicate with speaking, reading, writing and hearing, with a comment: "…can be worse when mental health deteriorates."
- There are major impacts to cognitive and emotional functioning in the areas of emotion, motor activity, and other emotional or mental problems. There are moderate impacts in four areas: bodily functions, attention/concentration, memory, and motivation. There are minimal impacts in the areas of impulse control, insight and judgment, executive, and psychotic symptoms. The GP added comments that the appellant's "level of impairment greatly dependant on level of pain as well as mood disturbance. Patient has very poor coping skills."
- The appellant is independent with walking indoors and requires periodic assistance from another person and takes significantly longer than typical with walking outdoors.
- The appellant is independently able to perform every assessed task of the meals DLA (including meal planning, food preparation, cooking, and safe storage of food) and the pay rent and bills DLA (including banking, budgeting, and pay rent and bills).
- For the personal care DLA, the appellant is independent and takes significantly longer than typical with the tasks of dressing and grooming. She is both independent and requires periodic assistance from another person with the task of bathing. She is independent with toileting, feeding self and regulate diet. The appellant requires periodic assistance from another person with transfers in/out of bed and transfers on/off of chair. The GP comments with respect to all tasks "mobility greatly depends on level of pain from multi-joint osteoarthritis."
- For the basic housekeeping DLA, the appellant requires periodic assistance from another person and takes significantly longer than typical with both doing laundry and housekeeping,

with the explanation by the GP that the appellant's "ability depends on pain."

- Regarding the shopping DLA, the appellant is independent with reading prices and labels, making appropriate choices and paying for purchases. She requires periodic assistance from another person and takes significantly longer than typical with going to and from stores, with the comment by the GP that the appellant "rides electric scooter in shops," and also with carrying purchases home, with the comment: "…limited to very light lifting/carrying only." The GP added comments that "chronic back and knee pain is the limiting factor. Patient deemed non-surgical."
- For the medications DLA, the appellant is independent with filling/refilling prescriptions and safe handling and storage, and she requires periodic assistance from another person with taking her medications as directed. The GP commented: "dependant on mother for support."
- Regarding the transportation DLA, the appellant requires periodic assistance from another person with getting in and out of a vehicle, with the comment: "limited mobility because of chronic pain." The tasks of using public transit and using transit schedules and arranging transportation are marked as not applicable.
- For social functioning, the GP did not assess the various aspects, specifically making appropriated social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The GP wrote with respect to all of these aspects that "social functioning depends on presence/absence of depression and anxiety."
- The appellant has very disrupted functioning with her immediate social network and both good and marginal functioning with her extended social network. For additional comments, including identification of any safety issues, the GP wrote: "risk of injury significant because of obesity/ chronic pain."
- Asked to describe the support/supervision required that would help to maintain the appellant in the community, the GP wrote to see the section of the AR relating to help provided.
- For additional information, the GP wrote that the appellant is known to her for many years "with significant mental and physical health issues."

In her self-report, the appellant wrote that:

- Her arthritis makes physical activity painful and time-consuming. She has difficulties with mobility and DLA requiring physical exertion.
- The physical pain and lack of mobility contribute to her depression and anxiety.
- She suffers with medical side effects including nausea, dry mouth, constipation, and fatigue or sleepiness.
- She has to reduce the amount of work she does and she requires disability accommodations in the workplace.
- She has lost some executive function cognitively over time due to the impact of depressive episodes.
- Her physical limitations contribute to her poor mental health and her tendency to self-isolate.

Need for Help

The GP reported in the PR that the appellant requires an aid for her impairment, specifically "CPAP machine; cane/ walking stick occasionally."

In the AR, the GP reported that the help required for DLA is provided by family, friends, health authority professionals and community service agencies. For a description of help required where

none is available, the GP wrote: “massage therapy, physiotherapy, counseling, shockwave therapy for chronic joint pain, aqua-therapy/ recreational therapy.” The GP indicated that a cane and CPAP machine are routinely used by the appellant to help compensate for her impairment and no assistive animal is needed.

Additional Information

In her Notice of Appeal dated March 6, 2017, the appellant expressed her disagreement with the ministry’s reconsideration decision and wrote that she clearly does require assistance and can demonstrate/ prove it.

Prior to the hearing, the appellant provided a letter dated March 22, 2017 in which the GP wrote that:

- The appellant has significant lumbar backache as a result of multi-level disc degeneration and also has end-stage osteoarthritis of the left knee and is waiting for a knee replacement.
- The appellant currently gets cortisone injections in the left knee approximately every 2 months to keep her mobile until the operation.
- The appellant suffers from two different debilitating physical conditions that severely limit her mobility and also her ability to successfully perform her DLA.
- The appellant gets significant support and help from her son and friends.
- The appellant also suffers from significant depression currently under the treatment of her psychiatrist and using medicine for this condition.
- The appellant is a worthwhile candidate for approval of PWD because of three different substantial conditions as outlined and her application should be approved.

At the hearing, the appellant’s son stated that:

- His mother walks with a limp and there are many things he does to assist her, such as cooking and cleaning.
- He makes sure the dogs are well taken care of, including lifting the older dog at times and keeping them exercised.
- He helps his mother in the early morning, making her coffee, and sometimes he will stay over at her place because she is in chronic pain, although he is not sure exactly where she feels the pain.
- He tries to relieve some of his mother’s stress.
- When they go grocery shopping, his mother will experience pain in her knee or her back and she has to sit down to wait for the pain to pass and she is “clearly struggling.”
- His mother sweats profusely when walking around the store and he sees that her body “is not working well.”
- He helps his mother at bed time since she has sleep apnea and he will make sure the water level is okay in her CPAP machine.
- He also massages her knees, back and hips and he notices that she winces because there is so much pain. The regular massage helps keep the circulation in her body.
- When he sees that his mother’s legs cannot take the strain of standing, he will get her a chair.
- When his mother is working, he will help with the household day-to-day chores.
- With his mother’s skin condition, he applies a soothing cream to the infected areas and applies hydrogen peroxide where needed. She has boils around her groin area that have caused him to wonder how his mother can even sit up.
- He helps when there is a lot of laundry by loading the 2 or 3 bags into her vehicle since his mother has difficulty lifting weight.

At the hearing, the appellant stated that:

- Her son did not live in her community until he came home for a visit and realized how she was struggling financially and she needed help. He has moved to be closer to her to help her.
- Her skin condition started when she was a teenager. She inherited osteoarthritis.
- She has found ways to cope because, as a single parent, she needed to put food on the table for her family. There was no one else to do things needed to survive.
- She has "good days" when things take longer but she can get a bag of laundry into her car. If she sits, she can cook a meal.
- She goes on hikes with her dogs but a distance that would normally take 1 hour takes her 2 to 3 hours but she still needs the time outside in the fresh air. There is variability though because sometimes her "legs won't cooperate" and she cannot go on a hike.
- She has gained 200 lbs. over the last 10 years and she currently weights about 350 lbs. She cannot do physical jobs.
- Her son takes the dogs out and helps with breakfast.
- She does not like taking pain relief medication because it aggravates her mental illness and upsets her digestive system.
- Since the PWD application was completed, she has been to three different specialists in orthopedic surgery. She is getting cortisone shots in her knee every couple of months. She has had an x-ray of her leg and then a CT scan of her back and they have discovered some of the vertebrae in her back are fusing.
- She does not advertise that she needs help but when she had resources she would go for massage once a week and to the chiropractor to mitigate some of her problems. Without the resources, she is surviving on pain killers and her son helping with massage.
- There was a traumatic event in 2015 and she came under the care of a psychiatrist who helped her with her concentration, impulse control, and moodiness, and she was able to stabilize after a year. She does not recover the same way now and they are still figuring out her medications. She sees the psychiatrist every month.
- In the colder months of the year, her arthritis is aggravated and she will have 20 days in the month when she will struggle and 10 days where she is doing okay.
- In the summer months, her body functions better with her arthritis. She gets physical activity by swimming where it is free and it helps loosen things up. During the warmer weather, she has about half good days and half bad days in the month.
- The cardiac episode resulted in a referral to a cardiologist but they could not complete a stress test because although she felt her heart could go on, her legs would not cooperate and she was in "screaming pain." She has a familial history of atrial fibrillation and they are investigating to see if she has this condition. Her legs work well after she receives the cortisone shot and they may repeat the stress test after she has received the shot.
- She last worked full-time in 2014. Her brain works well and she wants to keep part-time work, which she can do when supported by her psychiatrist and with help of other people and accommodations in her workplace.

The appellant's advocate provided oral submissions that will be reviewed in Part F- Reasons for the Panel Decision.

The ministry relied on its reconsideration decision as summarized at the hearing. The ministry clarified at the hearing that the ministry concluded in the reconsideration decision that a severe mental impairment was established but a severe physical impairment was not established.

Admissibility of Additional Information

The ministry did not object to the admissibility of the March 22, 2017 letter from the GP. The panel considered the letter and the oral testimony on behalf of the appellant as information that corroborates the extent of the appellant's impairment as a result of a medical condition 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 PWD designation, 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 has a severe mental, though not a severe physical, impairment but her 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 person with disabilities (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)(a) 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.

At reconsideration, the ministry was satisfied that the information provided is sufficient evidence of a severe mental impairment. Prior to and at the hearing, the appellant argued that she also has a severe physical impairment. The panel considers it relevant to consider the severity of the appellant's physical impairment to determine how this impairment needs to be factored in when addressing the "Direct and significant restrictions in the ability to perform DLA" criterion discussed below.

Severe Physical 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.

In the PR, the GP diagnosed the appellant with multi-joint osteoarthritis, HS, morbid obesity, hypertension, hypothyroid, and sleep apnea and added in the health history that the appellant had "…corrective eye surgery 1990/1992, breast reduction 1995, ongoing severe abscess formation (starting 1992) on multiple parts of the body requiring frequent I & D, continuous wound care, ongoing/frequent skin infections. Patient with significant reduction in mobility because of multi-joint spinal osteoarthritis… Patient with chronic pain/ fatigue. 2007 right ACL /MCL /PCL reconstruction." In the Request for Reconsideration, the appellant's advocate wrote that the appellant has severe osteoarthritis of the neck, shoulders, left thumb, right wrist, lumbar spine, both knees, and the left big toe and when all her joints are experiencing an arthritis flare-up, the appellant can be rendered almost immobile. The advocate wrote that the appellant uses medication to manage the pain and inflammation on a daily basis and on a "good day" may not experience as much pain or loss of mobility. There was no indication by the advocate of how often the appellant's good or bad days occur. In her self-report, the appellant wrote that she has multiple health issues and her doctor has completed the application referring to only the most debilitating conditions. The appellant listed several of her medical conditions that had not been mentioned by the GP, including Duane's syndrome, hyperhidrosis, cervical cancer, incontinence, asthma, gout, acid reflux, and calcific tendonitis of both shoulders.

Given an opportunity to provide updated information in his March 22, 2017 letter, the GP did not refer to the appellant's other medical conditions and wrote that the appellant has significant lumbar backache as a result of multi-level disc degeneration and also has end-stage osteoarthritis of the left knee and is waiting for a knee replacement. The appellant stated at the hearing that since completing the PWD application, she has been to three different specialists in orthopedic surgery about her knee. The GP opined in the letter that these physical conditions, along with the appellant's significant depression under a psychiatrist's treatment, make the appellant's PWD application worthy of approval. However, while the GP wrote that the disc degeneration and osteoarthritis in her knee "severely limits her mobility" and that she receives cortisone injections into the left knee every two months "in an effort to keep the patient mobile," there was no change to the assessment of the appellant's functional skill limitations as reported by the GP in the PR.

For functional skills, the GP reported in the PR that the appellant can walk 2 to 4 blocks unaided, climb 5 or more steps unaided, lift 2 to 7 kg. (5 to 15 lbs.), and remain seated less than 1 hour. In the AR, the GP assessed the appellant as independent with walking indoors, and requiring periodic assistance from another person and takes significantly longer than typical with walking outdoors. At the hearing, the appellant's advocate argued that the appellant has to keep moving despite the fact that it is painful because, if she stops, she will not be able to move at all. The advocate argued that the application form does not reflect the reality that if the appellant walks for 4 or 5 blocks unaided, she will have to rest before continuing. However, the appellant also stated at the hearing that she goes on hikes with her dogs that take her 2 to 3 hours instead of 1 hour, or 2 to 3 times longer, indicating a range of independent mobility at the high end of the scale. The appellant stated that there is variability because sometimes her "legs won't cooperate" and she cannot go on a hike. The appellant stated at the hearing that she has "bad days" each month, which can vary from 15 to 20 days in the month, where her functioning is reduced. However, there was no indication by the GP whether his functional skills assessment was indicative of a good day or a bad day or the nature of the periodic assistance from another person with walking outdoors. The GP reported in the PR that the appellant requires aids for her impairment, including a cane/ hiking stick, but that she requires these aids "occasionally."

The panel finds that the ministry reasonably determined that the GP's assessment is inconsistent in indicating that the appellant requires continuous assistance from another person and takes significantly longer than typical with climbing stairs and yet the appellant can climb 5 or more steps "unaided," or without the assistance of another person or an assistive device. The GP reported that the appellant requires periodic assistance from another person with standing and the GP commented: "frequent sitting down," without describing how long the appellant can remain standing or how long she must sit down before getting up again. For lifting and carrying and holding, the appellant requires periodic assistance from another person and takes significantly longer, with a note by the GP: "help from other people" and no indication of how often this help is required, or if this assistance is required only for weights in excess of the appellant's lifting capacity of 5 to 15 lbs.

In her self-report, the appellant wrote that she is a carrier of resistant staph bacteria and with the 2nd degree HS she suffers a great deal of pain and numerous skin infections. The appellant wrote that she has had a surgical consult for her skin in the past but surgical intervention is not recommended at this time. The advocate argued in the Request for Reconsideration that, depending on the location of the eruption, the appellant may not be able to sit, may not be able to walk very far, and may experience bleeding and an odor resulting in stress and social isolation. The advocate argued at the

hearing that the GP wrote in the PR that the appellant requires “continuous wound care” as a result of her HS and the ministry could extrapolate to conclude that the impacts are ongoing. However, while the appellant’s HS is described by the GP as “severe abscess formation,” the panel finds that the ministry reasonably determined that the GP did not explain in the PR the ways in which the pain from abscesses is having an impact on the appellant’s mobility or physical ability. Given an opportunity to provide updated information in his March 22, 2017 letter, the GP did not refer to the impact of the appellant’s HS on her functioning, or provide clarification of the ways in which and how often the appellant requires assistance with her physical functioning.

In the reconsideration decision, the ministry notes that a large focus is placed by the GP on the appellant's diagnosis of multi-joint arthritis. The ministry concludes that while some degree of restriction is recognized due to this impairment, it is the minister's opinion that the functional skill limitations described by the GP are more in keeping with a moderate degree of impairment as the appellant is capable of basic unaided mobility. The panel understands from the appellant’s testimony at the hearing that an important aspect of her impairment is that there is a pattern of “bad days” and less frequent “good days.” No clear description of this pattern was before the ministry at reconsideration. While it appears to the panel that the assessments provided by the GP reflect the appellant’s abilities on her better days, the panel recognizes that the ministry had no other basis to interpret the mobility assessments provided by the GP and reasonably relied on these assessments in concluding that they reflected a moderate degree of physical impairment

Given the GP’s report of a moderate level of functional skills and undefined periodic assistance required with physical functioning, 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.

Direct and Significant Restrictions in the ability to perform DLA

At reconsideration the ministry found that there was sufficient evidence of a severe mental impairment and the advocate argued at the hearing that the court in *Hudson v. Employment and Assistance Appeal Tribunal* 2009 BCSC1461 stated that it is difficult to find a “severe” impairment without also finding that the DLA have been directly and significantly restricted. However, the determination that a person has a severe impairment does not itself determine eligibility for the PWD designation as Section 2(2)(b) of the EAPWDA requires that a prescribed professional provide an opinion that an applicant’s severe impairment directly and significantly restricts her ability to perform DLA, either 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, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant’s impairment continuously or periodically for extended periods.

In the appellant’s circumstances, the GP has known the appellant for more than 8 years and the GP wrote in additional comments to the AR that the appellant has “significant mental and physical health issues.” In terms of the appellant’s mental health history, she has had depression/anxiety onset as teenager, she is already on maximum medical therapy, has been hospitalized twice and she is currently under the care of a psychiatrist. The GP indicated that there are major impacts to cognitive and emotional functioning in the areas of emotion, motor activity, and other emotional or mental problems, and moderate impacts in four areas: bodily functions, attention/concentration, memory, and

motivation. The GP assessed minimal impacts in the areas of impulse control, insight and judgment, executive, and psychotic symptoms and the GP commented that the appellant's "level of impairment greatly dependant on level of pain as well as mood disturbance" and "patient has very poor coping skills." The advocate pointed out at the hearing there are only 3 areas of cognitive and emotional functioning for which the GP has assessed no impact.

The advocate argued at reconsideration that when the appellant is having a good day, week or month, the deficits to executive function, memory, and emotion can be somewhat mitigated by mood or assistance from others or medication use, but that does not mean that the conditions do not affect the appellant at all or that, at other times, they do not completely disable the appellant's socio-emotional function altogether. The advocate argued that, according to the DSM [Diagnostic and Statistical Manual of mental disorders] there are specific criteria that the appellant met and, in order to be diagnosed with depression and anxiety and adjustment disorder, the symptoms must be severe and disruptive and distressing to her psychological functioning.

However, considering the two "social functioning" 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 (relate effectively), the ministry found that there is insufficient 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 almost 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) and medications (safe handling and storage). For the task of taking medication as directed, the GP assessed the need for periodic assistance from another person and wrote "dependant on mother for support", without describing how often the support is required. The panel finds that the ministry reasonably determined that there is insufficient information provided by the GP to allow the ministry to determine that the impairment restricts the ability to perform DLA "periodically for extended periods," as required in the legislation. The GP also indicated in the AR that the appellant's ability to make appropriate social decisions "depends on presence/absence of depression and anxiety," and the GP does not describe how often the depression and anxiety is present.

Regarding the DLA of relating effectively, the GP reported in the AR that the appellant's ability to develop and maintain relationships and interact appropriately with others "depends on presence/absence of depression and anxiety," and the GP does not describe how often the depression and anxiety is present. The GP indicated that the appellant has very disrupted functioning in her immediate social network (including family), defined as "aggression or abuse, major withdrawn, often rejected by others" and yet the appellant described being helped by her family, with her son moving to the area to be available to help her, and the GP reported that the appellant's mother supports her with taking her medications as directed. The GP reported good/marginal functioning in the appellant's extended social networks, and the appellant reported that she is currently engaging in part-time work with support from her psychiatrist and help and accommodations at her workplace. Asked to describe the support/supervision required that would help to maintain the appellant in the community, the GP referred to the need for counseling along with various physical therapies such as massage, physiotherapy, shockwave therapy for chronic joint pain and aqua and recreational therapies. The GP reported that the appellant has no difficulties with communication and assessed her as having a good ability to communicate with speaking, reading, writing and hearing, with a comment: "…can be worse when mental health deteriorates," without an indication of how much worse her communication can be or how often her mental health deteriorates.

The advocate argued at the hearing that it is difficult for the prescribed professional to address the impact of a mental impairment on DLA because of the design of the AR form. In the appellant's case, the GP, who has known the appellant for more than 8 years, commented in the AR regarding an assessment of the ability to perform tasks of DLA that "…chronic back and knee pain is the limiting factor." Given an opportunity to provide additional information regarding the impacts to the appellant's DLA in the March 22, 2017 letter, the GP wrote that the appellant suffers from significant depression currently under the treatment of her psychiatrist, and there was no information provided from the psychiatrist on the appeal.

The GP indicated that the appellant has been prescribed medications that interfere with her ability to perform DLA, specifically an anti-depressant medication causing nausea and pain medication causing constipation, and the anticipated duration of the medications is "lifelong." As previously discussed the appellant is assessed by the GP as being independent with moving about indoors and requiring periodic assistance from another person and takes significantly longer than typical with moving about outdoors, being assessed by the GP as able to walk 2 to 4 blocks unaided on a flat surface and climb 5 or more stairs unaided.

The appellant is independently able to perform every assessed task of the meals DLA and the pay rent and bills DLA. For the tasks of some DLA for which the appellant requires periodic assistance, the GP commented that "mobility greatly depends on level of pain from multi-joint osteoarthritis" (personal care DLA), or "ability depends on pain" (housekeeping DLA), "rides scooter in shops" or "limited to very light lifting/ carrying only" (shopping DLA), "dependant on mother for support" (medications DLA) or "limited mobility because of chronic pain" (transportation DLA) without specifying how often the pain reaches the level that causes the appellant to require assistance. The appellant stated at the hearing that in the summer months, her body functions better and she can manage physical activity which "helps loosen things up" so she has about half "good days" and half "bad days" in the month. The appellant stated that in the colder months of the year, she will have 20 days in the month when she will struggle and 10 days where she is doing okay. Although the advocate argued at the hearing that the legislation does not require the frequency and duration of the assistance to be specified and, therefore, the doctors do not know to include this detail in the application, the panel finds that the ministry reasonably determined that there was a lack of information to allow the ministry to conclude that the periodic assistance is required for extended periods of time. The GP had the opportunity to provide a clearer picture of the appellant's physical functioning on a "good day" and a "bad day" in his March 22, 2017 letter, and there was also no detail provided by the GP or the appellant's psychiatrist to indicate the frequency of variation in the appellant's functioning due to her severe mental impairment.

In her self-report, the appellant wrote that over the last 5 years, most of her conditions have gotten progressively worse. At the hearing, appellant stated that since the PWD application was completed, she has been to three different specialists in orthopedic surgery, she is getting cortisone shots in her knee every couple of months, and she had a CT scan of her back and they have discovered some of the vertebrae in her back are fusing. Although the GP wrote in the AR that the appellant is "deemed non-surgical," the advocate argued at the hearing that the appellant is waiting for a knee replacement, and this was confirmed by the GP in the March 22, 2017 letter. However, there was no additional information provided on the appeal from a prescribed professional to describe the deterioration in the appellant's functioning and the consequent impact on her ability to perform DLA, or to provide the missing detail regarding her need for periodic assistance with some tasks of DLA.

Section 2(2)(b) of the EAPWDA requires that a prescribed professional provide an opinion that an applicant's severe impairment directly and significantly restricts her DLA, either continuously or periodically for extended periods. There is no discretion provided to the ministry to rely on information regarding impacts to DLA that has not been confirmed as being in the opinion of a prescribed professional.

Considering absence of evidence of significant impacts to the two DLA specific to a severe mental impairment, and a lack of detail regarding the extent of periodic assistance required from another person with a few tasks of DLA, the panel finds that the ministry was reasonable to conclude that there is insufficient evidence from the prescribed professional to show that the appellant's overall ability to perform her DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

In the reconsideration decision, the ministry held that, as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required.

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.

While the appellant benefits from the help provided by her family, especially her son as her primary support person, as well as the psychiatrist as a health authority professional who provides counseling, as well as the use of a CPAP machine and cane, 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 pursuant to Section 2(2) of the EAPWDA was reasonably supported by the evidence, and therefore confirms the decision. The appellant's appeal, therefore, is not successful.