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 March 21 2017 that denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in the *Employment and Assistance for Persons with Disabilities Act*, section 2. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

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

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

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

The ministry also found that it has not been demonstrated that the appellant is of one of the prescribed classes of persons who may be eligible for PWD designation on the alternative grounds set out in section 2.1 of the Employment and Assistance for Persons with Disabilities Regulation. As there was no information or argument provided by the appellant regarding alternative grounds for designation, the panel considers that this matter not to be at issue in this appeal.

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 and 2.1

PART E – Summary of Facts

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

1. The appellant's PWD Designation Application dated 14 October 2016. The Application contained:
   - A Self Report (SR) completed by the appellant.
   - A Physician Report (PR) dated 28 October 2016, completed by the appellant's general practitioner (GP), who has known the appellant since 1995 and seen her 2-10 times over the past year, based on an office interview and chart review (20 years).
   - An Assessor Report (AR) dated 31 October 2016, completed by the same GP.

2. The appellant's Request for Reconsideration submitted on 22 March 2016, attached to which are the following:
   - A submission from the appellant's advocate dated16 March 2017.
   - A second Self Report (SR2), undated.
   - Revised PR and AR, with changes and additions made by a locum for the GP (the locum) based on an office visit/assessment, each entry initialed and dated 02 March 2017 by the locum.

The panel will first summarize the evidence from the PR and the AR, with the locum's changes and additions shown in *italics*, as it relates to the PWD criteria at issue in this appeal.

Diagnoses

The GP diagnoses the appellant with chronic anxiety and chronic back pain – mechanical. No date of onset given. The locum adds a diagnosis of *mood disorder – depression*, with no date of onset given.

Severity/health history

Physical impairment

PR:
Under Health History, the GP writes

> "She is very overweight at 160 cm tall & 133 kg she is not motivated/willing to make lifestyle changes that would improve her knees & back. She reports chronic back pain & x-rays showed mild degenerative changes in the lumbar spine."

The locum adds:

> *"Also, her chronic mechanical back pain, aggravated by her high BMI, severely affects her physical abilities continuously on a daily basis. She is only able to stand for about 10 minutes or sit for 20 minutes. Any bending, lifting/carrying aggravates her back. She gets daily assistance from family for cooking, and housework. Anything she does must be done in small portions & take an inordinate amount of time."*

Under additional comments, the GP writes, "She is very deconditioned and ideally should lose weight and enroll in exercise classes but she won't do this."

As this to the Degree and Course of Impairment, the GP indicates that the appellant's impairment will likely continue for 2 years or more. The GP comments, "Likely knee/back pain will worsen with

time."

Under Functional Skills, the GP/locum provide the following assessments:
The appellant is able to walk 2 to 4 blocks *(1 to 2 blocks)* unaided on a flat surface; can climb 2 to 5 steps; is limited to lifting 15 to 35 lbs. *(under 5 lbs.);* with no limitations as to how long she can remain seated.

AR:
Regarding mobility and physical ability, the GP/locum assesses the appellant as follows:
- Walking indoors – independent
- Walking outdoors – independent
- Climbing stairs – this takes significantly longer than typical.
- Standing – independent.
- Lifting – independent *(periodic assistance from another person required).*
- Carrying and holding – independent.

The locum comments, *"Daily assistance with lifting, i.e. unloading dishwasher, as causes too much back pain."*

Mental impairment

PR:
Under Health History, the GP writes, "Patient has chronic anxiety and chronic sleep problems. She avoids people and has difficulty with social interactions."

The locum adds:

> *"Chronic mood disorder with both anxiety & depression symptoms affect her ability, on a daily basis, to interact with people/focus/concentrate, and get motivated to do any tasks. This has been resistant to medical interventions & severely affects her on a daily basis."*

Under additional comments, the GP writes, "She has chronic anxiety which affects her daily functioning especially around others."

The GP and locum indicate the appellant has significant deficits in cognitive and emotional function in the following areas: executive, memory, emotional disturbance, motivation and *attention or sustained concentration.*

As to communications, the GP indicates that the appellant has no difficulties, while the locum indicates *she does, caused by extreme social anxiety.*

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

Regarding cognitive and emotional functioning, the GP indicates that the appellant's mental impairment has the following impacts in the listed areas:
- Major impact: none.
- Moderate impact: emotion, impulse control, insight and judgment, executive, motivation, and other emotional or mental problems (avoids people).
- Minimal impact: bodily functions, attention/concentration, memory, and other neuropsychological problems.

- No impact: consciousness, motor activity, language, and psychotic symptoms.

The GP comments, “Avoids people.”

Ability to perform DLA

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

The GP assesses the appellant as restricted in her ability to perform the following DLA on a periodic basis: basic housework, daily shopping, mobility outside the home, and social functioning.
The locum adds *personal self care on a periodic basis.*

The GP explains “periodic” as “Has episodic difficulties.” The locum adds *“– on a regular basis.”*
The GP explains the impact on social functioning as “*Avoids people where possible.”*
The GP describes assistance that the appellant needs with DLA as *“Gets help from children.”*

AR:
The GP/locum assess the assistance required for managing DLA as follows (the locum’s comments in parentheses):

- Personal care – GP: independent in all aspects; locum: independent in all aspects, except *periodic assistance from another person required for bathing (Needs help getting out of the tub. Only showers once per week), and for regulating diet (needs continuous support for regulating her dietary intake. Would benefit from counseling for this.)*
- Basic housekeeping – independent in all aspects.
- Shopping: independent for reading braces and labels, making appropriate choices and paying for purchases; periodic assistance from another person required for going to and from stores and carrying purchases home
- Meals – GP: independent in all aspects; locum: adds *periodic assistance from another person required for meal planning (difficulty meal planning to have budget get her through until next paycheque)”*
- Pay rent and bills – independent in all aspects.
- Medications – independent in all aspects.
- Transportation – independent in all aspects.

With respect to social functioning, the GP assesses the appellant as independent for making appropriate social decisions, interacting appropriately with others, dealing appropriately with unexpected demands and able to secure assistance from others. The GP assesses the appellant as requiring periodic support/supervision for developing and maintaining relationships.
The locum assesses the appellant as requiring continuous support/supervision for interacting appropriately with others commenting, *“Very anxious around people on a continuous basis, making it difficult for her to make appropriate social decisions. Therefore mostly avoids people when on her own.”*

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

Help provided/required

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

In commenting on help required for DLA, the GP writes, "Gets help from children."

AR:
The GP indicates that help is provided to the appellant by family.

The GP does not indicate that the appellant requires any of the listed equipment or devices to compensate for her impairment.

With regard to if help is required but there is none available, the locum writes:

> *"Psychiatric care & regular counseling by a clinical psychologist patient manage her chronic mental health issues & help provide motivation [for] her to better self-manage her disability."*

When asked to provide additional comments regarding support/supervision for social functioning that would help maintain the appellant in the community, including the identification of any safety issues, neither the GP nor the locum provided any further information.

Self Report

In her SR, the appellant describes her disability as chronic anxiety and degenerative disc disease. In describing how her disability affects her life and her ability to take care of herself, the appellant writes:

> "I do not sleep well at all. I have to take sleeping pills, which allows me to sleep a few hours a night. I am constantly worried about things, even little things. It causes me not to go out I was very much. When I am around others, they notice it, and tell me I am uptight about things. I don't have any friends and spent a lot of time alone. I'm so anxious that I gave up driving as I was too anxious to drive. I feel like my memory has really become a problem, maybe because of the medication [prescription sleeping aid] I am taking. Like when I am watching TV, if I change the channel, all forget what I had just been watching. I'm forgetting phone numbers that were once very familiar to me. Even reading has become difficult.
>
> My [son in early 20's] lives with me and he does the things for me that I'm not able to do, like vacuuming and emptying the dishwasher. My daughter comes over to help with changing bedding and she helps me go shopping. I have to hold onto the cart while shopping and I have to go sit down by the time I get to the cashier. My daughter has to back the groceries into the bags and also lists them into the cart and car for me, as I'm not able to do it due to my back pain. I can walk a block, but any more than that causes too much pain."

Request for Reconsideration

In addition to the changes/additions made in the PR and AR by the locum, the Request for Reconsideration also included:

<u>SR2:</u>
In SR2, the appellant writes that she feels that she was unjustly denied PWD designation

because her doctor did not sit down with her to fill out her form. He does not know what she does through day today. Her doctor thinks that her back issues are due to her being overweight, but she started experiencing pain in her back way before she got the bulk of her weight.

She suffers greatly from depression and it severely interferes with her everyday life issues. She has a lot of family help, as she requires help around the house with everyday duties. Her doctor was absent when she had to fill out her papers, so she got a replacement doctor who sat down with her and asked her how she suffers from day to day.

She adds a P.S. that she is been prescribed antidepressants but they do not seem to help

Advocate's submission
The advocate's submission went to argument, drawing on the changes and additions provided by the locum.

Notice of Appeal

In her Notice of Appeal, dated 28 March 2017, the appellant writes: "I am very depressed, and I attempted suicide on March 22. I was in the hospital. My depression is debilitating, and so is my anxiety. My depression interferes with my every day life.

Information submitted before the hearing

On 13 April 2017, the appellant's advocate submitted an Emergency Department Physician Assessment and Treatment Record, recording a visit to the ER at a local hospital on 22 March 2017 due to an overdose of a prescription medication. The advocate states that this Record was produced by the ER physician after the appellant's depression became so severe that she overdosed on prescription medication.

In the Record, the ER physician noted: "per EMS – [prescription drug] OD when bailiffs came to evict from home" and "unable to elicit any other info/hx from patient.

The hearing

At the hearing, the appellant's advocate took issue with the ministry's approach in the reconsideration decision of giving more weight to the GPs assessments than to the changes and additions provided by the locum in the PR and AR (see Part F, Reasons for Panel Decision, below). In support of her argument, the appellant stated that the locum is a retired physician who practiced for many years in the community and who now fills in for other physicians in the community in their absence. He is thus a fully qualified physician.

The appellant explained that, when she visits him, her GP does not spend much time with her and tells her that all her problems are mental ones. She feels that her GP does not listen to her or know about her day-to-day struggles. She has tried to find another physician in her community, but none of them are taking on new patients if it is known that one already has a physician. When she went to the GP to have her PWD Application filled out, there was no discussion and the GP told her that he would fill it out and to come back later to pick it up.

When she went to try to obtain additional information to submit with her reconsideration package, the GP was away and she was seen by the locum. He assessed her using a computer-based diagnostic questionnaire to come up with the diagnosis of depression. He also sat down with her,

going through the information requirements of the PR and AR.

In answer to other questions, the appellant stated that she now lives in a hotel where visitors are not allowed, so she misses the almost daily support/supervision of her son, which she finds important for her mental health. She is also attending a health authority mental health program.

She described how her anxiety causes a dry mouth, making her reluctant to go out and be with other people, including going shopping.

She stated that she can walk or stand for only 10 minutes at a time, before her back pain gets so bad that she has to sit and rest. Her GP will not prescribe her any prescription pain medications, so she is only on an over-the-counter analgesic that she takes, but this does not provide much relief. Only sitting down when the pain gets bad seems to help.

The appellant also explained that she has often tried losing weight but nothing works. Even when she was in withdrawal from a prescription medication and hardly ate anything, she did not lose any weight. Besides, on her limited budget, it is hard to eat healthy foods that might help with weight loss.

The appellant stated that she had been prescribed antidepressant medications in the past, and could not understand why her GP had not diagnosed her with depression.

The ministry stood by its position at reconsideration (see also Part F, Reasons for Panel Decision, below).

Admissibility of additional information

The ministry did not object to the admissibility of the additional information submitted by the appellant before and at the hearing.

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 – that is, panels are limited to determining if the ministry's decision is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. Thus panels are not to assume the role of decision-makers of the first instance by considering information that presents a new or different picture of the impairment or restrictions than that which was before the ministry when it made its reconsideration decision.

The panel finds that the appellant's reference in the Notice of Appeal to a suicide attempt and the ER physician's report on her overdose of prescription medication are not in support of the information and records before the ministry and reconsideration. There is nothing in the information before the ministry at reconsideration referring to suicidal ideation or abuse of prescription medication and no indication of any safety issues. The appellant's advocate has sought to draw on the ER physician's report as substantiating the severity of the appellant's depression. However, the ER physician's report does not refer to any diagnosis about the appellant's mental condition at the time or in her history, referring only to the circumstances that brought her to the hospital – "[prescription drug] OD when bailiffs came to evict from home." The panel cannot be expected to make a finding of causality between a diagnosis and a subsequent

event. The panel therefore does not admit the above information as evidence.

The panel finds that the information provided in the balance of the appellant's testimony at the hearing tends to corroborate the information provided in the PR, AR and SR2 and therefore admits this information as evidence pursuant to section 22(4) of the EAA.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry decision that determined that the appellant did not meet three of the five statutory requirements of Section 2 of the *EAPWDA* for designation as a person with disabilities (PWD) is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. The ministry found that the appellant met the age requirement and that, in the opinion of a medical practitioner, her impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that:

- the appellant has a severe physical or mental impairment;
- the appellant's DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

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

2 (1) In this section:

"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person 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 or nurse practitioner is likely to continue for at least 2 years, and
(b) in the opinion of a prescribed professional
(i) directly and significantly restricts the person's to perform daily living activities either
(A) continuously, or
(B) periodically for extended periods, and
(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),
(a) a person who has a severe mental impairment includes a person with a mental disorder, and
(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires
(i) an assistive device,
(ii) the significant help or supervision of another person, or
(iii) the services of an assistance animal.

The following section of the EAPWDR applies to this appeal:

2 (1)For the purposes of the Act and this regulation, "daily living activities",
(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:
(i) prepare own meals;
(ii) manage personal finances;
(iii) shop for personal needs;
(iv) use public or personal transportation facilities;
(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
(vi) move about indoors and outdoors;
(vii) perform personal hygiene and self care;
(viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:
(i) make decisions about personal activities, care or finances;
(ii) relate to, communicate or interact with others effectively.
(2) For the purposes of the Act, **"prescribed professional"** means a person who is

(a) authorized under an enactment to practise the profession of

(i) medical practitioner,

(ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

(i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or

(ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*,

if qualifications in psychology are a condition of such employment.

Severity of impairment

General considerations

The ministry began its analysis of the information provided regarding severity of impairment by noting that the diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. The ministry defined an "impairment" as a medical condition that results in restrictions to a person's ability to function independently or effectively. The ministry must consider the nature of the impairment and the extent of its impact on daily functioning based on the functional skill limitations and restrictions. The panel notes that the PR form also provides a definition along similar lines, while expanding on the restrictions to a person's ability to function to include "appropriately or for a reasonable duration." While the definition as framed by the ministry in its decision is not set out in the legislation, the panel finds that it is consistent with the overall intent of the legislation, with its focus on restrictions and help required.

In reviewing the information provided by the GP and the changes/additions by the locum in the PR and AR, the ministry stated that it gives greater weight to the report completed by the GP, given that he had been the appellant's physician for over 20 years, as compared to the additional information the appellant provided to the locum. At the hearing, the appellant's advocate argued that this approach to discounting the information provided by the locum was unreasonable, given that the locum had actually sat down with the appellant in reviewing the forms and taken her through a computer-based diagnostic questionnaire to arrive at a diagnosis of depression. By comparison, as the appellant stated at the hearing, the GP did not go through the forms with the appellant, only telling her that he would fill them out and for her to come back later to pick them up.

The ministry's position, as elaborated at the hearing, is that the appellant has been the GP's patient for over 20 years and he could be expected to know her better than the locum who had met with her once. The ministry argued that it cannot be expected to take into account the setting in which the PR and AR is completed. The ministry also argued it would be inappropriate for the ministry to give weight to documents in which one physician amended, by crossing out and replacing with something else, a medical opinion submitted by another physician without explanation for the changes. The

panel considers the ministry's arguments compelling, particularly as the locum did not provide any explanation for the changed assessments

In its consideration of the weight to be given to the respective assessments of the GP and the locum, the ministry did not address the relevance of a new diagnosis by the locum of “mood disorder – depression,” or later, “chronic mood disorder with both anxiety and depression symptoms.” In the PR, the GP diagnosed the appellant with chronic anxiety and chronic back pain – mechanical. The GP indicated that the appellant's impairment, arising from these diagnosed medical conditions, will likely continue for 2 years or more. The legislation states that the minister must be satisfied that a medical practitioner or nurse practitioner has provided an opinion that the impairment is likely to continue for at least 2 years. It is only an impairment that meets this duration criterion that can be considered in applying the three other “impairment” criteria at issue in this appeal. In introducing the diagnosis of depression, the locum did not provide an opinion on its duration.

Accordingly, as the locum had not provided an explanation for the changed assessments or confirmed that the appellant’s diagnosed depression will continue for at least 2 years, the panel finds the ministry was reasonable in giving more weight to the GP’s assessments.

Physical impairment

In the reconsideration decision, the ministry referred to the GP’s diagnosis relating to physical impairment as chronic mechanical back pain and quoted the narratives provided by the GP and the locum as reported under Health History in the PR (see Part E above). The ministry also noted that the GP has indicated that the appellant has not been prescribed any medication or treatment that interferes with her ability to perform DLA and does not require any prostheses or aids for her impairment. The ministry further noted that the appellant had submitted a self-report with her application, stating that it is important to note that this information is considered in conjunction with the assessments provided by her medical practitioner. The ministry also summarized SR2 submitted at reconsideration (see Part E above).

Before turning to the more detailed assessments in the PR and AR, the ministry stated that in its opinion the appellant does not have a severe physical impairment

The ministry then reviewed the GP's assessments as to mobility and physical ability (can walk 2 to 4 blocks unaided, etc.) and noted however that the locum reported more limited abilities (can walk 1 to 2 blocks unaided, etc.).

The ministry also noted that in the AR the GP assessed the appellant as independent with walking indoors, outdoors, standing, lifting, and carrying and holding, while taking longer climbing stairs. The ministry also noted that the GP assessed the appellate as independent with all of her DLA, requiring only periodic assistance with going to/from stores, carrying purchases home, and with mobility outside the home.

The ministry went on to note that the locum now reports that the appellant also has periodic restrictions with personal self-care. He also reports episodes of difficulty on a regular basis, and also reports that the appellant requires daily assistance with lifting as it causes too much back pain. He further reports periodic assistance required with bathing, meal planning/budgeting, and continuous support regulating dietary intake (would benefit from counseling in this area).

At this point, the ministry stated that it gives greater weight to the reports completed by the GP as compared to the additional information provided by the locum. As discussed above under general

considerations, the panel finds this approach reasonable.

On this basis, the ministry concludes that the appellant functions independently with most of her physical requirements for DLA and it is unclear why there was such a significant change reported by the locum with respect to her limits with walking and lifting, given that the x-rays only report mild degenerative changes, which the ministry views as not indicative of a severe physical impairment. The ministry also noted that the nature and extent of the periodic assistance the appellant requires has also not been described in enough detail to determine the extent of the help that is required and/or provided, nor was it clarified how many activities take significantly longer to manage.

At the hearing, in addition to the issue of the weight to be given to the GP/locum information, the appellant's advocate took exception to the above analysis as this related to periodic assistance. The advocate objected to the ministry's being dismissive and minimizing the assistance required by referring to it as "only periodic assistance," and argued that the legislation does not require a description of the periodic assistance. The panel notes that in the AR, there is a footnote that states, "Periodic assistance – refers to the need for significant help for an activity some of the time as would be the case where a person required help due to the episodic nature of the impairment." While in the PR the GP reported that the appellant "has episodic difficulties" and the locum adds "*– on a regular basis,"* there is no other information provided by the GP in the PR or AR about the episodic nature of her impairments – i.e. how they are present for a length of time (days or weeks), then subside, and then reoccur and the periodic assistance required during these episodes. The panel finds it reasonable for the ministry to expect some description of the nature of any periodic assistance and its frequency and duration, to determine if the activity requiring periodic assistance is significantly restricted and to assess whether the appellant's ability to perform the activity is restricted periodically for extended periods.

The ministry concluded its analysis by stating that being very overweight with knee and back pain and mild degenerative changes is not representative of a severe impairment to overall physical functioning.

Considering:

- the ministry reasonably gave more weight to the assessments provided by the GP,
- the GP's assessments of her mobility and physical abilities (can walk 2 to 4 blocks unaided and lift 15 to 35 lbs.),
- the degree of independence in performing DLA as assessed by the GP, with the need for periodic assistance reported in the AR limited to 2 aspects of the DLA of shopping, and
- the lack of information provided regarding the nature and extent of any periodic help required and whether it is required periodically for extended periods,

the panel finds that the ministry was reasonable in finding that it has not been demonstrated that the appellant has a medical condition that severely restricts her ability to physically function independently or effectively, and therefore it has not been established that she has a severe physical impairment.

<u>Mental impairment</u>

In the reconsideration decision, the ministry had given as background the narratives under Health History provided by the GP and the locum (see Part E above). In addressing the severity of mental impairment the ministry turned to the impacts of the appellant's mental impairment on daily functioning in the AR and noted that the GP had reported that the appellant's chronic anxiety affects her daily functioning, especially around others ("avoids people"). The ministry noted that while the GP reported no major impacts, he does however identify moderate impacts in the following areas:

emotion, impulse control, insight and judgment, executive, and motivation.

The ministry also noted that the GP reported her “social functioning to be independent but marginal.” The panel considers this latter statement to be unclear and somewhat inaccurate. The panel understands the statement means that the GP has assessed the appellant as being independent with respect to the 5 listed social functioning abilities (ability to make appropriate social decisions, etc.). In fact, the GP had assessed the appellant as requiring periodic support/supervision for being able to develop and maintain relationships, while being assessed as independent for all others. The GP had also assessed how the appellant's mental impairment impacts her relationship with her immediate and extended social networks as marginal functioning.

The ministry also noted that the locum reported that the appellant's extreme social anxiety affects her on a continuous basis, making it difficult for her to make appropriate social decisions. The panel finds this sentence inaccurate – in fact the locum assessed the appellant as requiring continuous supports/supervision for the ability to interact appropriately with others, not the ability to make appropriate social decisions.

The ministry did not address the evidence provided in the PR and AR with regard to the appellant's ability to communicate, an area that may be restricted by mental impairment. In the PR, the GP had indicated that the appellant has no difficulties with communications, while the locum had indicated that she did, with the cause being given as “extreme social anxiety.” In the AR, the GP assessed the appellant's ability for speaking and hearing as good, and for reading and writing as satisfactory.

The ministry concluded by stating that while both physicians report that the appellant's anxiety makes her avoid people on her own and moderately impacts many areas of her life, no major impacts have been identified, and therefore a severe mental impairment has not been demonstrated. At the hearing, the appellant’s advocate argued that given the many moderate impacts assessed by the GP of mental impairment on daily functioning, it would be reasonable to conclude that these moderate impacts would combine or accumulate into major impacts on her daily functioning. In the panel’s view, the ministry cannot be expected to deduce to what extent and in what areas of daily functioning moderate impacts might combine or accumulate into major impacts. The panel notes that the GP has not, in the space provided, given any description or explanation of such cumulative impacts, except to note, “Avoids people.”

Despite the inaccuracies noted above, taking into account placing greater weight on the assessments provided by the GP, and considering that the GP had reported no major impacts of the appellant's mental impairment on daily functioning and had provided no information describing the periodic support/supervision in one of 5 of her social functioning abilities, the panel finds the ministry was reasonable in determining that a severe mental impairment had not been established.

Direct and significant restrictions in the ability to perform DLA

According to the legislation, the direct and significant restriction in the ability to perform DLA must be a result of a severe impairment. The legislation – section 2(2)(b)(i) of the EAPWDA – requires the minister to assess direct and significant restrictions of DLA, either continuously or periodically for extended periods, in consideration of the opinion of a prescribed professional. As discussed above, this involves giving more weight in this case to the information provided by the appellant’s GP. 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 reconsideration decision, the ministry found that it was not satisfied that the appellant has a severe impairment that, in the opinion of a prescribed professional, directly and significantly restricts DLA continuously or periodically for extended periods. In analyzing the assessments provided in reaching this conclusion, the ministry noted that the degree to which the GP assessed her as independent in performing most of the DLA requiring physical effort, and the limited extent that periodic assistance is required, with no information describing such periodic assistance. As to social functioning, the ministry noted that while as a result of her anxiety she requires periodic support/ supervision in social settings and maintaining relationships, it is unclear how often such help is required.

In terms of specific assessments, in the PR the GP assessed the appellant as restricted on a periodic basis with basic housework, daily shopping, mobility outside the home and social functioning, and not restricted for all other DLA. These assessments provide no information regarding the degree of restriction. With regard to the DLA of moving about indoors and outdoors, in the PR the GP assessed the appellant as being able to walk 2 to 4 blocks unaided and climb 2 to 5 steps. In the AR he indicated that she is independent for walking indoors and outdoors and taking significantly longer than typical for climbing stairs. With regard to the 7 other DLA applicable to a person with a severe mental or physical impairment, in the AR the GP assessed the appellant as being independent for all, except for requiring periodic assistance from another person (no detail given) for going to and from stores and carrying purchases home for the DLA of shopping.

Regarding the two social functioning DLA listed in section 2(1)(b) of the EAPWDR 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), the GP has provided no information that there is any difficulty with the “decision-making” DLA in such areas as meal planning, making appropriate choices while shopping, budgeting, and taking medications as directed, while assessing her as independent for making appropriate social decisions. The GP has indicated that the appellant requires periodic support/supervision in one area of the “relate to effectively” DLA, (ability to develop and maintain relationships) but again the nature and degree of such support/supervision has not been explained.

Giving greater weight to the assessments provided by the GP, and taking into account the level of independence reported by the GP in the appellant’s ability to perform DLA and the lack of information as to the nature and extent of any periodic assistance/support/supervision required, the panel finds that the ministry reasonably determined that it has not been established that this criterion has been met.

Help with 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 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 help from her son and from a mental health program, since 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. The panel therefore confirms the ministry's decision. The appellant is thus not successful on appeal.