

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 9, 2017 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that her impairment is likely to continue for at least two years. However, the ministry was not satisfied the evidence establishes that:

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

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 2

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included the appellant's Persons With Disabilities (PWD) Application comprised of the appellant's information and self-report dated July 10, 2016, a physician report (PR) dated August 29, 2016 and completed by a general practitioner (GP) who has seen the appellant 2 to 10 times in the past 12 months, and an assessor report (AR) dated September 2, 2016 and completed by a social worker (SW) who has known the appellant since June 2016 and has seen her 11 or more times.

The evidence also included the appellant's Request for Reconsideration dated February 6, 2017 with the appellant's handwritten notes attached.

Diagnoses

In the PR, the GP diagnosed the appellant with peripheral neuropathy hands and feet and Ischemic Heart Disease, both with an onset in 2015, DM [Diabetes Mellitus] and Major Depressive Disorder-recurrent, both with the date of onset unknown. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities (DLA), the SW wrote: "persistent and severe major depression, chronic Post Traumatic Stress Disorder (PTSD), neuropathy- hands and feet."

Physical Impairment

In the PR, the GP reported:

- With respect to the health history, "patient unable to feel much in her hands and feet."
- The appellant does not require any prostheses or aids for her impairment.
- In terms of functional skills, the appellant can walk 1 to 2 blocks unaided on a flat surface, climb 2 to 5 steps unaided, with no limitation on how long she can remain seated. The appellant can do "no lifting."
- The appellant has continuous restrictions with mobility inside and outside the home. There are no comments regarding the degree of restriction.

In the AR, the SW reported:

- The appellant is assessed as taking significantly longer than typical with walking indoors, with an explanation: "4-limb neuropathy, shortness of breath; pain in legs, feet, hands, numbness in feet/hands; lack of hand/body strength; loss of fine/gross motor skills" and "...she needs frequent rest breaks after walking 30 paces and climbing stairs; experiences shortness of breath with any exertion."
- There is no specific assessment of a need for assistance or the use of an assistive device for any of the activities of walking outdoors, climbing stairs, standing, lifting, and carrying and holding.
- In the section of the AR relating to assistance provided, toileting aids and bathing aids are identified as routinely used by the appellant to help compensate for her impairment, as well as "food preparation tools." Regarding equipment required but not being used, the SW wrote: "sleep apnea machine."

In her self-report, the appellant wrote that:

- In August 2015 she was diagnosed with diabetes and had her first heart attack.
- She has no feeling in her hands and feet but they hurt all the time and she cannot sleep.
- She has problems walking because she gets dizzy and the pain is too much.
- Her medical problems include heart attack, high blood pressure, diabetes, sleep apnea, and neuropathy. She is still having issues with her heart and has been in the hospital a few times.

In her Request for Reconsideration, the appellant wrote:

- She cannot walk or stand for long because the pain is too much.
- She has balance problems that cause her to be unstable and to get dizzy and fall. She has fallen many times in the bathtub. She now has a bench in her bathtub so she can sit.
- She is having lots of issues with her stomach.
- She goes through a lot of pain if she eats, walks, stands too long.
- She still has pains in her chest, it is angina.

Mental Impairment

In the PR, the GP reported:

- The appellant has no difficulties with communication.
- The appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance and motivation.
- The appellant is restricted with her social functioning, which is described as: “patient is depressed because she can no longer take care of herself like she used to.”

In the AR, the SW reported:

- The appellant has a good ability to communicate with speaking, reading and hearing. The SW noted that the appellant has poor writing and commented “numbness of hands- neuropathy.”
- With respect to daily impacts to the appellant’s cognitive and emotional functioning, the SW assessed the appellant with major impacts in the areas of bodily functions, emotion, motivation, motor activity, and other neuropsychological problems. There are moderate impacts to cognitive and emotional functioning in the areas of attention/concentration, executive, and other emotional or mental problems, and minimal/no impacts in the remaining areas. The SW commented: “depression- persistent and severe; chronic PTSD... various medical physical challenges negatively impact overall mental health and mood stability; diabetes, sleep apnea, cardiac problems/attack and recently informed of compressed lower spine.”
- The appellant is independent and requires no support or supervision in making appropriate social decisions and with interacting appropriately with others. She requires periodic support/supervision with developing and maintaining relationships and securing assistance from others. She requires continuous support/supervision for dealing appropriately with unexpected demands.
- The appellant has marginal functioning in her immediate social network (note: “client is isolating from social activities”) and marginal functioning in her extended social network (note: “lives rurally”).
- Asked to describe the support/supervision required which would help maintain the appellant in the community, the SW commented that the appellant requires continued support from mental health and addiction services in her community.

In her self-report, the appellant wrote that she has severe depression and it makes it really hard to cope.

In her Request for Reconsideration, the appellant wrote her depression is very high and she had her pills changed to a higher dose. She sleeps an average of 2 to 4 hours a night even with sleeping pills.

Daily Living Activities (DLA)

In the PR, the GP reported:

- The appellant is “now unable to perform most ADL’s without taking considerable amount of time. Unsafe to do any vocation requiring work with her hands, especially with hot/ sharp objects as per her previous vocations.”
- The appellant has been prescribed medication that interferes with her ability to perform DLA and the anticipated duration of the medications is “unknown.”
- The appellant is continuously restricted with several DLA, specifically: personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside and outside the home, and use of transportation. While social functioning is restricted, there is no indication if this restriction is continuous or periodic.
- The appellant is not restricted with management of her finances.

In the AR, the SW indicated:

- The appellant takes significantly longer than typical with walking indoors and there is no assessment for walking outdoors.
- The appellant is independent with all of the tasks of the pay rent and bills DLA (note: “monthly expenses exceed income”) and the medications DLA.
- The appellant is independent and takes significantly longer with all of the tasks of the basic housekeeping DLA and the meals DLA.
- For the personal care DLA, the appellant is independent and takes longer with the tasks of dressing, grooming and bathing, transfers in/out of bed and transfers on/ off chair, with the comment “4-limb neuropathy.” The appellant uses an assistive device and takes longer with toileting (note: “uses raised toilet”) and is independent and uses an assistive device and takes longer with feeding self and regulate diet, with the comment: “tools to assist with meal prep; financial constraints impact nutrition and diabetes.”
- For the shopping DLA, the appellant is independent and takes longer with the tasks of going to and from stores, paying for purchases, and carrying purchases home, with the note: “4 limb neuropathy.” The appellant is independent with reading prices and labels and requires periodic assistance with making appropriate choices. The SW wrote: “hands/feet neuropathy affects all ADL’s and mental health; client has fallen and broken nose, black eyes, as well has cut her finger with knife while preparing meals- these have required sutures.”
- Regarding the transportation DLA, the appellant requires continuous assistance from another person and takes longer with getting in and out of a vehicle and the other tasks are not applicable to the appellant.

In her self-report, the appellant wrote that:

- She has problems picking up things, opening containers or cutting up veggies or anything.
- She has problems showering because she gets dizzy and has fallen.
- Doing housework takes her forever because she has to stop lots because she gets sore and tired.
- She does not cook much because it is too hard to wash dishes. She has broken many dishes.

In her Request for Reconsideration, the appellant wrote that she knows she needs help with everyday things but she is trying to do it herself and it just takes her longer.

Need for Help

With respect to the assistance provided by other people, the GP reported that the appellant "...does not have assistance at this time but would certainly benefit from home care." The SW indicated in the AR that the appellant receives help from health authority professionals. In the section of the AR for identifying assistance provided through the use of assistive devices, the SW identified toileting and bathing aids and food preparation tools, and indicated that the appellant needs a sleep apnea machine.

Additional information

In her Notice of Appeal dated March 22, 2017, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that she is in severe pain and has lots of limitations. She was unable to get her doctor to fill out his part because of the timing and she is hoping to have the help of her SW.

Prior to the hearing, the appellant provided the following additional documents:

- 1) Psychiatric Assessment dated March 10, 2016 regarding depression and anxiety symptoms. Her diagnoses include persistent major depression with predominantly major depressive episodes, current mood "severely depressed with active suicidal ideation" and minimal psychosis, as well as "chronic PTSD, severe." Her treatment plan includes psychiatric follow-up with therapy.
- 2) Mental Health and Addiction centre report dated November 18, 2016 including an impression that the appellant's mood continues to be severely depressed with active suicidal ideation and minimal psychosis (visual illusions) and her alcohol use disorder is in remission;
- 3) Final Report dated February 22, 2017 regarding a referral to the internal medicine clinic of the hospital for assessment of poly-neuropathy and possible arthralgias [pain in joints]. The assessment and plan includes that the appellant has had multiple falls and remains high risk for recurrent falls. Given that her diabetes control has been fairly adequate, her underlying neuropathic symptoms are thought to relate to chronic alcohol use and alcohol induced neuropathy. She would benefit from an OT and PT assessment and recommendation for mobility aids;
- 4) Outpatient clinic note dated March 3, 2017; and,
- 5) Undated handwritten notes by the appellant indicating that:
 - She needs frequent breaks after walking 10 to 15 paces, she has shortness of breath after any exertion, and loss of balance due to neuropathy.
 - She has trouble with stairs and can climb 2 to 5 stairs before she has to stop, she has limited strength in her legs, and going down stairs she feels like she is going to fall;
 - She can stand 2 to 3 minutes before her feet start throbbing and she has to sit;
 - She cannot lift a lot of things because of the loss of feeling in her hands, she drops things, and her left hand is worse than her right.
 - She cannot carry or hold items for long because of the feeling-loss in her hands. She cannot carry bags of pellets for heat.
 - Her restrictions are continuous in everyday life as she cannot open bottles or cans, cannot cut fruits or veggies because she cannot hold the items. The OT has given her some items that help with cutting.
 - Sweeping takes a lot longer as she has to stop and rest after about 2 minutes.
 - She has trouble doing dishes due to the dropping of items. She has used tape to hold onto items.
 - She cannot shower without a bath bench as her balance is very unsteady. She has fallen in the bathtub. She has no strength in her arms or legs.
 - She fell off a step stool in August 2016 and broke her nose.

At the hearing, the appellant and her SW stated that:

- The appellant's barriers have become extensive. She cannot walk for very long. She has an Achilles tendon that has "dropped down."
- Every day life is hard. She does not want to leave her home, to let other people see that something is wrong.
- She has difficulty cutting food since she cannot hold it.
- She goes on the treadmill every day for about a minute three times a day to get some exercise.
- She has sleep apnea that causes limited sleep and a referral has been made for her to get a CPAP machine.
- She has to use a bath bench to shower.
- She broke her nose when trying to hang curtains. She got dizzy and fell. She has to have surgery to repair her nose.
- She has diabetes and should be eating more veggies but she has difficulty cutting them and the pre-cut packaged veggies are too expensive.
- She has neuropathy and she cannot lift or carry the bags of pellets for her stove that weigh about 50 lbs. She has no strength in her hands. When she falls, it takes her a long time to get up.
- To vacuum takes a lot. Her left arm is worse than the right. She is right-handed.
- She has the grocery clerk put her groceries in several bags.
- An OT gave her some tools to help. She uses a cutting board that holds the food and knives that help.
- The SW sees that the appellant's condition is progressive and her daily functioning is becoming increasingly hard. She is concerned about the appellant's isolation because she does not see her condition stabilizing, she sees it getting worse. The appellant is living in a rural area because the rent is affordable. She has been there for 5 years.
- The appellant has difficulty with her daily hygiene and this is tied to her over-arching well-being and her emotional state.
- There is a lot of turn-over of medical professionals in her community and she has not known her doctor that long, but she has been in and out of the hospital.
- She has been under the care of a psychiatrist for 2 years.

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

Admissibility of Additional Information

The ministry did not object to the admissibility of the appellant's additional documents and did not raise an objection to the oral testimony on the appellant's behalf. The panel considered the information from the appellant as being in support of, and tending to corroborate, the impact from medical conditions referred to in the PWD application and the Request for Reconsideration, which were before the ministry at reconsideration. Therefore, the panel admitted this oral testimony in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a PWD, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the evidence does not establish that the appellant has a severe mental or physical impairment and that his DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a PWD are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person 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 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).

The EAPWDR provides 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.

(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.

Part 1.1 — Persons with Disabilities

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).

Severe Physical Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical impairment. The ministry acknowledged that the appellant had been diagnosed with several medical conditions, including peripheral neuropathy in her hands and feet, diabetes mellitus, and ischemic heart disease, and noted that while the GP's comment that the appellant is unable to do any vocation requiring work with her hands, the ability to work is not taken

into consideration for PWD designation. The ministry wrote that the GP reported that the appellant does not require an aid for her impairment while the SW indicated that the appellant uses meal prep tools, toileting aids and bathing aids. The ministry considered the appellant's functional skill limitations and wrote that, in the absence of an assessment in the AR of the appellant's mobility and physical ability, the evidence does not sufficiently describe or portray a severe impairment. The ministry acknowledged that the appellant experiences some degree of restriction due to her impairment, particularly with lifting, but the ministry was not satisfied that the combination of her functional skills, mobility and physical abilities exhibits a severe physical impairment.

A diagnosis of a serious medical condition or conditions 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 or for a reasonable duration. To assess the severity of an impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning.

Therefore, the ministry reasonably considered the impacts of the appellant's diagnosed medical conditions on her daily functioning, beginning with the assessments provided in the PR and in the AR. In the PR, the GP diagnosed the appellant with peripheral neuropathy hands and feet and Ischemic Heart Disease, both with an onset in 2015, and DM with an unknown date of onset. In the health history, the GP commented that the appellant is unable to do any vocation requiring work with her hands, and the panel finds that the ministry reasonably determined that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR. The ministry noted that the SW described the appellant's shortness of breath, pain in her legs, feet, and hands and numbness in her feet/hands as well as her lack of hand/body strength and loss of fine/gross motor skills; however, the ministry wrote that the SW did not provide any indication whether these symptoms restrict the appellant's ability to walk outdoors, climb stairs, stand, lift or carry and hold.

Given that the GP reported that the appellant can walk 1 to 2 blocks unaided, climb 2 to 5 steps unaided, with no ability to lift any objects, and no limitation on how long she can remain seated, the panel considers the ministry's rationale to be reasonable. In her Request for Reconsideration, the appellant wrote that she cannot walk or stand for long because the pain is too much, and she has balance problems that cause her to be unstable and to get dizzy and fall. The SW assessed the appellant as taking significantly longer than typical with walking indoors and that "...she needs frequent rest breaks after walking 30 paces and climbing stairs," without indicating how much longer it takes the appellant with walking indoors, that she requires assistance due to balance problems, or whether she needs assistance with any physical ability, particularly lifting. At the hearing, when asked to describe her restrictions with lifting, the appellant stated that she cannot lift or carry the bags of pellets for her stove that weigh about 50 lbs. as she has no strength in her hands, and she has the grocery clerk put her groceries in several bags so they are lighter for her to carry.

For the ministry to be "satisfied" that an 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 medical conditions on daily functioning, including by providing the explanations, descriptions or examples in the spaces provided in the PR and in the AR forms.

Additional information was provided in the Final Report dated February 22, 2017, which indicated that the appellant has had multiple falls and remains high risk for recurrent falls and that, given that her diabetes control has been fairly adequate, her underlying neuropathic symptoms are thought to relate to alcohol induced neuropathy, and that she would benefit from an OT and PT assessment and

associated recommendation for mobility aids. The GP reported that the appellant does not require an aid for her impairment, such as a mobility aid; however, the SW indicated that the appellant uses meal prep tools, toileting aids and bathing aids. At the hearing, the appellant stated that an OT gave her some tools to help in the kitchen, including a special cutting board and knives, but there was no reference on the appeal to the use of any mobility aids, such as a cane or walker. In her handwritten notes, the appellant wrote that she cannot shower without a bath bench as her balance is very unsteady and, at the hearing, the appellant stated that she recently fell and broke her nose. The appellant also wrote in her notes that she needs frequent breaks after walking 10 to 15 paces due to shortness of breath, she can climb 2 to 5 stairs before she has to stop, and she can stand 2 to 3 minutes before her feet start throbbing and she has to sit. The SW stated at the hearing that she sees that the appellant's condition is progressive and her daily functioning is becoming increasingly hard, but there was no specific change to the assessments of physical functioning as made in the PR and the AR, and as considered by the ministry in the reconsideration decision.

Given the GP's report in the PR of a moderate level of functional skills, with the exception of lifting, and the GP's emphasis on the appellant's employability, as well as the lack of specific assessments from the SW regarding mobility and physical ability, with no revised assessments provided on the appeal, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

Severe Mental Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided was sufficient evidence of a severe mental impairment. The ministry noted that the GP reported a significant deficit with cognitive and emotional functioning in the area of emotional disturbance and motivation while the SW indicated that these deficits have five major impacts, three moderate impacts and five minimal impacts to the appellant's daily functioning and, due to these inconsistencies provided in the two assessments, it is difficult to determine the overall level of the appellant's mental functioning. The ministry wrote that the GP reported that the appellant is restricted with social functioning, but does not indicate if the restriction is periodic or continuous.

The ministry reasonably considered the impacts of the appellant's diagnosed medical condition of Major Depressive Disorder- recurrent on her daily functioning; however, the ministry did not consider the comment by the SW, when asked to describe the mental or physical impairments that impact the appellant's ability to manage DLA, that she has "persistent and severe" major depression as well as "chronic PTSD." In the PR, the GP reported that the appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance and motivation and that she is restricted with her social functioning, with a comment that the appellant "...is depressed because she can no longer take care of herself like she used to." At the hearing, the appellant stated that she has not known the GP that long, with a high turn-over of medical professionals in her community, but she has been in and out of the hospital.

In the AR, the SW reported that the appellant has major impacts to her cognitive and emotional functioning in the areas of bodily functions, emotion, motivation, motor activity, and other neuropsychological problems. There are also moderate impacts to cognitive and emotional functioning in the areas of attention/concentration, executive, and other emotional or mental problems, and minimal/no impacts in the remaining areas. The SW commented: "depression-persistent and severe; chronic PTSD... various medical physical challenges negatively impact overall mental health and mood stability; diabetes, sleep apnea, cardiac problems/attack and recently informed of compressed lower spine." While the ministry reasonably considered the unexplained inconsistency between the assessments of the GP and the SW at reconsideration, the panel finds that the appellant provided additional information on the appeal that addresses this inconsistency,

and the panel placed weight on this evidence as being from mental health specialists.

The appellant stated at the hearing that she has been under the care of a psychiatrist for about 2 years. In her self-report, the appellant wrote that she has severe depression and it makes it really hard to cope. In the Psychiatric Assessment dated March 10, 2016, the appellant's diagnoses include persistent major depression with predominantly major depressive episodes, current mood "severely depressed with active suicidal ideation" and minimal psychosis, as well as "chronic PTSD, severe." Her treatment plan includes psychiatric follow-up with therapy. In the report dated November 18, 2016, the mental health and addiction centre conclusions include an impression that the appellant's mood continues to be severely depressed with active suicidal ideation and minimal psychosis (visual illusions) and her alcohol use disorder is in remission. At the hearing, the SW stated that she works with the appellant frequently and sees that the appellant's condition is progressive and her daily functioning is becoming increasingly hard. She is concerned about the appellant's isolation because she does not see her condition stabilizing, she sees it getting worse. The SW stated that the appellant has difficulty with her daily hygiene and this is tied to her over-arching well-being and her emotional state. The appellant wrote in her Request for Reconsideration that her depression is very high and she had her pills changed to a higher dose and she sleeps an average of 2 to 4 hours a night even with sleeping pills.

Given the additional information from psychiatric professionals provided by the appellant on the appeal, which the panel finds supports the assessment by the SW of several major impacts to the appellant's cognitive and emotional functioning, the panel finds that the ministry's conclusion that a severe mental impairment was not established under Section 2(2) of the EAPWDA was not reasonable.

Restrictions in the ability to perform DLA

In the reconsideration decision, the ministry was not satisfied that the appellant has a severe physical or mental impairment that, in the opinion of the prescribed professional, directly and significantly restricts DLA either continuously or periodically for extended periods of time.

According to the legislation, Section 2(2)(b) of the EAPWDA, the ministry must assess direct and significant restrictions to DLA in consideration of the opinion of a prescribed professional, in this case the appellant's GP and the SW. This does not mean that the other evidence is not factored in as required to provide clarification of the professional evidence, but the legislative language makes it clear that a prescribed professional's evidence is fundamental to the ministry's determination as to whether it is "satisfied." Therefore, the prescribed professional completing the assessments has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairments either continuously or periodically for extended periods.

In the reconsideration decision, the ministry reviewed the information provided in the PR and noted that the GP assessed continuous restrictions in the appellant's ability to perform all aspects of her DLA with the exception of management of finances and wrote "patient does not have assistance at this time but would certainly benefit from home care." The ministry considered the assessment by the SW in the AR that the appellant takes significantly longer than typical with all aspects of her DLA with the exception of managing her finance and medications, noting that "hand/feet neuropathy affects all ADL's and mental health." The ministry acknowledged that the appellant has certain limitations from hand and feet neuropathy but noted that the SW did not describe how much longer than typical it takes the appellant to manage her DLA and this makes it difficult to determine if the time taken represents a significant restriction to the appellant's overall level of functioning. The ministry wrote that the requirement for use of an assistive device for toileting and feeding self/regulate diet and the need for continuous assistance with one task of the DLA transportation (getting in and out of a

vehicle) does not establish that a severe impairment significantly restricts DLA continuously or periodically for extended periods.

The ministry reviewed the GP's assessment in the PR of continuous restrictions in many DLA, with the exception of management of finances, for which there are no restrictions, and social functioning, for which the restrictions are not defined as either continuous or periodic. As previously discussed, the GP wrote that the appellant is "now unable to perform most ADL's without taking considerable amount of time" and that it is "unsafe to do any vocation requiring work with her hands," placing an emphasis on the appellant's inability to work. As well, the GP has not indicated a response to a request for additional comments regarding the degree of restriction.

Regarding the 'move about indoors and outdoors' DLA, the appellant is assessed by the SW as taking significantly longer than typical with walking indoors and there is no assessment for walking outdoors. According to the GP, the appellant is able to walk 1 to 2 blocks unaided, and there is no requirement for an aid for her impairment, particularly a mobility aid. The ministry reasonably reviewed the information provided by the SW in the AR that the appellant is independent with all of the tasks of the pay rent and bills DLA and the medications DLA, and is both independent and takes significantly longer with most of the tasks of the other listed DLA, with no indication by the SW of how much longer it takes the appellant with these tasks. The appellant wrote in her Request for Reconsideration that she knows she needs help with everyday things but she is trying to do it herself and it just takes her longer. The exceptions are a requirement for periodic assistance for making appropriate choices when shopping, and the degree and frequency of periodic assistance is not described by the SW, and the requirement for continuous assistance for getting in and out of a vehicle. The ministry reasonably considered that the requirement for use of an assistive device for toileting and feeding self/regulate diet and the need for continuous assistance with one task of the DLA transportation does not establish that a severe impairment significantly restricts the appellant's overall ability to perform DLA continuously or periodically for extended periods.

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 panel finds that the ministry reasonably concluded that there is insufficient evidence to establish that the appellant is significantly restricted. Regarding the 'decision making' DLA, the SW reported in the AR that the appellant independently manages several decision-making components of DLA, specifically: personal care (regulate diet), meals (meal planning and safe storage of food), pay rent and bills (including budgeting), medications (taking as directed and safe handling and storage), and making appropriate social decisions. For the component for which the appellant requires periodic assistance from another person, specifically: shopping (making appropriate choices), there is no explanation or description provided by the SW to allow the ministry to determine that the assistance is required periodically for extended periods of time.

Regarding the DLA of 'relating effectively', the SW reported in the AR that the appellant requires periodic support/ supervision in her ability to develop and maintain relationships, with no information provided regarding the duration or frequency of the support required, and the appellant is independent with interacting appropriately with others. The SW assessed the appellant with marginal functioning in her immediate and extended social networks, commenting that she is "isolating from social activities" and she "lives rurally." The appellant stated at the hearing that she has lived in a rural area for 5 years because this is the only place she can find rent that is affordable. The GP reported that the appellant has no difficulties with communication, and the SW indicated that the appellant has a good ability to communicate with speaking, reading and hearing, and her poor writing is due to "numbness of hands- neuropathy," which the panel finds relates to her physical impairment and not to a mental impairment. Asked to describe the support/supervision required which would

help maintain the appellant in the community, the SW commented that the appellant requires continued support from mental health and addiction services in her community. There was no additional information provided on the appeal from the mental health professionals regarding the appellant's ability to perform the social functioning DLA specific to a severe mental impairment.

Given the lack of evidence of significant restrictions to those DLA that relate to a person with a severe mental impairment, the absence of information from the GP about the degree of restrictions with DLA, and the assessment by the SW that the appellant takes longer than typical with most of the tasks of DLA and no indication of how much longer, the panel finds that the ministry reasonably determined that the evidence is insufficient 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 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 GP indicated that the appellant "would certainly benefit from home care" and the SW reported that the appellant receives help from health authority professionals as well as toileting and bathing aids and food preparation tools, 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 also 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 pursuant to Section 2(2) of the EAPWDA, was reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant's appeal, therefore, is not successful.