

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated April 26, 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 ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

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 January 9, 2017, a medical report (MR) and an assessor report (AR) both dated January 9, 2017 and completed by a general practitioner (GP) who has known the appellant for more than 2 years and has seen her 2 to 10 times in the past 12 months.

The evidence also included the appellant's Request for Reconsideration dated April 4, 2017 with typed reasons of the appellant and an advocate attached.

Diagnoses

In the PR, the GP diagnosed the appellant with depressive disorder and anxiety disorder, both with an onset of more than 30 years. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities (DLA), the GP wrote: "able to manage ADL's; has difficulty with complex forms/ tasks."

Physical Impairment

In the MR and AR, the GP reported:

- The appellant does not require any prostheses or aids for her impairment.
- In terms of functional skills, this section of the MR is not applicable to the appellant.
- The section of the MR assessing mobility and physical ability is not applicable to the appellant.
- In the section of the AR relating to assistance provided, there are no assistive devices identified as being routinely used by the appellant to help compensate for her impairment, and this section of the AR has been marked as not applicable to the appellant.

In the Request for Reconsideration, the appellant's support worker wrote that the appellant does not disagree with the fact that there is no physical impairment.

Mental Impairment

In the MR and the AR, the GP reported:

- With respect to the health history, the appellant has "difficulty concentrating/ focusing on detailed tasks. Gets easily overwhelmed; frequent anxiety episodes. Difficulty dealing with stressful situation."
- The appellant has no difficulties with communication.
- The appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance and attention or sustained concentration, with the comment: "difficulty planning/ organizing tasks; easily overwhelmed. Difficulty concentrating/ 'unhappiness'."
- For additional comments, the GP wrote that the appellant "...has a longstanding history of depression/ anxiety since late teenage years. Tried various antidepressants/ anxiety (illegible) with some benefit. She has many issues with concentration/ focus on detailed tasks. Is easily overwhelmed by situations and experiences increase in her anxiety/ panic attacks."
- For assessing an ability to communicate in various aspects, the GP indicated that this section of the report is not applicable to the appellant.
- With respect to daily impacts to the appellant's cognitive and emotional functioning, the GP indicated that the appellant has moderate to major impact in emotion and both moderate and major impact in attention/concentration, as well as minimal impacts in executive and motivation. There are no impacts in the remaining areas, and the GP did not provide

additional comments.

- Regarding the impacts to the appellant's social functioning, the GP assessed the appellant as independent with most aspects, specifically: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, and securing assistance from others. There was no assessment with the aspect of dealing appropriately with unexpected demands, and the GP wrote: "anxiety increased in stressful/ unexpected situations."
- The appellant has good functioning in both her immediate and her extended social networks.

In her self-report, the appellant wrote:

- She has anxiety and depression.
- She has some difficulty getting out of bed in the morning, moderate lack of motivation and low energy.
- She has difficulties planning, organizing, etc.
- She has moderate to extreme anxiety when faced with tasks outside her routine.
- She required assistance to fill out forms.
- She has panic attacks and some tics due to her undiagnosed autism.
- She requires a low stress lifestyle.

In her Request for Reconsideration, the appellant's support worker wrote:

- The anxiety and feelings of being overwhelmed that the appellant experiences are so severe that she can at times feel suicidal and she has gone so far as to begin creating a plan.
- With a frequent anxiety episode, the appellant experiences a sense of "freezing" and an inability to complete the task at hand.
- With the difficulty planning and organizing tasks, the appellant has not unpacked boxes 6 weeks after her move.
- Her anxiety and inability to cope with stressful situations and people means she retreats into her home, and often her bed to avoid the stress of the day, which can result in her isolating, particularly when there are tasks at hand to be done.
- She has supported the appellant with her difficulty dealing with neighbors.
- Most days the appellant reports sleeping at least 16 hours a day.
- The challenge the appellant is experiencing is increasing in severity.

Daily Living Activities (DLA)

In the MR and the AR, the GP reported:

- The appellant has not been prescribed medication and/or treatments that interfere with her ability to perform DLA.
- Asked to describe the assistance needed with DLA, the GP wrote: "needs help with filling out detailed forms/ complex tasks."
- For the personal care DLA, the appellant is independent with all tasks, specifically: dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off of chair.
- Regarding the basic housekeeping DLA, the appellant is independent with all tasks, specifically: doing laundry and basic housekeeping.
- For the shopping DLA, the appellant is independent with all tasks, specifically: going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home.
- For the meals DLA, the appellant is independent with all tasks, specifically: meal planning, food preparation, cooking, and safe storage of food.
- Regarding the pay rent and bills DLA, the appellant is independent with all tasks, specifically:

banking, budgeting and pay rent and bills.

- For the medications DLA, the appellant is independent with all tasks, specifically: filling/refilling prescriptions, taking her medications as directed, and safe handling and storage.
- Regarding the transportation DLA, the appellant is independent with all tasks, specifically: getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation.

In her self-report, the appellant wrote that she requires assistance from community service agencies to help fill out forms, etc.

In the Request for Reconsideration, the appellant's support worker wrote:

- The appellant has not cooked a meal for 3 months and lost 30 lbs. during a 6-week period. She forgets to eat and, when she remembers, the anxiety created by having to cook is so strong she avoids it.
- The appellant has had periods when she has been unable to take medications as prescribed, which has resulted in decreased wellness. It is a challenge to plan ahead to get prescriptions re-filled. Without medications, the appellant reported feeling extremely anxious and irritable.
- Daily living tasks are daunting for the appellant and although she can perform many of the activities, she will not. These activities include house maintenance and personal care such as eating, drinking, and showering.
- The appellant has difficulty with simple tasks such as completing ministry stubs and 2 to 3 times a year forgetting to send in the stub, phoning to make a doctor's appointment, deciphering the washing machine, simple cleaning tasks, or hanging a picture.
- The challenge the appellant is experiencing is increasing in severity. She reports that in the last 6 months, tasks that she would have been able to do such as book an appointment, or to cook meals, she is no longer able to do.

Need for Help

With respect to the assistance provided by other people, the GP reported the help required for DLA is provided by community service agencies "for complex forms/ detailed tasks." The GP indicated that the section of the AR for identifying assistance provided through the use of assistive devices does not apply.

Additional information

In her Notice of Appeal dated May 5, 2017, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that she has struggled since she was a teenager. There is no "cure" for her anxiety and it often and frequently prevents her from performing regular daily tasks like managing her finances and interacting with others.

At the hearing, the appellant provided the following additional documents:

- 1) Written submission;
- 2) Print out of information from the Canadian Mental Health Association (CMHA) regarding depression, anxiety disorders and generalized anxiety disorder;
- 3) Print out of information from the Centre for Addiction and Mental Health regarding mental illness and addictions, facts and statistics;
- 4) Print out of ministry information for Persons with Persistent Multiple Barriers (PPMB) including an overview, policy and Frequently Asked Questions;
- 5) Letter dated June 18, 2012 to the appellant in which the ministry approved her for the PPMB category;
- 6) Undated letter in which the appellant's previous landlord wrote that the appellant was constantly late with her rent and, for the years that she lived in the suite, her living room was

- not used because of the piles of packed boxes from her move;
- 7) Photograph of the living room of the appellant's current apartment showing boxes piled up from her move in March 2017;
 - 8) Rent receipts from the appellant's current landlord for the months of April, May and June 2017; and,
 - 9) Mental Health and Addiction Services client service history for the period from January 1, 2010 to June 1, 2017 indicating 3 meetings in 2011 and 2 meetings in 2014.

At the hearing, the appellant's advocate stated:

- The appellant has struggled with mental health issues for over 30 years. As supported by information from the Centre for Addiction and Mental Health, 70% of mental health problems have their onset during childhood or adolescence.
- The appellant has experienced traumatic events in her childhood, which she is not comfortable talking about, and she saw a psychiatrist at the time and quit school.
- Over the years, the appellant attempted to address her mental health issues by attending group and one-on-one therapy.
- The appellant worked sporadically in her twenties and married and had a child in her thirties. The appellant believes her mental health contributed to the failure of the marriage.
- Her child was diagnosed with autism but her social anxiety prevented her from asking for assistance and she failed to complete important documents pertaining to her son's needs.
- Generalized Anxiety Disorder (GAD) is a mental illness belonging to the group of illnesses called "anxiety disorders." Worrying all the time can be hard on the body. GAD can leave a person feeling tired, restless or irritable all the time.
- The appellant attends a chiropractor and physio to address muscle tightness. She has also experienced stomach aches and hiatus hernia.
- The appellant has also struggled with depression. According to the CMHA, a mood disorder affects 1 in 8 Canadians at some point in their lives. Depression can be triggered by a life event, such as the loss of a job, the end of a relationship, or other life stresses such as moving to a new city or having a baby. People who have it cannot just "snap out of it," or make it go away. It is a real illness and the leading cause of suicide.
- The appellant has contemplated suicide before.
- The appellant was granted PPMB status approximately 5 or more years ago. The PPMB category provides assistance for those who have long-term barriers to employment that are not expected to be overcome in the short term despite all reasonable steps. Clients are provided with time and supports to overcome their barriers and move towards independence, or transition to other client categories including PWD designation.
- There has been no suggestion by the ministry that the appellant move towards independence.
- The appellant was placed in a volunteer position but this was unsuccessful. The appellant was so overcome with anxiety about making a mistake that she could no longer work there.
- "Severe" is defined in the Merriam-Webster dictionary as "causing great discomfort or hardship, very painful or harmful, requiring great effort and of a great degree."
- The appellant's mental health has precluded her from having to seek employment under the PPMB framework.
- The GP is not a mental health professional and perhaps is not trained to recognize the nuances of mental illness. Although she diagnosed the conditions, she may not be aware of some of the possible symptoms.
- The appellant admitted that she sometimes does not tell the GP about all of her symptoms as a result of her depression and anxiety. The appellant is anxious about speaking up.
- The GP may see the appellant on a "good day" where she appears to be functioning. However, there are days when the appellant cannot get out of bed.

- The appellant has now received a referral for psychiatric services and is awaiting an appointment.
- The appellant's physical impairment is secondary to her mental illness. She experiences stomach issues, tiredness and an inability to sleep.
- As a result of her anxiety and depression, the appellant does not care for herself. She sometimes does not care for her personal hygiene.
- The appellant does not cook for herself. She recently lost a significant amount of weight but the GP did not report this fact or seek to determine a cause.
- The appellant frequently reported not remembering certain dates, but the GP does not indicate any loss of memory function. The appellant feels her concerns about memory lapse have been dismissed by the GP.
- The appellant had been prescribed an anti-depressant medication and the appellant experiences drowsiness as a side effect.
- On some days, the appellant can manage some of her DLA. When she is struggling with her anxiety and depression, she cannot manage DLA.
- The appellant has noted that her depression and anxiety are increasing. The spiral of mental illness is paralyzing her ability to complete simple tasks.
- The appellant's former landlord attests to her late rent payment and the appellant's current landlord fortunately understands her restrictions.
- The appellant requires assistance with all facets of her life. She relies on her father who is a senior citizen and who often forgets when she has asked him for help. She relies on the services of her support worker and requires the assistance of a legal advocate.
- The appellant requires medication and therapy to manage her symptoms and they fall under the category of an "assistive device" as they help the appellant to perform DLA that she is otherwise unable to perform.
- The appellant attends counseling.
- Since mental illness is a disease that carries significant stigma, a person may mask symptoms and try to appear "normal."
- The support work has helped the appellant complete the PWD application and the process would not have gotten this far without her help. She also helped her when she got evicted from her previous residence, and when she needed to deal with other tenants.
- The appellant did not feel comfortable approaching the GP to provide another assessment or clarification of her assessment in the MR and the AR so this was not an option for the appeal.

At the hearing, the appellant stated:

- If she had PWD designation, she would feel less anxious knowing her rent and bills were always paid and she was not worried all the time about becoming homeless. Then she could relax.
- She does not trust her doctor because of comments made to her, so she often goes to a walk-in clinic for care.
- When she was evicted before, she went to the walk-in clinic for counseling and she was prescribed an anti-depressant medication.
- She is waiting for an appointment with a psychiatrist for an assessment.
- She has a friend who will sometimes help her. Her father will help too, but he often forgets that he has said he will help with a project like repairing the cabinets in her kitchen.

The ministry did not attend the hearing and relied on the reconsideration decision.

Admissibility of Additional Information

The panel considered the information provided in the letters from the ministry and the appellant's landlord, as well as the rent receipts, photograph, and the client service history, and the appellant's oral testimony, for the most part, 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*.

The panel considered the advocate's written submission and the print-outs of information about depression, anxiety disorders, generalized anxiety disorder, mental illness and addictions, and PPMB as argument on the appellant's behalf.

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 considered that the GP did not diagnose a physical condition and also did not suggest that the appellant may have a physical condition in the narrative of her report. The ministry wrote that the GP reported in the MR and AR that the assessments for impacts to her functional skills are not applicable to the appellant.

In the Request for Reconsideration, the appellant's support worker wrote that the appellant does not disagree with the fact that there is no physical impairment. At the hearing, the appellant's advocate referred to the information from the CMHA regarding anxiety disorders that worrying all the time can be hard on the body. The advocate argued that, according to the CMHA, GAD can leave a person feeling tired, restless or irritable all the time and the appellant's physical impairment is secondary to her mental illness. The advocate stated that the appellant experiences stomach issues, tiredness and an inability to sleep, and has had hiatus hernia. The appellant also attends a chiropractor and physio to address muscle tightness.

Given the absence of a diagnosis for a physical health condition and the report by the GP that none of the assessments for physical functioning are applicable to the appellant, and with no revised assessments by the GP or other medical professional 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 considered that the GP diagnosed the appellant with depressive disorder and anxiety disorder and wrote in the MR that the appellant has "difficulty concentrating/ focusing on detailed tasks," that she "gets easily overwhelmed," has "frequent anxiety episodes" and "difficulty dealing with stressful situation." Although the appellant wrote in her self report that she has some tics due to her undiagnosed autism, there was no further information provided regarding this potential health condition.

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.

The ministry wrote that the GP reported in the MR that the appellant has significant deficits in areas of cognitive and emotional functioning, specifically emotional disturbance and attention/concentration, and the GP narrated that the appellant has difficulty planning/organizing tasks, she is easily overwhelmed, and has difficulty concentrating. The ministry considered that in the AR the GP emphasized major impact to daily functioning in attention/concentration and moderate impact in emotion, and there are minimal to no impacts in the remaining areas of functioning. The ministry wrote that while the GP outlined that the appellant experiences 'difficulty' in these areas, the appellant does not present significant restrictions or limitations or an inability to complete the tasks.

The ministry also considered the information from the appellant and her support worker as set out in the Request for Reconsideration and concluded that overall the information is in keeping with the restrictions, limitations and degree of a moderate, rather than a severe, mental impairment. The ministry considered the information from that the appellant and her support worker that the

appellant's anxiety and feelings of being overwhelmed are so severe that the appellant at times feels suicidal and has gone so far as to begin to create a plan. The ministry wrote that the appellant and her support worker stated that the frequent anxiety episodes entail the appellant experiencing a sense of "freezing" and an inability to complete the task at hand. The ministry considered the example given of the appellant having not cooked a meal for months and losing 30 lbs. in a 6-week period. The ministry also reviewed the examples given of the appellant's difficulty planning and organizing tasks, that the appellant has not unpacked boxes several weeks after her move and has difficulty refilling prescriptions. The ministry also considered the information provided by the appellant and her support worker that most days the appellant reports sleeping at least 16 hours a day. The ministry reasonably considered that there was no further information provided by the GP regarding the need for treatment, such as through a referral to a mental health expert like a counselor or a psychiatrist.

At the hearing, the appellant's advocate argued that the plain, ordinary meaning of "severe" as defined in the Merriam-Webster dictionary is: "causing great discomfort or hardship, very painful or harmful, requiring great effort and of a great degree," and that the appellant's mental impairment has met this standard. The advocate reviewed that appellant's long history of decades of mental health concerns and stated that the appellant has contemplated suicide before. The advocate stated that the appellant had been prescribed an anti-depressant medication by another physician at a walk-in clinic, she has attended counseling, and she has received a referral to psychiatric services and is awaiting an appointment with a psychiatrist. The panel notes that the Mental Health and Addiction Services client service history for the period from January 1, 2010 to June 1, 2017 indicated that the appellant attended three meetings in 2011 and two meetings in 2014, and there was no record of the appellant attending counseling in 2016 or 2017.

The advocate also argued that the GP is not a mental health professional and perhaps is not trained to recognize the nuances of mental illness, and the appellant admitted that she sometimes does not tell the GP about all of her symptoms as a result of her depression and anxiety. The advocate suggested that the GP may see the appellant on a "good day" where she appears to be functioning and her assessment does not account for the days when the appellant cannot get out of bed. The advocate argued that the challenge the appellant is experiencing is increasing in severity. The advocate stated that the appellant was not comfortable with approaching the GP for an update or supplementation to, or clarification of, her assessment in the MR and the AR and there was no further information provided on the appeal from a medical professional. While the appellant is awaiting an appointment with a psychiatrist, the psychiatric assessment has not yet been conducted and there was no information provided from a mental health counselor or the physician from the walk-in clinic.

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 MR and in the AR forms.

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 GP reported in the AR that the appellant independently manages all of the decision-making components of DLA, specifically: personal care (regulate diet), shopping (making appropriate choices and paying for purchases) meals (meal planning and safe storage of food), pay rent and bills (including budgeting), medications (taking as directed and safe handling and storage),

transportation (using transit schedules and arranging transportation) and making appropriate social decisions. While the advocate argued that the appellant's former landlord attests to her late rent payment, the GP as the prescribed professional reported that the appellant is independent and does not require any assistance with paying her rent and bills.

Regarding the DLA of 'relating effectively', the GP reported that the appellant is independent and does not require support/ supervision with developing and maintaining relationships or interacting with others and she has good functioning in both her immediate and extended social networks. The appellant's support worker wrote in the Request for Reconsideration that the appellant's anxiety and inability to cope with stressful situations and people means she retreats into her home to avoid the stress of the day, which can result in her isolating, and she has supported the appellant with her difficulty dealing with neighbors. As previously noted, there was no additional information provided on the appeal from a prescribed professional to indicate that the appellant requires support or supervision in these areas. In the MR, the GP reported that the appellant has no difficulties with communication and, in the AR, that an assessment of the ability to communicate in specific areas is not applicable to the appellant.

Given the absence of sufficient evidence to establish that the appellant is significantly restricted with the two DLA specific to a severe mental impairment, and the lack of the lack of evidence from the GP of significant impacts to the appellant's cognitive and emotional functioning, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

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. 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 by the GP in the AR and considered that the appellant can complete all aspects of DLA independently, specifically the personal care DLA, the basic housekeeping DLA, the shopping DLA, the meals DLA, the pay rent and bills DLA, the medications DLA, the transportation DLA, and the social functioning DLA. The ministry noted that while the GP indicated that the appellant's anxiety is raised in stressful/ unexpected situations, the GP does not report that the appellant requires support or supervision with unexpected demands.

The ministry also considered the information from the appellant and her support worker as set out in the Request for Reconsideration that the appellant has difficulty with simple tasks such as completing ministry stubs and forgetting to send in the stub about 2 to 3 times a year, phoning to make a doctor's appointment, deciphering the washing machine, simple cleaning tasks, or hanging a picture. Although the information from the support worker indicated a need for assistance with simple tasks, when asked in the MR to describe the assistance needed by the appellant with DLA, the GP wrote:

“needs help with filling out detailed forms/ complex tasks.” In the AR, when asked to describe the mental or physical impairments that impact the appellant’s ability to manage DLA, the GP wrote: “able to manage ADL’s; has difficulty with complex forms/ tasks.” There was no additional information from the GP submitted on the appeal to indicate a change to this assessment of independence.

The ministry reviewed the support worker’s description in the Request for Reconsideration of the appellant’s struggle with extended networks such as her neighbors and her comment that building new relationships are very situational. As previously discussed, the panel finds that the ministry reasonably determined that there is not sufficient evidence of significant restrictions in the two social functioning DLA specific to a severe mental impairment, and no further information was provided on the appeal.

At the hearing, the advocate argued that the appellant was granted PPMB status, which provides assistance for those who have long-term barriers to employment that are not expected to be overcome in the short term despite all reasonable steps. The advocate argued that those in the PPMB category are provided with time and supports to overcome their barriers and move towards independence or they are transitioned to other categories including PWD designation, and there has been no suggestion by the ministry in the appellant’s case that she move towards independence. The advocate argued that the appellant was placed in a volunteer position but this was unsuccessful because the appellant was so overcome with anxiety about making a mistake that she could no longer work there. At the hearing, the appellant stated that if she had PWD designation, she would feel less anxious knowing her rent and bills were always paid and she was not worried all the time about becoming homeless, and she could relax. While employability is a consideration for PPMB status, the panel notes that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed DLA in section 2 of the EAPWDR.

Given the independence reported with DLA by the GP as the prescribed professional, and the lack of evidence of significant restrictions to those DLA that relate to a person with a severe mental impairment, 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.

At the hearing, the advocate argued that the appellant requires medication and therapy to manage her symptoms and they fall under the category of an “assistive device” as they help the appellant to perform DLA that she is otherwise unable to perform. The panel notes that the GP indicated that the section of the AR for identifying assistance provided through the use of assistive devices does not apply to the appellant, and while medication and therapy may be considered “assistive,” the panel finds that neither medication nor therapy can reasonably be considered “devices,” which is an integral part of the definition in Section 2(1) of the EAPWDA.

While the GP reported that the appellant receives help from community service agencies for complex forms and detailed tasks, 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.