

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 05 June 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 physical or mental 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) – sections 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 11 January 2017. The Application contained:
 - 2 Medical Reports (MR), one dated 02 January 2017, completed by a general practitioner (GP) who has known the appellant for 18 months and seen her 2-10 times in the past 12 months, and a second dated 31 January 2017. The panel will refer only to this second MR, as it reflects the GP also completing the Assessor Report at the same time (see immediately below).
 - 2 Assessor Reports (AR), one dated 13 January 2017, completed by the coordinator of a specialized victims service organization, who indicates she is not registered with a professional regulatory body, and the second dated 31 January 2017, completed by the appellant's GP. As the person who completed the first AR is not a prescribed professional, the ministry did not consider that AR, and for the same reasons, the panel will not consider the opinions and assessments contained therein as those of a prescribed professional.
 - A Self Report (SR) completed by the appellant.
2. The appellant's Request for Reconsideration dated 25 May 2017, attached to which is a letter from the appellant's GP dated 15 May 2017 and 2 other letters of support (see below).

In the MR, the GP diagnoses the medical conditions related to the appellant's impairment as mood disorder – depression, anxiety and PTSD symptoms (no dates of onset given).

The panel will first summarize the evidence from the MR, the AR and the GP's letter at reconsideration as it relates to the PWD criteria at issue in this appeal. [The GP writes that the information provided in the letter was based on a review of the ministry's original denial letter, an office interview with the appellant and written information provided by the coordinator of the specialized victims services organization.]

Severity of impairment

Physical impairment

MR:

The GP indicates that the appellant can walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, has no limitations with respect to remaining seated, and her lifting limitations are unknown

AR:

As to mobility and physical ability, the appellant is assessed as independent for walking indoors, walking outdoors, climbing stairs, standing, climbing stairs and lifting and carrying and holding.

GP's letter:

Re: Mobility and Physical Ability: "The appellant suffers lack of energy and motivation related to her depression that can make it difficult for her to complete these [mobility and physical ability] tasks."

Mental impairment

MR:

Under Health History, the GP writes:

“[The appellant] suffers from significant anxiety and depression, as well as PTSD symptoms (flashbacks, hyperarousal) related to past physical, emotional & sexual abuse perpetrated by an ex-partner. These symptoms have been exacerbated by this partner attempting to re-establish contact with her and her infant son, as well as a drop in legal charges. She also struggles in the emotional & financial aspects of being a single mother to a young child. She is receiving counselling and support locally.”

Under Additional Information, the GP writes, “Is in constant fear/anxiety of abusive ex partner attempting to re-establish contact. Depressed mood making it difficult to fulfill any employment requirements. Struggling to support infant son as a single parent.”

GP’s letter:

“[The appellant] suffers from PTSD symptoms, anxiety and depression related to physical, emotional and sexual abuse at the hands of an ex-partner. These symptoms are likely to continue for two or more years. Her partner is attempting to reestablish contact and continues to harass her. The police are involved and she requires escorts in and out of her house and her workplace for the safety of herself and her young son. She experiences PTSD symptoms including nightmares, flashbacks and hyper-vigilance daily and every night. She is constantly triggered by constant reminders of her abusive relationship while out in the community. She fears working with males at her workplace.”

MR:

The GP indicates that the appellant has no difficulties with communications.

The GP indicates that the appellant’s ability to communicate is good for speaking, reading, writing, and hearing.

GP’s letter:

Re: Ability to Communicate: “[The appellant] can struggle with speaking when her symptoms are triggered – she will stutter or disengage. She does not want to talk to anyone or be around anyone.

MR:

The GP reports that the appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance, motivation and impulse control. The GP comments, “Significant emotional disturbance – anxiety, depression, poor impulse control – e.g. ETOL.”

AR:

Asked to describe the appellant’s mental or physical impairments that impact her ability to manage DLA, the GP writes, “Significant anxiety, depression and PTSD symptoms related to abuse at the hands of an ex-partner. Struggles with ETOL abuse.”

The GP assesses the degree to which the appellant’s mental impairment restricts or impacts her functioning in the following areas as:

- Major impact: emotion.
- Moderate impact: impulse control.
- Minimal impact: attention/concentration.

- No impact: bodily functions, consciousness, insight and judgment, executive, memory, motivation, motor activity, language, psychotic symptoms, other neuropsychological problems, other emotional or mental problems.

The GP comments, "Experiences of flashbacks, hyperarousal, nightmares and poor sleep due to past abusive relationship. Severe anxiety around partner's return to province and attempts to re-establish contact. Often uses alcohol to help with symptoms. Struggles with focusing on tasks.

GP's letter:

Re: Cognitive and Emotional Functioning: "[The appellant's] symptoms at her worst cause major impact on her daily functioning including sleep disturbances, poor orientation of confusion, 'zoning out,' emotional dysregulation, poor impulse control (including substance use), poor judgment around decisions, poor concentration, inability to execute sequenced behaviours and poor memory. She regularly experiences lack of motivation. When triggered, her speech is disorganized and rushed. She is also very hyper-vigilant, constantly repeating behaviours like locking doors and cleaning the house."

Ability to perform DLA

MR:

The GP indicates that the appellant has not been prescribed any medication and/or treatments that interfere with her ability to perform DLA, and that she does not require any prostheses or aids for her impairment.

AR:

The GP assesses the appellant is independent for all aspects of personal care, basic housekeeping, shopping, meals, paying rent and bills, medications, and transportation.

GP's letter:

Activities of Daily Living: "She is independent for personal care although depressive symptoms make these difficult at times. She struggles with basic housekeeping and shopping and requires periodic assistance from her mother to deal with the organization of meals and finances. As [noted] above, she can require escorts for some of her transportation due to safety issues."

AR:

As to the support/supervision required for social functioning, the GP assesses the appellant as independent for making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.

The GP assesses the appellant's relationship with her immediate social network as marginal functioning and with her extended social networks as good functioning.

The GP does not describe any safety issues with respect to social functioning.

GP's letter:

"She requires Periodic Support for social functioning including from community-based specialist victim services and counsellors. She has marginal functioning with her immediate and extended social networks due to her mental health issues."

Help required

AR:

The GP indicates that the help required for the appellant's DLA is provided by family and community service agencies.

The GP does not indicate that the appellant requires any of the listed equipment or devices to compensate for her impairment and indicates that she does not have an assistance animal.

The GP describes the type of services provided by his office as ongoing office visits/supportive counseling (prenatal & postpartum care previously).

GP's letter:

"She requires periodic support for social functioning including from community-based specialist victim services and counsellors. She has marginal functioning with her immediate and extended social networks due to her mental health issues."

Self Report

In describing her disability, the appellant writes that every day is an internal struggle – she feels stressed with anxiety, depression and PTSD. It's a battle trying to focus and be strong for herself and her son. She is constantly in fear of her ex-partner coming after them and hurting them or fighting to take her son. Every second she worries about paying her bills and rent. Money worries make her physically ill. She goes on to write that she checks her doors and windows all the time to make sure they are safe. She cannot sleep because she worries all night, so she lays there with her eyes shut thinking about everything. If she does sleep, she usually wakes up from a nightmare from the physical and sexual attack she went through resulting in her being pregnant. She stresses a lot of work and about her future. Her anger sets in full force several times a day when she finds herself so mad and screaming, wanting it all to just go away.

In describing how disability affects her life and her ability to take care of herself, she writes that she feels very scattered, unorganized, flustered, constantly behind schedule in getting everyday things done. Setting goals or physically wanting to leave the house is hard. She honestly cannot focus on tasks, making her lose things and staring off into space. She is nervous and socially awkward, resulting in panic attacks. As a result she wastes time making sure they are safe. She writes that she is working with two counsellors and her doctor and will be joining the PTSD group for help. She feels lost, like a failure, angry and with mood swings. She is easily set off and that makes being around anyone hard. She wants to turn to substances just to make the craziness stop, but does everything not to. She gets sick to her stomach daily from worrying about enough money to pay for everything. She is constantly having flashbacks, which make it hard getting things done or concentrating. She worries that she is not as good a mother as so many are and that makes her sick to her stomach, crying and angry.

She goes on to write that she cannot turn off her mind but she tries. Working with some men makes her very scared, tired and mad. She feels the abuse has made her weak and she is not herself. She has no desire for things she usually liked to do and that makes her sad and feel worthless. This makes it hard to focus and she can't control herself. She feels like so much time is wasted

Request for Reconsideration

In her Request for Reconsideration, the appellant gives as reasons the ongoing extreme issues she is dealing with the mentally. She is being consistently seeking counselling and support. Financially, it is being very rough as work is very difficult. She feels the trauma and depression daily, making doing everyday activities difficult. She feels like a pinball, with daily ups and downs and being all over the map. As a single mom to a child of rape, plus the harassment the father has been putting her through, makes every day hard and she is mentally a mess trying to cope. Just some help would help ease a little of the strain.

In addition to the GP's letter, the appellant attached 2 other letters:

- Letter from the coordinator of a specialized victim services organization dated 11 May 2017. The coordinator provides a brief overview of the history of the abusive relationship between the appellant and her ex-partner, the involvement of police, and the appellant's psychological traumatization in documenting this abuse for a lawyer to obtain a family court protection order for the appellant and her child.
The coordinator goes on to explain that the appellant continues to struggle with symptoms of complex PTSD, that her anxiety in social settings, including but not limited to her place of employment, continues to present challenges that impact your daily life, and that the appellant is functioning in a level of trauma, struggling every day to go to work and with interactions with male co-workers.
- Letter from a counsellor dated 12 April 2017. The counsellor writes that the appellant has been a client of this counselling program since November 2015. She has attended 12 sessions of counselling as well as a 10-week psycho-education group on PTSD. The counsellor reports that the appellant has completed the PENN inventory and a PostTraumatic Stress Assessment. The former is considered an accurate measure of symptoms of PTSD. The appellant scored 61, with a score of 35 or above indicative of PTSD. The appellant also showed a high level of symptoms in the PostTraumatic Stress Assessment.

Notice of Appeal

The appellant's Notice of Appeal is dated 15 June 2017. Under Reasons, the appellant writes that it is unbelievable that she is being denied because she has no one else, plus a 1 ½ year old son. She is forced to get out of bed and function with this horrid disability. She is backed into a corner and it is getting worse rather than better. She can barely work three days a week and mentally she is fed up. She lives in fear and on a roller-coaster ride daily.

The hearing

Neither the appellant nor the ministry attended the hearing. After confirming that both parties were notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

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. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe physical or mental 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 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

The legislation provides that the determination of severity of impairment is at the discretion of the minister, taking into account all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed professional respecting the nature of the impairment and its impact on daily functioning. While the legislation does not define "impairment", the PR and AR define "impairment" as a "loss or abnormality of psychological, anatomical or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration." While this is not a legislative definition, and is therefore not binding on the panel, in the panel's opinion it reflects the legislative intent and provides an appropriate analytical framework for assessing the degree of impairment resulting from a medical condition.

When considering the evidence provided respecting the severity of impairment, the ministry must exercise its decision-making discretion reasonably by weighing and assessing all of the relevant evidence and cannot simply defer to the opinion of a prescribed professional as that would be an improper fettering of its decision-making authority.

In the reconsideration decision, the ministry noted the letters submitted at reconsideration from the coordinator of the specialized victim services organization and from a counsellor. The ministry stated these letters cannot be considered when assessing the appellant's eligibility for PWD designation, as the first letter was written by a person who is not a prescribed professional and it is unknown whether the counsellor is a prescribed professional.

Considering that the determination of severity of impairment is at the discretion of the minister, taking into account all the evidence, the panel finds that the ministry was unreasonable in its determination not to even consider this evidence, particularly as it relates to facts rather than opinions or assessments, and give it appropriate weight.

Physical impairment

In the reconsideration decision, the ministry determined that it is not satisfied that the information provided establishes a severe physical impairment. In reaching this conclusion, the ministry noted that the appellant has been diagnosed with mental (rather than physical) health conditions, though acknowledging that mental health conditions may have physical symptoms.

The ministry reviewed the assessments in the PR and AR relating to physical functioning (able to walk 4+blocks unaided, etc.) and mobility and physical ability (independent walking indoors and outdoors, etc.) and noted that the GP has indicated that the appellant does not require any prostheses or aids for her impairment. The ministry also noted that in her letter at reconsideration, the GP stated that the appellant can struggle with speaking when symptoms are triggered – she will stutter or disengage – and that in terms of her mobility and physical ability, she suffers lack of energy and motivation related to her depression. The ministry regarded these comments by the GP, when considered in conjunction with the assessments of physical functioning provided in the PR and AR, as indicating that the appellant's mental health conditions limit her ability to speak (at times) and to perform tasks requiring mobility and physical abilities, despite her being physically capable in these areas. As such, the ministry viewed this information as not indicative of physical impairment. The ministry therefore concluded that, overall, the information provided does not establish a severe physical impairment.

Considering that the appellant has not been diagnosed with a physical health condition, and given the assessments as reviewed by the ministry, the panel finds that the ministry was reasonable in determining that a severe physical impairment has not been established.

Mental impairment

In the reconsideration decision, the ministry determined that it is not satisfied that the information provided establishes a severe mental impairment. In reaching this determination, the ministry reviewed the narratives and assessments in the PR, AR and the GPs letter at reconsideration. The ministry noted that the GP diagnosed the appellant with a mood disorder – depression, significant anxiety, and PTSD symptoms. The ministry explained that diagnoses of medical conditions do not in themselves determine PWD eligibility or establish a severe impairment. To assess the severity of a mental impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning as evidenced by restrictions to cognitive, emotional and social functioning. The panel finds this approach to determination of the severity of mental impairment reasonable, considering the definition of impairment discussed above.

The ministry noted that in the MR and the AR, the GP had not noted any difficulties with communication, but in her letter at reconsideration writes that the appellant can struggle with speaking when her symptoms are triggered – she will stutter or disengage. The ministry noted that the GP does not indicate the frequency and duration of these times when the appellant symptoms are triggered such that she stutters or disengages and the impacts of her stuttering and disengagement are also unknown. This prompted the ministry to consider the DLA assessments, which indicate that despite these limitations, she is able to complete almost all activities independently without assistance or additional time. As a result, the ministry found this information insufficient to establish a severe mental impairment.

The ministry noted contradictions between the GP's assessments in the MR and AR regarding the appellant's cognitive and emotional functioning. In the MR, the GP indicates that the appellant has significant deficits in the areas of impulse control and motivation, but in the AR she indicates only a moderate impact in the area of impulse control and no impact in the area of motivation.

The ministry referred to the narrative in the GPs letter where she writes that the appellant's symptoms at her worst cause major impact on her daily functioning including: [numbers inserted by the panel] 1) sleep disturbances, 2) poor orientation of confusion, 3) 'zoning out,' 3) emotional dysregulation, 4) poor impulse control (including substance use), 5) poor judgment around decisions, 6) poor concentration, 7) inability to execute sequenced behaviours and 8) poor memory. She regularly experiences 9) lack of motivation. When triggered, 10) her speech is disorganized and rushed. She is also very 11) hyper-vigilant, constantly repeating behaviours like locking doors and cleaning the house. The ministry argued that the phrases "at her worst," and "when triggered" indicate that the appellant's symptoms vary and are periodically worse than other times. However, the GP does not indicate the frequency and duration of these times when her symptoms are worse such that she experiences these major impacts to her cognitive and emotional functioning. The effects of having periodic major impacts in these areas as well as ongoing nightmares, flashbacks, hyper-vigilance and a lack of motivation are unknown, prompting the ministry to again consider her daily living activity assessments. As before with the stuttering when triggered, the ministry stated that these assessments indicate that despite her limitations, the appellant is able to complete almost all activities independently without assistance or additional time. As such, it appears that these symptoms may be periodic as well, rather than ongoing and as such the ministry finds this information insufficient to establish a severe mental impairment.

The ministry concluded its analysis by noting the GP's report of the appellant's marginal functioning with both her immediate and extended social networks and her fear with working with men, and again argued that a review of her DLA assessments indicates that the appellant is able to complete almost all activities independently without assistance or additional time, and as such the ministry finds this information insufficient to establish a severe mental impairment. The ministry also stated that the narratives and assessments provided by the GP do not demonstrate that she requires significant help in making decisions about personal activities, care or finances, a need that is characteristic of a person with a severe mental impairment.

The panel has difficulty with the above ministry analysis: rather than considering "the big picture" in the context of the broad definition of impairment discussed above, the ministry analysis tends to address individual sets of narrative or assessments, in the panel's view over-parsing each one, and finding each not establishing a severe mental impairment because she is assessed as independent in her ability to perform DLA. In particular, in her letter at reconsideration the GP writes that the appellant experiences PTSD symptoms *daily and every night*. In her letter, the GP has listed 11 major impacts of the appellant's mental health condition on her cognitive and emotional functioning. While there may evidence to conclude that the appellant is able to perform the prescribed DLA independently or not taking additional time (see below under Direct and significant restrictions in the ability to perform DLA.) the ministry has not examined the evidence as to whether and to what degree the appellant's mental condition restricts her ability to function *appropriately* or *effectively*. In the panel's view, the evidence points to the appellant being very restricted in her ability to function appropriately (e.g. substance use, repeating behaviours like locking doors), and effectively (e.g. stuttering when triggered, poor judgment around decisions). Taking into account these broader aspects of impairment, the panel finds that the ministry was not reasonable in determining that the information provided does not establish a severe mental impairment.

Direct and significant restrictions in the ability to perform DLA

The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be the result of a severe impairment, a criterion established in this appeal. The legislation – section 2(2)(b)(i) of the EAPWDA – requires the minister to assess direct and significant restrictions of DLA in consideration of the opinion of a prescribed professional, in this case the appellant's GP. This does not mean that other evidence should not be factored in as required to provide clarification of the professional evidence, but the legislative language is clear that a prescribed professional's evidence is fundamental to the ministry's determination whether it is "satisfied." And for the minister to be "satisfied," it is reasonable for the ministry to expect that a prescribed professional provides a clear picture of the extent to which the ability to perform DLA is restricted, as assessed in terms of the nature and duration of help required, in order for the ministry to determine whether the restrictions are "significant."

In the reconsideration decision, the ministry stated that the information provided does not establish that, in the opinion of a prescribed professional, the appellant's ability to perform DLA is restricted continuously or periodically for extended periods and that as a result, she requires significant assistance from others to complete them. In making this determination the ministry noted that GP has indicated that the appellant has not been prescribed any medication and/or treatment did interfere with her ability to manage DLA.

The ministry also noted that in the AR, the GP indicates that the appellant is independent in her ability to perform all of her DLA. She does not indicate that she requires continuous assistance, periodic assistance, and assistive device, or significant additional time to complete any DLA.

In reviewing the GPs letter at reconsideration, the ministry noted that the GP had reassessed the appellant as requiring periodic assistance from her mother to organize meals and finances. The ministry pointed out that these include multiple aspects: meal planning, food preparation, cooking, and safely storing food, as well as banking, budgeting, and paying rent and bills. It is unclear whether the appellant requires assistance for all or some of these aspects. In addition the GP does not indicate the frequency and duration of the periodic assistance she requires. As such it cannot be determined at the periodic system she requires is for an extended period of time. The GP had also written that the appellant's struggles with basic housekeeping and shopping, but does not indicate that in order to perform those activities the appellant requires continuous assistance, periodic assistance, and assistive device, or significant additional time.

On this basis, the ministry concluded that it is not satisfied that the DLA assessments and narratives provided by the GP establish that the appellant has an impairment that significantly restricts her ability to perform yelling either continuously or periodically for extended

The panel notes that in this section of its decision the ministry did not specifically address the 2 "social functioning" DLA applicable to a person with a severe mental impairment as specified in section 2(1)(b) of the EAPWDR – make decisions about personal activities, care or finances (the "decision-making" DLA); and relate to, communicate or interact with others effectively (the "relating to effectively" DLA), though some of this was covered under severity of mental impairment.

In the AR, the GP assesses the appellant as independent (not requiring any support/supervision) for the social functioning areas of making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. In her letter at reconsideration, the GP writes that the appellant requires periodic support for social functioning including from specialist victim services and

counsellors. However, the GP does not indicate what area of social functioning requires periodic assistance, nor does she provide any description of the nature and type or frequency and duration of such assistance.

Regarding decision-making, the GP has not provided an explanation as to whether the help from the appellant's mother to organize meals or finances means help in making decisions in this respect. As to the substance abuse and the appellant's decision-making in this regard, the GP has not indicated whether any treatment or ongoing support is required.

In terms of the "relating to effectively" DLA, the GP has not described whether the appellant requires therapy for her stuttering when stressed. Further, while her counsellor has reported that the appellant has attended 12 counselling sessions and a 10-week psycho-educational program, the GP has not described the nature or frequency of any ongoing support/supervision that the appellant may require to manage her social functioning.

As discussed above under Severity of mental impairment, the evidence points to major impacts of the appellant's mental health condition on her ability to function appropriately and effectively. However, based on the assessments provided by her prescribed professional as reviewed above and the reported level of independence, the panel finds that the ministry was reasonable in finding that there was insufficient evidence to establish that, as a result of her impairment, her ability to perform the prescribed DLA is directly and significantly restricted, either continuously or periodically for extended periods.

Help required

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 the assistance of her mother and has had 12 counselling sessions and a 10 week psycho-educational group, 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.