

## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated November 23, 2017, which held that the appellant did not meet 3 of the 5 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 and duration requirements, but was not satisfied that:

- 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 those restrictions, the appellant requires an assistive device, the significant help or supervision of another person 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 reconsideration decision indicates that the appellant's PWD application comprised of a Medical Report (MR) completed by the appellant's general practitioner (the "Physician") dated August 1, 2017 and an Assessor Report (AR) completed by a psychologist (the "Psychologist") on July 24, 2017, and the appellant's Self-report (SR) dated August 8, 2017 was received on August 16, 2017 although the panel notes that the date stamp in the appeal record indicates August 14, 2017 rather than August 16, 2017.

The appellant's request for PWD designation was denied on October 3, 2017. On October 4, 2017 the appellant requested reconsideration, and on November 2, 2017 she completed her request for reconsideration (the "RFR"), which included her letter providing further information regarding her condition and a letter from the Physician dated October 27, 2017 (the "Letter").

On December 4, 2017, the tribunal received the appellant's Notice of Appeal dated November 27, 2017.

### Summary of relevant evidence

#### Diagnoses

In the MR, the Physician indicates that the appellant has been diagnosed with depression, anxiety post traumatic stress disorder (PTSD), traumatic brain injury, fracture right humerus, fracture right tibial plateau, fracture lumbar vertebrae, and chronic pain/possible fibromyalgia, with an onset of January 2015 for all conditions.

In the Health History portion of the MR, the Physician indicates that the appellant sustained severe and life altering injuries when she was a pedestrian struck by a car, including multiple fractures, right arm and knee, lumbar spine, traumatic brain injury, concussion and wide spread muscle strain. The Physician indicates that the appellant's fractures have healed but she has chronic pain and has had gradual worsening of her mental health.

The Physician indicates that the appellant has been her patient for over two years and she has seen the appellant 11 or more times in the past 12 months.

#### Physical Impairment

In the MR for Functional Skills, the Physician indicates that the appellant is able to walk 1 to 2 blocks unaided on a flat surface, can climb 5+ steps unaided, can lift 2 to 7 kg and can remain seated less than 1 hour. In the Health History portion of the MR, the Physician indicates that the appellant's fractures have healed but she has chronic pain. In the Additional Functional Skills Comments section of the MR, the Physician indicates that the appellant has been left with severe disabling chronic pain and that although she worked hard at physiotherapy and kinesiology she has chronic back and shoulder pain. The Physician indicates that the appellant's pain is aggravated by staying in any one position, so she can't sit or stand for long without moving.

In the AR, the Psychologist indicates that the appellant is independent with walking indoors, walking outdoors, climbing stairs and standing but requires periodic assistance from another person with lifting and carrying and holding. The Psychologist explains that the appellant has anxiety when walking in public places.

In the SR the appellant states that she suffers constantly from pain in her back ranging from pain at a level 6 to a 9 depending on the day, the weather, or what happened the previous day. The appellant states that sometimes the pain is so bad she does not get out of bed and she cannot stand or sit for long periods of time. The appellant states that she also feels pain in her knee and shoulder if the day is particularly bad, and she has difficulty sleeping because of her pain, which often leaves her exhausted.

In the Letter, the Physician states that the appellant sustained a traumatic brain injury, a fractured right shoulder, fractured right knee, fractured lumbar vertebrae, multiple neck and back strains and is in chronic pain as a result of her injuries. The Physician indicates that the appellant remains profoundly affected by the accident and is disabled in many aspects of her life emotionally and physically.

In the RFR the appellant states that she can walk 1-2 blocks but she requires stops and breaks and the chance to stretch. She states that she uses a stool to sit in the shower to manage cleaning herself, that she can sit for up to an hour before she needs to move but within 20 minutes she is already in pain and struggling. The appellant states that she needs help with carrying and holding whenever possible.

### Mental Impairment

In the MR, the Physician indicates that the appellant has significant deficits with cognitive and emotional function in the areas of executive, memory, emotional disturbance, motivation, impulse control and attention. The Physician comments that the appellant has PTSD, depression, anxiety, TBI, and difficulties with impulse control (blurts out thoughts without thinking of appropriateness).

In the Health History portion of the MR, the Physician indicates that the appellant has disabling depression, anxiety and PTSD and that despite counselling and medications she becomes suicidal and feels incapable of dealing with her chronic pain, fatigue, and emotional strain.

In the Additional Functional Skills Comments the Physician indicates that the appellant's depression intermittently worsens to severe and that the appellant has expressed suicidal ideations multiple times.

In the AR, the Psychologist indicates that the appellant's ability to communicate with speaking, reading (but can lead to headaches), and writing is good, and that her hearing is satisfactory (client-self-report). For Cognitive and Emotional Functioning the Psychologist indicates that the appellant has major impact to emotion, moderate impact to bodily functions, motivation and other emotional or mental problems, minimal impact in the areas of consciousness, impulse control, attention/concentration, executive, memory and motor activity, and no impact in the areas of insight and judgment, language, psychotic symptoms and other neuropsychological problems.

The Psychologist indicates that the appellant meets the criteria for Major Depressive Disorder (moderate) and that suicidal ideation has come up quite regularly. The Psychologist indicates that the appellant has panic attacks and generalized anxiety.

In the SR, the appellant states that the mild traumatic brain injury greatly affects her drive, memory, concentration, and focus and if her pain is bad it intensifies her symptoms. She states that she is drastically sensitive to light and constantly suffers moderate to severe headaches and migraines, about two to five a day. The appellant states that she has severe depression and anxiety which worsen her drive to do anything at all and sometimes motivation is non-existent to get out of bed. She

states that her emotions aren't easily managed and she often thinks about suicide. She states that anxiety is triggered by traffic and can sometimes be debilitating if the situation is severe.

In the Letter, the Physician indicates that the appellant has ongoing depression that is not responding well to medications and that the appellant has suicidal ideation and has recently attempted suicide requiring an emergency room visit. The Physician indicates that the appellant remains very emotionally fragile, is socially isolated, and has had difficulty with relationships since the accident. The Physician states that the appellant spends days in bed due to pain and depression and she has been denied further assistance from an insurance company for physiotherapy and kinesiology.

In the RFR, the appellant states that the information from the Physician in the Letter indicating that she went to hospital is not correct. The appellant states that she did ingest two bottles of pills but was not admitted to the hospital and was taken care of by family and friends so she could avoid being placed on a psychiatric hold. The appellant states that she has nearly made suicidal attempts at least 5 times and it is constantly on her mind.

### DLA

In the MR the Physician indicates that the appellant has been prescribed medications that interfere with her ability to perform DLA. The Physician explains that the medications, taken as needed, cause fatigue at times. For DLA, the Physician indicates that the appellant has continuous restrictions with basic housework and daily shopping and periodic restrictions with personal self-care, meal preparation, management of medications, mobility outside the home, use of transportation and social functioning. The Physician indicates that the appellant is not restricted with mobility inside the home or management of finances.

With respect to the periodic restrictions, the Physician indicates that the appellant's pain worsens with sitting, standing and movement, so she rapidly becomes fatigued and is in pain. With respect to social functioning the Physician comments that the appellant's anxiety, depression and mood changes have severely impaired her social functioning, that she has poor impulse control and these impacts have altered her close relationships.

With respect to the degree of restriction, the Physician further comments that it is variable but at times severe, especially when the appellant has severe depression.

In the AR, the Psychologist indicates that the appellant is independent with all aspects of personal care but requires periodic assistance with laundry and basic housekeeping, noting that her father helps. With respect to shopping the Psychologist indicates that the appellant is independent with reading prices and labels, making appropriate choices and paying for purchases but requires periodic assistance from another person with going to and from stores and carrying purchases home, explaining that she needs her father's help with lifting and carrying. The Psychologist indicates that the appellant is independent with all aspects of meals, explaining that the issue is more a problem of motivation and self-care. The Psychologist indicates that the appellant is independent with all aspects of paying rent and bills and medications except that she requires periodic assistance with taking medications as directed, explaining that she needs to be reminded or she tends to forget to take them. The Psychologist indicates that the appellant is independent with all aspects of transportation, describing that while the appellant can do it she experiences back pain.

The Psychologist indicates that the appellant is independent with all aspects of social functioning but explains that the appellant can have problems with social anxiety, that relationships can be easily distressing for her and that she can become overwhelmed. The Psychologist indicates that the

appellant has good functioning in her immediate and extended social networks but notes “somewhere between good and problematic”.

In the SR, the appellant states that her injuries and chronic pain have dramatically impacted her life. Using public transportation is difficult and painful even if she is sitting. Her pain has affected her hobbies and ability to do them as she used to. Her pain keeps her from attending school and she misses out on extremely important lessons because she is often alienated from teachers and classmates alike because of her spotty attendance. The appellant states that sometimes her motivation is non-existent to get out of bed, bathe, or eat. She states that her room is always messy and she struggles to clean it or keep it clean. She feels pain doing dishes and cooking and needs her father’s help going shopping and putting things away. The appellant states that carrying a basket of laundry filled with clothing is too hard and heavy and bending down to switch the clothes from the washer to the dryer is difficult.

The appellant states that her medications often cause drowsiness, which adds to the exhaustion already present. She states that she is very limited at the gym or doing exercises, and constantly needs to take breaks. After working out she cannot do anything else later in that day and her day needs to be planned in detail if she wants to achieve everything she needs to. The appellant states that she can barely take care of her own cat and it hurts to get down to pet him. She states that she can’t empty or clean his litter box and her father has to do it.

In the RFR the appellant states that the information provided by the Psychologist indicating that she is independent in all areas of social functioning is not entirely true. The appellant states that she has not been able to form any deep or long standing connections with people and has lost friends because of her inability to go out and function. She states that her anxiety makes it difficult to connect with people and even phone calls are a difficult challenge. The appellant states that she can function fine within her family unit but she does not really have a social network and feels alienated and alone because of her condition. The appellant states that the frequency of her restrictions is periodic because all she has is her father to help and he is not always around. The appellant states that she can clean her own dishes and can sometimes clean her room but sometimes it won’t happen for months and when she cleans, it takes her a week because she needs so many pauses and breaks.

The appellant states that self-care is restricted mostly because of severe depression and lack of motivation. She states that she can go weeks without showering and sometimes she won’t brush her hair. She can prepare meals in cans or boxes and she eats junk, as she cannot cook nutritional meals. The appellant states that she has gained over 50 pounds because of this and suffers from anemia.

In the Letter, the Physician indicates that the appellant did go to school in the last two years, attempting a drama program and while she derived emotional benefit her physical pain has worsened. The Physician indicates that the appellant missed approximately 25% of her classes due to widespread pain and depression. The Physician also indicates that while in class, the appellant often has to change her position: standing, stretching, resting and has difficulty paying attention. The Physician indicates that the appellant has difficulty using public transportation because of worsening back pain due to prolonged sitting and standing and often arrives at class already exhausted from her commute. The Physician indicates that the appellant is unable to support herself and is unable to sustain employment.

### Need for Help

In the MR, the Physician indicates that the appellant does not require any prosthesis or aids for her impairment. The Physician indicates that the appellant needs assistance with shopping, meal prep, rides at times as her pain is aggravated by standing and sitting. When she is depressed, she needs reminders to bathe and take medications.

In the AR, the Psychologist indicates that the help required for DLA is provided by the appellant's family (father) and friends. The Psychologist describes that the appellant will tend to just withdraw to avoid and psychological support helps her to continue to push herself. The Psychologist does not indicate that the appellant uses any assistive devices and she does not have an Assistance Animal.

In the SR, the appellant states that she requires help from her father with cooking, lifting and carrying, housework, going shopping, and putting things away.

In the RFR, the appellant states that she requires help from her father but he is not always around.

### **Additional information provided**

In her Notice of Appeal dated November 27, 2017 the appellant states that she disagrees with the reconsideration decision because she does have both a severe mental and physical disability that affects her life to the point everything is horrible and difficult and severely impaired.

Prior to the hearing the appellant submitted a three-page submission (the "Submission") dated December 19, 2017 prepared by her advocate and occupational therapist (the "OT"). In the Submission the OT states that the appellant sustained multiple injuries in an accident a few years ago and has ongoing physical, cognitive, and emotional difficulties. The OT indicates that she agrees with the information in the AR, but indicates that the Psychologist has had limited opportunity to observe the appellant's physical abilities and functional abilities in the community as their sessions are confined to an office environment. The OT indicates that she has worked with the appellant since February 2015 and continues to review her status with home visits, regular telephone monitoring and joint sessions with the kinesiologist working under her direction for a supervised gym and pool program.

The OT states that the appellant is able to walk short distances (1 to 2 blocks) but reports a significant increase in her back pain and right knee pain after this distance. While walking aids were considered, it was determined that the appellant should continue to walk unaided "as tolerated". The OT indicates that the appellant's ability to climb stairs is limited by pain in her right knee and back and she continues to use a shower chair to assist with shower/bath transfers. The OT indicates that the appellant relies on her father to assist with the majority of meal preparation, grocery shopping, and cleaning and she has limited ability to bend, lift, or stand for extended periods of time.

The OT states that the appellant finds using public transportation both physically and emotionally challenging due to severe pain and increased anxiety when walking in the community or using public transportation. She relies on her father for transportation for longer distances and to help with her grocery shopping due to her severe anxiety and PTSD. The OT states that the appellant continues to report symptoms of severe depression and at times, suicidal ideation. The OT indicates that the appellant's sleep pattern has been significantly affected by pain and anxiety and she is often too exhausted or in too much pain to attend school. The OT reports that when the appellant has been able to sleep for a few hours she presents well but during home visits she frequently presents as

fatigued, disorganized, and socially isolated. The OT states that the appellant is unable to bring friends back to her home environment, which she shares with her father and uncle. The OT indicates that their sessions are completed in the appellant's bedroom and that the appellant appears to lack the motivation or physical energy to organize her room or her possessions. She states that her low mood and symptoms of depression and anxiety make it very challenging for the appellant to form a good network of support. The OT indicates that the appellant continues to participate in her rehabilitation treatment program, but her recovery and progress have been slow and that her ongoing pain, anxiety and depression are significantly affecting her ability to function independently and effectively in the community.

At the hearing the appellant stated that she has been unable to participate in her drama classes because the additional movement causes her increased pain. The appellant stated that she cannot do much more than her kinesiology program and when she does she has increased pain for the next few days. The appellant stated that she is not getting any more funding from the insurance company and cannot afford a gym pass. She stated that her father does everything for her such as meal preparation, housework and grocery shopping but she tries to clean her room and when she does it takes her a week. The appellant stated that  $\frac{3}{4}$  of her day is spent lying down and when she goes to school she constantly has to change positions. The appellant states that she can make a sandwich but she cannot make a complete dinner.

The appellant states that when completing the AR, the Psychologist only had a short time and missed including information and that her social functioning is not good as reported. The appellant states that her social functioning is challenging due to her depression and anxiety. The appellant stated that her world is very small consisting mostly of her father, aunt, uncle and grandmother. The appellant stated that most of the days of the week she cannot function and when she does she has increased pain. The appellant did not voice her concerns to the Psychologist about the missing information in the AR and did not ask her for any further information to clarify the AR as she had no further funding to do so.

At the hearing the OT stated that the appellant presents well and comes across better than she is actually doing but she has spent a lot of time with the appellant in her home and has observed that she is not doing as well as she presents. The OT stated that the AR is more optimistic and that with respect to social functioning she is of the opinion that the appellant needs periodic support/supervision and that she is often overwhelmed. The OT states that there are some days when the appellant can't get out of bed because of her pain and at school she has had to take a lot of breaks and has increased pain. The OT stated that the appellant has followed through on all recommendations but has ongoing pain and little improvement. The OT stated that she has spoken to the appellant's psychiatrist who fully supports the application but was not able to get anything in writing in time for the appeal.

### **Admissibility of New Information**

The ministry did not object to the new evidence.

The panel has admitted the appellant's oral testimony, the OT's oral testimony and the Submission, as they are evidence in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the information corroborates the information provided by the Physician in the MR and provides clarification and expands on the appellant's information in the SR and the RFR.

The panel has accepted the information in the Notice of Appeal as argument.

## PART F – Reasons for Panel Decision

### **Issue on Appeal**

The issue on appeal is whether the ministry's decision to deny the appellant 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. In particular, was the ministry reasonable when concluding it was not satisfied that

- a severe physical or mental impairment was established;
- 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 those restrictions, in the opinion of a prescribed professional, the appellant requires help, as it is defined in the legislation, to perform DLA?

### **Relevant Legislation**

#### **EAPWDA**

**2** (1) In this section:

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

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

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

- (a) in the opinion of a medical practitioner 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).



## EAPWDR

### 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.

(3) The definition of "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

### 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).

### **Panel Decision**

The legislation provides that the determination of severity of an 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 MR 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.

### **Severe Physical Impairment**

The appellant's position is that the evidence demonstrates that she has a severe physical impairment. In particular, the appellant states that she cannot sit or stand for a long time, must constantly change positions, has chronic pain (ranging from 6 to 9) that limits her ability to do any activities, and that her injuries have profoundly impacted her life. The appellant states that due to her pain she is often in bed for most of the day and is often exhausted.

The appellant's position is that the ministry has not reasonably considered all of the information provided and that when considering all of the information including the Submission, the ministry should conclude that the appellant's physical impairment is severe.

The ministry's position is that the information provided does not establish a severe physical impairment. The reconsideration decision indicates that it considered all of the information regarding the appellant's impairment but that the functional skills reported by the Physician in the MR are not indicative of a severe impairment of physical functioning. The ministry notes that while the Physician indicates that the appellant has missed many days at school due to pain and is incapable of working, employability is not set out as an eligibility criterion of the PWD legislation.

The reconsideration decision states that the Psychologist did not describe the frequency or duration of periodic assistance required with lifting and carrying/holding and as the Physician indicates that the

appellant can lift 2 to 7 kg, this is considered sufficient ability to lift a variety of household and shopping items. The ministry notes that the Psychologist indicates that the appellant is independent with the majority of listed areas of mobility and physical ability and that the Physician does not describe how long the appellant can remain sitting or standing. The ministry acknowledges that the appellant experiences impacts to her physical functioning due to her medical conditions but finds that a severe impairment of her physical functioning has not been established.

The information in the MR indicates that the appellant sustained fractures to her right humerus, right tibial plateau and lumbar vertebrae and while the fractures have healed the appellant has chronic pain and possible fibromyalgia. The MR indicates that the appellant is able to walk 1 to 2 blocks unaided on a flat surface, can climb 5+ steps unaided, can lift 2 to 7 kg and can remain seated less than 1 hour. The AR indicates that the appellant is independent with walking indoors, walking outdoors, climbing stairs and standing but requires periodic assistance with lifting and carrying and holding. While the reconsideration decision states that the Physician does not describe how long the appellant can remain sitting or standing, the panel finds that the Physician, by indicating that the appellant can remain seated less than one hour, did provide some information regarding duration as one hour would mean less than 60 minutes. However there is no further information from the Physician as to how much less than an hour the appellant can remain seated and whether that might be 10 minutes, 30 minutes or 45 minutes.

While the Physician describes the appellant's pain as severe and disabling, the functional skills reported in the MR appear inconsistent with the Physician's description of the appellant's condition and with the appellant and OT's reports of her functional limitations. While the OT explained that she has also spoken to the appellant's physiatrist who supports her application for PWD, there was no information from the physiatrist describing the appellant's functional limitations.

The information provided by the appellant and the OT indicates that the appellant can perform the functional skills described by the Physician and the Psychologist but that all activity causes her increased pain. In addition, the Physician in the MR indicates that the appellant does not require any prostheses or aids of her impairment whereas the appellant and the OT indicate that she uses a stool to shower, as she cannot sit long to wash herself. The information from the OT and the appellant indicate a more severe impairment than the information provided in the MR and the AR; however the Letter from the Physician does not provide further description of the appellant's specific functional limitations. In the Letter the Physician indicates that the appellant has ongoing chronic pain and often spends days in bed due to pain and depression, but the Letter seems to focus mainly on the appellant's inability to attend school full time or work. However, employability is not a criterion for eligibility as PWD

While the appellant, Physician, and the OT indicate that the appellant does not have any further funding for a rehabilitation program, the information provided indicates that the appellant has been working with a kinesiologist under the direction of the OT. Although the appellant reports increased pain and inability to do little else on some days after she has been to the gym or exercised, the panel finds that this information also supports the ministry's reconsideration decision that the appellant's physical functioning is more indicative of a moderate rather than severe impairment.

In addition, while the AR indicates that the appellant requires periodic assistance with lifting and carrying and holding, the Physician indicates that the appellant can lift 2 to 7 kg. The panel finds that the ministry was reasonable in determining that the ability to lift 2 to 7 kg is sufficient ability to lift a variety of household and shopping items.

Based on the foregoing, the panel therefore finds that the ministry reasonably determined that a severe physical impairment has not been established.

### Severe Mental Impairment

The appellant argues that she has a severe mental impairment due to depression, anxiety, PTSD and inability to focus and concentrate due to ongoing impacts from her traumatic brain injury and concussion.

The ministry's position is that the information provided from the Physician and Psychologist is inconsistent making it difficult to develop a clear picture of the appellant's mental impairment. The reconsideration decision notes that in the MR the Physician indicates that the appellant has significant deficits with cognitive and emotional functioning in the areas of executive, memory, emotional disturbance, motivation, impulse control, and attention/sustained concentration, but the AR only indicates major impact to emotion, moderate impact to bodily functions, motivation and other emotional or mental problems and minimal impacts to the areas of consciousness, impulse control, attention/concentration, executive, memory and motor activity.

The ministry notes that while the Psychologist indicates that the appellant has anxiety when walking in public places she does not describe an inability to walk in public places. The ministry also notes that the Psychologist describes the appellant's depression as moderate. The ministry's position is that the cumulative impact to cognitive and emotional functioning, is not considered indicative of a severe impairment of mental functioning.

The reconsideration decision also notes that while the Psychologist indicates that the appellant has problems with social anxiety, she indicates that the appellant is independent with all listed areas of social functioning, indicates good functioning with both the appellant's immediate and extended social networks and does not describe any support/supervision required to help the appellant maintain in the community. The ministry's position is that it is difficult to establish a severe impairment of mental functioning based on the Psychologist's assessments of social functioning.

The information provided by the Physician in the MR and the Letter indicates that the appellant has depression, anxiety and PTSD and suffers from suicidal ideation. The Physician indicates that the appellant is emotionally very fragile, is socially isolated and has difficulty with relationships. The information from the Psychologist indicates that the appellant meets the criteria for Major Depressive Disorder (moderate). The information from the appellant and the OT indicate that the appellant has difficulties with depression, anxiety and motivation and that she has suicidal ideation. The appellant clarified that although she took too many pills on one occasion she did not end up in the hospital as the Physician indicates in the Letter but was monitored at home.

The panel finds that the ministry reasonably concluded that the cumulative impact to cognitive and emotional functioning is not considered indicative of a severe impairment of mental functioning. In particular, the panel notes that the information provided by the Physician and Psychologist is not consistent and it makes it difficult to obtain a clear picture of the appellant's mental functioning. For example while the MR indicates that the appellant has significant deficits with cognitive and emotional functioning in the areas of executive, memory, emotional disturbance, motivation, impulse control and attention or sustained concentration, the Psychologist indicates that the only major impact is in the area of emotion, moderate impact to motivation and minimal impact to executive, memory, impulse control and attention or sustained concentration. While the Psychologist indicates that the appellant has moderate impact to the areas of bodily functions and other emotional or mental problems, commenting that she has moderate depression, anxiety and suicidal ideation.

The appellant and the OT describe more severe impacts to the appellant's level of mental impairment, particularly with motivation, explaining that she may not shower for several days and has difficulty getting motivated to clean her bedroom due to depression and pain and lack of motivation. While the appellant and the OT indicate that the Psychologist only had a short time to complete the AR, and that the OT had more opportunity to observe the appellant at home and in the community, the appellant confirmed that she had seen the Psychologist on several occasions and the Psychologist indicates in the AR that the approaches and informational sources were an office interview, ongoing communication with the OT, her clinical record as a treating psychologist and her knowledge of the appellant. This is not the case where the Psychologist only met with the appellant on one occasion and had not prior involvement with her as the Psychologist indicates that she was her treating Psychologist.

The appellant indicates that she does not agree with the Psychologist's description of her social functioning and states that her world is very small, limited to her family and she feels alienated from others, but no further information from the Psychologist was obtained to clarify the information provided in the AR and the information from the appellant and OT is inconsistent with the Psychologist's reports of the appellant's mental functioning.

The panel also notes that while the Physician comments that the appellant has difficulties with impulse control (blurts out thoughts without thinking of appropriateness), the Psychologist indicates that the appellant is independent with interacting appropriately with others.

While the evidence must be considered in a broad way, the inconsistencies between the MR and the AR and the inconsistencies between the AR and the appellant's and OT's information make it difficult to obtain a clear picture of the appellant's mental functioning. The panel finds that the ministry reasonably determined that the information provided is not evidence of a severe mental impairment.

#### Restrictions in the ability to perform DLA

Section 2(2)(b)(i) of the EAPWDA requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether or not it is satisfied that the legislative criteria are met, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration – the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended periods. Inherently, any analysis of periodicity must also include consideration of how frequently the activity is restricted. All other things being equal, a restriction that only arises once a year is less likely to be significant than one that occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

DLA are defined in section 2(1) of the EAPWDR and are listed in both the MR and the AR sections of the PWD application with the opportunity for the prescribed professional to check marked boxes and provide additional narrative. DLA, as defined in the legislation, do not include the ability to work.

The appellant's position is that the information provided, when read in its entirety and in a broad way, establishes that she has a severe impairment that directly and significantly restricts her DLA

continuously or periodically for extended periods. The appellant states that there are days when she is too hurt and/or depressed to bother getting out of bed and the only reason she does is because of school. She states that she can barely function like a normal person without extreme effort on her part. The appellant argues that because of her pain and limitations she believes she qualifies for PWD designation.

The ministry's position is that based on the information provided, there is not enough evidence to confirm that the appellant has a severe impairment that significantly restricts her ability to perform DLA continuously or periodically for extended periods. The reconsideration decision notes that while the Physician indicates that the appellant is prescribed medications that at times cause fatigue and interfere with her ability to perform DLA and that when her depression becomes worse she needs reminders to bathe, take her medications and to try and exercise, the Physician does not describe the frequency of periods during which the appellant's depression worsens so it is not clear how often this occurs or how long these periods may last.

The reconsideration decision indicates that although the Physician indicates continuous restrictions to basic housework and daily shopping, the Psychologist indicates that the appellant requires periodic assistance with these areas. While the Physician indicates periodic restrictions to personal self-care, meal preparation, management of medications and use of transportation, the Psychologist indicates that the appellant is independent with all listed areas of personal care, meals and transportation and independent with 2 of 3 listed areas of medications. The reconsideration decision also notes that while the Physician indicates that the appellant's pain worsens with sitting, standing, and movement and that the appellant becomes fatigued and in pain, the Physician does not provide further information to establish the frequency or duration of periodic restrictions to these areas. The reconsideration decision also indicates that the Psychologist does not describe the frequency or duration of periodic assistance required with taking medication as directed, laundry and basic housekeeping other than a few comments indicating that the appellant needs help from her father with lifting, carrying, and that the issue is motivation and she needs to be reminded to take her medications. The ministry's position is that it is difficult to establish significant restrictions to DLA based on the assessments provided.

The appellant indicates that her physical and mental impairments significantly restrict her from DLA, and her evidence is that as she has constant pain she is not able to perform many activities and when she does her pain increases. The appellant states that her depression causes low motivation and combined with her anxiety and fatigue that is contributed to by her medications, she has a very isolated social life and frequently does not get out of bed for most of the day. The appellant's evidence is that she has been going to drama school but the activity causes increased pain and fatigue and she has missed about 25% of her classes. While the panel finds that the appellant has some restrictions to DLA, the information from the Physician and the Psychologist is inconsistent and the information provided by the appellant and the OT indicates considerably more restrictions than the information in the MR and the AR, resulting in further inconsistencies between the information provided.

For example the Physician indicates that the appellant is continuously restricted with basic housework and daily shopping but the Psychologist indicates that the appellant only requires periodic assistance in these areas with some help from her father. The appellant's evidence is that she needs help from her father and is only able to clean her room and even that is difficult due to her pain and motivation. The Physician indicates that the appellant requires periodic assistance with personal self-care but the Psychologist indicates that the appellant is independent with all aspects of personal care. The Physician indicates that the appellant has periodic restrictions with meal preparation but the Psychologist indicates that the appellant is independent with all aspects of meals, only describing

an issue of motivation and self-care. The Physician indicates that the appellant requires periodic assistance with management of medications but the Psychologist indicates she is independent with filling/refilling prescriptions and safe handling and storage and only requires periodic assistance with taking medications as directed. In addition, the information provided indicates that the appellant has suicidal ideation and has on one occasion taken too many pills, requiring monitoring to be sure she was okay. Despite that, neither the Physician nor the Psychologist indicate that she has continuous restrictions with respect to medications and the Psychologist indicates she is independent with safe handling and storage of medications.

The Physician indicates that the appellant is periodically restricted with transportation outside the home but the Psychologist indicates that the appellant is independent with all listed areas of transportation. With respect to periodic, the Physician describes that the appellant's pain worsens with sitting, standing, and movement so she rapidly becomes fatigued and in pain, but the Physician does not describe the frequency or duration of the periodic restrictions. The Psychologist explains that the appellant has experiences back pain with transportation but can do it. In both the MR and the Letter the Physician states that the appellant has been profoundly affected by the accident and is disabled in many aspects of her life emotionally and physically but the information provided regarding the appellant's restrictions is not consistent with that description and the Physician has not provided additional information in the Letter explaining the frequency or duration of the appellant's restrictions to DLA.

With respect to social functioning the Physician indicates that the appellant has periodic restrictions explaining that it is variable but at times severe, especially when the appellant has severe depression. However, the Physician does not explain how often the appellant's depression is severe or how long the bouts of severe depression last. In addition, the Physician's information is not consistent with the Psychologist's information because although the Psychologist indicates that the appellant can have problems with social anxiety and that relationships can be easily distressing for her and that she can become overwhelmed, the Psychologist indicates that the appellant is independent with all aspects of social functioning and that she has good functioning with her immediate and extended social networks.

The appellant states that her social functioning with her family is good but not with extended social networks and she states that her world is quite small. The OT states that she agrees somewhat with the Psychologist's information but indicates that she would say that the appellant often becomes overwhelmed and that in her opinion the appellant requires periodic support/supervision with social functioning.

It may be that the appellant's DLA are more restricted than the information provided in the MR and the AR indicate but based on the above, given the inconsistencies in the information provided and the lack of descriptions regarding the frequency and duration of her periodic restrictions, the panel finds that the ministry reasonably determined that the information provided does not demonstrate that the appellant has a severe impairment that significantly restricts her ability to perform DLA continuously or periodically for extended periods.

#### Help to perform DLA

Section 2(2)(b)(ii) of the EAPWDA requires that, *as a result of direct and significant restrictions in the ability to perform DLA*, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform DLA.

The appellant's position is that she requires help with DLA because of her severe physical and mental impairment. The appellant's position is that she requires significant help from her father whenever he is around, particularly with meals, shopping, laundry and housework.

The ministry argues that because it has not been established that DLA are significantly restricted, it cannot be determined that help is required.

In the MR, the Physician indicates that the appellant does not require any prosthesis or aids for her impairment. The Physician indicates that the appellant requires assistance with shopping, meal prep and rides at times as her pain is aggravated by standing and sitting. The Physician indicates that when the appellant is depressed, she needs reminders to take her medications. In the AR, the Psychologist indicates that help for DLA is provided by family (father) and friends and that the appellant benefits from psychologist support as she tends to withdraw and avoid.

Given that confirmation of direct and significant restrictions with DLA is a precondition of the need for help criterion and as the panel found that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel also finds that the ministry reasonably concluded that it cannot be determined that the appellant requires help to perform DLA as required by section 2(2)(b)(ii) of the EAPWDA.

### 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 and is a reasonable application of the applicable enactment, and therefore confirms the decision. The appellant is not successful on appeal.