

### **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 December 11, 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 information before the ministry at the time of reconsideration included the appellant's PWD application comprised of a Medical Report (MR) completed by the appellant's general practitioner (the "Physician") dated August 5, 2017, an Assessor Report (AR) completed by the appellant's social worker (the "Assessor") dated July 30, 2017, and the appellant's Self-Report (SR) dated August 21, 2017.

The appellant's request for PWD designation was denied on October 24, 2017. On November 28, 2017 the ministry received the appellant's request for reconsideration (the "RFR") dated November 23, 2017.

The information at the time of reconsideration also included the following:

- Report from a psychologist (the "Psychologist") dated July 18, 2012 (the "Psychologist Report")
- Report from a psychiatrist (the "Psychiatrist") dated July 10, 2013 with PHQ-9 and GAD-7 (the "Psychiatrist Report")
- Physician's answers to questions posed by the advocate dated November 16, 2017 (the "Response")
- The appellant's PHQ-9 and GAD-7 completed by the Physician May 31, 2017
- Evaluation Report regarding the appellant's son dated July 14, 2017
- Autism Diagnostic Assessment Summary Report from a pediatrician regarding the appellant's son dated July 14, 2017
- List of the appellant's appointments with the Physician from April 10, 2013 to August 2, 2017
- The appellant's PHQ-9 completed by the Physician dated August 12, 2017
- Letter from the Assessor dated November 20, 2017 (the "Letter")
- Letter from a counsellor dated November 23, 2017 (the "Counsellor")
- Letter from an advocate dated November 27, 2017

On December 18, 2017, the tribunal received the appellant's Notice of Appeal dated December 18, 2017.

### Summary of relevant evidence

#### Diagnoses

The Psychologist Report indicates that the appellant was diagnosed with post traumatic stress disorder (PTSD) and major depressive disorder after a car accident of February 6, 2011 (the "Accident"). The Psychiatrist Report indicates that the appellant was diagnosed with chronic pain disorder, associated with psychological factors and a general medical condition. The Psychiatrist also diagnoses the appellant with PTSD, major depressive disorder and alcohol abuse disorder, noting that those conditions were all in full remission.

In the MR, the Physician indicates that the appellant has been diagnosed with depression and anxiety, PTSD, and chronic neck pain, date of onset being the Accident. The Physician also indicates that the appellant has a history of family violence from at least 2015 and that her son was diagnosed with autism spectrum disorder (ASD) in July 2017. The Physician indicates that the appellant did not see him between October 5, 2013 and June 5, 2015. For Frequency of Contact the Physician indicates that he has seen the appellant 2-10 times in the past 12 months. In response to the question asking how long the appellant has been his patient, the Physician states "see attached copy of the visit history record", which indicates that the appellant's first visit was April 10, 2013.

In the Health History portion of the MR, the Physician indicates "refer to assessor report" and "reviewed with patient".

In the AR, the Assessor indicates that the appellant's mental or physical impairments that impact her ability to manage DLA are PTSD, depression, anxiety and that the appellant is physically affected from the Accident and since she has had chronic neck and back pain.

In the Response, the Physician indicates that the appellant has not been able to function/work due to: major depression, chronic, anxiety, PTSD, chronic neck pain and ongoing multiple stressors. In relation to the diagnosis of PTSD, the Physician indicates "refer to previously attached psychiatric consultation reports".

The Counsellor indicates that the appellant has been a client since August 11, 2017 and she has seen the appellant 7 times. The Counsellor indicates that the appellant described symptoms consistent with PTSD such as intrusive memories, anxiety, and depression.

### Physical Impairment

The Psychologist Report indicates that the appellant reported multiple pain sites with pain at the back of her skull and neck, along her shoulder blades, top of her shoulders, down her back, and left leg pain.

The Psychiatrist Report indicates that the appellant has ongoing chronic pain issues that require clinical attention.

In the MR for Functional Skills, the Physician indicates that the appellant is able to walk less than one block unaided on a flat surface, can climb 2 to 5 steps unaided, is unable to lift and can remain seated less than 1 hour, noting "according to patient" for all functional skills. Under Part F – Additional Comments the Physician indicates "see attached copies of consultation reports brought to me by patient".

In the AR, the Assessor indicates that the appellant is independent with walking indoors but takes significant longer than typical with walking outdoors (can only walk up to 5 min at a time and then must sit down), climbing stairs (can walk stairs but must rest after 2-3 steps), standing (can only stand for 2-3 min and then must sit down), lifting (can lift max 3-4 lbs) and carrying and holding (can carry only 2-3 lbs, her son who is 4 years old can now walk on his own). The Assessor indicates that she has known the appellant for four years and seen her 11 or more times in the past 12 months.

In the SR, the appellant states that physically she always feels tense, anxious and worried. The appellant states that because of the Accident, "CT scans and x-rays revealed that her neck bones have "spikes" that are going into the nerves and causing extreme pain that the doctors said won't "kill me" but will "have all my life". The appellant states that she was advised by the doctor to always sit tall to decrease the pain. She states that she has done a lot of physiotherapy (30x) and has used a machine to pull her neck straighter. She states that there was some improvement and she joined a stretching class (1-2/week), which she continues to attend.

In the Response, the Physician indicates that the appellant has chronic neck pain and management is limited because of lack of financial support.

In the Letter, the Assessor indicates that she does not see the appellant as ever being able to seek or maintain employment because of her physical health as she continues to have severe back pain and headaches. The Assessor indicates that she is a registered child protection social worker working as a consultant for an in-home parenting program and has met with the appellant on several occasions over the years.

The Counsellor indicates that the appellant continues to experience pain in her neck and shoulder, which prohibits her ability to support herself and her son financially (through work).

### Mental Impairment

The Psychologist Report indicates that the Psychologist saw the appellant twice for a clinical intake and assessment of her psychological condition following the Accident. The Psychologist Report indicates that the appellant reported that since the Accident the appellant had developed many fears, became very unhappy, had poor memory, was very self-conscious, and had low self-esteem. The Psychologist indicates that the appellant described symptoms of PTSD including fears, flashbacks, nightmares, anxiety, reduced memory, poor coping, and low mood and affect. The Psychologist Report indicates that the appellant was offered three psychological counselling appointments, which she declined and was then treated 4 times between April 23 to June 4, 2012. The Psychologist indicates that after treatment the appellant was still suffering from PTSD and major depressive disorder and was waiting to see a psychiatrist.

The Psychiatrist Report indicates that the appellant's affect was anxious/restricted but there was no evidence of biological symptoms of depression or generalized anxiety. The Psychiatrist indicates that the appellant obtained a score of 6 on the PHQ-9 indicating minimal symptoms but other tests indicated that her work domain score indicated extreme impairment and her home/family responsibility domains score indicated marked impairment,

mostly because of pain. The Psychiatrist indicates that the appellant sustained chronic pain disorder, major depressive disorder, PTSD and alcohol abuse from the Accident, but that her major depressive disorder, PTSD and alcohol abuse were all in full remission.

In the MR, the Physician indicates that the appellant does not have any difficulties with communication, other than a lack of fluency in English. The Physician indicates that the appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance, attention or sustained contraction and other (impact from chronic neck pain and forgetfulness).

In the AR, the Assessor indicates that the appellant's ability to communicate with speaking, reading, writing, and hearing is good. For Cognitive and Emotional Functioning the Assessor indicates that the appellant has major impact to consciousness, emotion, attention/concentration, executive, memory, and motivation; moderate impact to bodily functions (sleep disturbance) and no impact to impulse control, insight and judgment, motor activity, language, psychotic symptoms, other neuropsychological problems or other emotional or mental problems.

The Assessor indicates that the appellant's sleep is effected and she has very bad nightmares about things that happened during the day, or flash backs of the car accident and her ex-partner. The Assessor indicates that there was ongoing violence in the relationship but that the appellant stayed in the relationship as her ex-partner was able to carry and help with the care of their son. The Assessor indicates that the appellant is chronically exhausted, is not motivated to get out the door, and wants to sleep all day. The Assessor indicates that because of anxiety and depression the appellant is always forgetting everything. The Assessor indicates that the appellant has "post-it" notes stuck all over her walls but they are often out-dated. The Assessor indicates that the appellant forgets current information and written information is often misplaced. The Assessor indicates that the appellant used to be interested in traditional dancing, yoga and going to the gym but she is not involved in any activities as her sole focus has been raising her son. The Assessor indicates that the abusive relationship has also impacted the appellant's level of motivation to do anything.

In the SR, the appellant states that she cries all the time and has been like this since the Accident. She states that a community professional who she met shortly after moving to Canada described her as "brave, outgoing and happy" but recently described her as "weak, worried", and appeared to want to "hide in a box". The appellant states that she has poor sleep because of her PTSD, often waking up every hour or two bathed in sweat and it takes 1-2 hours to fall back to sleep. She states that when she wakes at night she rethinks things that happened during the day, the Accident, or about her previous abuse. The appellant states that because she is constantly caught up in thoughts she does not feel like going out and she is worried that people are going to hurt her, but then staying home causes her to feel hopeless and she cries more. The appellant states that she has had several stressors in her personal life including past abuse, (both emotional and physical); her son's ASD, and lack of financial support from her son's father.

In the Response the Physician indicates that the appellant has major depression (chronic). The Physician states "Please refer to the most recent psychiatric consultation report. Receiving ongoing counselling weekly".

In the Letter, the Assessor states that she has not seen any changes in the appellant and the appellant always appears very depressed, very anxious, and overwhelmed which affects all aspects of her DLA. The Assessor indicates that the appellant 's son is often late for daycare, which is partially a reflection of his ASD but also due to the appellant's inability to be motivated to get up in the mornings. The Assessor indicates that the appellant cries easily, does not feel optimistic about the future, and appears to have indicators of PTSD from years of spousal abuse. The Assessor indicates that she does not see the appellant as ever being able to seek or maintain employment because of her emotional/mental health. The Assessor indicates that the appellant admits that she has suffered from depression for years even before the Accident, but that her depression and anxiety was exacerbated by the Accident and the spousal violence.

The Counsellor indicates that the appellant has reported feelings of hopelessness and anxiety during her sessions as well as the ongoing impacts of the Accident in triggering past childhood trauma. The Counsellor indicates that the appellant has also experienced violence from a partner in Canada, which has added to her trauma, distress and mental health issues.

### DLA

In the MR the Physician indicates that the appellant has not been prescribed medications that interfere with her ability to perform DLA. The Physician indicates that the appellant's impairment restricts her ability to perform DLA indicating "please refer to section 3 – AR".

In the AR, the Assessor indicates that the appellant's impairments that impact her ability to manage DLA include PTSD, depression, and anxiety. The Assessor indicates that the appellant is physically affected from the Accident and has had chronic neck and back pain. The Assessor also indicates PTSD as a result of the Accident and domestic violence.

In the AR, the Assessor indicates that the appellant is independent with all aspects of personal care, paying rent and bills and medications. The Assessor indicates that the appellant takes significantly longer than typical with laundry (the washing machine is in her apartment; struggle to use the bigger machine 3 floors down) and basic housekeeping (it takes a long time to clean but she does it herself). For shopping, the Assessor indicates that the appellant is independent with going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases but that for carrying purchases home the appellant takes significantly longer than typical explaining that the grocery store is right across the street, that the appellant buys small amounts each time, and uses a shopping cart.

For meal planning the Assessor indicates that the appellant takes significantly longer than typical with all listed tasks explaining that she does not do a lot of cooking but buys pre-packaged meals that can easily be microwaved. For transportation the Assessor indicates that the appellant is very anxious when in a vehicle or on a bus, is worried about whether she is on the correct bus and worried where to get off.

For social functioning, the Assessor indicates that the appellant is independent with appropriate social decisions and securing assistance from others but that she requires periodic support/supervision with developing and maintaining relationships, interacting appropriately with others and dealing appropriately with unexpected demands. The Assessor explains that the appellant has few friends and keeps to herself, that she gets anxious in social settings, presents as anxious, asks a lot of questions and often repeats the same question. The Assessor indicates that her follow up is poor and she often agrees with information given to her but does something different. The Assessor indicates that it is unclear if this is related to memory or anxiety. The Assessor indicates that the appellant has marginal functioning with respect to her immediate and extended social networks.

In the SR the appellant states that she has no energy for self care and does not fix up her hair, makeup etc. and has lost a lot of weight.

In the Response, the Physician indicates that the appellant's mental impairment impedes her capacity to meet self care needs, manage housework, daily grocery shopping, and looking after her son. The Physician indicates that the appellant has social isolation as she does not have anyone with whom to share her feelings, and has lack of support because she has not extended families and no close friends. The Physician also states that the report of the appellant's psychiatrist's (the "Treating Psychiatrist") of November 11, 2017 indicates "*Financially. She did not have any support. She was hungry most of the time. When she got some food, she always fed to her son first*".

In the Letter, the Assessor indicates that the appellant's mental impairment affects all aspects of her DLA.

The Counsellor indicates that the appellant's ongoing pain in her neck and shoulder limits her ability to perform DLA.

### Need for Help

In the MR, the Physician indicates that the appellant requires ongoing psychological counselling for management of her chronic mental conditions, social support as she has no extended families and is a single parent, and physio and massage therapy for neck pain. The Physician also indicates that with regard to social functioning and chronic pain the appellant may benefit from an assessment from an occupational therapist.

In the AR, the Assessor indicates that help for DLA is provided by family and the ministry of children and family development (MCFD). The Assessor also indicates that the appellant was in the Accident one year before she became pregnant with her son and MCFD was involved and paid 100% for full time daycare for her son when he was only 6 weeks old as she could not hold him. The Assessor indicates that gradually the appellant was able to do a few things around the house but the daycare has and continues to be paid for by MCFD.

For assistive devices, the Assessor writes "N/A". The Assessor indicates that the appellant does not have an Assistance Animal.

In the SR, the appellant states that she stayed with her abusive partner, even though he was charged and convicted for assaulted her with a weapon, as he was the "*only one who could look after their son as she could not pick up her son, take him to daycare etc*".

In the Response, the Physician indicates that the appellant receives ongoing counselling and support from community organizations. The Physician indicates that the appellant needs ongoing counselling and financial support to cover the cost of counselling if any, and the cost of medications. The Physician indicates that the appellant needs financial support for therapies and medications and that she needs social support and resources.

In the Letter, the Assessor indicates that the appellant has no family in the city in which she lives and few friends. The Assessor indicates that in the last year the appellant has returned to another country twice to be with her family for support, as her mother is unable to visit her. The appellant attempts to do self-care for herself and is attending counselling on a regular basis.

#### **Additional information provided**

In her Notice of Appeal dated December 18, 2017, the appellant states that she disagrees with the decision as she believes her disabilities are severe and do impact her DLA, and that she has assistance from her ex-partner and friends to do DLA.

At the hearing the appellant stated that she strongly disagrees with the ministry's reconsideration decision as she has mental illness, emotional issues, her son's special needs as he has ASD, and that she is seriously affected by her disabilities and past abuse, all which seriously restrict her DLA. The appellant stated that she is suffering serious depression and anxiety and that although she looks well on the outside, her impairment is extreme. The appellant stated that she is extremely sad, cannot control her fear, terror or anxiety, and cries constantly. The appellant stated that she is not in contact with close friends for years, has isolated herself, can't sleep or eat well, and "it's a torture". The appellant stated that she has had suicidal ideation but has not carried it out because of her son.

The appellant states that currently she has numerous stressors as she has to spend 3 hours per day, 7 days per week on her son's treatment. In addition, she needs to see the Physician, Treating Psychiatrist, Counsellor, family support worker and attending meetings with a social worker, her son's pediatrician, her son's family physician and dentist, as well as several meetings for ASD groups. The appellant stated that her ex-husband does not give her a penny to support her and she needs support. The appellant also stated that this appeal is a significant stressor and that she has language issues and difficulty understanding the written information. The appellant stated that she feels like a "total invalid" as she doesn't know how to read and answer the questions. The appellant stated that the most painful thing is that she does not receive any money from her ex-husband and lives on about \$1,000 per month, which doesn't leave much money for anything after her rent is paid.

The appellant stated that with respect to her physical condition she does not have a physical impairment. The appellant stated that "*I have arms, I have legs, I can walk and lift*". With respect to mental impairment the appellant stated that she has a severe mental illness/depression. With respect to DLA and help needed, the appellant stated that for meals, her son's father often picks up meals and brings them over or her friend helps cook and brings food to her. She states that all of her son's treaters come to her home to provide care. She states that she has one friend and her ex-husband that help her but no one else. She stated that her ex-husband will take their son to and from daycare most of the time and that her friend comes over approximately once a week for 2-3 hours to cook and clean up.

At the hearing, the appellant provided clinical records of the Treating Psychiatrist from November 11, 2017 and December 16, 2017 (the "Clinical Records"). In the November 11, 2017 note, the Treating Psychiatrist reviews the appellant's past medical and psychiatric history. The Treating Psychiatrist indicates that the appellant only gets financial support from the government, is now hopeful as she feels she is getting help from him, has strong motivation to get better, and no suicidal thoughts. In the Clinical Records, the Treating Psychiatrist states that the appellant's mood is "sad, but hopeful" and notes that her thoughts are goal directed and organized, there was no signs of psychosis, her cognitive function was intact, insight and judgment were fair, and that the appellant had no suicidal or homicidal ideations. The Treating Psychiatrist indicates a diagnosis of major depression chronic and notes multiple stressors (being a single mother, past verbal abuse, son's ASD, step-mother's physical abuse when she was young, current financial difficulty, unemployment, lack of support from family, no friends). The Treating Psychiatrist indicated that he started the appellant on anti-depressant medication. In the December 16, 2017 note, the Treating Psychiatrist indicates that the appellant's main issue is major depression chronic with anxiety features and that she might also suffer general anxiety disorder (GAD). The Treating Psychiatrist indicates that he will continue to monitor her mood for a more accurate diagnosis.

The appellant also provided a prescription dated November 11, 2017 from the Treating Psychiatrist for her anti-depressant medication.

The appellant also provided a letter from her friend (the "Friend") dated December 15, 2017 (the "Friend's Letter"). The Friend indicates that he has known the appellant and her son for 2 years and assisted them on a daily basis, transporting her son to and from day care and assisting with many chores. The Friend states that as a result of her limited physical abilities, the appellant requires help with grocery shopping, laundry, lifting objects, carrying her son, and transportation. The Friend states that the appellant's language barrier makes communication with doctors and physical therapists and help for her son extremely difficult.

At the hearing, the Assessor stated that she completed the AR with the appellant in her home. The Assessor stated that she has known the appellant for almost 5 years, since her son was 2 months old. She state that MCFD was initially paying for full time day care with the expectation that it would decrease over time but they are still paying for full time daycare because of the appellant's injuries from the Accident and her depression. The Assessor stated that on 3-4 occasions, she has had to call MCFD because of the appellant's inability to parent due to her depression and anxiety, which slows her down to the point of preventing her from doing almost everything. The Assessor stated that as an example the appellant's son may be hungry but the appellant becomes so overwhelmed in her thoughts and emotions that she can't get up and go make a meal and needs assistance to guide her through the process, step by step. The Assessor stated that from her observation, the appellant makes only simple meals, mostly microwaveable items.

The Assessor stated that when she first met the appellant, her physical injuries from the Accident were the main problem but over time it has become clear that the appellant's depression, anxiety and PTSD prevent her from being able to perform DLA. The Assessor stated that it takes the appellant longer with housekeeping because of her depression/anxiety/overwhelm. The Assessor stated that even though the appellant has a washer and dryer in her apartment, she often is too overwhelmed or does not have the motivation to get her laundry done and there have been several calls from the daycare about her son arriving in dirty clothes. The Assessor stated that although the appellant has good intentions and writes numerous post it notes to help her remember what she needs to do, she has no follow through due to her anxiety, confusion, and feelings of being overwhelmed.

In response to questions, the Assessor stated that the appellant lives on a third floor apartment and is able to walk the stairs on her own and walk across the street to the grocery store but only buys a few items at a time. The Assessor stated that because of the appellant's neck pain she can only lift 3-4 pounds at a time and was unable to lift her son for a long time.

The Assessor stated that she was aware of how often the appellant's ex-husband was taking their son to and from daycare but she was not aware of how often the appellant's friend came to help.

The Assessor also indicated that the appellant met with an advocate and provided the Treating Psychiatrist note of November 11, 2017 and the Assessor and the appellant understood that was provided to the ministry with the RFR, particularly as it is referred to by the Physician. The Assessor reports that she and the appellant were surprised to see that the Treating Psychiatrist's November 11, 2017 note was not in the appeal record.

**Admissibility of New Information**

The ministry did not object to the Clinical Records, prescription, Friend's Letter or the oral testimony provided by the appellant or the Assessor.

The panel has admitted the information in the Clinical Records, prescription, Friend's Letter and the appellant and Assessor's oral testimony as it is evidence that is 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*. The panel has accepted the information in the appellant's 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 practice 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.

### Severe Physical Impairment

The appellant’s position is that while she has some neck pain, she does not disagree with the ministry that she does not have a severe physical impairment. The appellant’s position is that she has a severe mental impairment.

The ministry’s position is that the information provided does not establish a severe physical impairment. The reconsideration decision indicates that when assessing functional skills, the Physician notes “according to patient”, therefore the ministry finds the information is considered the appellant’s self-report and not the Physician’s medical opinion. The reconsideration decision indicates that the Assessor reports that the appellant takes significantly longer than typical to manage walking outdoors, climbing stairs, standing, lifting and carrying and holding, but that the Assessor does not describe how much longer than typical it takes the appellant to manage these aspects of mobility and physical ability, making it difficult to determine if they represent a significant restriction to the appellant’s overall level of physical functioning.

The reconsideration decision also notes that in the Response, the Physician indicates that the appellant has chronic neck pain and management is limited because of lack of financial support. The ministry’s position is that the information provided demonstrates that the appellant experiences limitations to her physical functioning due to chronic neck pain but that the assessments provided speak to a moderate rather than severe physical impairment.

The panel finds that the ministry reasonably determined that the information provided does not establish that the appellant has a severe physical impairment. In particular, the information from the Physician, given his statement that the assessment are “according to patient” does not make it clear whether the appellant’s reports are also his opinion.

The panel notes that the appellant’s information is also inconsistent so it is difficult to obtain a clear picture of the severity of her physical impairment. For example, in the SR, the appellant states that because of the Accident, “*CT scans and x-rays revealed that her neck bones have “spikes” that are going into the nerves and causing extreme pain that the doctors said won’t “kill me” but will “have all my life”*”. However, there is no information from the Physician indicating that CT scans and/or x-rays revealed any problems with her neck bones or nerves. In addition, at the hearing, the appellant stated that she is not arguing that she has a severe physical impairment and that she “has arms and legs, I can walk and lift”.

While the Physician and the Assessor indicate that the appellant has chronic neck pain, the SR indicates that the appellant has experienced improvement with physiotherapy and stretching. While the Assessor indicates that it takes the appellant significantly longer than typical with walking outdoors, climbing stairs, standing, lifting, and carrying and holding, the Assessor does not describe how much longer than typical it takes the appellant to perform these items. In addition, at the hearing, the Assessor indicated that the appellant is capable of walking up the three flights of stairs to her apartment and is capable of walking to and from the grocery store on her own to purchase small, light items. More importantly, at the hearing, the Assessor indicated that the reason it takes the appellant longer to perform these aspects of mobility and physical ability is due to her lack of motivation related to her mental impairment, rather than physical restrictions, with the exception of lifting and carrying which she reports is limited due to neck pain.

Taking into account the information in the assessments and the appellant’s evidence that she does not disagree with the ministry’s finding that she does not have a severe physical impairment, the panel finds that the ministry reasonably determined that a severe physical impairment has not been established.

### Severe Mental Impairment

The appellant's position is that she has a severe mental impairment due to depression, PTSD, and anxiety that are all aggravated by the stressors in her life. The appellant's position as set out in the letter from the advocate, is that the information provided establishes that the appellant is suffering from a severe mental health disability as a result of major depressive disorder, anxiety, and PTSD and exacerbated further by the neck pain she experiences.

The reconsideration decision provides a summary of the information provided by the Physician and Assessor and states that the information provided does not establish that the appellant has a severe mental impairment. In particular the reconsideration decision notes that while the Assessor indicates that the appellant has marginal functioning with both her immediate and extended social networks, the Assessor does not describe the support/supervision required in order to maintain in the community.

The panel finds that the ministry reasonably determined that the information provided does not establish that the appellant has a severe mental impairment. The information provided indicates that the appellant suffers from depression and anxiety but the varied and inconsistent information as between the various reports makes it difficult to obtain a clear picture of the severity of the appellant's mental impairment and impact on her functioning.

The panel notes that the information in the Psychologist Report and the Psychiatrist Report provide considerable information on the appellant's functioning in the few years after the Accident. However the information in those reports is over 4 years old and there are inconsistencies in those reports too. For example the Psychologist Report indicates that the appellant has major depressive disorder and PTSD but the Psychiatrist Report indicates that the appellant's major depressive disorder, PTSD and alcohol abuse were all in full remission. The panel finds that the information in the PR, AR and the Clinical Records is a better reflection of the appellant's current level of functioning.

However, the panel notes that there are several inconsistencies between the information provided by the Physician and the Assessor, which also make it difficult to obtain a clear picture of the current level of severity of the appellant's mental impairment. For example, in the MR, the Physician indicates that the appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance, attention or sustained concentration, and other (noting impact from chronic neck pain and forgetfulness), but does not indicate significant deficits in the areas of consciousness, executive, memory or motivation. In the AR however, the Assessor indicates that the appellant has major impact to consciousness, emotion, attention/concentration, executive, memory and motivation, and moderate impact to bodily functions (sleep disturbance). In the Response, the Physician again indicates that the appellant has major depression (chronic) and indicates "refer to the most recent psychiatric consultation report", but does not provide information to indicate that the appellant has significant deficits with cognitive and emotional function in all the areas noted by the Assessor, making it difficult to obtain a clear picture of the severity of the appellant's mental impairment.

The panel notes that the information provided at the hearing by the appellant and the Assessor indicates that the appellant is sad and cries a lot, and that she struggles with being overwhelmed and has little motivation, which makes all DLA, take longer. However, while the Assessor, in the Letter, indicates that the appellant appears to have indicators of PTSD from years of spousal abuse, and the Counsellor indicates that the symptoms described by the appellant are consistent with symptoms of PTSD, the Treating Psychiatrist does not provide any information to indicate that the appellant has PTSD and the Physician has not make a diagnosis of PTSD. In addition, the Treating Psychiatrist indicates, in the Clinical Records, that although the appellant has major depression, she was feeling hopeful, her thoughts were goal direct and organized, that she had fair insight and judgment, and that her cognitive function is intact. The Treating Psychiatrist does not provide any further information regarding the severity of the appellant's depression and the Counsellor does not provide any further information regarding the impact of the appellant's mental impairment on her functioning.

In addition, the panel notes that the Counsellor indicates that the appellant's neck and shoulder pain limits her ability to perform DLA indicating that limitations are more from physical rather than mental impairments but this is not consistent with the appellant's own evidence that she does not have a severe physical impairment.

The panel also notes that the information provided by the appellant and the Assessor focuses significantly on the stressors and challenges involved for the appellant with raising her son and the level of ongoing care that she is provided by the MCFD regarding his care. While the panel appreciates that it must be very challenging for the appellant to raise her son who has ASD, particularly without financial support from the son's father, lack of financial resources and stressors due to raising children are not criterion for eligibility for PWD designation. Likewise, the appellant, the Physician and the Assessor all indicate that the appellant is not capable of working but employability is not a criterion of eligibility for PWD designation.

The Physician indicates that the appellant does not have any difficulties with communication other than a lack of fluency in English and the Assessor indicates that the appellant's ability with speaking, reading, writing, and hearing is good. While the Assessor indicates, in the AR, that the appellant has marginal functioning with both her immediate and extended social networks, the Assessor does not describe the support/supervision that the appellant requires to maintain in the community. At the hearing, the Assessor stated that the appellant's lack of motivation and inability to focus are the main restrictions that limit her ability to perform DLA and that she needs guidance when she is overwhelmed. At the same time, the AR indicates that the appellant is independent with a majority of DLA and her own evidence is that she is attending and participating in the numerous weekly appointments that she has for both herself and her son. The panel also notes that while the Assessor indicates significant problems with motivation, the Treating Psychiatrist indicates that the appellant has a strong motivation to get better.

While the panel finds that the appellant has some restrictions due to her depression and has periods when she can get overwhelmed and struggle with motivation, the inconsistencies between the various information make it difficult to obtain a clear picture of the appellant's mental functioning. The panel finds that based on the information provided, 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 ministry should find that she qualifies for PWD designation as her disabilities are severe and do impact her DLA. The appellant's position, as set out in the letter from the advocate, is that the appellant has ongoing and significant restrictions managing a variety of DLA including social functioning, personal care, grocery shopping, and housework.

The ministry's position is that the information provided is not sufficient to establish that the appellant has a severe impairment that, in the opinion of a prescribed professional, directly and significantly restricts the appellant's ability to perform DLA. The reconsideration decision notes that in the MR, the Physician, when asked to indicate which DLA are restricted and to describe the extent of restriction, he notes "Please refer to Section 3 – AR") and when asked what help is required the Physician indicates that an occupational therapy assessment may be helpful. The

reconsideration decision indicates that in the AR, the Assessor notes that the appellant is able to manage all aspects of DLA with the exception of taking significantly longer to manage laundry, basic housekeeping, carrying purchases home, meal planning, food preparation, cooking and safe storage of food. However, the ministry notes that the Assessor does not describe how much longer than typical it takes the appellant to manage these aspects of DLA making it difficult to determine if they represent a significant restriction to the appellant's overall level of functioning.

In addition, the ministry notes that the Assessor describes that the appellant is anxious in a vehicle or using public transportation but does not indicate if assistance is required from another person to manage transportation.

The reconsideration decision indicates that the ministry reviewed the Response, noting that the Physician indicates that the appellant has ongoing restrictions as her mental conditions impede her capacity to meet self care needs, manage housework, daily grocery shopping and looking after her son, noting that she receives ongoing counselling. However the Physician does not provide further information to indicate how much longer than typical it takes the appellant to perform these tasks or provide more information on the frequency or duration of any periodic assistance needed.

The panel finds that the ministry reasonably determined that the assessments provided are indicative of a moderate level of impairment. In the MR, the Physician did not complete Section E – DLA, simply noting that the appellant's impairment directly restricts her ability to perform DLA and indicates "please refer to session 3 – AR". The panel notes that in the SR, the appellant states that she has no energy for self care and she does not fix up her hair or makeup and has lost a lot of weight, but in the AR, the Assessor indicates that the appellant is independent with all aspects of personal care and at the hearing the appellant stated that she is capable of all personal care. In the MR, the Physician does not provide the appellant's height or weight but there is no indication from the Physician or the Assessor that the appellant is underweight. In the Response, the Physician indicates that the appellant's conditions impede her capacity to meet self-care needs but there is no further description about which self-care needs are restricted or a description as to the nature of degree of any restriction.

In the AR, the Assessor indicates that the appellant takes significantly longer than typical with laundry and basic housekeeping. At the hearing, the Assessor described that the appellant struggles with motivation to do her laundry and that the appellant's son has arrived at his daycare on several occasions wearing dirty clothes. The AR indicates that it is a struggle for the appellant to use the bigger machines that are 3 floors down. However the AR also indicates that the appellant has a washing machine in her apartment and she is capable using it. There is no additional information to indicate how much longer than typical the appellant takes to perform laundry. In the Response, the Physician does not provide any further information to indicate that the appellant has restrictions with laundry and while the Treating Psychiatrist indicates that the appellant presented wearing old clothing, he did not provide any information indicating that hygiene was in issue or information with respect to the appellant's ability to perform laundry tasks.

With respect to basic housekeeping the information from the appellant and the AR indicates that the appellant's main restriction is due to her lack of motivation. The Physician, in the Response indicates that the appellant's mental impairment impedes her capacity to manage housework, but in the MR the Physician did not indicate that the appellant has significant deficits with cognitive and emotional functioning in the area of motivation and the in the Response, the Physician does not provide further information to explain how the appellant's mental impairment impacts her ability to manage housework. In addition, neither the Physician nor the Assessor provides further information on how much longer than typical it takes the appellant to manage her DLA of laundry or basic housekeeping and there is no indication that the appellant requires periodic or continuous assistance. In particular, the Assessor indicates that it takes the appellant a long time to clean but she does it herself. The panel notes that at the hearing the Assessor indicated that she was not aware of the assistance provided by the Friend and in the Friend's Letter, he indicates that he assists with many chores. The appellant indicates that the Friend comes over once a week and helps for 2-3 hours but this information is not consistent with the information in the AR in which the Assessor indicates that the appellant is able to perform her housekeeping tasks herself.

For shopping, the AR indicates that the appellant is independent with going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases but takes significantly longer than typical with carrying purchases home, indicating that the appellant buy small amounts each time and uses a shopping cart. In the AR, the Assessor indicates that the appellant is only able to carry 3-4 pounds at a time and the Friend indicates

that the appellant requires help with grocery shopping. In the Response, the Physician indicates that the appellant has restrictions with daily grocery shopping but there is no further information regarding the nature or degree of the restriction. At the hearing, the appellant and the Assessor indicated that the appellant is able to walk across the street to the grocery store and buy groceries, she just does so in smaller amounts, so the panel finds that the ministry reasonably determined that the information provided is more indicative of a moderate level of restriction.

The Assessor indicates that the appellant takes significantly longer than typical with all listed aspects of meals, noting that the appellant does not do a lot of cooking and buys pre-packaged meals that can easily be microwaved, but does not provide further information regarding how much longer than typical is required. At the hearing, the appellant stated that she is too tired to cook and has difficulty looking after her son and managing all her DLA. In the Response however, the Physician does not provide any further information indicating that the appellant's DLA of meals is restricted, and neither the Counsellor nor the Treating Psychiatrist provide further information to indicate that the appellant's DLA of meals is restricted.

The AR indicates that the appellant is independent with all aspects of paying rent and bills and medications. While the Assessor indicates that the appellant is very anxious when in a vehicle and when on a bus, the Assessor does not indicate that the appellant takes significantly longer than typical or that she requires periodic or continuous assistance with any of the listed aspects of transportation.

For social functioning the Assessor indicates that the appellant is independent with making appropriate social decisions and securing assistance from others but that she requires periodic support/supervision with developing and maintaining relationships, interacting appropriately with others and dealing appropriately with unexpected demands. The Assessor explains that the appellant has few friends, keeps to herself, presents as anxious, asks a lot of questions and her follow through is poor. The Assessor also indicates that the appellant agrees with information but then does something different and it is unclear if this is related to memory or anxiety. The panel notes that in the AR the Assessor indicates major impact to memory whereas in the MR, the Physician does not indicate that the appellant has significant deficits with cognitive and emotional function with memory. In the Response, the Physician does not provide any further information to indicate that the appellant has significant impacts with memory and neither the Treating Psychiatrist nor the Counsellor indicate that the appellant has restrictions with memory. The Treating Psychiatrist indicates that the appellant may have GAD and the Counsellor indicates that the appellant described symptoms of anxiety, but there is no additional information regarding the nature or frequency of the periodic support/supervision that the appellant requires with these aspects of social functioning.

The AR indicates that the appellant has marginal functioning with her immediate and extended social networks and the appellant's evidence is that she has no family or friends except her ex-husband and the Friend and is socially isolated, there is no information indicating the support/supervision required in order for the appellant to maintain in the community. The appellant's evidence regarding assistance provided is also unclear as in the NOA she indicates that she has assistance from her ex-partner and friends to do DLA whereas at the hearing she stated that she only has no other friends except the Friend to provide assistance.

While the panel finds that the appellant has some restrictions to DLA, the information provided makes it difficult to determine whether the appellant has significant restrictions to DLA. Considering all the information together, the panel finds that the ministry was reasonable in determining that the appellant's impairment does not, in the opinion of a prescribed professional, directly and significantly restrict the appellant's ability to perform DLA as required by the legislation.

#### 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 mental impairment, lack of finances and support, and that she has assistance from her ex-partner and friends to do DLA. The appellant's position, as set out in the letter from the advocate, is that she requires assistance and support from other people

including friends, family and her healthcare team. At the hearing, the appellant stated that she really needs financial support as she doesn't get "one penny" from her son's father.

The ministry's position is 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 requires ongoing psychological counselling for management of her chronic mental conditions, social support as she has no extended families and is a single parent, and physio and massage therapy for neck pain. The Physician also indicates that with regard to social functioning and chronic pain the appellant may benefit from an assessment from an occupational therapist.

In the AR, the Assessor indicates that help for DLA is provided by family and other (MCFD). The Assessor also indicates that the appellant was in the Accident one year before she became pregnant with her son and MCFD was involved and paid 100% for full time daycare for her son when he was only 6 weeks old as she could not hold him. The Assessor indicates that gradually the appellant was able to do a few things around the house but the daycare has always, and continues to be paid for by MCFD.

For assistive devices, the Assessor writes "N/A". The Assessor indicates that the appellant does not have an Assistance Animal.

In the SR, the appellant states that she stayed with her abusive partner, even though he was charged and convicted for assaulted her with a weapon, as he was the "*only one who could look after their son as she could not pick up her son, take him to daycare etc*". The appellant indicates that she receives in home parenting support, weekly for 5 years, PTSD counselling, psychiatric referral, social work support, stretching group, single mother's group, and various supports for her son, and attends a stretching group.

In the Response, the Physician indicates that the appellant receives ongoing counselling and support from community organizations. The Physician indicates that the appellant needs ongoing counselling and financial support to cover the cost of counselling if any, and the cost of medications. The Physician indicates that the appellant needs financial support for therapies and medications and that she needs social support and resources.

In the Letter, the Assessor indicates that the appellant has no family in the city in which she lives and few friends. The Assessor indicates that in the last year the appellant has returned to another country twice to be with her family for support, as her mother is unable to visit her. The appellant attempts to do self-care for herself and is attending counselling on a regular basis.

The panel finds that the information provided indicates that the appellant requires some help with some aspects of DLA and requires considerable help with caring for her son. However, 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.