PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated February 27, 2018 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that her impairment is likely to continue for at least two years. However, the ministry was not satisfied the evidence establishes that:

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

The ministry also found that the appellant is not one of the prescribed classes of persons who may be eligible for PWD designation on the alternative grounds set out in Section 2.1 of the Employment and Assistance for Persons with Disabilities Regulation and the appellant did not appeal the decision on that basis.

PART D – RELEVANT LEGISLATION

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

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 2 and 2.1

PART E – SUMMARY OF FACTS

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the appellant's information and self-report dated October 10, 2017, a medical report (MR) dated October 10, 2017and an undated assessor report (AR) both completed by a general practitioner (GP) who has known the appellant for more than one year and has seen her 11 or more times in the last year.

The evidence also included the following documents:

1) Revised version of the PWD Application comprised of the appellant's information and self-report dated January 11, 2018, a MR ("the second MR") and an AR ("the second AR") both dated January 6, 2018 and completed by the same GP who completed the initial PWD Application; and,

2) Request for Reconsideration dated February 13, 2018.

Diagnoses

In the MR, the GP diagnosed the appellant with arthritis, COPD [Chronic Obstructive Pulmonary Disorder], and Anxiety Disorder, with no dates of onset provided. In the second MR, the GP added the diagnoses of Substance Use Disorder, Cirrhosis, and DDD [Degenerative Disc Disease], as well as the diagnostic code for osteoporosis, which conditions the GP identified as chronic in 2016. Asked to describe the appellant's mental or physical impairments that impact her ability to manage her daily living activities, the GP wrote in the AR: "Slow; Weak; Short of Breath; Anxiety." In the second AR, the GP wrote: "Mental- anxiety, cognition secondary to medication/substances."

Physical Impairment

In the MR and the AR, the GP reported:

- The appellant does not require an aid for her impairment.
- In terms of functional skills, the appellant can walk 2 to 4 blocks unaided on a flat surface, climb 5 or more steps unaided, lift 2 to 7 kg. (5 to 15 lbs.) and remain seated less than 1 hour.
- The appellant is assessed as independent with all aspects of mobility and physical ability including walking indoors and walking outdoors (note: "slow, takes breaks"), climbing stairs, standing, lifting (note: "lifts small amounts at a time"), and carrying and holding. The GP wrote: "Gets by but slow."
- In the section of the AR relating to assistance provided, the GP indicated that none of the listed assistive devices are applicable to the appellant and wrote "N/A" or not applicable to the appellant. The GP also wrote that she "may need equipment after knee surgery that is being scheduled." For equipment that is required but not currently being used, the GP wrote "cane/walker."

In her self-report, the appellant wrote:

- Her sciatica does not allow her to stand or sit for more than an hour.
- The arthritis in her back and knees make it difficult for her to lift heavy things.
- With the COPD, certain environments make it hard to breathe.

- She is waiting for knee surgery and gall bladder surgery.
- Her gall bladder attacks have been more frequent and the pain has her in bed, sometimes for up to two days.

In the second MR and the second AR, the GP made the following amendments:

- In terms of the appellant's health history, "radiologically, her DDD and OA [osteoarthritis] is mild but clinically it is moderate. COPD grade 1 spirometry."
- The appellant requires an aid for her impairment. The GP wrote: "emotional support- her pet dog is of great benefit."
- For her functional skills, the appellant can only climb 2 to 5 steps unaided, but she can lift 7 to 16 kg (15 to 35 lbs.).
- The appellant takes significantly longer than typical with walking outdoors and the GP wrote "needs to use furniture for support." The appellant requires continuous assistance from another person with lifting and with carrying and holding.
- The appellant has an assistance animal, and the GP wrote: "emotional support dog."

Mental Impairment

In the MR and the AR, the GP reported:

- The appellant has no difficulties with communication.
- The appellant has significant deficits with her cognitive and emotional functioning in the areas of executive, emotional disturbance, attention or sustained concentration and other, specified as "husband died."
- The appellant is not restricted in her social functioning.
- The appellant has a good ability to communicate in all areas, specifically: speaking, reading, writing and hearing.
- With respect to the section of the AR relating to daily impacts to the appellant's cognitive and emotional functioning, the GP assessed no major impacts, moderate impacts in the areas of emotion, attention/concentration, and motivation and minimal impacts to consciousness, executive, and memory. There are no impacts to the areas of bodily functions, impulse control, insight and judgment, motor activity, language, psychotic symptoms, other neuropsychological symptoms, and other emotional or mental problems.
- The appellant is independent in all aspects of social functioning, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The GP noted that the appellant "lives alone."
- The appellant has good functioning in both her immediate and in her extended social networks. The GP wrote: "is alone, lonely."

In her self-report, the appellant wrote:

- She frequently gets panic attacks, which she takes medication for.
- Her husband passed away and she is still not herself emotionally.
- Her anxiety levels have been higher lately.

In the second MR and the second AR, the GP made the following amendments::

- The appellant has significant deficits with her cognitive and emotional functioning in all of the listed areas, specifically: consciousness, executive, language, memory, perceptual psychomotor, psychotic symptoms, emotional disturbance, motivation, impulse control,

motor activity, and attention or sustained concentration. The GP wrote: "severely affected by anxiety, medication."

- The appellant is restricted in her social functioning. The GP wrote: "widow; socially isolated." Regarding the degree of restriction, the GP wrote: "social anxiety."
- The appellant has a good ability to communicate in speaking and hearing and her ability with reading and writing is unknown.
- With respect to the section of the AR relating to daily impacts to the appellant's cognitive and emotional functioning, the GP assessed major impacts in the areas of emotion and impulse control. There are moderate impacts in the areas of bodily functions, consciousness, attention/concentration, executive, memory, motivation and motor activity. There is a minimal impact to insight and judgment.
- The appellant requires periodic support/supervision with aspects of social functioning, specifically with making appropriate social decisions (note: "history of substance use disorder"), dealing appropriately with unexpected demands and securing assistance from others (note: "70 to 80% of the time").
- The appellant has marginal functioning in both her immediate and in her extended social networks. The GP wrote: "socially isolated."
- For the support/supervision that would help maintain the appellant in the community, the GP wrote: "financial assistance- rent/pet/food etc."

In her second self-report, the appellant wrote:

- Her husband passed away suddenly and it has been very stressful for her.
- She has had anxiety and panic attacks. She is being medically treated for this.

Daily Living Activities (DLA)

In the MR and the AR, the GP reported:

- The appellant has been prescribed medication that interferes with her ability to perform DLA. The GP noted that the appellant "says it does not affect her function."
- The appellant is restricted with the DLA of basic housework, daily shopping, and mobility outside the home. The GP does not indicate if the restrictions are continuous or periodic. The appellant is not restricted with the DLA of personal self care, meal preparation, management of medications, mobility inside the home, use of transportation, management of finances and social functioning. For the assistance required with DLA, the GP wrote: "manages herself but is slow."
- In the AR, the appellant is independent with all of the tasks of all of the listed DLA, specifically the personal care DLA, the basic housekeeping DLA (note: "slow"), the shopping DLA (note: "slow" with the task of making appropriate choices), the meals DLA, the pay rent and bills DLA, the medications DLA, and the transportation DLA (note: "slow" with the task of using public transit).

In her self-report, the appellant wrote that her knee pain has kept her from doing some basic chores.

In the second MR and the second AR, the GP made the following amendments:

- The appellant has been prescribed medication that interferes with her ability to perform DLA. The GP noted that the medication "can result in cognitive impairment."

- The appellant is also restricted with the DLA of use of transportation. The GP does not indicate if the restrictions are continuous or periodic. It is unknown if the appellant is restricted with the management of finances DLA.
- In the AR, the appellant is independent with all of the tasks of the personal care DLA, but the GP added the comment that the appellant "needs to remain seated when getting dressed and, for the task of toileting "takes a lot longer than 'normal.'"
- The appellant requires periodic assistance from another person with the basic housekeeping DLA, including the task of laundry, with no additional comments.
- The appellant requires periodic assistance from another person with going to and from stores and carrying purchases home when shopping, there is no assessment for the tasks of reading prices and labels and making appropriate choices, and the GP noted that the appellant "has made poor choices."
- For the meals DLA, the GP commented that the appellant "tries to go easy route, e.g. prepared microwave food."
- Regarding the pay rent and bills DLA, the GP wrote that the task of banking "causes anxiety" and the appellant "avoids crowds."
- For the transportation DLA, the appellant requires periodic assistance from another person with all tasks, specifically getting in and out of a vehicle, using public transit and using transit schedules and arranging transportation. The GP wrote that the appellant "needs help 70% of the time" and she has "anxiety" with using public transit.

Need for Help

The GP reported in the AR that the appellant "gets social financial assistance, nothing else." In the second AR, the GP wrote that he is "not fully aware of the extent of help she already gets." When asked to describe help required where none is available, the GP wrote "mainly financial."

Additional information

In her Notice of Appeal dated March 6, 2018, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that her family doctor was not very familiar with the application process. She had challenges with filling in the application as comprehension has been difficult. She would like to apply with a new doctor who understands.

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

1) Respiratory Therapy Report dated October 2, 2017, which included an impression of "mild airflow obstruction without definite reversibility but there seems to be a volume response. Results consistent with COPD, GOLD grade 1 spirometry. Bronchodilators may be symptomatically beneficial;"
2) Lumbar Spine X-Ray Report dated October 10, 2017, which included an impression of "a mild anterior compression deformity of L1 vertebral body with further anterior height loss since October 2016. Moderate degenerative changes are present in the lower lumbar spine, unaltered from the previous study;
3) Knee MRI Report dated October 10, 2017, with a conclusion that included "minimal tri-compartmental osteoarthritis, with underlying chondrocalcinosis;"
4) Bone Density Survey dated January 7, 2018, which included an impression of osteoporosis and a "moderate" 10-year fracture risk;
5) Letter from the advocate to the GP dated February 1, 2018 requesting that an enclosed self-report by the appellant be used as a guide to making the suggested amendments; and,
6) Copy of the AR dated January 6, 2018 with undated handwritten notes and highlighting of areas, made by an advocate.

At the hearing, the appellant stated:

- She had been prepared to have her gall bladder surgery when her husband passed away unexpectedly and the surgery was cancelled. She has recently been given the requisitions for blood work and an ultrasound to prepare for the surgery again.
- Her GP was not too familiar with the process or the forms. Her previous family doctor retired and he knew her the best. The GP sees her to repeat her prescription.
- He asked her about her mobility and she said that she can walk for 2 blocks and then her knees start "burning." The doctor has said that she needs to keep walking because it is "the best thing" for her.
- When the advocate sent the suggested revisions to her doctor, he was not comfortable using someone else's words and just signing. He said he had given his opinion and he did not want to change it. The advocate did not talk with the GP.
- She considers the two PWD applications as being part of the whole picture of her physical and mental impairments.
- There are some things she can do because she has to and there are some things she cannot do. She will do a little and then she needs to lie down for a bit.
- There was a report that she had a hairline fracture in her lumbar spine and her back starts to hurt.
- With the osteoarthritis, it is hard for her to do simple chores like sweeping, vacuuming, and mopping. Her son helps with these chores because they "kill" her lower back.
- She can do things, but it takes time and she requires frequent rest periods when she has to lie down. She has never liked the idea of having a housekeeper come into her home and she will do light chores over time.
- The forms for the PWD application were difficult to deal with. She had never gone through this before and she found it difficult to do.
- She has been given medication to help her sleep at night, or to help her when she has a panic attack. She has cut back on the drinking.
- When she is walking, her mind is not on where she is and she will end up tripping.
- Some of her injuries have been caused by her alcohol abuse, and she is trying to curb her drinking.
- She has some old friends in her community that have been a big help for her. They will bring her food from time to time. She does not really talk with them about personal issues.
- Sometimes, she does not eat well because she misses her husband and does not want to eat.
- She gets confused when she tries to go to the store for groceries.
- She feels more comfortable talking with people she knows rather than going to a group session or an Alcoholics Anonymous (AA) meeting.
- She is still having gall bladder attacks about once a week. The attack can last for 3 days and it is very painful in her side and around to her back. She has found that she can lessen the frequency by avoiding certain foods. Sometimes she can go for a week or so with no attacks.
- She spent many decades as a housewife with only occasional part-time work and she really needs help.

At the hearing, appellant's advocate stated:

- The appellant has many serious medical conditions. There is a long list of COPD, gall bladder issues and there is a risk of bursting, she is dependent on medication because of the acute trauma she suffered from witnessing her husband die at home. She has developed a dependency on alcohol to cope.
- All of these health functions are not allowing her to function normally.
- Her family can see a steady decline in the appellant's function since the summer of 2017. It was hard for the appellant to even concentrate on getting the PWD application completed.
- The appellant has a severe addiction and this has impacted even her physical ability to walk. The appellant has had some bad falls in the last couple of weeks.
- The appellant's addiction is making her other conditions hard to deal with. It restricts the appellant from work and from doing her DLA.
- The appellant's connection with the advocate through this process was sporadic.
- She has not seen the appellant for about 6 months, but she talks with her on the telephone.

The ministry relied on the reconsideration decision as summarized at the hearing. At the hearing, the ministry clarified that employability is not a criterion in section 2(2) of the EAPWDA, as it is with the status of Persons with Persistent Multiple Barriers (PPMB) to employment.

Admissibility of Additional Information

The ministry did not object to the admissibility of the additional documents, with the exception of the copy of the AR report with handwritten comments by the advocate. The panel reviewed the documents and determined that the information in the reports and letter support information before the ministry at reconsideration as relating to medical conditions diagnosed or referred to in the PWD application. The panel also admitted most the oral testimony on the appellant's behalf as being in support of, and tending to corroborate, the impact from medical conditions referred to in the PWD application which was before the ministry at reconsideration. Therefore, the panel admitted this additional information in accordance with Section 22(4)(b) of the *Employment and Assistance Act.*

With respect to the copy of the AR with handwritten comments by the advocate, the ministry argued that the comments were not signed or dated and were not consistent with the information before the ministry at reconsideration. The panel reviewed the AR and determined that those comments not adopted by the GP in the second AR were inconsistent with the information available to the ministry at reconsideration. The panel did not admit the copy of the AR as it was not before the ministry at reconsideration and was not in support of information before the ministry at reconsideration.

PART F – REASONS FOR PANEL DECISION

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

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

Persons with disabilities

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

(a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

The EAPWDR provides as follows:

Definitions for Act

2 (1) For the purposes of the Act and this regulation, **"daily living activities"** ,

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

(i) make decisions about personal activities, care or finances;

(ii) relate to, communicate or interact with others effectively.

(2) For the purposes of the Act, "**prescribed professional**" means a person who is

(a) authorized under an enactment to practise the profession of

(i) medical practitioner,

(ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

(i) an authority, as that term is defined in section 1 (1) of the Independent School Act, or

(ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the School Act,

if qualifications in psychology are a condition of such employment.

Part 1.1 — Persons with Disabilities

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2 (2) [persons with disabilities] of the Act:

(a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;

(b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;

(c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the Community Living Authority Act;

(d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the Community Living Authority Act to assist that family in caring for the person;

(e) a person who is considered to be disabled under section 42 (2) of the Canada Pension Plan (Canada).

Severe Physical Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical impairment. The ministry acknowledged that the appellant was diagnosed by the GP with arthritis, COPD, Cirrhosis, DDD and osteoporosis. In the second MR, the GP commented regarding the appellant's health history that: "radiologically, her DDD and OA is mild but clinically it is moderate. COPD grade 1 spirometry." The reports provided by the appellant at the hearing confirm these diagnoses.

In her self-reports, the appellant referred to sciatica pain, arthritis in her back and knees, COPD, and also that she is waiting for knee surgery and gall bladder surgery. The appellant wrote that her gall bladder attacks have been more frequent and the pain has her in bed, sometimes for up to two days. At the hearing, the advocate for the appellant stated that the appellant has many serious medical conditions that include gall bladder problems with a risk of bursting. At the hearing, the appellant stated that she is still having gall bladder attacks about once a week and the attack can last for 3 days, being very painful in her side and around to her back. She stated that sometimes she can go for a week or so with no attacks. While the appellant described the impact of her gall bladder condition, given an opportunity to describe a diagnosis and the associated restrictions to the appellant's functioning in the second MR and the second AR, the GP did not provide this information.

A diagnosis of a serious medical condition or conditions does not in itself determine PWD eligibility or establish a severe impairment. An "impairment" involves 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. Section 2(2) of the EAPWDA requires that the ministry be satisfied that the impairment is severe before the ministry may designate an applicant as a PWD. To assess the severity of the impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning.

The ministry considered the impacts of the appellant's diagnosed medical conditions on her daily functioning, reviewing the assessments provided in the initial MR and the AR, as well as the second MR and the second AR. The ministry wrote that the GP reported in the initial MR that the appellant is able to walk 2 to 4 blocks unaided on a flat surface, climb 5 or more steps

unaided, lift 5 to 15 lbs. and remain seated less than 1 hour. The ministry also considered that the GP assessed the appellant in the initial AR as being independent with all aspects of mobility and physical ability including walking indoors and walking outdoors (note: "slow, takes breaks"), climbing stairs, standing, lifting (note: "lifts small amounts at a time"), and carrying and holding. Regarding assistive devices, the GP wrote in the initial AR that the appellant "may need equipment after knee surgery that is being scheduled," and the equipment is identified as "cane/walker." The ministry considered that the GP did not indicate in the second MR or the second AR that the appellant currently requires any prostheses or aids for a physical impairment.

The ministry considered that the assessment by the GP of the appellant's functional skills in the second MR does not vary substantially with the first assessment as the GP reported that the appellant can only climb 2 to 5 steps unaided, but that she can lift 15 to 35 lbs. The GP indicated that the appellant takes significantly longer than typical with walking outdoors and the ministry considered that the GP's comment "needs to use furniture for support" does not describe how much longer it takes the appellant with walking outdoors. The ministry wrote that the GP assessed the appellant as requiring continuous assistance from another person with lifting and with carrying and holding, which appears to be inconsistent with her ability to lift 15 to 35 lbs. As the appellant is assessed as being able to lift up to 35 lbs., the continuous assistance would likely be for heavier weights in excess of this amount.

For the ministry to be "satisfied" that an impairment is severe, the panel considers it reasonable for the ministry to expect that the information provided by the medical practitioner and prescribed professional presents a comprehensive overview of the nature and extent of the impacts of the medical conditions on daily functioning, including explanations, descriptions or examples in the spaces provided in the MR and in the AR forms.

At the hearing, the appellant stated that she told the doctor that she can walk for 2 blocks and then her knees start "burning," but that her doctor has said that she needs to keep walking because it is "the best thing" for her. Provided an opportunity to clarify the assessments in the MR and the AR following contact by an advocate and to clarify the extent of assistance required by the appellant, the panel finds that the ministry reasonably determined that the GP did not substantially change his assessment of physical functioning in the second MR and the second AR.

Given the GP's assessment of physical functioning in the moderate range of functional skills limitations and independence with her mobility and physical ability, with insufficient evidence of the need for assistance, the panel finds that the ministry reasonably determined that the evidence is not sufficient to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

Severe Mental Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided was sufficient evidence of a severe mental impairment. The ministry wrote that the GP reported in both MR's that the appellant has been diagnosed with Anxiety Disorder and Substance Use Disorder. The GP also reported in the initial MR that the appellant has significant deficits with

her cognitive and emotional functioning in the areas of executive, emotional disturbance, attention or sustained concentration and "other," specified as "husband died." In assessing daily impacts to the appellant's cognitive and emotional functioning, the GP assessed no major impacts in the initial AR, with moderate impacts in the areas of emotion, attention/concentration, and motivation and minimal impacts to consciousness, executive, and memory. The GP initially assessed no impacts in the areas of bodily functions, impulse control, insight and judgment, motor activity, language, psychotic symptoms, other neuropsychological symptoms, and other emotional or mental problems.

The ministry considered that in the second MR the GP indicated that the appellant has significant deficits with her cognitive and emotional functioning in all of the listed areas, specifically: consciousness, executive, language, memory, perceptual psychomotor, psychotic symptoms, emotional disturbance, motivation, impulse control, motor activity, and attention or sustained concentration, and the GP wrote: "severely affected by anxiety, medication." The ministry wrote that although the number of significant deficits identified is notable, the majority of impacts to daily functioning are classified as moderate to minimal in nature. In the second AR, the GP reported that there are major impacts in the areas of emotion and impulse control; however, the GP had previously indicated that there was no impact in the area of impulse control and, in the absence of an explanation for this marked change, the panel finds that little weight can be placed on the GP's assessment of a major impact on impulse control in the second AR. The GP reported moderate impacts in the areas of bodily functions, consciousness, attention/concentration, executive, memory, motivation and motor activity. For the areas of bodily functions and motor activity, the GP has not provided an explanation for the change from no impact in these areas to a moderate impact and the panel finds that little weight can be placed on these revised assessments.

Considering the two "social functioning" DLA, as set out in Section 2(1)(b) of the EAPWDR, that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (relate effectively), the panel finds that the ministry reasonably concluded that there is insufficient evidence to establish that the appellant is significantly restricted in either. Regarding the 'decision making' DLA, the GP reported in the initial and the second AR that the appellant independently manages most of the decision-making components of DLA, specifically: personal care (regulating diet), shopping (making appropriate choices and paying for purchases), meals (meal planning and safe storage of food), pay rent and bills (including budgeting), and medications (taking as directed and safe handling and storage). In the second AR, the GP noted that the appellant "has made poor choices" when shopping, she requires periodic assistance from another person with decision-making aspects of transportation (using transit schedules and arranging transportation) and periodic support/supervision with making appropriate social decisions. While for transportation the GP reported that the appellant "needs help 70% of the time," indicating a need for help for extended periods of time, for making appropriate social decisions the GP wrote "history of substance use disorder," which the ministry reasonably considered does not describe the frequency or duration of the assistance required.

Regarding the DLA of 'relating effectively', the GP reported in the initial MR that the appellant is not restricted with her social functioning and, in the second MR, that she is restricted, with the comment: "widow; socially isolated." However, in both the initial and the second AR, the GP reported that the appellant is independent with developing and maintaining relationships and with interacting appropriately with others. The GP initially assessed good functioning in the appellant's immediate and extended social networks, which was amended to marginal functioning in the second AR, with the comment "socially isolated." At the hearing, the appellant clarified that she has some old friends in her community that have been a big help for her as they bring her food from time to time. The appellant stated that she does not really talk with them about personal issues, but she feels more comfortable talking with people she knows rather than going to a group session or an AA meeting.

At the hearing, the appellant's advocate stated that the appellant has a severe addiction and this has impacted even her physical ability to walk, that she has had some bad falls in the last couple of weeks and this is a safety concern. The appellant explained that when she is walking, her mind is not on where she is and she will end up tripping and falling. The appellant agreed that some of her injuries have been caused by her alcohol abuse, and she is trying to curb her drinking. When asked to describe the support/supervision required which would help to maintain the appellant in the community, however, the GP wrote in the second AR: "financial assistance- rent/pet/food etc." and did not report safety concerns. The GP reported in the initial and second MR that the appellant has no difficulties with communication and that she has a good ability with speaking and hearing, although her ability to read and write is unknown by the GP.

Given the discrepancies in the assessment of impacts to some of the areas of cognitive and emotional functioning and the mostly moderate impacts, as well as the insufficient evidence of significant impacts to the two social functioning DLA that are specific to a mental impairment, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

Section 2(2) of the EAPWDA requires that a severe impairment directly and significantly restricts the appellant's ability to perform the DLA either continuously or periodically for extended periods. The direct and significant restriction may be either continuous or periodic. If the restriction is periodic, it must be for an extended time. Inherently, any analysis of periodicity must also include consideration of the frequency. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence from the prescribed professional 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 also listed in the MR and, with additional details, in the AR. Therefore, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairment continuously or periodically for extended periods. In this case, the GP is the prescribed professional.

In the reconsideration decision, the ministry was not satisfied that the appellant has a severe physical or mental impairment that, in the opinion of the prescribed professional, directly and significantly restricts DLA either continuously or periodically for extended periods of time. The ministry reviewed the information provided in the initial MR and wrote that the GP indicated that the appellant has been prescribed medication that interferes with her ability to perform DLA and the GP noted that the appellant "says it does not affect her function." In the second MR, the GP commented that the combination of medications "can result in cognitive impairment."

In the first MR, the GP reported that the appellant is restricted with the basic housework DLA, the daily shopping DLA, and with mobility outside the home. In the second MR, the GP indicated that the appellant is also restricted with the DLA of use of transportation. The ministry considered that in both the initial and the second MR, the GP did not indicate if the restrictions to these DLA are either continuous or periodic. In the second MR, the GP changed the assessment for the management of finances DLA from not restricted to "unknown." The appellant is not restricted with the DLA of personal self care, meal preparation, management of medications, and mobility inside the home. For the assistance required with DLA, the GP wrote in the initial MR: "manages herself but is slow" and, in the second MR, "emotional support; pet dog."

In the AR, the GP assessed the appellant as independent with the "mobility" DLA of moving about indoors and outdoors, indicating that the appellant takes longer with walking outdoors but not specifying how much longer than typical. The ministry considered that the GP indicated in the initial AR that the appellant is independent with all of the tasks of all of the listed DLA, specifically the personal care DLA, the basic housekeeping DLA, the shopping DLA, the meals DLA, the pay rent and bills DLA, the medications DLA, and the transportation DLA, although the GP commented "slow" with the tasks of laundry and basic housekeeping, making appropriate choices when shopping using public transit.

The ministry also considered that in the second AR, the GP changed his assessment for some tasks of DLA from independent to a need for periodic assistance from another person, specifically with basic housekeeping and laundry, going to and from stores and carrying purchases home when shopping and, in the absence of comments indicating the frequency or duration of the assistance needed, the panel finds that the ministry reasonably concluded that there was insufficient information provided to determine that the assistance is required for extended periods of time with these tasks. However, the GP also indicated that the appellant requires periodic assistance with getting in and out of a vehicle, using public transit and using transit schedules and arranging transportation and the panel finds that the GP's comment that the appellant "needs help 70% of the time" indicates a need for assistance for extended periods of time with these tasks of the transportation DLA.

In her self-report, the appellant wrote that her knee pain has kept her from doing some basic chores. At the hearing, the appellant stated that she can do things, but it takes time. She has never liked the idea of having a housekeeper come into her home and she will do light chores herself, over time. The appellant stated that her osteoarthritis makes it hard for her to do simple chores like sweeping, vacuuming, and mopping and her son helps with these chores because they "kill" her lower back. The appellant also stated that she gets confused when she tries to go

to the store for groceries. The advocate stated that the appellant's addiction restricts the appellant from work and from doing her DLA. As for finding work and/or working, the panel notes that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

Given the GP's initial assessment of independence with all tasks of DLA and the subsequent assessment of the need for periodic assistance from another person with a few tasks of DLA, with an absence of sufficient information to determine that the assistance is required for extended periods, the panel finds that the ministry reasonably concluded that the evidence is insufficient to show that the appellant's overall ability to perform her DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

In the reconsideration decision, the ministry held that, as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required. Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of being directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods, a person must also require help to perform those activities. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

The GP reported in the AR that the appellant "gets social financial assistance, nothing else." In the second AR, the GP wrote that he is "not fully aware of the extent of help she already gets." When asked to describe help required where none is available, the GP wrote "mainly financial," and the panel finds that the ministry reasonably concluded that financial need is not a criterion used in the assessment of eligibility for the PWD designation. The panel also finds that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established in the opinion of a prescribed professional, the panel also finds that the ministry reasonably concluded that, under section 2(2)(b)(ii) of the EAPWDA, it cannot be determined that the appellant requires help to perform DLA.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation pursuant to Section 2(2) of the EAPWDA, was reasonably supported by the evidence. The panel confirms the ministry's decision. The appellant's appeal, therefore, is not successful.