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 15 May 2018 that denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in section 2 of the *Employment and Assistance for Persons with Disabilities Act*, section 2. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

(i) directly and significantly restricts his ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

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

The ministry determined that the appellant satisfied the other 2 criteria: he has reached 18 years of age and his impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA) – section 2
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – sections 2 and 2.1.

PART E – SUMMARY OF FACTS

The evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 01 November 2017. The Application contained:
   - A Self Report (SR).
   - A Medical Report (MR) dated 10 November 2017, completed by a hospital physician who has known the appellant for 2 weeks during a hospital stay and seen him 2-10 times during that period.
   - An Assessor Report (AR) dated 22 December 2017, completed by a registered social worker (SW) who met with the appellant once.
2. A telephone log of a conversation on 05 March 2018 between a ministry adjudicator and the physician who completed the MR (see below).
3. The appellant's Request for Reconsideration submission, dated 14 May 2018, prepared by the appellant's advocate, to which is attached a questionnaire prepared by the advocate in which the appellant's general practitioner (GP) confirmed, on 19 April, 2018, a number of statements (see below).

In the MR, the physician provides the following diagnoses related to the appellant's impairment: Insulin dependent diabetes (onset unknown), major depressive disorder (onset August 2014), mixed anxiety disorder (onset unknown), morbid obesity (onset unknown), and right 1st toe amputation for osteomyelitis (onset September 2017).

In the AR, the SW describes the appellant's impairment as follows: Type II diabetes (diagnosed 2010), hypertension (diagnosed 2010), obesity (since childhood), major depressive disorder (initially diagnosed 1989), anxiety (diagnosed 1989), and lower back pain (for at least the past 10 years).

The panel will first summarize the evidence from the MR and the AR as it relates to the PWD criteria at issue in this appeal. As the AR provides much narrative, this summary will necessarily focus on the highlights.

Severity/health history

Under Degree and Course of Impairment, the physician indicates that the appellant's impairment is likely to continue for two years or more, commenting: "Unknown duration. May improve with ongoing psychiatric treatment, counselling, weight loss, improved blood sugar control."

Physical impairment

MR:
Under Health History, the physician writes that the appellant "also has moderately impaired mobility as a result of morbid obesity and recent foot surgery (amputation of right 1st toe)."

Regarding functional skills, the physician reports that the appellant can walk 1 to 2 blocks unaided on a flat surface, can climb 5+ steps unaided, has no limitations in lifting, and there are no limitations to remaining seated.

The physician indicates that the appellant's height and weight are relevant: >190 cm, and >170 kg.

The physician indicates that the appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform DLA. He also indicates that the appellant does not require any prostheses or aids to compensate for his impairment.

AR:
Respecting mobility and physical ability, the SW assesses the appellant as requiring continuous assistance from another person or unable and taking significantly longer than typical (5x longer) for walking indoors, walking outdoors (1 block max,) and climbing stairs (5 steps max.); requiring continuous assistance from another person or unable for standing (5 minutes max, quickly loses balance); independent for lifting; and periodic assistance from another person required for carrying and holding (difficulty with balance, cannot carry with two hands upstairs, must ask for help 50% of the time).

The SW adds that after losing his toe the appellant has tried crutches, a cane, and a walker but did not find any of them to be beneficial.

Mental impairment

MR:
Under health history, the physician writes, "Severely impaired function as a result of long-standing depression and anxiety. This is the main issue preventing him from working."

The physician indicates that the appellant has no difficulties with communication.

The GP indicates that the appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance, motivation, and attention and sustained concentration.

AR:
The SW assesses the appellant's ability to communicate as satisfactory for speaking (some difficulty speaking to new people – anxiety) and reading (some difficulty due to near sightedness and would benefit from glasses); good for writing; and poor for hearing (impaired hearing – frequently must ask people to repeat themselves). The SW comments that communicating with unfamiliar people causes increased anxiety.

The SW assesses the appellant's mental impairment as having the following impacts on functioning:

- Major impact: bodily functions, emotion, impulse control, insight and judgment, executive, and motivation.
- Moderate impact: consciousness, attention/concentration, motor activity, and other neuropsychological problems.
- Minimal impact: none
- No impact: memory, language, psychotic symptoms, and other emotional or mental problems.

The SW adds extensive commentary to these assessments. To summarize:

- The appellant has to urinate frequently, every 30 minutes on 10 days per month, so toileting takes a significant amount of his day.
- He eats only one meal per day and grazes throughout the rest of the day, usually on junk food.

- He sleeps 4 to 5 hours per night, and naps 2 to 4 hours throughout the day, yet he consistently feels fatigued. This impacts his consciousness, as he must stop to rest for a few hours due to fatigue.
- His constant pain, limited mobility, and the resulting impact on quality of life significantly worsen his symptoms of depression.
- These factors also cause anxiety and feelings of panic in social situations.
- He struggles with mood swings, heightened when around others.
- He isolates at home six days per week, avoiding social situations that caused panic attacks.
- He has difficulty with impulse control and makes unhealthy food choices, with consequences for his diabetes.
- He also spends beyond his means when dining out and makes impulse buys while grocery shopping, showing a lack of insight and judgment in taking care of health.
- Focusing on tasks and conversations is difficult for him.
- Motivation is low due to his depression and limited mobility, leading to his neglecting activities such as dressing, grooming, laundry, etc.
- Executive functioning is poor as his situation makes it difficult to plan ahead and motor activity is impacted by mobility challenges and energy levels. Even basic tasks, such as going to the washroom, cause pain and are very tiring.

Ability to perform DLA

MR:
The physician reports the following with regard to the appellant's ability to perform DLA:

- Restricted on a continuous basis – mobility outside the home and use of transportation.
- Restricted on a periodic basis – personal self-care, daily shopping, and social functioning.
- Not restricted – meal preparation, management of medications, basic housework, mobility inside the home, and management of finances.

The physician explains the "periodic" restriction by writing, "Related to exacerbations of psychiatric illness."
The physician explains the impact on social functioning as follows: "Related to long-standing anxiety and depression."
The physician adds, "Restriction and use of transportation is related to impacted mobility, making it challenging to use public transit."

AR:
The SW provides the following assessments of the assistance the appellant requires in performing DLA:

- Personal care – continuous assistance from another person or unable for dressing, grooming, and bathing; periodic assistance from another person required for regulating diet; independent and taking significantly longer than typical for toileting, transfers in/out of bed and transfers on/off chair; and independent for feeding self.
- Basic housekeeping – periodic assistance from another person required and takes significantly longer than typical for laundry; and continuous assistance from another person or unable for basic housekeeping.
- Shopping – continuous assistance from another person or unable for going to and from stores, making appropriate choices, and carrying purchases home; and independent for reading prices and labels and paying for purchases.

- Meals – continuous assistance from another person or unable for meal planning, food preparation and cooking; independent for safe storage of food.
- Pay rent and bills – continuous assistance from another person or unable for banking and budgeting; periodic assistance from another person required for paying rent and bills.
- Medications – continuous assistance from another person or unable for filling/refilling prescriptions and taking as directed; independent for safe handling and storage.
- Transportation – continuous assistance from another person or unable for using public transit; periodic assistance from another person required for using transit schedules and arranging transportation; and independent for getting in and out of a vehicle.

The SW provides the following additional comments:

> "Neglects personal care (dressing, grooming, bathing) 6 days per week largely due to low motivation but also due to pain and low energy. Additionally, the amount of time spent isolating at home is a factor, as he does not see the purpose of doing these activities if no one is going to see him. Requires but does not have a grab bar and shower chair for bathing – he has not managed to have a shower since having his toe amputated in Sept. 2017 as he does not have these aids (has tried to sponge down instead). Requires daily reminders and support for regulating diet."

With respect to social functioning, the SW assesses the appellant as Independent for making appropriate social decisions and interacting appropriately with others; requiring periodic support/supervision for developing and maintaining relationships (unable to make plans ahead of time due to unpredictable physical or emotional pain; no energy/motivation to make new friends) and ability to secure assistance from others (not wanting to ask for help or be around other people); and continuous support/supervision for ability to deal appropriately with unexpected demands (causes extreme anxiety; difficulty saying no even if the demand is beyond his abilities).

The SW describes how the appellant's mental impairment impacts his relationship with his immediate social network as marginal functioning (small social circle, but heightened anxiety within that circle) and with his extended social network as marginal functioning (brief communication is okay; avoids going out in public most days).

Help provided/required

MR:

The GP indicates that the appellant does not require any prostheses or aids to compensate for his impairment.

AR:

The SW does not indicate that the appellant routinely uses of any of the listed assistive devices. She writes that he would benefit from a grab bar and shower chair for bathing and a grab bar by his toilet to assist with transfers.

The SW indicates that assistance is provided by family.

She comments that the appellant has a few close friends who assist with shopping trips and provide periodic support and encouragement.

In terms of help required, she writes that he requires continuous and ongoing support for depression, anxiety, and social functioning. He requires daily reminders to bathe, dress, grooming, regular diet, and take medications. It also requires continuous assistance with shopping, meals (meal planning, food preparation and cooking), housekeeping, budgeting, banking, managing medications (taking as directed and obtaining refills) and transportation. He requires periodic assistance with carrying and holding (50% of the time) and laundry (50 to 75% of the time).

Self Report

The SR is a four-page typewritten document signed by the appellant on 11 January 2018. It was prepared with the assistance of an advocate from an advocacy organization, and states that the information was supplied by the appellant who has reviewed it to confirm its accuracy. The content relating to the description of his disability and how it affects his life and ability to take care of himself, including ability to perform DLA, appears to reflect to a large degree the assessments and narrative of the AR, which in turn was completed earlier, on 22 December 2017. Accordingly, the panel will not summarize the SR in detail.

Telephone log

In answer to a question by the adjudicator regarding the appellant's mobility, the physician stated that he had treated the appellant while he was in hospital and can only speak to how he was doing at that time – 3 to 6 months ago, and he hasn't seen him since. The physician is not able to answer how the appellant is currently functioning – the adjudicator would have to ask the family doctor. It was clear that the appellant would have some degree of disability, but he can't speak to what that would look like at this time.

According to the log, the adjudicator raised questions about, but the physician did not provide any further information regarding how the appellant has recovered following the amputation of his toe, whether there were any consults available regarding his recovery, and whether there were any psych consults available. The physician also did not provide any further information as to the frequency and duration of his "exacerbations of psychiatric illness."

Request for Reconsideration

Accompanying the reconsideration submission prepared by the appellant's advocate is a questionnaire in which the appellant's GP is asked whether she agrees with a number of statements. The GP indicates with her initials that she agrees with all of them:

- [The appellant] has been diagnosed with major depressive disorder.
- [The appellant] is a prescribed [prescription medications] for his depression and anxiety.
- [The appellant] has a history of suicide attempts and ideation as a result of his mental impairments.
- [The appellant's] mental impairments are likely to continue for two or more years from today
- As a result of [the appellant's] mental impairments, he experiences significant impacts to his bodily functions, consciousness, emotional regulation, impulse control, insight and judgment, attention/concentration, executive function, and motivation.

The reconsideration submission is 10 typewritten pages, includes reference to the information provided in the above questionnaire, and goes to argument disputing the ministry's original decision.

Notice of Appeal

The appellant's notice of appeal is dated 22 May 2018. Under Reasons for Appeal, he writes, "The decision is not reasonably supported by the evidence and is not a reasonable application of the EAPWDA in my circumstances."

The hearing

With the consent of the appellant, a ministry worker attended the hearing for familiarization purposes. With the consent of the ministry, two representatives from the advocacy organization of the appellant's advocate attended the hearing as observers.

At the hearing, the appellant's advocate spoke to a 13-page submission that went to argument (see Part E, Reasons for Panel Decision, below).

Attached to this submission was a "To whom it may concern" letter dated 04 June 2018 from the SW. She writes that she is a full-time employee at an employment services agency where she works with clients facing challenges, such as disabilities. Apart from the $75 she receives from the ministry, she receives no payment for completing Assessor Reports – she does this as a community service, volunteering her time. The SW states that to complete an AR, she reviews the MR to understand what physical or mental disabilities the applicant has been diagnosed with and the other medications and other treatments that have been prescribed. She also reviews the applicant's SR to get an understanding of their perspectives on their disabilities and the impact those disabilities have on their day-to-day life. She uses this evidence to assess the information provided to her by the applicant, but she makes an independent judgment of the impact of the applicant's diagnosed medical conditions on that person's ability to perform DLA. She spends a minimum of two hours speaking with an applicant in depth about their impairments, their ability to perform DLA and the help required. Having this extensive interview with the applicant allows for the opportunity to build trust, learn about the applicant's day-to-day life, question inconsistencies within various DLA which often leads to discovering challenges with DLA that the client otherwise would not think to mention, as well as to make her own observations about the client's situation. She then records her opinion on the type and degree of impacts and provides an explanation for that opinion.

She writes that she is also been asked to consider the questionnaire answered by the GP, particularly about the impacts the applicant experiences as a result of his mental impairments. In her view, these are consistent with information provided to her by the applicant and her own observations and opinions.

In his testimony at the hearing, the appellant stated that there might be differences in the physician's view of his disability as compared to that of the SW. The physician saw him in a hospital setting where he was eating properly and his blood sugar was under control, while the SW saw him after he had returned home, where he is not continuously being monitored.

In answer to a question, the appellant's advocate explained that she had interviewed the appellant in November 2017 and prepared the first draft of the SR. It was this draft that the SW reviewed before interviewing the appellant. Subsequent to receiving the completed AR, the advocate revised the draft SR to take into account additional information noted in the AR. It was this revised SR that the appellant reviewed and signed in January 2018.

The ministry stood by its position at reconsideration.

Admissibility of additional information

The ministry did not object to the admissibility of the letter from the SW as submitted by the advocate. The panel finds that this letter is in support of the information and records before the ministry at reconsideration, as it tends to corroborate the certification by the assessor that "This report… contains my findings and considered opinion at this time." The panel therefore admits this letter as evidence under section 22(4) of the *Employment and Assistance Act.*

The panel accepts as argument the advocate's submission, the appellant's testimony regarding any differences between the physician's and the SW's view of his disability, and the advocate's explanation regarding the drafting of the SR.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry decision that determined that the appellant did not meet three of the five statutory requirements of Section 2 of the EAPWDA for designation as a person with disabilities (PWD) is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe physical or mental impairment that, in the opinion of a prescribed professional,

(i) directly and significantly restricts his ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

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

The ministry determined that the appellant satisfied the other 2 criteria: he has reached 18 years of age; and his impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

The following section of the EAPWDA applies to this appeal:

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

The following section of the EAPWDR applies to this appeal:

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

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

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:
(i) make decisions about personal activities, care or finances;
(ii) relate to, communicate or interact with others effectively.

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

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

(i) medical practitioner,

(ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner, or

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

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

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

if qualifications in psychology are a condition of such employment.

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) 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).

Analysis

Weight of evidence

In the reconsideration decision, the ministry found that the appellant's PWD application to be "somewhat problematic," as the physician that completed the MR had only known the appellant for two weeks while in hospital because of his toe amputation and was not his regular general practitioner, and because the SW who completed the AR had only just met the appellant when completing her section of the application.

Further to these observations, the ministry wrote:

"While it is recognized that the legislation does not require you to have a long-standing history with the professionals who completed your application, it does require the minister be satisfied that the severe impairment exists. While their information has been taken into account, the minister must question the accuracy of their assessments given the limited understanding they would no doubt have after knowing you for such a limited time…[W]hen asked to indicate what approaches and information sources your social worker used to complete the assessors section, she indicates her information only came from the one visit with you. The minister has determined that it is more likely that the information they

provided is more so a reiteration of the impairments you report to them, rather than a direct reflection of their professional opinion. Although [the physician] had only known you for two weeks during your stay in the hospital recovery situation, the minister has given his assessment considerably more weight in determining the severity of your impairments as [the SW] has only met with you once and is not a physician."

In her submission at the hearing, the appellant's advocate takes issue with the ministry weighing the evidence as described above. She argues that it is a basic principle of administrative law that each case involving the exercise of discretion by a statutory decision-maker – such as by the minister making a PWD designation determination – must be determined on its merits. A decision-maker fetters their discretion by relying on a pre-existing policy or presumption so that there is no genuine exercise of discretion in an individual case. She notes that fettering of discretion in deciding a matter generally results in the in the decision being found to be unreasonable. She argues that there was no basis for the presumption that a prescribed professional would provide inaccurate information and opinions based on one assessment interview, and in particular there is no basis for presuming that the SW's assessments were inaccurate.

The advocate also takes the position that the ministry unreasonably determined that the AR was inaccurate and gave it little weight because the assessor was assumed to have reiterated information provided by the applicant rather than exercise professional judgment. It may be that in a specific case an assessor may fail to perform their professional obligation and the AR should be given less weight. However, there is no consideration given to the SW's report and no basis for concluding that it does not reflect her professional opinions.

Panel finding

"Fettering of discretion" has been recently described by the BC Supreme Court in *Trinity Western University v. The Law Society of British Columbia* 2015 BCSC 2326: "[97] Fettering of discretion occurs when, rather than exercising its discretion to decide the individual matter before it, an administrative body binds itself to policy or to the views of others…Although an administrative decision maker may properly be influenced by policy considerations and other factors, he or she must put his or her mind to the specific circumstances of the case and not focus blindly on a particular policy to the exclusion of other relevant factors."

The appellant's advocate has not cited any policy or other outside influence as having any bearing on the reconsideration decision. Based on the above (and other) definitions of fettering of discretion, it is the panel's view that there is been no fettering of discretion in this case. However, the presumption of inaccuracy, as raised by the advocate, merits further consideration.
On reading the reconsideration decision, the panel understands the ministry to be finding that it has little confidence in the information provided by both the physician in the MR and by the SW in the AR, but the ministry placed "considerably" more weight on the MR and, as stated elsewhere in the reconsideration decision, the SW's assessments have been given "little weight."

The ministry acknowledged that the legislation does not require an applicant to have a long-standing history with the professionals who complete the application but stated that the legislation does require that the minister be satisfied that a severe impairment exists. The ministry explains this approach to applying weight to the evidence by stating, "the minister must question the accuracy of their assessments given the limited understanding they would no doubt have after knowing you for such a limited time."

The ministry also stated, "…[W]hen asked to indicate what approaches and information sources your social worker used to complete the assessors section, she indicates her information only came from the one visit with you."

The ministry has drawn attention to several instances in which the assessments provided by the physician "contradict" those of the SW. For example, the SW indicates that the appellant is continuously restricted with indoor mobility while the physician indicates that he experiences no restriction in this area, and the SW indicates that areas of impulse control and executive functioning have a major impact on daily functioning, while the physician indicates that the appellant does not experience any significant deficits in these areas. The ministry determined that it is more likely that the information the SW provided is more a reiteration of the impairments the appellant reported to her, rather than a direct reflection of her professional opinion.

In the panel's view:

- In stating that it must question the accuracy of the professionals' assessments the ministry has not pointed to anything that would cast doubt on their expertise or integrity in certifying that "This report… contains my findings and considered opinion at this time."

- In the AR under Approaches and Information Sources, the SW checked only "office interview with applicant," and not "other assessments." In her letter submitted on appeal, the SW stated that she reviewed the MR and SR. Given that the MR is physically in the same booklet as the AR and was completed by the physician before the AR, it would have been reasonable for the ministry to understand that "other assessments" could be taken to mean "reports not included in the application" and that she had indeed reviewed the MR.

- The ministry has not given any substantive or objective reasons, other than that the prescribed professionals were with the appellant "for such a limited time," to question the accuracy of the professionals' assessments.

- It should not be considered unusual that professionals might differ in their opinions. This is particularly understandable in this case, as the physician knew the appellant in a highly monitored hospital setting, while the SW met with him sometime after he had returned home. The panel does not see the differences in assessments as contradictions, but as variations in the observable scope of impairment due to the changed setting and the SW's expertise and experience in assessing the nature and degree of impairment.

- It is clear that, on reading the MR and AR together, along with the SR, and given the detailed narrative provided by the SW, with some of her assessments confirmed by GP in the questionnaire, the SW has a wider and deeper insight into the appellant's impairments than does the physician. The references to the need for grab bars and a shower chair for bathing and toileting are examples.

- There is nothing in the legislation that states that assessments provided by one class of prescribed professional, that of medical practitioner, should be given more weight than that provided by a professional in any of the other classes.

The panel finds that the ministry had no reasonable basis for giving the SW's assessments little weight and for considering inconsistencies in the reporting of the prescribed professionals as contradictions. The panel finds that the ministry's approach to weighing the evidence does not result in a reasonable analysis of the information provided in the application.

Application of the evidence to the PWD criteria at issue

In the reconsideration decision, the ministry determined that, on the basis of weighing the evidence of the physician, the SW, and the GP as described above, the information provided did not establish that the appellant met any of the criteria at issue in this appeal.

The position of the appellant, as explained in his advocate's submission at the hearing, is that, based on due consideration and weighing of the evidence, the ministry's findings are not reasonably supported by the evidence.

As the panel has found that the weighing of the evidence by the ministry is unreasonable, the panel will review the evidence to determine if the evidence reasonably supports the ministry's determinations.

Severity of impairment

The legislation is clear that the determination of severity of impairment is at the discretion of the minister, taking into account all of the evidence. The legislation requires that for PWD designation, the minister must be "satisfied" that the person has a severe mental or physical impairment. For the minister to be "satisfied" that the person's impairment is severe, the panel considers it reasonable for the ministry to expect that the information submitted by the independent and professional medical practitioner and prescribed professional (in this case the physician and the SW) completing the application provides the minister with a comprehensive overview of the nature and extent of the impacts of the person's medical conditions on daily functioning.

Severity of physical impairment

Summarizing from the MR and AR:

- The physician diagnoses the appellant with insulin-dependent diabetes, morbid obesity, and right 1st toe amputation.
- The physician states that the appellant "has moderately impaired mobility as a result of morbid obesity and recent foot surgery."
- The physician indicates that the appellant can walk 1 to 2 blocks unaided; the SW indicates that the appellant can walk 1 block max. unaided, and taking 5x times longer than typical, both indoors and outdoors, with difficulty with balance since losing toe.
- The physician assesses the appellant is able to climb 5+ steps; the SW sets this as 5 stairs max. and taking 5x times longer than typical.
- The SW states that for standing, the appellant has significant pain after 5 minutes and quickly loses balance.

- The SW comments that on the advice of the physician the appellant tried using crutches, a cane and a walker, but he did not find these to be beneficial.
- The physician assesses the appellant as continuously restricted for mobility outside the home and use of transportation. In terms of restrictions resulting from his physical impairment, the SW assesses the appellant as requiring continuous assistance or unable for aspects of these DLA, as well as for the mobility aspects of the following: personal care (dressing, grooming, bathing), shopping (going to and from stores and carrying purchases home), meals (food preparation and cooking), and medications (filling/refilling prescriptions).
- The SW also reports that the appellant requires a grab bar and shower stool for bathing and a grab bar for toileting.

Despite the physician's comment of "moderately impaired mobility," given the reported degree of restrictions in the appellant's mobility as a result of his diagnosed medical conditions, particularly the morbidity obesity, and the resulting impact on his ability to function independently and effectively, the panel finds that the ministry was not reasonable in determining that a severe physical impairment has not been established.

Severity of mental impairment

From the MR, the AR and the questionnaire:

- The physician diagnoses the appellant with major depressive disorder and mixed anxiety disorder. This diagnosis is confirmed by the GP.
- The physician indicates that the appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance, motivation, and attention or sustained concentration.
- The SW assesses major impacts of the appellant's mental impairment in the areas of emotion and motivation (areas where the physician identified significant deficits) and in the areas of bodily functions, impulse control, insight and judgment, and executive. In the other area where the physician identified a significant deficit (attention/concentration) the SW assesses a moderate impact. (For the SW's commentary of these assessments regarding his isolating himself and panic attacks, see Part E above)
- The GP confirmed major impacts in all the areas identified as major impacts by the SW, adding consciousness and attention/concentration, areas where the SW assesses moderate impacts.
- As a result of his mental impairment, the SW assesses the appellant as requiring continuous assistance from another person or unable for the dressing grooming and bathing aspects of personal care (neglects 6 days/week, requires continuous reminders); for the making appropriate choices aspect of shopping (frequently makes unhealthy choices); for the banking and budgeting aspects of paying rent and bills (interacting with tellers heighten anxiety, does not budget); and for the taking as directed aspect of medications (requires continuous reminders).
- Regarding social functioning, the SW assesses the appellant as requiring periodic support/supervision for developing and maintaining relationships and securing assistance from others and continuous support/supervision for dealing appropriately with unexpected demands. The SW states that the appellant requires continuous and ongoing support for depression, anxiety and social functioning.

Considering the scope and degree of impacts of the appellant's diagnosed mental health conditions on daily functioning, including requiring daily reminders for such day-to-day activities as grooming and bathing and taking medications, and his need for ongoing support in dealing with his depression and anxiety, the panel finds that the ministry was not reasonable in finding that a severe mental impairment has not been established.

Direct and significant restrictions in the ability to perform DLA

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

The above summaries have included highlights of the SW's assessments of the appellant's ability to perform DLA, with emphasis on those aspects where the SW has found that he requires continuous assistance from another person or is unable. Giving due consideration to these assessments, and considering the range of DLA for which the appellant requires ongoing assistance, the panel finds that the ministry was not reasonable in its determination that, as a result of the appellant's severe impairments, it has not been established that the appellant's ability to perform DLA directly and significantly restricted on a continuous basis.

Help required

In the reconsideration decision, the ministry held that, as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required.

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of being directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods, a person must also require help to perform those activities. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

The evidence of the SW is that the appellant requires help to perform a wide range of DLA, including daily reminders for personal self-care and taking medications, having someone drive him to and from the store for shopping, continuous assistance from another person for meals, housekeeping and managing finances, and ongoing support for his depression and anxiety. He also needs a grab bars for toileting and a grab bar and a shower chair for bathing

Considering that the panel has found that the ministry was not reasonable in determining that it has not been established the appellant's ability to perform DLA is significantly restricted, and taking into account the assessments provided by the SW on the wide range of help required by the appellant to perform DLA, the panel finds that the ministry was unreasonable in not determining that as a result of his restrictions, the appellant requires help to perform DLA**.**

Conclusion

The panel finds that the evidence does not reasonably support the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation. The panel therefore rescinds the ministry's decision. The appellant is thus successful on appeal.

PART G – ORDER

THE PANEL DECISION IS: (Check one) ☒ **UNANIMOUS** ☐ **BY MAJORITY**

THE PANEL ☐ **CONFIRMS THE MINISTRY DECISION** ☒ **RESCINDS THE MINISTRY DECISION**

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? ☐ Yes ☐ No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) ☒ or Section 24(1)(b) ☐
and
Section 24(2)(a) ☐ or Section 24(2)(b) ☒

PART H – SIGNATURES

PRINT NAME Richard Roberts	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018 June 18

PRINT NAME Donald McLeod	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018 June 18
PRINT NAME Trevor Morley	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018 June 18