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<b>PART C – DECISION UNDER APPEAL</b>
<p>The decision under appeal is the Ministry of Social Development and Poverty Reduction (“the ministry”) reconsideration decision dated October 2, 2018 which denied the appellant designation as a Person with Disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in the <i>Employment and Assistance for Persons with Disabilities Act</i>, Section 2. Specifically, the ministry determined that the information provided did not establish that in the opinion of a prescribed professional the appellant’s severe mental impairment:</p> <ul style="list-style-type: none"><li>(i) directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,</li><li>(ii) as a result of those restrictions, she requires help to perform those activities.</li></ul> <p>The ministry determined that the appellant satisfied the other 3 criteria: she has a severe mental impairment, has reached 18 years of age and in the opinion of a medical practitioner her impairment is likely to continue for at least 2 years.</p>



<b>PART D – RELEVANT LEGISLATION</b>
<p><i>Employment and Assistance for Persons with Disabilities Act</i> (EAPWDA), Section 2</p> <p><i>Employment and Assistance for Persons with Disabilities Regulation</i> (EAPWDR), Section 2</p>

## **PART E – SUMMARY OF FACTS**

### **Evidence before the Ministry at Reconsideration**

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the appellant's self report (SR) dated March 21, 2018, a medical report (MR) and an Assessor Report (AR) dated April 4, 2018, both completed by the appellant's general practitioner ("the GP"), who has known the appellant since 2014 and who has seen the appellant 11 or more times in the past 12 months.

The evidence considered at reconsideration also included the following documents:

- appellant's Request for Reconsideration received by the ministry on September 5, 2018; containing the appellant's additional self-report ("SR2"), summarized as follows:
  - basic housekeeping is a struggle;
  - she falls behind and feels overwhelmed;
  - laundry takes longer to do and clean laundry is put away once per month;
  - she has problems shopping from store to store and usually asks for help;
  - she doesn't attempt to use transit because it causes so much anxiety;
  - her money disappears and she can't stick to a budget;
  - she suffers anxiety in new social situations;
  - she finds it difficult to manage as a single parent of a young child and asks for help at least once a week;
  - her parents and sister suffer from health problems and are unable to provide much help;
  - she is unable to maintain employment due to anxiety;
  - she is extremely afraid of her ex-spouse ("V") and experienced a great deal of stress and anxiety related to his court proceedings;
  - currently she is receiving counselling through the Elizabeth Fry Society;
- September 12, 2018 letter from the appellant's Elizabeth Fry Society case worker noting that the appellant struggles with increased anxiety, has difficulty completing daily activities and becomes easily overwhelmed;
- September 13, 2018 Victim Impact Statement in which the appellant noted that as a result of V's crime she experiences increased anxiety, sleeplessness, worry, nervousness, constant feeling of being overwhelmed, difficulty with DLA and social isolation.

### **PWD Application**

The PWD application is summarized as follows:

### **Diagnosis**

In the MR the GP diagnoses the appellant as suffering from depression and generalized anxiety disorder ("GAD").

### **Mental Impairment**

In her SR the appellant states that she feels overwhelmed and anxious about everything on an almost daily basis. Her anxiety and depression have worsened since V threatened to kill their daughter and other members of her family. To date medications have not helped. Currently she is participating in counselling sessions.

In the MR the GP noted that the GAD and PHQ-9 (depression) scores indicate severe degrees of mental impairment, adding that the appellant suffers from unrelenting daily symptoms of anxiety and depression. She suffers significant deficits in cognitive and emotional function: executive, memory, emotional disturbance, motivation, motor activity and attention/sustained concentration, as well as major impacts on sleep and motivation.

In the AR the GP noted that the appellant experiences major impacts to cognitive and emotional functioning in the areas of sleep disturbance, emotion, attention/concentration, memory and motivation and moderate impact in the area of "other" problems. The GP added the comment: *"highly irritable and angry"*.

#### **Daily Living Activities (DLA)**

In her SR the appellant wrote that every day is a struggle and her child keeps her going. She finds it hard to get out of bed nearly every day, especially since V threatened to kill her child and other family members.

In the MR the GP noted that the appellant's medications interfere with her ability to perform DLA.

In the AR the GP wrote that the appellant is independent in all listed areas of DLA except:

- she takes significantly longer than typical in making appropriate shopping choices, meal planning, preparation and cooking;
- she requires periodic assistance with taking medications as directed and takes longer than typical to fill prescriptions and to take her medication as directed.

The GP noted that the appellant is independent in all areas of social functioning but has marginal functioning with her immediate social network and very disrupted functioning with extended social networks, commenting: *"Due to high social anxiety"*. The GP added that the appellant requires help in the form of counselling.

#### **Assistance Required**

In the AR the GP noted that the appellant receives limited help from family members due to their own health problems. The GP also commented that the appellant requires assistance in the form of child care.

#### **Additional Information received after Reconsideration**

At the hearing the appellant commented that her house is a "disaster" due to her anxiety and lack of motivation. Laundry is put away only once per month, and she goes grocery shopping once per month. Her grandmother assists with dishes and housecleaning at least once each week, and her sister helps when she can. As well a friend helps out once or twice a month. If she feels overwhelmed by the stresses of single parenting she asks her mother or an older friend to take the child overnight. This happens approximately once each week.

The appellant also commented that she continues to experience significant anxiety arising from fear of harm from V, whose sentencing for violent and threatening criminal offences is imminent. She fears that V may soon be released due to the length of time already served in custody.

#### **Admissibility of Additional Information**

The panel considered the admissibility of the appellant's oral evidence at the hearing and determined that all of it was admissible under EAA Section 22 (4) (b) as evidence in support of the information that was before the ministry at reconsideration because it provided clarification and additional details directly related to the evidence that was assessed at reconsideration and did not contain new information.

## PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry reasonably determined that the appellant was ineligible for designation as a PWD. The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in the *Employment and Assistance for Persons with Disabilities Act*, Section 2. Specifically, the ministry determined that the information provided did not establish that in the opinion of a prescribed professional the appellant's severe mental impairment:

- (i) directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,
- (ii) as a result of those restrictions, she requires help to perform those activities.

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 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.

EAPWDR:

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.

At reconsideration the ministry found that the information established that the appellant suffers from a severe mental impairment, but did not establish that:

1. the impairment significantly restricts DLA either continuously or periodically for extended periods, and
2. because direct and significant restriction of DLA was not established it could not be determined that significant help was required from other persons.

### **1. Restrictions in Ability to Perform DLA**

The appellant argues that her severe mental impairment directly and significantly restricts her ability to perform DLA.

The ministry's position is that insufficient evidence was provided by the prescribed professional to establish that the appellant's impairment significantly restricts DLA either continuously or periodically for extended periods.

#### Panel Decision

The appellant's personal evidence, contained SR, SR2, Victim Impact Statement and oral testimony, suggests that her ability to perform DLA is significantly restricted almost continually. Overall her performance of DLA is a daily struggle. She falls behind and feels overwhelmed with housekeeping, laundry, shopping, use of transit and financial management. She describes her home as "a disaster". Nearly every day she finds it hard to get out of bed, especially since V threatened to kill her child and other family members. She finds it difficult to manage as a single parent of a young child and asks for help at least once a week by having the child spend the night with a family member or trusted friend. She also finds it difficult to cope with new social situations and tends to isolate herself at home.

However, the legislative requirement respecting DLA set out in Section 2 (2) (b) of the EAPWDA is that the minister be satisfied that as a result of a severe physical or mental impairment a person is, *in the opinion of a prescribed professional*, directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods. Consequently, while other evidence may be considered for clarification or support, the ministry's determination as to whether or not it is satisfied is dependent upon the evidence from "prescribed professionals". 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. The MR and AR also provide the opportunity for the prescribed professional to check marked boxes and provide additional comments when describing the nature, frequency and degree of the restriction(s). The appellant's Elizabeth Fry Society case worker, whose September 12, 2018 letter was included at reconsideration, is not a prescribed professional as defined under EAPWDR Section 2.

In the MR the GP indicated that previous antidepressant and anti-anxiety medications interfered with the appellant's ability to perform DLA but did not comment on current medication, other than to note that its anticipated duration is 12-18 months if it proves to be effective. The reconsideration decision also contains the following statement related to the MR: *"... the GP did not complete the DLA page of the MR. While this information is not required, it can be useful in determining restrictions to DLA."* The panel notes the top of Section 2-E the directions clearly state: *"If you are completing the AR- Section 3, in addition to this MR, do not complete this page."* The panel therefore finds that the ministry was not reasonable in commenting adversely on the absence of a completed DLA page in the MR.

In the AR the GP described the appellant as independent in all listed areas of DLA except that she takes significantly longer than typical in making appropriate shopping choices, meal planning, preparation and cooking. The GP did not describe how much longer than typical the applicant requires to complete these DLA despite being directed to do so on Page 20 of the AR.

Although the GP noted that the appellant requires periodic assistance with taking medications as directed and takes longer than typical to fill prescriptions and to take her medication as directed the GP did not explain or describe the type and amount of assistance required where asked to do so in Section 3-C.

The GP noted that the appellant is independent in all listed areas of social functioning, which includes developing and maintain relationships, interacting with others appropriately, understanding social cues, social problem solving and securing assistance from others. The GP then assessed the appellant as having marginal functioning (little significant participation/communication: relationships often minimal and fluctuate in quality) with her immediate social network and very disrupted functioning (overly disruptive behaviour; major social isolation) with extended social networks, commenting: *"Due to high social anxiety"*. The GP did not provide an explanation to reconcile these two markedly different assessments of the appellant's social functioning.

In conclusion, due to the GP's assessment of the appellant's high degree of independence in performing DLA, lack of explanation and/or comment provided by the GP in Section 3-C and the seemingly contradictory assessment in areas of social functioning on Page 21 of the application, the panel finds that the ministry reasonably determined that the information provided by the prescribed professional was insufficient to establish that the appellant's impairment significantly restricts her DLA either continuously or periodically for extended periods.

## **2. Help in Performing DLA**

The appellant argues that she requires the significant help of family members and a friend to perform her DLA.

The ministry's position is that because it has not been established that DLA are significantly restricted it cannot be determined that significant help is required from other persons.

### *Panel Decision*

It is clear from the evidence of the appellant and the GP that the appellant requires the significant help of another person to perform several of her DLA and to cope with the pressures of single parenting.

However, Section 2(2) (b) (ii) of the EAPWDA can only be met if the person requires help as a result of direct and

significant restrictions with ability to perform DLA. In other words, the establishment of direct and significant restrictions to DLA is a precondition of the “need for help” criterion.

Because 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**

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry’s reconsideration decision, which determined that the appellant was not eligible for PWD designation because the legislative criteria set out in EAPWDR Section 2 (b) (i) and (ii) were not met, was reasonably supported by the evidence, and confirms the decision. The appellant is not successful on appeal.

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<b>PART G – ORDER</b>	
<b>THE PANEL DECISION IS: (Check one)</b> <input checked="" type="checkbox"/> <b>UNANIMOUS</b> <input type="checkbox"/> <b>BY MAJORITY</b>	
<b>THE PANEL</b> <input checked="" type="checkbox"/> <b>CONFIRMS THE MINISTRY DECISION</b> <input type="checkbox"/> <b>RESCINDS THE MINISTRY DECISION</b>	
If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>LEGISLATIVE AUTHORITY FOR THE DECISION:</b> <i>Employment and Assistance Act</i> Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input type="checkbox"/> and Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

<b>PART H – SIGNATURES</b>	
PRINT NAME <b>Joan Bubbs</b>	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) <b>2018/Oct/31</b>

PRINT NAME <b>Patrick Cooper</b>	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) <b>2018/Oct/31</b>
PRINT NAME - on behalf of <b>Marilyn Mellis</b>	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) <b>2018/Oct/31</b>