

PART C – DECISION UNDER APPEAL

The Decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision dated November 7, 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* (EAPWDA) for designation as a person with disabilities (PWD). The Ministry found that the Appellant met the age requirement and that the Appellant's impairment is likely to continue for at least two years. However, the Ministry was not satisfied that the evidence establishes that:

- the Appellant has a severe physical or mental impairment;
- the Appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of 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 EAPWDA.

PART D – RELEVANT LEGISLATION

EAPWDA, Section 2

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

PART E – SUMMARY OF FACTS

The evidence before the Ministry at the time of the Reconsideration Decision included the PWD Application comprised of the applicant information and Self Report (SR) dated June 18, 2018, a Medical Report (MR) dated June 20, 2018 and completed by the Appellant's General Practitioner (GP) who has known the Appellant for one year and who has seen the Appellant 2 - 10 times in that time, and an Assessor Report (AR) dated June 21, 2018 completed by an unidentified person (the Assessor) and signed by the GP.

The evidence also included the following documents:

1. Letter from the Ministry to the Appellant, dated August 31, 2018, denying her application for PWD designation.
2. Request for Reconsideration (RFR) signed on October 10, 2018 stating that the Appellant had been unable to understand the instructions and materials relating to her appeal and the RFR process because her mental ("*depressive/grieving*") state results in her inability to recall things; and,
3. Disability Related Employment Needs Assessment (DRENA) Report dated June 12, 2018, prepared by a Vocational Rehabilitation Professional (VRP) on behalf of the Appellant providing background information about the Appellant including her education history, living situation, a mental health summary, information concerning a physical disability (joint pain) and treatment, information concerning her immediate and extended social networks, work history, employment and training goals, barriers to employment, employment service recommendations and a list of recommended worksite accommodations.

Diagnoses

In the MR, the GP diagnosed the Appellant with mood disorders (depression and anxiety) with an onset of October 2010 and Hepatitis C with an onset of 2014.

Physical Impairment

In the health history section of the MR, the GP indicates that the Appellant's Hepatitis C does not impair her ("*no impact*"). The GP also indicates that the Appellant can walk more than 4 blocks unaided on a flat surface, can climb more than 5 steps unaided, can lift 5 to 15 lbs. and has no limitations with respect to remaining seated. In the AR, the Assessor indicates that the Appellant is independent with respect to all aspects of mobility and physical ability (walking indoors and outdoors, climbing stairs, standing, lifting and carrying and holding).

In the DRENA Report in the section headed "Type of physical disability" the VRP has written that the Appellant "*made slight comments around her knees but did not expand on this area*". He also indicated that the Appellant was taking a homeopathic remedy to help her with her joint pain, which she says helps.

In the SR, the Appellant wrote that she has "*numbness in hands and feet, headaches, feel pain in bones and joints*".

Mental Impairment

In the health history section of the MR, the GP indicates that the Appellant's depression and anxiety are impacted by "*(illegible), drug use, social anxiety, +/- ADL's*". The GP also indicates that the Appellant has significant deficits with cognitive and emotional functioning resulting in emotional disturbance and presenting problems with executive functioning, impulse control and memory. No additional comments are provided in the MR.

In the AR, the Assessor indicates that the Appellant's level of ability with respect to all listed components of communication (speaking, reading, writing and hearing) as "good" (the other choices being "satisfactory", "poor" and "unable"). With respect to cognitive and emotional functioning, the Assessor indicates (with related Assessor's comments in *parentheses*) that the Appellant's mental impairment has a major impact on emotion, insight and judgment, attention/concentration, executive functioning, memory and motivation, a moderate impact on bodily functions (*stays in bed sometimes all day*), impulse control, language, psychotic symptoms (specifically "disorganized thinking") and other emotional or mental problems (*anger towards others*), a minimal impact on consciousness and other neuropsychological problems (*lack of concentration*) and no impact on motor activity.

In the SR, the Appellant writes that she has constant feelings of sadness and cries very easily. She states that she is quick to anger, being easily irritated for no discernable reason, and finds everyone annoying. She indicates that she has no motivation and wants to feel something but is "*numb and empty*". She states that she cannot feel affection for her children or grandchildren and that she sleeps too much, having no interest in DLA. She explains that she cannot concentrate and often forgets appointments and it is difficult for her to make decisions. She states that a number of people who are close to her have died recently and she spends a lot of time thinking about death. She states that she has panic attacks and anxiety.

Restrictions in the Ability to Perform DLA

In the MR, the GP indicates that the Appellant has not been prescribed any medications or treatments that interfere with her ability to perform DLA. In the MR, the GP indicates that the Appellant has an impairment which directly restricts her management of medications, and social functioning on a continuous basis and that she is periodically restricted in the DLA of daily shopping, mobility inside and outside the home, and management of finances, with no impact to personal self care, meal preparation, basic housework or use of transportation. Where asked to explain those DLA which are periodically restricted, the GP writes "*Sore achy bones' at times*". Where asked to explain how social functioning is impacted, the GP writes "*severe social anxiety*".

In the section of the AR where the assessor is asked to provide a brief summary of mental and physical impairments that impact the Appellant's ability to manage DLA, the Assessor writes "*has anxiety attacks in public and at home*". The Assessor also states in the AR that the Appellant is independent with respect to all listed DLA in the areas of personal care, basic housekeeping, shopping (except for going to and from stores, for which she requires periodic assistance), meals, medications and transportation. The Assessor indicates that the Appellant requires continuous help from another person in only one other area of DLA (paying rent and bills). With respect to social functioning, the Assessor indicates that the Appellant is independent in developing and maintaining relationships (*not interested in relationships*) and

[Redacted]

interacting appropriately with others, but requires periodic support or supervision in making appropriate social decisions (*does not make good choices, has mother to support*), in dealing appropriately with unexpected demands (*needs support from others*) and in her ability to secure assistance from others. A description of the degree and duration of periodic support or supervision is not provided. The Assessor indicates that the Appellant has marginal functioning with respect to her immediate social network (*family and friends*) and extended social network. In the section of the AR where the Assessor is asked to provide any additional information that might be relevant to understanding the nature and extent of the Appellant's impairment and its effect on DLA, the Assessor writes "*(Appellant) paralyzed at times, cannot think or make decisions on own. Grief, anxiety & depression take over most of her DLA which hinders her ability to function normally.*"

In the SR, the Appellant states that she has restrictions in her ability to perform six DLA. In a 4 page schematic diagram accompanying her SR (the SR Schematic), she indicates that in each case the tasks are weekly or semi-weekly activities that are restricted on a continuous basis 5 or 6 days a week. She provides the following details regarding the challenges she encounters with each of them:

1. **Ability to relate to and communicate or interact with others effectively** – makes plans with family and friends but cancels or doesn't show up because it's too exhausting, avoids going out of the house so that she doesn't have to see or talk to anyone, has difficulty following or contributing to conversations with family and friends, cancels important appointments with her doctor, counsellor or her legal advocate.
2. **Ability to make decisions about personal activities, care or finances** – avoids having to make plans or decisions due to anxiety and fear, impulsive with spending money (feels that she needs to get rid of it because it's a burden), has difficulty determining which tasks are more important and have to be done first and often avoids doing any of them, abandons housekeeping activities after starting them because she feels exhausted or that it's pointless because the tasks will just have to be done again anyway.
3. **Ability to shop for personal needs** – unable to enter a store without feeling extremely anxious and wanting to leave, can't make nutritional choices when she shops, if there is a line up at the cashier of more than 2 to 3 people she leaves without buying groceries, puts off shopping tasks as long as possible by sleeping through meals to make food last longer so she doesn't have to shop as often.
4. **Ability to do housework and laundry** – doesn't care how her home looks, the thought of doing housework makes her lethargic and gives her feelings of being overwhelmed, feels housework is pointless and lacks the motivation and energy.
5. **Ability to prepare her own meals** – has no appetite or interest in cooking for herself so she puts off eating, when she does eat it is whatever is quickest and involves the least amount of effort with no thought about nutrition.
6. **Ability to perform personal hygiene and self-care** – getting out of bed and dressed seems pointless and too difficult because she doesn't have the energy, goes 7 to 10 days without showering or changing clothes.

Need for Help

In the MR, where asked what assistance the Appellant requires with DLA, the GP's comments are largely illegible [*"Help with (illegible) and med (illegible)"*]. In the AR, the Assessor indicates that, in addition to requiring unspecified periodic assistance with going to and from stores, the Appellant requires continuous assistance from another person in paying rent and bills, adding *"not good with money – no motivation"* but the Assessor does not provide any description of the degree or duration of support or supervision required or any other additional comments. With respect to social functioning, where asked to describe the support/supervision required to help the Appellant stay maintained in the community the Assessor writes *"psychologist, family, grief counselling"*. The Assessor indicates that the Appellant does not have an assistance animal and does not require any prosthesis or aids for her impairment. The Assessor states that the Appellant lives with her mother and that family, friends and community service agencies help her with her DLA adding the comment *"mental health"*.

In the SR, the Appellant stated that she needs help performing five of the above-listed DLA. She provides the following details regarding the help she requires with each of them:

1. **Ability to relate to and communicate or interact with others effectively** – needs help from another person to deal with these activities and to deliver her to and from appointments, spends 3 to 6 hours a week in group counselling at the community mental health facility to help her deal with these problems. (Group counselling is only available 2 to 3 times a week for 1 to 2 hours each time.)
2. **Ability to make decisions about personal activities, care or finances** – needs help from another person to deal with these activities and to engage with and motivate her to make plans or decisions, spends 3 to 6 hours a week in group counselling at the community mental health facility to help her deal with these problems.
3. **Ability to shop for personal needs** – needs help from another person once a week to deal with these activities and to stand in line for her when lineups are too long and drive her to and from stores.
4. **Ability to do housework and laundry** – needs help from another person twice a week to encourage her and assist her with housekeeping tasks.
5. **Ability to prepare her own meals** – needs help from another person twice a week to remind her to eat, help her with meal planning and to assist her with cooking and preparing meals.

Additional Information Submitted after Reconsideration

In her Notice of Appeal (NOA) dated November 19, 2018, the Appellant states that she believes that medical practitioners do not understand what *"is going on in (her) head"*, that she has a severe mental health problem and that she continues to see a "psychologist/psychiatrist" to address her mental health issues. Included with the NOA is a prescription form (the Prescription Form) from a physician at the Appellant's community health authority dated November 14, 2018 in the name of the Appellant and addressed to whom it may concern stating *"The (Appellant) was assessed on September 24, 2018. She has an Anxiety Disorder with agoraphobia and panic attacks as well as (substance) use disorder. In addition she has ongoing complicated bereavement symptoms."*

At the hearing, the Appellant stated that she had had a hard time understanding what to do in completing her PWD application because of depression and confusion, which she largely attributes to the protracted grief she has suffered since the loss of her brother, whom she referred to as her "*closest friend*", in March 2018. She also stated that she was not able to read all of the information in the PWD application package because she is unable to understand most of what she reads these days. She explained that she has to look up even common words in the dictionary to understand what they mean.

The Appellant said that while she would like to work, she can't handle working in even a menial job because she is mentally unable to go out of the home. When she is out in public, her temper will often flare up or she will start crying. She explained that she looks at help wanted ads but she knows she can't work because there is "*too much going on in (her) head*".

In terms of a physical impairment the Appellant said that she has the usual aches and pains ... but physically she is OK. She said that she was also upset with her GP who had rushed through the appointment with her and didn't ask any detailed questions about her mental impairments. The Appellant also explained that the GP did not complete the AR, which was done by the GP's office assistant. The Appellant also stated that the GP's assistant did not rely on any notes from the GP in completing the AR, rushed through the AR by ticking the boxes quickly, and appeared to want the form completed in as little time as possible. The Appellant stated that the GP's assistant told her that PWD applications were usually not approved the first time, and as a result applicants would usually have to apply more than once. The Appellant stated that when completing the section on personal hygiene, for example, she was too embarrassed to explain to the GP's assistant that she often went a week without showering due to depression, so she didn't say anything to the GP's assistant, who ticked "*Independent*" next to personal hygiene, even though this was the wrong answer. She said that she has "*switched to a more caring doctor*" since the PWD application was prepared, but that she did not have the will or energy to go through the entire PWD application process again if her appeal was not successful.

The Appellant explained that the SR Schematic was prepared by her Advocate, who had offered to help her with her entire application at the time she completed it, but that her Advocate could no longer assist her because she was no longer working in the community.

In terms of help and support, the Appellant explained that she gets lots of support from Alcoholics Anonymous which she relies on for group counselling because there is no Narcotics Anonymous in her community. She stated that her sister does the grocery shopping for her and that her mother, with whom she lives, helps her by providing direction and support with household chores and meals, but that her mother can't provide much physical assistance with housekeeping because she is old.

At the hearing, the Ministry relied on its Reconsideration Decision and stated that the legislation relating to PWD eligibility does not consider employability, but instead focuses on the applicant's ability to manage "*normal functioning*". In response to a question from a Panel Member, the Ministry explained that there was a separate designation for Persons with Persistent Multiple Barriers (PPMB) which involved a different application process and which deals with employability which the Appellant could consider if her appeal was not successful, to which the Appellant replied that the PPMB designation application process would be "*too stressful (for her) to apply*".

The Ministry acknowledged that sometimes doctors don't take the time necessary to accurately complete

the MR and/or the AR and that based on the Appellant's additional evidence in this case the Ministry acknowledged that the GP may not have provided enough information regarding severity of impairment. However, the Ministry stressed that it has to make the decision on whether or not the legislative criteria for a PWD designation is met "*based on the information in front of it*", and pointed out that there is space on the application forms for the prescribed professional to explain or provide comments. The Ministry stressed that in most cases those spaces were left blank in the Appellant's application.

Regarding the evidence provided by the Appellant that the GP's assistant rather than the GP had completed the AR, the Ministry stated that having someone other than the prescribed professional complete the PWD application forms "*is not that unusual these days*" and pointed out that it had noted the hand writing discrepancy in its Reconsideration Decision. The Ministry explained that in some cases its Health Assistance Branch (HAB) Adjudicator contacts the prescribed professional where clarification on who completed the forms is required but did not know why the HAB Adjudicator did not contact the GP in this instance. The Ministry also stated that it was not clear who had prepared the SR Schematic and that it would have been helpful for the HAB Adjudicator to have known that it was the Appellant's Advocate, and acknowledged that because the HAB Adjudicator did not know the source of the SR Schematic, he or she probably didn't give that evidence a lot of weight.

Admissibility of Additional Information

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the Ministry when the decision being appealed was made and "*oral and written testimony in support of the information and records*" before the Ministry when the decision being appealed was made – i.e. information that substantiates or corroborates the information that was before the Ministry at reconsideration. These limitations reflect the jurisdiction of a panel established under section 24 of the EAA: to determine whether the Ministry's Reconsideration Decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant. That is, panels are limited to determining if the Ministry's decision is reasonable and are not to assume the role of decision-makers of the first instance.

The Panel considers the information in the Notice of Appeal to be argument. The Panel considers the information in the Prescription Form regarding the diagnosis of an anxiety disorder and panic attacks and the complicated bereavement symptoms to be information that was before the Ministry at the time the Reconsideration Decision was made, and the information in the Prescription Form regarding the diagnosis of agoraphobia and a substance use disorder to be information in support of information before the Ministry when the decision being appealed was made.

Therefore, the Panel admitted all of this additional testimony as information that was before the Ministry when the decision being appealed was made or in support of information and records that were before the Ministry at reconsideration, in accordance with Section 22(4)(b) of the EAA.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry's Reconsideration Decision, dated November 7, 2018, which found that the Appellant is not eligible for designation as a PWD, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant.

While the Ministry was satisfied that the Appellant was of the required age and had an impairment which was likely to continue for at least 2 years, the Ministry found that the evidence does not establish that the Appellant has a severe mental or physical impairment that, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform her DLA, either continuously or periodically, for extended periods. Also, as a result of those restrictions, the Ministry found that it could not be determined that 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 ...

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).

Severity of Impairment

A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a "severe" impairment. Section 2(2) of the EAPWDA requires that in determining whether a person may be designated as a PWD, the Ministry must be satisfied that the individual has a severe physical or mental impairment. "Impairment" is not a defined term in the legislation. The Cambridge Dictionary defines an "impairment" as the deterioration in the functioning of a body part, organ, or system that can be temporary or permanent and can result from injury or disease. With respect to assessing the severity of an impairment, Section 2(2)(b)(i) of the EAPWDR requires that a mental or physical impairment *directly and significantly* restrict the person's ability to perform DLA either *continuously, or periodically for extended periods*. Therefore, to assess the severity of an impairment, the Ministry must consider both the nature of the impairment and the extent to which it impacts daily functioning as evidenced by functional skill limitations and the degree to which the ability to perform DLA is restricted. In making its determination, the Ministry must consider all the relevant evidence, including that of the appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a prescribed professional – in this case the Appellant's GP.

Physical Functioning

The Appellant's position is that she has some aches and pains but that they did not significantly restrict her physical functioning and therefore she did not claim to have a severe physical impairment. The Ministry's position, as set out in its Reconsideration Decision, is that it is not satisfied that the information provided establishes a severe physical impairment.

Panel Decision

The Panel finds that the Ministry's determination that there is not sufficient evidence to establish that the Appellant has a severe physical impairment which directly and significantly restricts the Appellant's ability to perform DLA either continuously or periodically for extended periods pursuant to Section 2(2) of the EAPWDA, was reasonably supported by the evidence before the Ministry at reconsideration.

Mental Functioning

The Appellant's position is that she has a severe mental health problem. The Ministry's position, as set out in its Reconsideration Decision, is that the information provided with the Appellant's application for the PWD designation does not establish a severe impairment.

In its Reconsideration Decision, the Ministry states that "A diagnosis of a serious medical condition does not in itself determine PWD eligibility". Therefore the Ministry implicitly acknowledges that the GP has described a diagnosis of a serious medical condition, but argues that a severe impairment of the Appellant's mental functioning has not been established because the GP has not provided sufficient detail as to the nature of the impairment and the extent of its impact on daily functioning as evidenced by limitations/restrictions in emotional, cognitive and social functioning.

In its Reconsideration Decision, with respect to evidence of significant deficits in cognitive and emotional functioning, the Ministry notes that, while the GP's assessment in the MR indicated four areas of major impact (executive function, memory, emotional disturbance and impulse control), she did not provide any comments. In the AR, the Ministry notes that the Assessor has indicated major impacts to six areas of cognitive and emotional functioning (emotion, insight and judgment, attention/concentration, executive functioning, memory and motivation), but places little weight on the information because the handwriting in this section of the application is clearly different from the GP's, and because the GP's initials are not on each page it is difficult to determine if she is in agreement with the information provided. On balance, the Ministry finds that, based on the information provided, the cumulative impact on cognitive and emotional functioning was not indicative of a severe impairment to mental functioning.

With respect to cognitive and emotional functioning, the Assessor indicates that the Appellant's mental impairment has a major impact on emotion, insight and judgment, attention/concentration, executive functioning, memory and motivation, a moderate impact on bodily functions, impulse control, language, psychotic symptoms and other emotional or mental problems, a minimal impact on consciousness and other neuropsychological problems and no impact on motor activity.

Panel Decision

The Panel notes that the legislation does not identify the number of areas of cognitive and emotional functioning in which an applicant must demonstrate a severe impact, or the number of impacts that must be found to be major or moderate, or even that a majority of areas must be impacted. Instead, the legislation requires evidence of a mental or physical impairment directly and significantly restricting the person's ability to perform DLA either continuously, or periodically for extended periods.

With respect to cognitive and emotional functioning, the Panel notes that the GP has indicated in the MR that the Appellant has *significant* deficits in four areas. While the Panel acknowledges that the GP has not provided detailed comments or explanations in the MR and might not have had input in the AR assessments, it is noted that the Ministry has acknowledged that prescribed professionals will often not provide the detailed information the Ministry might require to make an informed assessment, and that it will sometimes contact the prescribed professional for clarification when it appears that the MR or AR might have been prepared by an unidentified person other than the prescribed professional. The Panel notes that the Ministry did not contact the GP in this case to determine whether she supported the assessments provided in the AR.

The Panel notes that the Ministry did not refer to any of the information contained in the Appellant's SR in its Reconsideration Decision, in particular, the detailed information contained in the SR Schematic. The Ministry has indicated that it might not have referred to the SR Schematic evidence in its Reconsideration Decision because it was apparent that the evidence had not been written directly by the Appellant, and therefore it was not given any weight. However, the Panel notes that the SR Schematic was provided by the Appellant as an attachment to the SR with the following comment in the SR, which was signed by the Appellant on June 18, 2018: "*Please see enclosed charts detailing impairments, restrictions & assistance/supervision needed in 6 DLA*".

In light of the fact that the Ministry has acknowledged that sufficient detail is sometimes not provided by a prescribed professional for the Ministry to make an informed assessment, and/or it is not clear that a prescribed professional has completed the MR or the AR, and in light of the fact that the Ministry on occasion will follow-up with the prescribed professional on these points and did not in this case, the Panel suggests that there is more reason for the Ministry to provide additional weight to the other evidence, including an SR, particularly if that information is largely consistent with what information is provided by a prescribed professional in the MR and/or the AR.

The Panel notes that the evidence not considered in the SR Schematic supports the GP's finding in the MR that major and moderate impacts exist to most of the areas of cognitive and emotional functioning and therefore finds that the Ministry did not reasonably determine that a severe mental impairment was not established pursuant to Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

Section 2(2)(b) of the EAPWDA requires that the Ministry be satisfied that a prescribed professional has provided an opinion that an applicant's severe impairment directly and significantly restricts his or her DLA, continuously or periodically for extended periods. In this case, the GP is the prescribed professional. 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, the prescribed professionals completing these forms have the opportunity to indicate which, if any, DLA are significantly restricted by the Appellant's impairments either continuously or periodically for extended periods, and to further elaborate so that the nature and extent of the restrictions to DLA are clear. Prescribed professionals are further encouraged to elaborate on the nature and extent of the limitations or restrictions in the instructions provided in those sections of the forms. For example, in Part C of the AR the assessor is instructed to identify whether assistance is required in each case with respect to the full range of DLA, and if the applicant is not independent, to describe the type and amount of assistance required.

The Appellant's position is that she has a severe mental health problem that significantly restricts her ability to perform six DLA. The Ministry's position, as set out in its Reconsideration Decision, is that a significant restriction in her ability to perform DLA cannot be established because there are some inconsistencies between the information contained in the MR and the AR. Specifically, the Ministry notes that the Appellant is continuously restricted with social functioning in the MR but the Assessor on the AR indicates that the Appellant experiences no continuous restrictions with any categories of her social functioning. In addition, the Ministry notes that in the MR, the GP indicates that the Appellant has continuous restrictions with the management of medications but where asked to describe the degree of the restriction in the area below she leaves that section blank, making it difficult for the Ministry to

understand the nature of her continuous need.

The Ministry also notes in the Reconsideration Decision that the AR was largely completed by someone other than the GP, and that because the GP has not initialled the pages of the AR "*it is difficult to determine if (she) agrees with the information*".

Panel Decision

The Panel notes that the Ministry determined in its Reconsideration Decision that, while the Appellant is assessed by the GP as being periodically restricted with daily shopping, mobility inside and outside her home and management of finances, it is noted elsewhere in the application that she experiences no significant *physical* impairments. The Panel notes that other written evidence, including the evidence provided in the SR Schematic, makes it clear that the Appellant's restrictions to those DLA are the result of a *mental* impairment, not a physical one. The Panel finds that the Ministry did not reasonably consider the impact of the Appellant's mental impairment on the daily shopping, mobility inside and outside her home and management of finances DLA.

The Panel acknowledges the Ministry's finding that the GP has provided insufficient evidence in the MR in terms of the nature, frequency or duration of the periodic assistance required to perform her daily shopping, mobility inside and outside the home and management of finances DLA or the nature duration and frequency of the continuous assistance required in the management of her medications.

The Panel notes that the MR and the AR are not prescribed forms under the EAPWDA or the EAPWDR, but that they are used by the Ministry as part of the application process to aid in its assessment of PWD eligibility. The Panel further notes that EAPWDA Section 2(2)(b) requires that a prescribed professional must determine whether an applicant's significant impairment directly and significantly restricts the person's ability to perform DLA either continuously or periodically for extended periods. The Panel finds that, while it is reasonable for the Ministry to rely on the MR and the AR provided they have been completed by prescribed professionals, there is insufficient evidence to demonstrate that a prescribed professional completed the AR in this case. Therefore the Panel finds that the Ministry should have relied solely on the MR to determine whether a prescribed professional has provided sufficient information for the Ministry to determine whether the Appellant has a significant impairment which directly and significantly restricts her ability to perform DLA either continuously or periodically for extended periods.

The Panel finds that, while the Ministry should have considered and weighed the evidence in the SR, the Ministry reasonably concluded that there is not enough evidence from a prescribed professional to establish that the Appellant's impairment significantly restricts her ability to manage her DLA either continuously or periodically for extended periods, thereby satisfying the legislative criterion of Section 2(2)(b)(i) of the EAPWDA.

Help with DLA

The Appellant's position is that she needs help from another person to deal with many of her DLA on a weekly or a semi weekly basis, and that she spends several hours a week in group counselling at the

community mental health facility to help her deal with her mental impairment. The Ministry's position, as set out in its Reconsideration Decision, is that it cannot be determined that significant help is required because it has not been established that DLA are significantly restricted.

Panel Decision

Section 2(2)(b)(ii) of the EAPWDA requires that, *as a result of direct and significant restrictions* in the ability to perform DLA, a person requires help to perform those activities. 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 Panel finds that the Ministry reasonably determined that, as direct and significant restrictions in the Appellant's ability to perform DLA have not been established, it cannot be determined that the Appellant requires help to perform DLA as a result of those restrictions, as defined by Section 2(3)(b) 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 under Section 2 of the EAPWDA, was reasonably supported by the evidence and was a reasonable application of the EAPWDA in the circumstances of the Appellant, and therefore confirms the decision. The Appellant's appeal, therefore, is not successful.

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

Simon Clews

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/12/10

PRINT NAME

Connie Simonsen

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

Nancy South

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)