

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision dated November 14, 2018, which found that the Appellant did not meet four 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). While the Ministry found that the Appellant met the age requirement, it was not satisfied that the evidence establishes that:

- the Appellant's impairment is likely to continue for at least two years;
- 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 and the Appellant did not appeal the decision on this basis.

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 29, 2018, a Medical Report (MR) dated July 2, 2018 and completed by the Appellant's General Practitioner (GP) who has known the Appellant since 1999 and who has seen the Appellant 2 - 10 times in the past year, and an Assessor Report (AR) dated July 2, 2018 completed by the GP.

The evidence also included the following documents:

1. Request for Reconsideration (RFR) signed on October 16, 2018 in which the Appellant states that:
 - he has been working with a community treatment center to get into a 5 week treatment program for which he has completed a formal request and that he is hopeful he will be able to enter the program soon; and,
 - he is desperate for help because he has had many years of depression, anxiety and violent outbursts which he is not been able to control and that he has lost many jobs as a result;
2. Psychiatric Report from a regional health authority (the HA) dated February 17, 2017 in the name of the Appellant (the HA Psychiatric Summary Report) providing a history of the Appellant's presenting illness, his past psychiatric history, medications, past medical and social history, substance uses, and the consultant's impressions of a mental status exam and recommendations;
3. HA Discharge Summary Report in the name of the Appellant printed on September 28, 2017, summarizing the topics covered in four group therapy sessions held in April 2017, indicating that the Appellant attended three of the four sessions, and stating that the Appellant had been scheduled to start a depression group therapy session on June 8, 2017 with the note "*Client did not start the(depression group therapy session)*";
4. HA Consultation Report in the name of the Appellant dated March 23, 2012 (the First Consultation Report) providing details of the Appellant's social history, a diagnosis of depression and a personality disorder with narcissistic features, indicating a Global Assessment of Functioning (GAF) score of 65, and prescribing group psychotherapy treatment; and
5. HA Consultation Report in the name of the Appellant dated April 15, 2013 (the Second Consultation Report), completed by the same consultant who had completed the First Consultation Report, stating that the Appellant had been "*keen to attend (the group psychotherapy treatment prescribed in the First Consultation Report) but did not follow up*". The consultant provided the same diagnosis that appeared in the First Consultation Report and stated "*(The Appellant) feels he now needs to get involved in the (therapy) recommended to him a year ago. He will start process group when there is an opening*".

Duration

In the MR, the GP does not indicate whether the Appellant's impairment is likely to continue for two years or more from today by ticking either of the boxes ("Yes" or "No") in the space provided, but does state that the estimated duration of the Appellant's impairment is unknown. The GP adds "*(The Appellant) is encouraged to attend treatment for his anxiety ... depression and substance use*". In the Section of the MR which asks for additional comments the GP writes "*(The Appellant) has (had) behaviour problems since childhood ... He has (a) history of substance use ... the extent and duration of impairment in mental functions is prolonged and persistent*".

Diagnoses

In the MR, the GP diagnosed the Appellant with mood disorders, anxiety disorders and a personality disorder with narcissistic features, all present since childhood, and a substance use disorder since he was a teenager.

Physical Impairment

The GP did not identify any physical impairments. In the MR, the GP reports that the Appellant can walk more than 4 blocks unaided on a flat surface, can climb more than 5 steps unaided and has no limitations with respect to lifting and remaining seated. In the AR, the GP 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), with the added comment "*no impairment*".

In the section of the HA Psychiatric Summary Report headed "Past Medical History" the consultant has written "Gout".

In the SR, the Appellant wrote that he has Gout and arthritis resulting from a build-up of uric acid in his thigh and extreme physical exertion. He explained that he has moved furniture all of his life and likes to lift heavy things. He states that, while his Gout attacks are minor at the moment, when he does suffer an attack he is unable to do physical work for up to 3 to 4 weeks. Regarding his Arthritis, he explains that his feet ache continually in the winter months and that when he's working the pain is worse and persistent. In addition, he states that he has had traumatic injuries from "*(punching two) windows a week apart*" when he was 18, resulting in a severed artery in his arm and a 4 inch gash in his wrist and inner arm. The Appellant also writes that he suffered a bike accident as a child and he hit his head on a cement culvert and believes that he damaged his prefrontal cortex as a result.

Mental Impairment

In the MR, the GP states that the Appellant "*has persistent mental disorders of depression, anxiety, (and) anger outbursts. He is unable to keep employment due to his behaviour at work. He has been seen by various psychiatrists and he has been off work since January 2018. ... He used to be a heavy drinker, and (has a) history of substance use*". The GP also refers to attached psychiatric consultations completed in 2012, 2013 and 2017 (the HA Discharge Summary Report, the First Consultation Report and the Second Consultation Report).

The GP also reports that the Appellant has difficulties with communication due to cognitive influences,

adding the comment "*He has problems with focus and can have anger outbursts when triggered*". The GP lists the following areas where cognitive and emotional deficits are evident: emotional disturbance, motivation and impulse control, and adds "*anger problem, depression, he lacks motivation and he has problems with focus, impulse control and anxiety*".

Where asked in the MR to provide additional comments, the GP states "*(The Appellant) has behaviour problems since childhood ... He demonstrated problems with impulse control and has been in jail for anger and hitting out/assault. He has a history of substance use ... The extent and duration of his impairment in mental functions is prolonged and persistent. This has significant impact on his daily functioning*".

In the AR, the GP 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"). Where asked to provide additional comments, the GP states "*(Appellant) suffers from anxiety and depression. The (illegible) of mental impairment affects his (DLA). He usually spends time alone at home and tends to be socially isolated*".

Where asked in the AR to identify the degree to which the Appellant's mental impairment restricts or impacts his daily function, the GP indicates a major impact on emotion and impulse control, a moderate impact on insight and judgment, attention/concentration, executive functioning, memory and motivation, and no impact on the other functions (bodily functions, consciousness, motor activity, language, psychotic symptoms, or other neuropsychological, emotional or mental problems).

In the SR, the Appellant writes that he gets depressed for lots of reasons, including suffering abuse as a child and a failed relationship which resulted in his son's mother leaving them when their son was 3 years old. He states that he has been prone to violent outbursts as an adult for which he was prescribed Zoloft (Sertraline). He also writes that he has anxiety and that "*overthinking later in (his) life led to not sleeping (and that) sometimes (he is) up for days*". He also states that he had been prescribed Seroquel for his anxiety. The Appellant writes that if he feels he is being talked down to at work he "*(goes) into a blind rage*", but that he has always found a way to walk away without assaulting someone. He also states that he believes he has Post-Traumatic Stress Disorder (PTSD) but acknowledges that he has never been diagnosed with it.

Restrictions in the Ability to Perform DLA

The GP has not provided any information where asked in the AR to provide a brief summary of mental and physical impairments that impact the Appellant's ability to manage DLA. In the MR, the GP indicates that the Appellant has not been prescribed any medications or treatments that interfere with his ability to perform DLA and indicates that "*he is on medications that will facilitate his performing DLA*". In the MR, the GP also indicates that the Appellant has no impairment that directly restricts any of the listed DLA (personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside and outside the home, use of transportation and management of finances). However, the GP has not indicated whether the Appellant's impairment restricts the social aspects of daily functioning.

In the AR, the GP states that the Appellant is independent with respect to all listed DLA in the areas of personal care, basic housekeeping, shopping, meals, payment of rent and bills, medications and

transportation, adding "*no impairment*" in the section provided for additional commentary. With respect to social functioning, the GP indicates that the Appellant is independent in making appropriate social decisions, but requires periodic support or supervision in developing and maintaining relationships, in interacting appropriately with others, in dealing appropriately with unexpected demands, and in ability to secure assistance from others. A description of the degree and duration of periodic support or supervision is not provided. The GP indicates that the Appellant has marginal functioning with respect to his immediate and extended social networks, and adds the comment "*(The Appellant) will attend group therapy re: social functioning skills*" and that there are no safety issues.

The Appellant did not identify any physical restrictions he has in performing DLA, but indicated that he sometimes goes for extended periods without being able to leave the house or get out of bed.

Need for Help

In the AR, the GP indicates that the Appellant does not have an assistance animal and does not require any prosthesis or aids for his impairment. The GP states that the Appellant lives alone and that he "*requires no assistance related to (his) impairment*", "*no assistance for DLA*" and "*independent living*".

The Appellant did not identify any help he required in performing DLA.

Additional Information submitted after reconsideration

In his Notice of Appeal (NOA) dated November 20, 2018, the Appellant stated that he believes that his GP does not have his best interests in mind and that he is currently awaiting treatment at a treatment centre.

Prior to the Appeal Hearing, the Appellant submitted the following additional written evidence:

1. Appendix A, submitted on December 5, 2018, comprising a memo from the Appellant's HA dated November 30, 2018 (the first HA Memo) in which the HA confirms that the Appellant had been attending an HA Treatment Centre "*but was discharged early and was transferred to a hospital due to mental health concerns*"; and,
2. Appendix B, submitted on December 6 and 7, 2018, comprising:
 - o a memo from the Appellant's HA dated December 5, 2018 (the second HA Memo) in which the HA confirms that the Appellant had been admitted to the HA Treatment Centre on November 14, 2018 and had departed the HA Treatment Centre on November 26, 2018;
 - o a copy of a prescription dated July 30, 2018 signed by the GP for Seroquel, Sertraline and Allopurinol; and,
 - o an email from the Appellant to the Employment and Assistance Appeal Tribunal dated December 6, 2018 stating that Allopurinol is a medication which reduces the production of uric acid in the body and is used to treat kidney stones and gout.

The Appellant was supported by his sister and his sister's partner at the hearing. The Ministry did not attend the first hour of the hearing. The Appellant's oral testimony, which had been partially delivered when the Ministry arrived and which follows, was briefly summarized for the Ministry's benefit after it

joined the hearing.

At the hearing, the Appellant emphasized that he did not believe that the GP had his best interests in mind when she completed the MR and the AR. The Appellant explained that the same GP served as his sister's and his father's doctor. He stated that his father had verbally abused him as a child, and that this treatment by his father was the main cause of his mood disorder. He explained, as also argued by his sister at the hearing, that he was certain that his father had directly influenced the GP to ensure that she understated the Appellant's impairments and their impact on his DLA, and that she had not accurately completed the MR and the AR. The Appellant pointed out several instances where he thought that the GP's comments in the MR and the AR were contradictory. He also stated that the GP had suggested that the Appellant apologize to his father, and that the Appellant's lack of confidence in the GP had caused him to seek out a new doctor.

With reference to the Appellant's Gout, which he described as his principal physical impairment, the Appellant stated that, while it was not identified as a severe impairment by his GP, he had been suffering from it for over 10 years and that it runs in his family. He also stated that, while he recognized that it had not been diagnosed by a prescribed professional, he was quite sure that he had suffered damage to his cerebral cortex in a cycling accident he had experienced at the age of 3 or 4, and that he might have Post Traumatic Stress Disorder (PTSD) from childhood trauma.

Regarding his mental impairments, the Appellant said that he was sure they would continue without proper help, and that he sometimes uses substances to medicate himself because he wants to be happy and he isn't sure that the GP has prescribed the right medications. Regarding the group therapy sessions he has attended recently, he said that some of them are not effective because they involve up to 30 participants, and that he does much better in smaller groups. He stated that he had not attended the depression group therapy session that had been scheduled to start on June 8, 2017 because he had not been told where to go and when to be there.

In terms of the impact of his impairments on his DLA, the Appellant said that this was the first time he had been out of his home in two weeks. He confirmed that he lives alone, and stated that he has been able to do what basic housekeeping is necessary over the past two weeks, but he has been experiencing anxiety on a daily basis. With regard to his Gout, he said that it is influenced by the weather and can be debilitating for days at a time, making it difficult for him to walk to the store.

The Appellant also provided additional information regarding his recent stay at the HA Treatment Centre between November 14 and November 26, 2018. He explained that, upon being discharged before the end of his treatment term on November 26, 2018, he was transported to the Emergency Services Department of a local hospital and was there for six hours before being sent home on the bus, and that he assumes he was sent home because they had neither spare beds nor a psychiatric ward. He stated that the HA Treatment Centre only offers a 42 day treatment program, which he does not think is long enough to effectively treat him, and that another public rehabilitation facility located in an adjacent community has a more suitable, 90 day program, that he is waiting for confirmation that they can treat him, and that he expects that confirmation in the near future.

With regard to the GP's statement in the MR that the Appellant "*has been in jail for anger and hitting out/assault*", the Appellant stated that he has never been in jail, that he has never physically harmed

anyone, and that with respect to a reference in the HA Psychiatric Summary Report to an incident where he got angry at an employee in a fast food restaurant and the police were called, he stated that he had not physically assaulted anyone on that occasion and that he had been arrested but not jailed.

At the hearing, the Ministry relied on its Reconsideration Decision and emphasized that the answers that a prescribed professional gives to specific questions posed in the MR and the AR give guidance to the Ministry in determining whether the legislative criteria have been met: if a prescribed professional says that a particular condition is not satisfied, the Ministry considers that that criterion has not been met. If the medical professional does not provide specific answers to a particular question in the MR or AR, the Ministry gives their best estimation based on the answers to other, related questions. The Ministry also provided the Appellant with information concerning the Persons with Persistent Multiple Barriers (PPMB) designation, which the Ministry indicated the Appellant might wish to apply for should his appeal be unsuccessful.

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. Accordingly, panels cannot admit information that would place them in that role.

The Ministry did not object to the admissibility of the Appellant's additional written submissions contained in Appendices A and B.

The Panel considered the information in the Notice of Appeal to be argument. The Panel considered the additional information in Appendices A and B and the verbal evidence submitted at the hearing to be evidence in support of the information and records before the Ministry at reconsideration and therefore admitted the additional information 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, 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. 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, is likely to continue for at least 2 years, and that his DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, the Ministry found that as a result of those restrictions, 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).

Duration of Impairment

The Appellant's position is that the GP describes his mental impairments as being "prolonged" and "persistent" and that she also indicates that his mental impairments have been present since childhood. In its Reconsideration Decision, the Ministry was not satisfied that the information provided establishes an impairment which was likely to continue for two years, noting that the GP has indicated that "*it is unknown if your impairment will continue for two years or more.*"

Panel Decision

Despite the Ministry's finding that the GP has indicated that it is unknown if the Appellant's impairment will continue for two years or more, the Panel notes that, in fact, the GP neglected to indicate whether the Appellant's impairment will continue for two years or more. The Panel notes that the GP did indicate that the duration of the Appellant's impairment is unknown, which is not the same thing, particularly in light of the other evidence on duration provided by the GP. Specifically, the Panel notes that the GP indicates that "*the extent and duration of impairment in mental functions is prolonged and persistent*" and that the Appellant's mental impairments have been present since childhood. The Cambridge Dictionary defines "*prolonged*" as "*continuing for a long time*" and "*persistent*" as "*lasting for a long time or difficult to get rid of*". Given that the evidence clearly shows that the Appellant's mental impairments have been present since childhood and are described by a prescribed professional as being both prolonged and persistent, the Panel finds that the Ministry was not reasonable in assuming that the Appellant's impairments will not last for at least another two years simply because the GP neglected to provide a direct answer to that question.

Therefore the Panel finds that the Ministry's determination that there is not sufficient evidence to establish that the Appellant had an impairment that was likely to continue for two years or more was not reasonably supported by the evidence before the Ministry at reconsideration.

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. An "impairment" is a medical condition which results in restrictions to a person's ability to function independently or effectively. 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 he has several physical impairments, the most significant of which is Gout for which he takes medication, and that he is sometimes unable to do physical work for up to 3 to 4 weeks following an outbreak. He also argues that he has Arthritis and might have suffered damage to his cerebral cortex resulting from a childhood accident and possibly PTSD, while acknowledging that he has not been professionally diagnosed with any physical ailments other than Gout. The Ministry's position, as set out in the Reconsideration Decision, is that it was not satisfied that the information provided establishes a *severe* physical impairment.

Panel Decision

The Panel notes that, where asked to indicate the severity of the Appellant's medical conditions in the MR, the GP does not identify any physical impairments, and that in the AR, the GP indicates that the Appellant is independent with respect to all aspects of mobility and physical ability, with the added comment "*no impairment*". While the Appellant's position is that his Gout represents a severe physical impairment, the Panel notes that the legislation makes it clear that the fundamental basis for the analysis is the evidence from the GP, as explained above. The Ministry has indicated in its Reconsideration Decision that it will rely on the diagnoses provided by the GP in the Appellant's PWD designation application.

The Panel finds that the Ministry's reliance on the diagnoses provided by the GP in the Appellant's PWD designation application is reasonable, and that its conclusion 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

In its Reconsideration Decision, after summarizing the GP's diagnosis of the Appellant's mental functioning from the MR, the Ministry states "*The Ministry notes that a diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment*". 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 details 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.

The Ministry further notes that, in the MR, the GP indicates that the Appellant had difficulty with communication, noting that "*he has problems with focus and can have anger outbursts when triggered*", whereas in the AR the GP describes the Appellant's ability to communicate as good. While it does not draw a conclusion in its Reconsideration Decision, the Ministry appears to consider this evidence to be

contradictory and to be an example of an inconsistent assessment by the GP.

In its Reconsideration Decision, the Ministry also finds that the GP's assessments in the MR provided evidence of *significant* deficits with respect to cognitive and emotional functioning in the areas of emotion, motivation and impulse control. In the AR, the Ministry notes that the GP describes emotion and impulse control as having a *major* impact on the Appellant's daily functioning and describes insight and judgment, attention/concentration, executive memory, and motivation as having *moderate* impacts on his daily functioning. The Ministry concludes that "*the assessment of the deficits to you (sic) cognitive and emotional functioning as well as impacts they have on your daily functioning to be notable particularly when considered cumulatively*", but that it was unable to determine why this level of impact on daily functioning is as indicated because in the AR, where asked to indicate the assistance required to perform DLA, the GP indicates that the Appellant does not require assistance.

In the "Mental Functioning" section of its Reconsideration Decision the Ministry also weighs assessments relating to required support and supervision which are more appropriately addressed in the "Help Required with DLA" section of the Reconsideration Decision.

Panel Decision

The Panel notes that having a "*good*" ability to speak, hear, read and write, as the GP has indicated is the case for the Appellant in the AR, does not mean that an individual could not also have periodic difficulties with communication as a result of having occasional problems with focus and anger outbursts, as the GP states is the case for the Appellant in the MR. The two assessments are not mutually exclusive. Therefore the Panel finds that there is no apparent contradiction with respect to the GP's observations in that regard and that it is not reasonable for the Ministry to conclude that there is an inconsistency in these assessments, had it intended to do so.

The Panel also notes that one of the reasons the Appellant is not considered by the Ministry to have a severe impairment is that the GP has indicated that the Appellant does not require assistance with DLA, which is a separate criterion under the legislation and which is addressed in the section below.

Regarding severe impairment, 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 in order for an impairment to be severe. The Panel notes that the GP indicates that the Appellant has *significant* deficits to cognitive and emotional functioning in the MR, several major and moderate impacts to daily cognitive and emotional functioning in the AR, and has written "*The extent and duration of his impairment in mental functions is prolonged and persistent. This has significant impact on his daily functioning*" in the "Additional Comments" section of the MR. Therefore the Panel finds that the GP has provided abundant evidence of a severe mental impairment and that the Ministry was not reasonable in determining that a severe mental impairment was not established pursuant to Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

The Appellant's position is that the GP did not provide an accurate assessment of his abilities with respect to performing DLA. The Ministry's position is that the evidence provided with the Appellant's application is not sufficient to confirm that his impairment significantly restricts his ability to perform his DLA either continuously or periodically for extended periods, and that therefore the legislative criteria have not been met.

Panel Decision

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 Panel notes that the GP does not provide any information where asked in the AR to give a brief summary of mental and physical impairments that impact the Appellant's ability to manage DLA. In addition, the Panel notes that the GP states in the MR that the Appellant has not been prescribed any medications or treatments that interfere with his ability to perform DLA, indicating to the contrary that "*he is on medications that will facilitate his performing DLA*", and that he has no impairment that directly restricts any of the DLA. The Panel further notes that the GP indicates in the AR that the Appellant is independent with respect to all DLA, adding "*no impairment*" in the section provided for additional commentary.

With respect to social functioning, the Panel notes that the GP indicates that the Appellant is independent in making appropriate social decisions, but requires periodic support or supervision in developing and maintaining relationships, in interacting appropriately with others, in dealing appropriately with unexpected demands, and in his ability to secure assistance from others. However, the Panel notes that a description of the degree and duration of periodic support or supervision is not provided.

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

Help with DLA

While indicating at the hearing that he had not left his home for two weeks and was only able to perform basic housework, the Appellant did not identify any help he required in performing DLA. 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) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> 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? <input type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION:	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input checked="" type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME Simon Clews	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018/12/12

PRINT NAME Kulwant Bai	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY)
PRINT NAME Carla Tibbo	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY)