



PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated November 22, 2018, which held that the appellant did not meet 4 of the 5 statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirements, but was not satisfied that:

- the appellant's impairment was likely to continue for at least two years;
- 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 those restrictions, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

PART D – RELEVANT LEGISLATION

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

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

PART E – SUMMARY OF FACTS

The information before the ministry at the time of reconsideration included the following:

1. Appellant's PWD application comprised of the appellant's Self-Report dated August 22, 2018 (SR) a Medical Report (MR) completed by the appellant's general practitioner (Physician) dated July 25, 2018, and an Assessor Report (AR), completed by a social worker (Assessor) dated August 22, 2018
2. Appellant's Request for Reconsideration form dated October 29, 2018 (RFR) requesting an extension of time
3. Letter from the Assessor dated November 14, 2018 (Letter)
4. Revised Section 2 – Medical Report noting changes to the MR and initialled by the Physician dated November 20, 2018 (Revised MR)

Summary of relevant evidence

Diagnoses

In the MR, the Physician indicates that the appellant has been diagnosed with ADHD (date of onset 2003), and major depression (date of onset October 2014). The Physician indicates that the appellant has been a patient for 1 year and he has seen him 11 or more times in the past 12 months.

In the AR, the Assessor indicates that the appellant's impairments that impact his ability to manage DLA are major depression, ADHD, anxiety, and asthma. The Assessor indicates that she has known the appellant for two weeks and has seen him 2-10 times within that time frame.

Duration

In the MR, the Physician indicates that the appellant's impairment is likely to continue for two years or more. In response to the question as to the estimated duration of the impairment, the Physician indicates that he is unable to estimate and that if the appellant's father dies in the next four months, matters will escalate.

Physical Impairment

In the MR for Functional Skills, the Physician indicates that the appellant is able to walk 4+ blocks unaided on a flat surface, climb 5+ steps unaided, has no limitations with respect to lifting or being seated.

In the AR, the Assessor indicates that the appellant is independent with walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding. The Assessor indicates that the appellant requires periodic assistance from another person with walking outdoors, explaining that he has trouble with crowds and asthma and is three times slower than normal or avoids. The Assessor further comments that the appellant deals with claustrophobia and panics in large crowds.

In the Letter, the Assessor indicates that the appellant has asthma and his way of keeping his breathing under control is by avoiding strenuous activities. The Assessor indicates that the appellant can walk unaided on a flat surface but has little motivation and walks about 3x slower at best. The Assessor indicates that anything that requires physical exertion and being out in public is avoided because of panic attacks and breathing problems from the asthma.

Mental Impairment

In the MR, the Physician indicates that the appellant does not have any difficulties with communication. The Physician did not check off the box stating yes to indicate that the appellant has significant deficits with cognitive and emotional function but the Physician did indicate that the appellant has deficits evident in the area of executive, emotional disturbance, motivation, impulse control, and attention or sustained concentration.

In the health history portion of the MR, the Physician indicates that since the loss of his mother the appellant has struggled with severe depression and is under the care of a psychiatrist. The Physician indicates that the appellant's move from another city and his father's poor health has made matters worse for the appellant. The Physician indicates that the appellant has low motivation, feels hopeless, is overwhelmed by ordinary tasks and states that he feels worthless. The Physician indicates that the appellant's ADHD contributes and is an additional barrier to success. The Physician indicates that the appellant has major depression disorder and ADHD. The Physician indicates that the appellant struggles day to day and that his depression severely inhibits him.

In the AR, the Assessor indicates that the appellant's ability to communicate in the areas of speaking and reading is good, writing is satisfactory, and hearing is poor, explaining that the appellant is easily distracted. For cognitive and emotional functioning the Assessor indicates that the appellant has major impact to daily functioning in the areas of bodily functions (sleep disturbance), emotion, impulse control, attention/concentration, executive, motivation, and other neuropsychological problems. The Assessor indicates moderate impact to the areas of consciousness and memory, minimal impact to language, and no impact to motor activity. The Assessor indicates that the appellant is good at making a plan but has trouble organizing and carrying things through. The Assessor indicates that the appellant has poor motivation, impulsivity and racy speech.

In the Letter, the Assessor indicates that along with his depression/anxiety and ADHD the appellant has difficulty functioning towards independence, often isolating himself and struggling socially. The Assessor indicates that the appellant has significant disabilities both physical and emotionally/cognitively and together they further reduce his independence. The Assessor indicates that she is very concerned how the appellant will cope with the death of his father and how he will take care of his physical and emotional needs.

DLA

In the MR, the Physician indicates that the appellant has not been prescribed medications that interfere with his ability to perform DLA. The Physician indicates that the appellant's DLA of personal self-care, meal preparation, basic housework, daily shopping, management of finances and social functioning are all periodically restricted. The Physician indicates that the appellant is able to do the minimum, and occasionally can do more. The Physician indicates that the appellant's depression inhibits his social functioning.

In the Revised MR, the Physician indicates that the appellant's DLA of personal self-care, meal preparation, basic housework, daily shopping and management of finances are all periodically restricted. The Physician indicates that the DLA of social functioning is continuously restricted.

For periodic restrictions the Physician indicates that the appellant is rarely able to do the minimum and occasionally can do more. For social functioning the Physician indicates that the appellant's depression inhibits him continuously.

In the AR, the Assessor indicates that with respect to personal care the appellant is independent with toileting, feeding self, regulating diet, transfers (in/out of bed), and transfers (on/off chair) but requires periodic assistance and takes significantly longer than typical with dressing, grooming and bathing. The Assessor explains that the appellant does only what is needed and struggles with that. The Assessor indicates that the appellant requires periodic assistance from another person and takes significantly longer than typical, explaining that he struggles daily and takes 3-7x longer than typical or avoids.

With respect to shopping, the Assessor indicates that the appellant is independent with going to and from stores, reading prices and labels, and carrying purchases home, but requires periodic assistance from another person with making appropriate choices and paying for purchases, explaining that he is an impulsive shopper and avoids crowds. The Assessor comments that it took the appellant 1.5 months to get in to see her to complete the AR due to procrastination, depression, fear of an unknown environment, and becoming overwhelmed.

For meals, the Assessor indicates that the appellant is independent with safe storage of food, but requires periodic assistance from another person and takes significantly longer than typical with meal planning, food preparation, and cooking, explaining that the appellant does only what is necessary.

For paying rent and bills, the Assessor indicates that the appellant is independent with banking and paying rent and bills but requires periodic assistance from another person and takes significantly longer than typical with budgeting, (will pay bills that are needed but does not save).

For medications, the Assessor indicates that the appellant is independent with taking medications as directed and safe handling and storage but requires periodic assistance and takes significantly longer than typical with filling/refilling prescriptions as he avoids crowds to avoid panic attacks. With transportation, the Assessor indicates that the appellant is independent with getting in and out of a vehicle but requires periodic assistance and takes significantly longer than typical with using public transit and using transit schedules and arranging transportation as he avoids crowds as his heart races, he panics, and it can be confusing initially. Under additional comments the Assessor indicates that the appellant was taking a medication but stopped it due to suicidal thoughts.

For social functioning, the Assessor indicates that the appellant requires periodic support/supervision with making appropriate social decisions (very self conscious), developing and maintaining relationships (avoids others except friends/family), interacting appropriately with others (is good when he knows you or it is one of his people and he feels safe), dealing appropriately with unexpected demands, and securing assistance from others. The Assessor indicates that the appellant has marginal functioning with his immediate and extended social networks.

In the Letter, the Assessor indicates that the appellant is poorly motivated and takes significantly longer (5-7 times longer) to complete most of his DLA. The Assessor indicates that the appellant has had little support in life to learn needed independent skills. The Assessor indicates that along with his depression/anxiety and ADHD, the appellant has difficulty functioning towards independence, often isolating himself and struggling socially. The appellant has very poor self esteem, does not trust others and when he goes out in public it is often in the company of friends, otherwise he is often unable. The Assessor notes that the appellant does not feel comfortable talking to people and will basically hide behind his friends so he does not have to deal with people. He struggles considerably already and as the Physician indicated, with the soon anticipation of his fathers death, his disabilities will increase.

Need for Help

In the MR, the Physician indicates that the appellant does not require any prostheses or aids for his impairment. In response to the question asking what assistance the appellant needs with DLA the Physician indicates "Nil assistance. He merely neglects these issues further than the average person".

In the Revised MR, the Physician indicates that the appellant neglects DLA further than the average person due to ADHD and depression.

In the AR, the Assessor indicates that a mental health worker and a psychiatrist provide help. The Assessor indicates that the appellant does not routinely use any assistive devices and does not have an assistance animal.

In the Letter, the Assessor indicates that the appellant has few friends that provide significant emotional support. The appellant sees a mental health worker and a psychiatrist.

Additional information provided

In his Notice of Appeal dated December 4, 2018, the appellant states that he qualifies for PWD designation as both the Physician and Assessor have indicated so.

At the hearing, the appellant's advocate said that the appellant's father passed away one week ago and that the appellant was struggling more, as anticipated by the Physician. The advocate indicated that while the Physician indicates in the Health History portion of the MR that the appellant cares for his grandmother, the relationship between the appellant and his grandmother is one where they help each other as best they can. The advocate argued that the ministry did not reasonably consider all the information and that the appellant meets the legislative criteria to qualify for PWD designation.

At the hearing, the appellant said that he has been struggling with depression for four years, which worsened after his mother passed away. He says that he was previously hospitalized in another province due to suicidal thoughts;

once in 2015 and once in 2016. The appellant also says that before moving from another province, his grandfather committed suicide which further impacted his emotional status and ability to cope. This was further compounded when his father's health began to deteriorate in the last year, he pulled out of school, and spent his time hidden away in his house, not wanting to deal with anything. The appellant says that the few friends he has would have to pull him out of his house. The appellant stated that he needs support, as it is a big struggle to get things done.

The appellant says that he has had suicidal thoughts for the past 3.5 years which continue at present, and he has no semblance of a routine in his life. He says that some days he does not eat and some days he is unable to do anything. The appellant says that he has no motivation to take care of himself and does not see the point, particularly now that his father has passed away too.

The appellant described what a typical day is like for him which includes significant internal conflict to try and get himself to get up and do things at home and keep a normal routine. The appellant talks to his grandmother about her dreams but typically tends to isolate in his room and cries for hours. The appellant states that he feels like his life is on hold. The appellant says that he tries to help his grandmother with her grief around losing her husband while she waits to get support from mental health, and the help he provides is listening to her share her feelings. The appellant says that his grandmother helps him by driving him to appointments and encouraging him to get out of the house. The appellant says that he sees a psychiatrist but the appointments are not very often. The appellant says that his mental health counsellor went off on a leave of absence and he is waiting for him to return so he can start to see him again. The appellant says that he was prescribed one anti-depressant medication but it increased his suicidal ideation so he stopped taking that. He tried another anti-depressant medication but it did not work. He is currently taking another medication at bed time to help him sleep and he reports that it does help him sleep a bit more but that he does not wake up feeling rested.

The appellant says that his father passed away one week ago and that his mental health has deteriorated since then. The appellant also says that he has a bad knee and cannot walk up hills.

The appellant's grandmother said that the appellant was only capable of limited chores at home but after his mother passed away he has struggled to do even minimal chores and cannot keep up a normal routine. The grandmother says that the appellant will help with tasks such as lifting and carrying groceries but that he has not done dishes for about a month. The grandmother says that for cooking they tend to eat microwaved meals or food that can be made quickly or easily, or they will order out. The grandmother says that since his father passed away one week ago the appellant's mental health has further deteriorated and he is again suicidal and isolates in his room most of the day.

The ministry did not attend the hearing.

Admissibility of New Information

The panel has not admitted the information regarding the appellant's knee into evidence, as that was not information that was before the ministry at the time of reconsideration.

The panel has admitted the appellant's remaining oral testimony, the grandmother's oral testimony, and the advocate's oral testimony about the appellant's father's death and current condition into evidence, as it is information in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the new information supports the appellant's information regarding the appellant's mental impairment, ability to perform DLA, help needed with DLA, and the family's circumstances.

The panel has accepted the remainder of the advocate's oral testimony as argument.



PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the ministry's decision to deny the appellant 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. In particular, was the ministry reasonable when concluding it was not satisfied that:

- the impairment is likely to continue for two years or more;
- a severe physical or mental impairment was established;
- 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 those restrictions, in the opinion of a prescribed professional, the appellant requires help, as it is defined in the legislation, to perform DLA?

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 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).

EAPWDR

Definitions for Act

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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 practice 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.

(3) The definition of "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

Panel Decision

Duration

The ministry's position is that although the Physician indicated 'yes' to the question as to whether the impairment is likely to continue for two years or more from today, the Physician states that he is unable to estimate the duration of the impairment so the information provided does not correspond. The ministry's position is that it cannot establish if the appellant's impairment is likely to continue for 2 years.

The appellant's position is that he has suffered with severe, chronic depression for 4 years with suicidal thoughts. The appellant's position is that the Physician confirmed that his impairment is likely to continue for at least two years or more. The appellant says that although the Physician indicates that he is unable to estimate how long the

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impairment will continue, the Physician meant that he was unable to estimate how much longer than two years the impairment would continue. The appellant says that this is supported by the fact that the Physician indicates that if the appellant's father dies in the next few months that matters will escalate. The appellant says that the Physician's prognosis has been accurate, as his condition has escalated since his father passed away last week.

The panel finds that the ministry was not reasonable in determining that the information provided does not establish that the appellant's impairment is likely to continue for two years or more. The information must be read together and any ambiguity resolved in favour of the appellant.

In the MR, the Physician indicates that the appellant was diagnosed with ADHD in 2003 and major depression in 2014. The Physician clearly checks off the box indicating 'yes' in response to the question whether the impairment is likely to continue for two years or more. Given the length of the appellant's ongoing impairment and chronic depression and the Physician's comments that the depression severely inhibits the appellant's DLA, the panel finds that any ambiguity in the Physician's response must be resolved in favour of the appellant. The panel finds that the Physician's comment that he is unable to estimate how long the impairment is likely to continue must be interpreted to mean that the Physician is unable to estimate how much longer than two years the impairment is likely to continue.

Severity of Impairment

The legislation provides that the determination of severity of an impairment is at the discretion of the minister, taking into account all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed professional respecting the nature of the impairment and its impact on daily functioning. While the legislation does not define "impairment", the MR and AR define "impairment" as a "loss or abnormality of psychological, anatomical or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration." While this is not a legislative definition, and is therefore not binding on the panel, it reflects the legislative intent and provides an appropriate analytical framework for assessing the degree of impairment resulting from a medical condition.

When considering the evidence provided respecting the severity of impairment, the ministry must exercise its decision-making discretion reasonably by weighing and assessing all of the relevant evidence.

Severe Physical Impairment

The ministry's position is that a diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment and that the information provided does not establish a severe physical impairment. In particular, the reconsideration decision indicates that the functional skills reported by the Physician in the MR with respect to walking unaided, climbing stairs unaided, and no limitations with lifting or remaining seated, are not indicative of a severe physical impairment. The ministry indicates that although the Assessor indicates that the appellant has trouble when walking outdoors with crowds, this restriction is not due to physical ability. The ministry indicates that although the Assessor indicates that the appellant is 3x slower or avoids stairs as he has asthma, the information indicates that the appellant is independent with his physical ability and asthma was not a diagnosis confirmed by the Physician. The ministry's position is that if asthma was causing impairment to the appellant's physical functioning, it is expected that the Physician would have reported it as such.

The appellant says that asthma impacts his ability to perform strenuous activities but that his major impairment is his mental impairment.

In the MR, the Physician does not diagnose a physical impairment and the panel finds that the reported functional skills are not indicative of a severe physical impairment as the appellant can walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, and has no limitations with lifting or remaining seated. Although the Assessor indicates that the appellant has asthma which impacts his ability to walk, climb stairs and perform strenuous activities, the Physician did not confirm this diagnosis or report any impairment as a result of asthma.

Although the information of the Assessor establishes that the appellant may have some difficulty with breathing

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and strenuous activities due to asthma, the panel finds that the ministry was reasonable in determining that the information provided does not establish that the appellant has a severe physical impairment.

Severe Mental Impairment

The ministry's position is that although the appellant has been diagnosed with major depression and ADHD and struggles in social settings, the level of impairment is not in keeping with a severe impairment. The reconsideration decision notes that the Physician reports significant deficits to emotional disturbance, motivation, attention/concentration, impulse control and executive functioning. The reconsideration decision also indicates that the Assessor indicates that the impact to the appellant's daily functioning is major also includes major impacts to the appellant's bodily functions and other neuropsychological problems. The ministry notes that the Assessor further indicates moderate impacts to consciousness and memory but that the narrative provided does not indicate the same level of impact as it states that the appellant is good at making a plan but has trouble organizing and following through with things, plus poor motivation.

The ministry notes that in the Letter, the Assessor indicates that the appellant has significant disabilities both physical and emotionally and together, further reduce the appellant's independence. The ministry notes that the Assessor indicates that the appellant meets the legislative criteria for PWD and that she is very concerned with how the appellant will cope with the death of his father and how he will take care of his physical and emotional needs. The ministry also notes that the Physician indicates that the appellant helps with the care of his grandmother and there is no indication that he requires assistance with DLA except that they take him longer to perform due to poor motivation. The ministry also notes that although there is reference to a mental health worker and psychiatrist there is no information from either of these professionals who specialize in mental health.

The ministry's position is that although the appellant has impacts to his cognitive and emotional functioning, he maintains a certain amount of independence, most specifically in his ability to perform DLA. The ministry's position is that poor motivation and following through with plans does not establish a severe mental impairment. The ministry also notes that although the Physician and the Assessor both describe a deep concern for the appellant's circumstances with his father, but that the PWD application does not assess for potential future needs. The ministry's position is that a severe mental impairment cannot be established at this time.

The appellant's position is that he has chronic, persisting depression and ADHD, which severely inhibit his ability to perform DLA and have any semblance of a normal routine. The appellant says that his friends have to pull him out of his house and he has severe troubles with social functioning and social interaction.

The appellant's advocate notes that although the Assessor has not known the appellant as long as the Physician the Assessor conducted a three hour session with the appellant in completing the AR. The advocate argues that the information from the Physician and the Assessor clearly demonstrate that the appellant has a severe mental impairment. In particular, the advocate says that the Physician indicates significant deficits with cognitive and emotional function in the areas of executive, emotional disturbance, motivation, impulse control and attention or sustained concentration and the Assessor indicates major impact to executive, emotion, motivation, impulse control and attention/concentration.

The panel finds that the ministry was not reasonable in determining that the information provided does not establish that the appellant has a severe mental impairment. Although there are some minor inconsistencies in the information provided from the Physician and the Assessor in that the Assessor notes major impact to bodily functions (sleep disturbance) which is not reported by the Physician, the majority of the information demonstrates that the appellant suffers from significant impacts to his cognitive and emotional function.

While the reconsideration decision indicates that poor motivation and difficulty following through with plans does not establish a severe mental impairment, the panel finds that the ministry's comment in this regard focuses narrowly on this information rather than considering all the information as a whole. For example, as argued by the advocate, the Physician indicates significant deficits with cognitive and emotional function in the areas of executive, emotional disturbance, motivation, impulse control and attention or sustained concentration and the Assessor indicates major impact to executive, emotion, motivation, impulse control and attention/concentration. The fact that the appellant has poor motivation and inability to follow through with plans is just one aspect of how

the appellant's mental impairment impacts his functioning. As noted in the Letter, the Assessor indicates that the appellant is poorly motivated and takes significantly longer than typical (5-7 times longer) to complete most of his DLA. The Assessor also indicates that the appellant has very poor self-esteem, does not trust others, is not comfortable in public, and often isolates himself. This is consistent with the information provided by the appellant as to his difficulty getting out of the house, and it is consistent with the information from the Physician, which indicates that the appellant's depression significantly inhibits the appellant.

The reconsideration decision notes that both the Physician and the Assessor indicate their concern about the appellant if his father dies and that the PWD application does not assess future needs. The panel notes that the PWD application is not intended to address future needs if other events happen; however, the information provided by the Physician and the Assessor, when considered together also provides considerable information regarding their concerns about the appellant's current condition. For example, in the Health History portion of the MR, the Physician indicates that the appellant has severe depression with low motivation, feels hopeless, is overwhelmed by ordinary tasks, and feels worthless. The Physician further notes that the appellant's ADHD contributes and is an additional barrier to success. The Physician indicates that the appellant struggles day to day and that his depression severely inhibits him. In the Letter, the Assessor indicates that the appellant has significant disabilities both physical and emotionally/cognitively and together further reduce his independence. The Assessor indicates that the appellant should be found eligible for PWD designation.

The reconsideration decision states that the information provided indicates that the appellant cares for his grandmother and does not require assistance with DLA except that they take him longer to perform due to poor motivation. The appellant says that his relationship with his grandmother is a two way street in that she cannot lift anything more than two pounds whereas his grandmother helps him by pushing him to get out of the house and getting social support. The panel finds that any care or assistance that the appellant provides to his grandmother is minimal. The panel finds that the ministry was not reasonable in determining that the information provided by the Physician indicating that the appellant cares for his grandmother should be taken to mean that the appellant does not have a severe mental impairment or that the care provided is sufficient to reduce the impact of his significant deficits to cognitive and emotional functioning.

Although the appellant is independent in his ability to communicate, the information establishes that the appellant's social functioning is marginal. In particular, the Physician in the Revised MR indicates that the appellant's restriction with social functioning is continuous, not periodic, as initially indicated.

The reconsideration decision indicates that there is reference to the appellant working with a mental health worker and a psychiatrist but that the appellant did not provide information from either professional who specialize in mental health. The panel notes that it may be helpful to have additional information from the appellant's mental health worker or psychiatrist but the PWD application does not require additional information from other specialists. In addition, the appellant says that his mental health worker is off on a leave of absence and he is waiting for him to return to work to resume sessions. The appellant also says that he only sees the psychiatrist rarely but would like to see him more. The panel finds that the lack of information from the mental health worker or the psychiatrist should not be taken to imply that the appellant's mental impairment is somehow less severe.

The EAPWD legislation does not require that a certain number of areas of major impact must exist before a severe impairment is found. However, given that the Physician indicates significant impact to cognitive and emotional functioning in five areas and the Assessor indicates seven areas of major impact to cognitive and emotional functioning and both agree that the appellant's social functioning is marginal, when read together as a whole and taking into account the information provided by the appellant, the panel finds that the ministry did not reasonably consider all the information.

Based on the above, the panel finds that the ministry was not reasonable in determining that the information provided does not establish that the appellant has a severe mental impairment.

Restrictions in the ability to perform DLA

Section 2(2)(b)(i) of the EAPWDA requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to

perform DLA either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether or not it is satisfied that the legislative criteria are met, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration – the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended periods. Inherently, any analysis of periodicity must also include consideration of how frequently the activity is restricted. All other things being equal, a restriction that only arises once a year is less likely to be significant than one that occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

DLA are defined in section 2(1) of the EAPWDR and are listed in both the MR and the AR sections of the PWD application with the opportunity for the prescribed professional to check marked boxes and provide additional narrative. DLA, as defined in the legislation, does not include the ability to work.

The ministry's position is that the information provided is not sufficient to establish that the appellant has a severe impairment that, in the opinion of a prescribed professional, directly and significantly restricts the appellant's ability to perform DLA. In particular, the reconsideration decision indicates that the Physician indicates that the appellant is periodically restricted in DLA of self-care, meal preparation, basic housework and management of finances. The ministry notes that when asked to describe the periodic restrictions, the Physician states that the appellant is rarely able to do the minimum and occasionally can do more, but that the nature, frequency, and duration are not provided.

The ministry notes that in the Revised MR, the Physician indicates that the appellant is continuously restricted in social functioning and narrates that the appellant's depression inhibits him continuously. However, when asked what assistance the appellant needs with DLA, the Physician indicates "nil – he merely neglects these issues further than the average person".

The ministry notes that in the AR the Assessor indicates that the appellant requires periodic assistance with dressing, grooming and bathing, laundry, housekeeping, meal planning, food preparation, cooking, budgeting, filling prescriptions and using public transit and that she also indicates that the appellant takes significantly longer than typical to perform these activities. The ministry notes that the Assessor reports that the appellant only does what is needed and often struggles with it or avoids. The ministry's position is that this information indicates that the appellant can perform the tasks independently but has poor motivation as outlined by the Assessor. The ministry notes that the frequency and duration of periodic assistance is not outlined.

The ministry notes that with respect to social functioning, the Assessor reports that the appellant requires periodic support or supervision with making appropriate social decisions, developing and maintaining relationships, dealing with unexpected demands and securing assistance from others. The Assessor indicates that the appellant is very self-conscious but is good at interacting with others when he knows the person; it is when there is one too many people the appellant does not know that causes panic attacks. The ministry notes that the frequency and duration of support/supervision is not provided. The ministry also notes that while it is reported that the appellant has marginal functioning with his immediate and extended social networks and that the appellant does not participate significantly in his relationships, he can maintain minimal relationships which includes taking part in social activities with friends in public and caring for his grandmother.

The ministry's position is that considering all the information, it cannot establish that the appellant's DLA are directly and significantly restricted continuously or periodically for extended periods of time.

The appellant's position is that the information provided demonstrates that his impairments directly and significantly restrict his ability to perform DLA. The appellant's position is that the evidence demonstrates that he experiences continuous, significant restrictions in the areas of social functioning and that he has periodic restrictions with DLA of personal self-care, meal preparation, basic housework, daily shopping and management of finances.

The appellant's advocate argues that while the ministry indicates that the frequency and duration of periodic

[REDACTED]

assistance is not outlined, the legislation does not require the Physician to provide that information so it is not reasonable to deny the application when the Physician does confirm that the restrictions are periodic and provides information indicating that the appellant is rarely able to do the minimum and occasionally can do more.

The panel finds that the ministry was not reasonable in determining that the assessments provided are not indicative of a severe level of impairment that directly and significantly restricts the appellant's DLA either continuously or periodically for extended periods as required by EAPWDA section 2(2)(b).

The ministry notes that that with respect to the appellant's periodic restrictions in personal self-care, meal preparation, basic housework and management of finances the Physician, when asked to describe the periodic restrictions, states that the appellant is rarely able to do the minimum and occasionally can do more but that the nature, frequency and duration are not provided. The advocate argues that the legislation does not require anything more than the information provided. The panel finds that although the ministry indicates that the nature, frequency and duration of the appellant's periodic restrictions are not provided, the Physician's statement that the appellant is rarely able to do the minimum, is a description of the nature of the periodic restrictions, as the word "rare" is defined in the Merriam-Webster dictionary as "seldom" or "uncommon". The Physician also indicates that the appellant can occasionally do more and although the Physician did not provide further information on how often the appellant can do more; the word "occasionally" is defined as "now and then" or "at infrequent or irregular intervals". The panel finds that the Physician did in fact provide information regarding the nature and frequency of the appellant's periodic restrictions.

In addition, in the Health History portion of the MR, the Physician indicates that the appellant struggles day to day and his depression severely inhibits him, which is further information regarding the nature and frequency of the periodic restrictions.

While the ministry indicates that the Assessor did not provide information regarding the frequency and duration of periodic assistance, under additional comments, the Assessor explains that it took the appellant 1.5 months to get in to see her to complete the PWD application due to procrastination, poor motivation, depression, and fear of an unknown environment. The Assessor also indicates that the appellant becomes overwhelmed with simple things. The panel finds that the ministry was not reasonable in not taking this information into account as a description of the nature of the appellant's restrictions.

While the ministry indicates that the Assessor reports that the appellant takes significantly longer than typical with DLA of dressing, grooming and bathing, laundry, housekeeping, meal planning, food preparation, cooking, budgeting, filling prescriptions and using public transit this indicates that the appellant can perform the tasks independently but has poor motivation. However, in the AR, the Assessor indicates that with respect to dressing, grooming, and bathing the appellant does only what is needed and often struggles with that. With respect to laundry and basic housekeeping the Assessor indicates that the appellant struggles daily and takes 5-7 times longer or avoids. With respect to shopping the Assessor indicates that the appellant avoids crowds and is an impulsive shopper. In the AR the Assessor comments that the appellant is overwhelmed with simple things and in the Letter, the Assessor indicates that it takes the appellant 5 to 7 times longer than typical to complete most of his DLA. While the ministry indicates that poor motivation appears to be the reason for the appellant's restrictions to DLA, the reconsideration decision unreasonably fails to acknowledge the other factors including the appellant's impulsivity, feeling of being overwhelmed with simple things, daily struggles, and fear of crowds.

In addition, the panel finds that the ministry does not reasonably consider the appellant's significant ongoing suicidal ideation that is different than simply poor motivation. In particular, the appellant reports that he has suicidal thoughts every day for the past 3.5 years, has trouble getting out of bed and often isolates himself. This is supported by the information from the Physician, as he indicates that the appellant is severely inhibited by his depression and struggles with the basics of day to day activities. The panel finds that the ministry did not reasonably consider the evidence as a whole, as the information provided, with any ambiguity resolved in favour of the appellant, indicates that the appellant's severe mental impairment directly and significantly restricts his DLA.

In addition, while the ministry indicates that the appellant's care for his grandmother indicates a higher level of independence and lack of difficulty with DLA, the information provided indicates that the appellant simply spends time with his grandmother and lifts the occasional item that it too heavy for her to lift. As indicated by the Assessor,

[REDACTED]

the appellant has had little support in life to learn needed independent skills and while it is clear that the appellant lives with his grandmother the family is not functioning very well, given her grief over her husband committing suicide and the appellant's ongoing suicidal ideation requiring two prior hospitalizations.

The reconsideration decision states that although the Assessor indicates that the appellant requires periodic support or supervision with making appropriate social decisions, developing and maintaining relationships, dealing with unexpected demands and securing assistance from others noting that the appellant is self-conscious and has panic attacks when there is one too many people that he does not know, the frequency and duration of support/supervision is not provided. The ministry also notes that while the appellant has marginal functioning with his immediate and extended social networks he can maintain minimal relationships and takes part in social activities with friends in public and cares for his grandmother.

The panel notes that the Physician in the Revised MR indicates that the appellant's social functioning is continuously restricted. The AR indicates that the appellant requires periodic support/supervision with DLA of social functioning and has marginal functioning with his immediate and extended social networks. The panel finds that the ministry was not reasonable in concluding that the fact that the appellant is able to participate in a few social activities and interact with his grandmother demonstrates that his DLA of social functioning is not continuously restricted. In particular, the Letter from the Assessor further explains that the appellant has had little support in life and he often isolates himself and struggles socially. The Assessor indicates that when the appellant goes out in public it is often in the company of friends, otherwise he is often unable. The Assessor indicates that the appellant does not feel comfortable talking to people and will basically hide behind his friends so he does not have to deal with people.

The panel finds that when all the information is considered together the ministry was not reasonable in determining that the legislative criteria of EAPWDA section 2(2)(b)(i) were not met. The panel finds that when the evidence is read together as a whole and any ambiguity resolved in favour of the appellant, that the ministry was not reasonable in determining that the legislative criteria of EAPWDA section 2(2)(b) was not met as the panel finds that the appellant is directly and significantly restricted either continuously or periodically for extended periods, in at least two DLA.

Help to perform DLA

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. 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 DLA.

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

The appellant's position is that he requires help from his grandmother and friends with DLA, particularly social functioning and tasks requiring him to go out of his room and his home. The appellant states that he struggles to have any routine, to get out of the house and to perform simple tasks. The appellant says that he struggles with medications as the side effects have been hard to deal with and that he needs ongoing help from his mental health worker and psychiatrist.

The panel finds that the ministry was not reasonable in determining that it could not be determined that significant help is required as required by EAPWDA section 2(3)(b)(ii). In the MR the Physician indicates that the appellant does not require any prostheses or aids for his impairment and in the AR the Assessor indicates that the appellant does not require the use of assistive devices. However, as the appellant's impairment is largely mental not physical, that is not surprising.

The panel notes that in the MR, the Physician, when asked what assistance the appellant requires with DLA, writes "nil assistance – he merely neglects these issues further than the average person". However, in the Health History portion of the MR, the Physician does indicate that the appellant is under the care of a psychiatrist and in the AR and the Letter, the Assessor indicates that the appellant requires and receives help from a mental health worker

[REDACTED]

and psychiatrist.

The appellant and his grandmother both say that the appellant struggles with isolation and has an extremely difficult time getting out of the house. While the appellant's grandmother can provide some support in that regard, the Letter from the Assessor indicates that the appellant has little support in life to learn needed independent skills and needs friends to get out of the house and talk to others. The panel finds that the ministry did not reasonably consider that the information provided establishes that the appellant requires the significant help or supervision of another person as specified in EAPWDA section 2(3)(b)(ii).

As the panel finds that the ministry was unreasonable in determining that the appellant does not have a severe impairment that directly and significantly restricts his ability to manage his DLA either continuously or periodically for an extended period of time, the necessary precondition is satisfied.

As the panel finds that the information from the Physician and the Assessor in combination with the information from the appellant and his grandmother indicates that the appellant requires significant help to perform DLA, most notably the DLA of social functioning, the panel finds that the ministry's decision that the appellant did not satisfy the legislative criteria of EAPWDA section 2(3)(b) was not reasonable.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision finding the appellant ineligible for PWD designation is not reasonable based on the evidence and is not a reasonable application of the legislation in the circumstances of the appellant except. The panel therefore rescinds the ministry's decision and the appellant is successful in his appeal.

PART G – ORDER

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

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

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

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Helene Walford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/01/04

PRINT NAME

Deborah Kinnear

DATE (YEAR/MONTH/DAY)

2019/01/04

PRINT NAME

Mel Donhauser

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/01/04