

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision dated April 15, 2019, which found that the Appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) for designation as a person with disabilities (PWD). While the Ministry found that the Appellant met the age requirement and had an impairment which was likely to continue for at least two years, it was not satisfied that the evidence establishes that:

- The Appellant has a severe physical or mental impairment;
- The Appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- As a result of these restrictions, the Appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The Ministry also found that the Appellant is not one of the prescribed classes of persons who may be eligible for PWD designation on the alternative grounds set out in Section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) and the Appellant did not appeal the decision on this basis.

**PART D – RELEVANT LEGISLATION**

EAPWDA, Section 2

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 a Self Report (SR) dated January 22, 2019, a Medical Report (MR) dated February 13, 2019 and completed by the Appellant's General Practitioner (GP) who has known the Appellant since 2013 and who has seen the Appellant 2 - 10 times in the past year, and an Assessor Report (AR) dated February 20, 2019 completed by the GP.

The evidence also included:

- An unsigned Request for Reconsideration (RFR) apparently completed by the Appellant on April 9, 2019 in which the Appellant indicated that she was dissatisfied with the Ministry decision regarding her request for a PWD designation and wished to exercise her right to request a reconsideration of that decision but did not provide any reasons;
- An initial Screening Assessment (Screening Assessment) dated August 10, 2018 prepared by a nurse clinician at the Health Authority (HA) in the Appellant's community, which includes background information on the Appellant, a summary of her psychiatric history, her functional status and her current mental status;
- An initial Psychiatric Assessment (Psychiatric Assessment) dated on August 20, 2018 prepared by a psychiatrist at the Health Authority in the Appellant's community, which includes a history of the Appellant's presenting complaint, her past psychiatric history, her personal social history, a summary of a mental state examination and a treatment plan;
- An email dated September 18, 2019 from the Mother of the Appellant to the Appellant's GP challenging the diagnosis of the Appellant's mental condition as set out in the Psychiatric Assessment and providing a brief social and employment history of the Appellant; and
- A Psychiatric Referral Report (Referral Report) dated January 12, 2019 prepared by a psychiatrist in a community adjacent to the Appellant's community, which includes a history of the Appellant's presenting illness, her past psychiatric history, her substance use history, her past medical history and current medications, her family and social history, a summary of a mental state examination, her Patient Health Questionnaire Score 9 (PHQ-9), a diagnosis and a treatment plan.

***Diagnoses***

In the MR, the GP diagnosed the Appellant with an Anxiety Disorder and a Mood Disorder (Depression), indicating that the Appellant's anxiety symptoms began when she was a teenager. The date of the onset of her Depression is not identified.

***Physical Impairment***

There is no evidence of a physical impairment presented by any of the prescribed professionals or the Appellant.

***Mental Impairment***

In the MR, the GP states that the Appellant has low scores on screening tools for anxiety and depression but had to leave a job in September 2018 because she felt it was too stressful. The GP also indicates

that the Appellant has difficulties with communication caused by anxiety and social anxiety and has significant deficits with cognitive and emotional functioning in the areas of emotional disturbance and motivation, adding the comment "*Anxiety – staying in house, sensation of depersonalization, easily overwhelmed – depression – moody, irritable, suicidal thoughts, but no plan*". Where asked if there are any remedial treatments that might resolve or minimize the impairment, the GP writes "*Will require medication for anxiety + mood symptoms as well as counselling supports*". In the section of the MR that asks for additional information that might be relevant to understanding the significance of the Appellant's impairment, the GP states that the Appellant will require "*medication optimization*" and Cognitive Behaviour Therapy (CBT) and a neuropsychiatric assessment to determine whether she has a learning disability. The GP also notes that finances are a major barrier to CBT and a neuropsychiatric assessment as they are not covered by her available health insurance plans.

In the section of the AR where the assessor is asked to identify the applicant's mental impairments that impact her ability to manage DLA, the GP has indicated that the Appellant had experienced difficulties recalling information and memorizing at school and that her Mother fills her medical prescriptions as the Appellant has difficulty talking on the phone. In the section of the AR where the assessor is asked to indicate the level of ability to communicate, the GP has indicated "Good" in the areas of reading, writing and hearing and "Satisfactory" for speaking, adding "*ability to speak ok, avoids talking on the phone*". In the section of the AR where the assessor is asked to indicate to what degree the applicant's mental impairment restricts or impacts her functioning, the GP has indicated no major impacts and moderate impacts on her emotion, memory, motivation and other neuropsychological problems (where the GP has circled "learning disabilities"). The GP has indicated minimal impact on attention/concentration, executive functions and motor activity (having circled "agitation" and "tension") and no impact on the other seven listed areas (bodily functions, consciousness, impulse control, insight and judgment, language, psychotic symptoms, or any other emotional or mental problems). In the section of the AR where the assessor is asked to indicate the level of support or supervision required by the applicant, the GP has indicated that the Appellant is independent in the areas of making appropriate social decisions and interacting appropriately with others, but needs periodic support in developing and maintaining relationships ("*mom helps*"), dealing appropriately with unexpected demands ("*causes anxiety*"), and securing assistance from others ("*mom helps*"). No description of the frequency, duration or degree of periodic support is indicated. In assessing how the Appellant's mental impairment impacts her relationship with her immediate social network (family and friends) and how the Appellant's mental impairment impacts her relationship with her extended social networks, the GP has ticked "marginal functioning", adding the comments "*social network minimal*" and "*trying to improve social functioning and social network but anxiety recently prevented her from meeting a friend*".

In the Screening Assessment the nurse clinician states that she interviewed the Appellant on the telephone and that the Appellant told her that she has been struggling with anxiety and depression and that the depression in particular has worsened lately. The Appellant also told the nurse clinician that she is easily overwhelmed and that she is challenged in her part-time customer service work because she feels under pressure if customers are difficult and that her anxiety inhibits her ability to function properly. In terms of functional status, the nurse clinician reports that the Appellant's sleep and appetite are normal but she has low energy and poor short term memory and is affected by shortness of breath, increased heart rate, increased sweating, nausea, muscle tension and dizziness. The nurse clinician notes that the Appellant has indicated that she worries about being judged or criticized and fears that she

will say the wrong thing. Regarding suicide risk, the nurse clinician reports that the Appellant says that she has had suicidal ideation in the past but denies having ever attempted suicide or of having any current intentions or plans.

In the Psychiatric Assessment, the HA psychiatrist reconfirmed much of the information contained in the Screening Assessment and indicates that the Appellant's mood is generally good but she has "*occasional low days but overall feels it is about six out of ten*". Regarding the possibility that the Appellant might have a learning disability, the HA psychiatrist writes "*... she is able to show good social and emotional behavior, her non verbal communication is quite appropriate, she's never engaged in any restrictive or repetitive patterns of behavior. She has managed to establish and maintain relationships. There's also no language or motor deficit ... I do not believe she has autistic spectrum disorder*". He states that she has "*a history of anxiety disorder going back to her teens*" but "*(s)he is not suffering with depression*". He concludes that the degree of her symptoms are starting to affect her daily life and that he thinks that CBT will be very helpful.

In the Referral Report the psychiatrist indicates that the Appellant has stated that her mood has been low over the past month and that she has been irritable and not sleeping well. He states that she said that her energy and concentration were low but her appetite was "*ok*" and she denied any feelings of guilt or suicidal ideation. His diagnosis is Generalized Anxiety Disorder and advised her to increase her dose of medication and indicated that he would follow up in 8-12 weeks.

In the SR, the Appellant states that she has a generalized anxiety disorder, social anxiety and possibly agoraphobia, and that she suffers from major depression. She explains that she gets anxious in social situations, struggles to build and maintain relationships, and that finding and maintaining employment is also a struggle due to "*anxiety and mood*". She also says that she gets anxious and/or irritated in crowded places. She states that she may have a learning disability and that anxiety in the workplace or in a busy environment "*gets to the point where (she feels) physically ill*". She says that she has had panic attacks, her mood and energy level fluctuates frequently and that communicating with strangers, including talking to them on the phone causes anxiety. When asked how her disability affects her life and her ability to take care of herself, the Appellant indicates that she struggles with financial stability, that her anxiety causes frustration in completing certain tasks, some days fear of getting anxious in public makes it hard for her to leave the house, she is easily overwhelmed "*causing avoidance or seclusion*" affecting her social skills and interaction, and that certain work environments cause her extreme stress and anxiety to the point where she feels ill.

### ***Restrictions in the Ability to Perform DLA***

In the MR, the GP indicated that the Appellant "*reported that on some days she had to push herself to accomplish (DLA)*" but that she had not been prescribed any medications that interfered with her ability to manage her DLA.

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, meals, and transportation. While independent in most areas of shopping, the GP reports that the Appellant needs periodic assistance in going to and from stores and making appropriate choices, adding "*anxiety in stores, sometimes needs to leave*" and "*mom helps with*

*choices at store*". The GP also indicates that she needs continuous assistance with banking and paying rent and bills ("*mom needs to prompt*").

Other than referencing occasional anxiety and panic attacks in situations where she has to deal with the public, the Appellant does not identify any restrictions in her ability to perform DLA in any of the written documents submitted prior to the Reconsideration Decision.

### ***Need for Help***

In the MR the GP indicates that the Appellant does not require any prostheses or aids for her impairment.

In the AR, the GP states that the Appellant does not have an assistance animal. She lives with and is supported by her Mother and there are several DLA for which the Appellant's Mother provides help (developing and maintaining relationships, dealing appropriately with unexpected demands, securing assistance from others, making appropriate choices when shopping, paying rent and bills, and banking).

The Appellant did not identify any help that she requires in performing DLA in any of the written documents submitted prior to the Reconsideration Decision.

### ***Additional Information Submitted after Reconsideration***

In her Notice of Appeal (NOA) dated April 20, 2019, the Appellant states that she disagrees with the Ministry's decision because she believes that her anxiety disorder prevents her from obtaining employment and functioning properly. She states that she is prone to panic attacks when she feels overwhelmed, both at home and when in a public setting.

The Appellant's Mother submitted a one page typed document on May 13, 2019 (the Appellant's Mother's Submission) in which she stated that the Appellant:

- Has no friends, no employment and no education beyond high school, which was "*a huge struggle*";
- Struggles with relationships and simple day-to-day life skills (mailing a letter, calling the pharmacist to refill her prescriptions, walking the dog, driving a car), and her anxiety and depression prevent her from leading a normal life;
- Attended appointments with both psychiatrists, at which "*they asked a few standard questions and made a diagnosis*". These appointments lasted about 15 minutes each and the psychiatrists don't see her day-to-day interactions;
- Has anxiety which prevents her from being in a grocery store for more than 10 minutes and from taking advantage of any job opportunities;
- Has tried, without success, to meet friends using various social media sites; and
- Has been attending support group therapy sessions at a local hospital, but these are mostly to learn how to use tools, such as breathing exercises, that are designed to help her deal with anxiety. While this gets her out of the house, it's not a social function and she relies on her Mother for "*pretty much everything*".

At the hearing, the Appellant and the Appellant's Mother summarized the written evidence, emphasizing the Appellant's struggle with finding a job and performing DLA, including her difficulty leaving the house due to her severe anxiety, explaining that she sometimes feels physically ill or has panic attacks as a result of her anxiety. Her anxiety started in her teens and has been getting worse over the past few years. She often feels overwhelmed and has never had a driver's licence because she is too anxious to drive. The Appellant and her Mother noted that she even gets anxious when she travels as a passenger in a vehicle.

With respect to DLA, she struggles with taking the family dog for a walk and can't stay in a grocery store or any other busy or crowded location for more than 10 minutes. Her Mother stated that the Appellant tries to help with housekeeping chores (laundry, cooking, cleaning) but needs constant supervision in performing those tasks because she forgets how to complete them and "*certain things need to be explained*". She is unable to work in any job that deals with the public due to the anxiety she feels in having to relate to strangers and she doesn't think she could handle a desk job where she didn't have to deal with the public because she is afraid that she would "*get stressed out from something else*".

In terms of an extended social network, the Appellant and her Mother stated that the Appellant has no social activity and no close friends. She had met one young woman on a social media web site but never heard from her again. On another occasion she made arrangements to meet with another young woman but backed out due to her anxiety. The Appellant stated that she does not feel she is like the average people her age. She moved recently from another community and has no family in and near her home community except for her father and mother. She was involved for a while with an agency in her home community that offered employment counselling and social outings for people who suffered from forms of mental impairment such as anxiety, depression and bipolar disorder, and also individuals who were recovering from substance abuse, but she stopped going because she did not feel comfortable. On one occasion she attended a yoga class but felt physically ill. She is currently attending group therapy sessions at a hospital in her community and has just completed anxiety management therapy and is now taking depression management therapy. Her Mother helps her with the coping exercises she has learned in therapy.

In response to a question from the Panel regarding the frequency and duration of episodes of severe anxiety and panic attacks, the Appellant explained that the frequency of these episodes, which she described as a "*head-on meltdown*" can vary from one a week to once every several weeks and typically last for an hour or so. The Appellant's mother explained that the Appellant takes two types of medicine for her anxiety; one for panic attacks, which she doesn't like to take, and another medication which she takes on a daily basis, the dosage for which was increased recently. At one time the Appellant tried to lower the dosage and her Mother said "*it was a disaster*".

Regarding the psychiatrist's reports, the Appellant's Mother said that the Appellant had to wait for a long time in the waiting area for the Psychiatric Assessment before the psychiatrist saw her and that when she finally did speak with him it was only for 15 minutes. Regarding the appointment which resulted in the Referral Report, the Appellant was required to complete a written questionnaire before the appointment (the PHQ-9), but that neither the psychiatrist nor the GP explained what the Appellant's score on that PHQ9 questionnaire meant. The Appellant's Mother also explained that the Appellant did not meet with the psychiatrist for the follow-up appointment as recommended in 8 to 12 weeks after the

initial appointment as the Appellant did not think it would be of any value, and the Appellant's Mother was considering making an appointment with a psychologist if the cost could be covered under the Appellant's extended health care plan.

In response to a question from the Panel, the Appellant's Mother indicated that she had researched social assistance options online on behalf of the Appellant and that the Appellant had started receiving benefits in the form of a monthly support allowance in October 2018. The Appellant's Mother had also initiated the PWD application on behalf of the Appellant based on the online research she had completed.

At the hearing, the Ministry relied on its Reconsideration Decision and emphasized that financial constraints, employability and vocational ability are not considered in determining an applicant's eligibility for the PWD designation. The Ministry explained that when income assistance is provided, the applicant must sign an employment plan, under which WorkBC helps the recipient with employment skills such as obtaining additional education or training, help in preparing a resume, and other activities relating to gaining stable employment. The Ministry stated that a recipient who is unable to work might qualify as a Person with Persistent Multiple Barriers (PPMB), which requires that specified conditions be met and is reviewed every 2 years and renewed should the program criteria continue to be met, whereas the PWD designation is a lifetime designation. The Ministry also explained that a support allowance recipient could earn up to \$400 per month from part-time employment (referred to as an earning exemption) before the monthly allowance amount would be reduced.

### ***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. Because a panel can accept oral and written testimony in support of the information and records before the Ministry when the decision was made, there is limited discretion for a panel to admit new evidence. Accordingly, instead of asking whether the decision under appeal was reasonable at the time it was made, panels must determine whether the decision under appeal was reasonable based on all admissible evidence, including any new evidence admitted under EAPWDA Section 22(4).

The Panel considered the written information in the NOA, the Appellant's Mother's Submission and the additional verbal evidence presented at the hearing to be argument and evidence in support of the information and records that were 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 under 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 and that her 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. In addition, the Ministry 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 EAPWDR.

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).

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### **Severity of Impairment**

Neither the terms "*impairment*" nor "*severe*" are defined in the EAPWDA. The Cambridge Dictionary defines "*impairment*" in the medical context to be "*a medical condition which results in restrictions to a person's ability to function independently or effectively*" and defines "*severe*" as "*causing very great pain, difficulty, worry, damage, etc.; very serious*".

A diagnosis of a severe impairment does not in itself determine PWD eligibility. 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 with two additional characteristics: in the opinion of a prescribed professional, the severe impairment must both be likely to continue for at least two years [EAPWDA 2(2)(a)] and it must significantly restrict a person's ability to perform DLA continuously or periodically for extended periods, resulting in the need for the person to require assistance in performing those activities [EAPWDA 2(2)(b)]. Therefore, in determining PWD eligibility, after assessing the severity of an impairment the Ministry must consider how long the severe impairment is likely to last and the degree to which the ability to perform DLA is restricted and help in performing DLA is required. 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**

Neither the Ministry nor the Appellant argued that the Appellant has a physical disability.

### **Mental Functioning**

The Ministry's position is that, while it acknowledges that the Appellant sometimes requires help from her Mother with a few aspects of social functioning due to her anxiety, the information provided does not establish a severe impairment of her mental functioning. The Appellant's position is that she has a generalized anxiety disorder, social anxiety and possibly agoraphobia and suffers from major depression, which results in a severe impairment of her mental functioning, and that the two psychiatric assessments are unreliable as they do not reflect the severity of her condition and were provided without an adequate or sufficiently extensive examination.

*Panel Decision*

In its Reconsideration Decision, the Ministry summarizes the GP's assessment of the impacts of the Appellant's cognitive and emotional functioning as moderate in four areas (emotion, memory, motivation and learning disabilities) and having minimal or no impact in all other areas. The Ministry concludes that the assessments provided are more reflective of a moderate impact than of a severe one. As there are no cognitive or emotional functions that are described as having a major impact on the Appellant's daily functioning according to the GP's assessment, the Panel finds that the Ministry reasonably concluded that there is no evidence of a severe impairment of the Appellant's cognitive and emotional functioning.

In its Reconsideration Decision, the Ministry also points out that the GP indicates that the Appellant requires periodic support or supervision from her Mother in developing and maintaining relationships, in dealing appropriately with unexpected demands, in securing assistance from others, and in being maintained in the community. The Ministry acknowledges that the Appellant sometimes requires help from her Mother with some aspects of social functioning due to anxiety, panic attacks and an inability to leave the house, however the Ministry concludes that, as no information has been provided to describe the frequency or severity of the Appellant's panic attacks or how often and for what period of time she is unable to leave her house, it is unable to determine the Appellant's overall level of functioning. The Panel finds that the Ministry reasonably concluded that it is unable to determine her overall level of functioning without information as to the frequency and duration of panic attacks or periods during which the Appellant is unable to leave her house.

While the Ministry acknowledges that additional information is submitted with the Appellant's PWD application in its Reconsideration Decision, including the Psychiatric Assessment and the Referral Report, the Ministry does not discuss any of the evidence provided in either of those psychiatric reports in determining whether the Appellant has a severe mental impairment. However, the Panel notes that the GP has specifically stated in the AR that she has taken those assessments into account in providing her assessment, and that, though the absence of a reference to the implications of the Appellant's PHQ9 score in the Referral Report or the AR is unfortunate as it might have shed additional light on the severity of the Appellant's impairment, the assessments in the Psychiatric Assessment, the Referral Report and the AR are otherwise generally consistent (although in the Psychiatric Assessment the psychiatrist indicates that the Appellant is not suffering from depression). As the Ministry considers the GP to be the prescribed professional, the Panel finds that the Ministry reasonably relied upon the assessments provided by the GP, without reference to the psychiatric assessments, though referencing the two psychiatric assessments as further evidence in support of the Ministry's conclusions would, in the opinion of the Panel, have been appropriate.

The Panel has reviewed all the evidence and finds that, in relying on the evidence provided by a prescribed professional, the Ministry reasonably determined that a severe mental impairment was not established pursuant to Section 2(2) of the EAPWDA.

**Restrictions in the Ability to Perform DLA**

The Ministry's position is that not enough evidence is provided to establish that the Appellant's ability to manage DLA is significantly restricted either continuously or periodically for extended periods of time.

The Appellant's position is that she struggles with several DLA, including leaving her home, performing housekeeping chores (laundry, cooking, cleaning) and working in any job that deals with the public. In addition, the Appellant argues that the GP did not accurately report the impact of the Appellant's mental impairment on her ability to manage DLA.

### *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, prescribed professionals completing these forms have the opportunity to indicate which DLA, if any, 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 in the instructions provided in those sections of the forms to provide information about the nature and extent of the limitations or restrictions. 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*".

In its Reconsideration Decision, the Ministry notes that, while the GP indicates that the Appellant requires continuous assistance from her Mother to perform banking and to pay rent and bills, there are no noted major impacts to daily physical functioning, and because the Appellant is able to perform similar activities such as budgeting and paying for purchases, the Ministry is unable to determine why this level of assistance is required. The Panel finds that the Ministry was reasonable in reaching this conclusion. In addition, the Ministry noted that the GP states that the Appellant requires periodic assistance from her Mother to go to and from stores, to make appropriate choices while shopping and in filling and refilling prescriptions, but that information regarding how often or over what period assistance in these activities is required is not provided with the Appellant's PWD application. Therefore, the Ministry states, it is not able to determine how often the Appellant has bad days on which she requires the help of her Mother, and as a result, is unable to establish that her restrictions are both significant and periodic for extended periods, as required under the legislation. The Panel finds that the Ministry was reasonable in reaching this conclusion based on the available evidence.

The Panel has reviewed all of the evidence and finds that the Ministry acted reasonably in relying primarily on the evidence of the GP and in concluding that the evidence presented regarding the Appellant's impairment does not significantly restrict her ability to manage her 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**

The Ministry's position is that it cannot be determined that significant help is required because it has not been established that DLA are significantly restricted. The Appellant's position is that there are many DLA for which she requires the help and support of her Mother.

*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 one or more DLA.

The Panel has reviewed all of the evidence and 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 the 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.

APPEAL NUMBER

**PART G – ORDER**

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

THE PANEL       CONFIRMS THE MINISTRY DECISION       RESCINDS THE MINISTRY DECISION

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

**LEGISLATIVE AUTHORITY FOR THE DECISION:**

*Employment and Assistance Act*

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

and

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

**PART H – SIGNATURES**

PRINT NAME

Simon Clews

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/05/18

PRINT NAME

Kulwant Bal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/05/18

PRINT NAME

Carla Tibbo

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/05/18