APPEAL NUMBER:

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated June 21, 2019, in which the ministry found that the appellant was not eligible for designation as a Person with Disabilities ("PWD") under section 2 of the *Employment and Assistance for Persons with Disabilities Act* ("EAPWDA"). The ministry found that the appellant meets the age and duration requirements, but was not satisfied that:

- the appellant has a severe mental or physical impairment;
- the appellant's impairment, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform daily living activities ("DLA") either continuously or periodically for extended periods; and
- as a result of restrictions caused by the impairment, the appellant requires an assistive device, the significant help or supervision of another person, 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. As there was no information or argument provided for PWD designation on alternative grounds, the panel considers that matter not to be at issue in this appeal.

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

APPEAL NUMBER:

PART E – SUMMARY OF FACTS

The evidence and documentation before the minister at the reconsideration consisted of:

1. Information from the ministry's record of decision indicating that the PWD application was received by the ministry on March 1, 2019 and denied on March 22, 2019. On May 24, 2019, the ministry received the appellant's Request for Reconsideration ("RFR"). The appellant was granted an extension until June 21, 2019 to provide submissions and the ministry completed the review of the RFR on that date.

2. An RFR, signed by the appellant on May 24, 2019 with attached letter in which she provides argument: for the reconsideration and describes injuries and restrictions sustained as the result of a motor vehicle accident ("MVA") in 2012. The appellant reports that:

- She has difficulty with (and avoids) reading and writing as she experiences a great deal of pain in trying to concentrate. Articulating thoughts is difficult and takes a long time. A family member assists her with writing by taking dictation.
- Her injuries include daily migraines; headaches; neck, shoulder, and back problems; jaw issues; cognitive impairment including memory problems and light sensitivity; mood disorders including PTSD, depression, irritability/short temper, and anxiety; chronic pain; and sleep disturbances.
- Her headaches occur randomly and escalate suddenly with "horrendous pain" that debilitates her to the extent she spends most of her time in her bedroom. The appellant reports having migraines more days than not, lasting between 45 minutes and 6 days ("may have two for 45 minutes every day or a longer one that lasts a week"). The appellant reports a pain threshold of 7-10 for her migraines which can wake her up in the middle of the night and also happen during the day.
- She has tried all sorts of medications which either made her migraines worse or caused side effects (stomach problems). Although she has learned to survive without medication for the most part, she will still take medication if she has to go for an appointment and it still doesn't relieve her migraine.
- She has "constant neck pain" which always turns into a migraine when it escalates, though her daily pain threshold generally ranges from 2 to 10 and when it is 10 she cannot move. The appellant reports that her neck pain gets worse if she attempts to drive, go shopping, or do anything that involves turning her head. When her neck pain escalates, she also has very bad jaw pain.
- She injured her right shoulder, is right handed, and has weakness and difficulty when trying to raise her arm all the way up.
- She has cognitive problems including difficulty searching for words or "rambling on". The appellant reports having difficulty using her bank card (calculations) as well as memory issues such as forgetting what she is doing, not remembering what she did in the last hour, and not recalling faces of people she knows.
- Her mood and social problems include regular feelings of embarrassment, humiliation, confusion, irritability, and frustration and anger when dealing with people. Awaking at night with a migraine makes her cognitive problems worse and she needs to take lots of rests as she does not sleep through the night.
- Her weight gain affects her self-esteem and also aggravates her back injury; she is unable to sit up in a chair for even short periods of time and she cannot lie flat either. The appellant reports that if she sits in a chair for more than 5 minutes, her back tightens up and she has difficulty twisting or bending from a standing position. The appellant reports that back pain happens "multiple times a day" for extended hours.
- She rarely leaves her home, and usually has family with her when she does go out. The appellant reports she is "very untrusting of strangers" and she needs "constant help" at home with chores, shopping, and meals which she delegates to family. The appellant reports that even when she is "ok to cook", she is unable to eat because she is in too much pain from cooking and "often drops the dinner in the middle of making it." Her family does the laundry and sometimes she is "ok to fold it." She reports that her family does the majority of the household cleaning and the appellant is unable to clean the tub or floors as it aggravates her injury.
- She bathes only about twice a week as it is impossible to shower and bathe when she is in pain (and both activities aggravate her pain). The appellant states that she usually spends an hour in bed after showering due to pain and sometimes she is so afraid of a pain surge that she has family sit in the bathroom until she is done.

- She manages to drive when her pain threshold is at 6, but if her pain goes over 6 she has to pull over and then she has a surge of pain when trying to park the vehicle. The appellant reports that she has had police and pedestrians trying to render aid when she was pulled over illegally. She keeps emergency supplies in her vehicle and her anxiety increases if the items are not near her.
- She has problems with reading due to issues with perception; her eyes "seem to jump lines" and she has memory issues retaining what she read. The appellant reports that LED screens and bright backgrounds bring on her migraines and she cannot spend very much time with electronic devices.
- She was organized and full of confidence before she had the accident but now she does not have the mental faculties or emotional strength to deal with new relationships and she has not had a romantic relationship since she was injured. The appellant reports that she is quick to anger and then feels guilty afterward.

3. The appellant's PWD application comprised of:

- the applicant information (self-report - "SR") dated January 15, 2019;
- a Medical Report ("MR") dated February 20, 2019, completed by a General Practitioner ("GP") who has known the appellant for more than 5 years and has seen her once in the past 12 months; and an
- Assessor Report ("AR") dated February 21, 2019, also completed by the GP who indicates the assessment is based on an office interview with the appellant, and specialists reports (psychiatry, neurology, surgery, and sports medicine).

Summary of relevant evidence from the application:

Diagnoses

In the MR, the appellant is diagnosed with chronic myofascial pain syndrome, major depression, cervi-cogenic headaches, bilateral temporomandibular joint dysfunction ("TMJ"), medical obesity, and anxiety: onset of all conditions 2012. In the AR, cognitive problems are also identified among the mental impairments that impact the appellant's ability to manage DLA.

Under *Health History* in the MR, the GP reports that the appellant suffered injuries to her neck, back, and right shoulder in an MVA in 2012. In a slip and fall accident in 2015, the appellant sustained a right ankle fracture as well as right knee, hip, hand and upper arm injuries. The GP reports the appellant has received multiple treatments for her injuries without significant improvement. The appellant suffers from constant neck and back pain, has daily headaches, is low in mood and motivation, and has memory problems.

Functional skills

Self-report

The appellant reports that with high daily pain levels, she is unable to sit and stand "for periods of time", and she has a memory impairment and "mixes words up." The appellant reports that she does not read anymore (as it triggers migraines), and she is confused and anxious and has difficulty sleeping and breathing while asleep. The appellant reports difficulty with swallowing and a "choking feeling" with eating.

Medical Report

Under *Health History*, the GP reports that the appellant's sitting tolerance is 10 minutes and the appellant cannot lie down as it aggravates her lower back (she sleeps in a semi-sitting position with an adjustable bed). The appellant has difficulty falling asleep and remaining asleep, and chronic pain "severely affects her ability to communicate and socialize." The GP states that the appellant feels embarrassed and upset because of her memory and concentration problems and she needs more time to find words to express herself and to recall information.

Under section D, *Functional Skills*, the GP indicates the appellant can walk 4 or more blocks unaided on a flat surface and climb 5 or more steps unaided. The appellant is able to lift 5-15 lbs. and remain seated for less than 1 hour (comment, "10 minutes"). In addition, the appellant has difficulties with communication that are caused by her

cognitive impairment (comment, "difficulty finding words, impaired concentration, difficulty with following the conversation, very irritable, difficulty with controlling emotions - avoids communication").

The GP indicates the appellant has significant deficits with cognitive and emotional function in 6 of the 12 areas listed on the form: *Executive*, *Memory*, *Emotional disturbance*, *Motivation*, *Attention*, and *Other* ("severe irritability when in pain").

Assessor Report

Under section B-2, *Ability to Communicate*, the GP assesses the appellant's ability in 3 areas of communication as *Good* (speaking, writing, and hearing) and one area (reading) as *Satisfactory* (comment, "avoids it as it aggravates her headaches").

Under section B-3, *Mobility and Physical Ability*, the GP marks the appellant as independent with 4 of the 6 listed skills: *Walking indoors*, *Walking* Outdoors, *Climbing* stairs, and *Standing* (comment for *Standing*, "15 minutes max. without break"). The GP indicates the appellant requires periodic assistance from another person with *Lifting*, and with *Carrying/holding* (comment, "needs assistance with more than 10 lbs.").

For section B-4, *Cognitive and Emotional Functioning*, the GP indicates that the appellant's mental impairment or brain injury restricts or impacts the appellant's functioning in the following areas:

- Language - *Minimal impact*;
- Bodily functions, Executive, and Memory - *Moderate impact*;
- Emotion, Attention/concentration, Motivation, and Other emotional or mental problems (comment, "severe irritability - avoids communication so as not to get into verbal fights") - *Major impact*

Daily Living Activities

Self-report

The appellant states that she has difficulty with daily responsibilities and needs help with cooking, cleaning, and running errands. She states that she has had to learn to do "only what I can and take many and much needed breaks."

Medical Report

Under *Health History*, the GP states that the appellant "struggles with dressing, for that reason she wears only stretch pants and sweatshirts with front zipper." The GP states that the appellant used to take a shower twice a day prior to her injuries, "now it is limited to 3 times per week due to pain plus low mood and motivation." The GP indicates the appellant requires "constant assistance" with cleaning, vacuuming, doing laundry, carrying groceries, and shopping", and the appellant "cooks only occasionally."

The GP states that the appellant "did not develop new relationships, and avoids social interactions in general", including with her neighbours and others in the community. The GP indicates the appellant "feels embarrassed and upset" around other people because of her memory and concentration problems, and she feels that people "don't understand her struggle and judge her for being slow."

The GP indicates *No*, the appellant has not been prescribed medications or treatments that interfere with her ability to perform DLA. The GP checks *No*, the appellant does not require any prostheses or aids for her impairment.

Assessor Report

The GP states that chronic pain, depression, and cognitive problems impact the appellant's ability to manage DLA. In section C of the AR, the GP provides the following information for specific DLA:

Personal Care

- the appellant is independent with 4 of the 8 areas listed on the form: *Toileting*, *Feeding self*, *Transfers in/out of bed*, and *Transfers on/off of chair*;
- the appellant takes significantly longer than typical with *Dressing* (comment, "takes significantly longer, wears only leggings and zipped sweatshirts");
- the GP comments that *Grooming* is "rare";
- the appellant takes significantly longer with *Bathing* (comment, "only 3 times per week now - before injury was twice per day");
- For *Regulating diet*, the GP comments, "emotional eating, gains weight".

Basic Housekeeping

- The appellant needs continuous assistance from another person with both areas: *Laundry* and *Basic Housekeeping*. The GP comments that family helps with these tasks;

Shopping

- the appellant is independent with 4 of the 5 listed areas: *Going to and from stores*, *Reading prices and labels*, *Making appropriate choices*, and *Paying for purchases* which also takes significantly longer than typical (comment, "forgets PIN, difficulty finding (bank) cards, embarrassed, avoids, does not shop alone");
- the appellant requires continuous assistance with *Carrying purchases home* and her family provides help.

Meals

- the appellant is independent with 2 of the 4 areas listed: *Meal planning*, and *Safe storage of food*;
- the appellant needs periodic assistance with *Food preparation* and *Cooking* and also takes significantly longer than typical with these tasks (the GP comments that the appellant's family assists her).

Pay Rent and Bills

- The appellant is independent with all of the listed areas: *Banking*, *Budgeting*, and *Pay rent and bills*.

Medications

- The GP writes "N/A."

Transportation

- the appellant is independent with all of the listed areas: *Getting in/out of a vehicle*, *Using public transit*, and *Using transit schedules and arranging transportation.*

No additional comments are provided or safety issues identified for the above DLA.

Social Functioning

- the appellant is independent with 2 of the 5 areas listed: *Appropriate social decisions*, and *Able to secure assistance from others*;
- for *Able to develop and maintain relationships*, the GP comments, "maintain only - family and friends";
- under *Interacts appropriately with others*, the GP writes, "avoids socializing because of impaired concentration and memory, low self-esteem, fear of being judged, severe irritability"; and under
- *Able to deal appropriately with unexpected demands*, the GP writes, "severe anxiety".

The GP checkmarks that the appellant has good functioning with her immediate social network, and marginal functioning with her extended social networks. The GP does not provide any comments to describe the support/supervision required to help maintain the appellant in the community or to identify any safety issues.

Need for help

In the MR, under *Health History*, the GP indicates the appellant requires "constant assistance" from family to manage her DLA and she worries about her future in case her family members move out. The GP check marks *No*, the appellant does not require any prostheses or aids for her impairment.

In the AR, section D - *Assistance Provided for Applicant*, the GP indicates that the help required for DLA is provided by the appellant's family. Under *Assistance provided through the use of assistive devices*, the GP checkmarks that bathing aids and *Other* (adjustable bed) are used routinely to help the appellant compensate for her impairment. The GP checkmarks that the appellant does not have an assistance animal.

4. A *Medical Report – Employability* dated February 10, 2019 in which the GP describes the appellant's medical conditions including chronic pain, daily headaches, anxiety, and impaired concentration and memory. The GP reports that the conditions are not episodic and the appellant's restrictions include "not able to stand, sit, stoop for prolonged periods." The GP reports that the appellant cannot sustain attention or concentration, remain on task, or remember new information, and she also gets fatigued easily.

5. The ministry's *Decision Summary* with attached letter dated March 22, 2019, indicating the appellant does not meet all of the criteria for PWD designation.

Additional information

The appellant filed a *Notice of Appeal* with a hand-written statement which the panel accepts as argument. Subsequent to the reconsideration decision, the appellant provided two submissions requiring an admissibility determination in accordance with section 22(4) of the *Employment and Assistance Act*.

First submission on appeal

The first submission (Appendix A) includes the following evidence:

1. A medical-legal report (41 pages) from the appellant's GP, dated April 26, 2016 with respect to the injuries the appellant sustained in a motor vehicle collision in 2012. The GP indicates that the report is an update to his previous report from 2014. The appellant attended the GP's clinic for a total of 12 visits in 2014, 2015, and 2016.

The GP describes the following conditions, symptoms, and functional restrictions:

2014 findings

- The appellant reported "constant neck pain" as well as back, shoulder, and arm pain. She also reported headaches that occurred "all the time", accompanied by blurred vision, jaw pain, light-headedness, fatigue, and decreased energy.
- The appellant complained of mood and cognitive symptoms during extreme pain episodes, including sadness, mood swings, decreased concentration and energy, sleep problems; feelings of guilt, and anxiety/PTSD symptoms in and around motor vehicles. The appellant reported more general concentration and memory problems as well.
- The appellant indicated she was having problems with self-care and with family and social life (including difficulty participating in social activities). The appellant's self-esteem and self-image had been negatively impacted by the collision resulting in weight gain.
- Range of motion and related measures (for all areas of the spine) indicated 10-60 degree decreases and associated pain and tightness.
- The appellant reported difficulties with household chores including cooking, cleaning, vacuuming, washing dishes, doing laundry, carrying groceries, driving, and doing yard work.
- The appellant was referred to a psychologist.

2015 findings

- The appellant felt like she was under "house arrest". Her worst symptoms were "constant neck pain", headaches, and nerve pain. The appellant reported continuing cognitive issues and indicated she was taking too much medication (and stronger medication) due to the severity of the pain.
- The impact of the collision on the appellant's family and social life remained unchanged since her last visits. The appellant had continued difficulty participating in social activities such as family and community events.
- The appellant shared that she was having difficulty doing self-care tasks such as bathing and dressing.

- The appellant reported daily headaches and problems with her short-term memory concentration and indicated that her symptoms had worsened or stayed the same since her last appointment.
- The appellant indicated that reaching, carrying, and holding aggravated her shoulder pain.
- The range of motion measures remained decreased.
- The appellant reported that when she pushed herself more to attempt daily household activities, the pain would stop her.
- The appellant reported that she had a fall in October 2015 which resulted in an increase in many of her pain symptoms.
- The appellant reported headaches that occurred 2-6 times per day. She rated her daily neck pain as 7 out of 10 on a scale of severity, with bursts of pain in the 7-9 range. She indicated the severity was 9 out of 10 when her pain was at its worst.

2016 findings

- The appellant's symptoms continued, with neck pain ranging from 7-9.5 in severity, and "constant migraines" that occurred 2-6 times per day, as well sleep deprivation (due to pain), and problems with memory, confusion, and cognitive slowness. Too much movement and exertion aggravated the appellant's symptoms.
- Since her fall in October 2015, the appellant experienced additional lower back pain, and difficulty with walking due to a very painful right leg and foot. The appellant sustained a right ankle fracture in the fall and has not recovered from the injury.
- The appellant's range of motion remained decreased, and the problems with her self-esteem, social functioning, and anxiety continued and she reported having difficulty with self-care tasks and needing help with all household chores.
- Prior to her accident, the appellant was well and had no ongoing pain problems, decreased energy, anxiety, sleep issues, or cognitive problems. Before the accident, the appellant enjoyed participating in family and community events.

Treatment and outcomes

- The GP described a wide variety of treatments that the appellant has participated in: medication regimes, exercise programs (the appellant was taking morning walks, attending kinesiology/ personal training sessions, using a tread mill, and doing stretching exercises in 2015), diet/nutritional interventions, massage therapy, physiotherapy including Botox injections for headaches, chiropractic visits, and counselling sessions.
- By mid-2016, the appellant reported she was having difficulty doing all of her exercises due to pain and she was still concerned about her weight gain. The appellant was still walking (for exercise) throughout 2015 until her fall in October of that year, after which walking became very painful due to leg and foot pain. The appellant was referred to swimming rather than walking.
- The GP reported the appellant gained some relief from her headaches with the Botox injections; however, the neurologist she saw in 2015 noted that the appellant "did not have a tremendous response to Botox therapy" and recommended that she concentrate on physical therapy.
- The GP recommended counselling and noted that the appellant may also require antidepressant/anti-anxiety medication.
- The GP states that the appellant should avoid prolonged sitting and standing or other prolonged postures as well as work activities that require bending, twisting, reaching, carrying or stooping, as well as activities that involve higher levels of concentration, memory, executive function, and emotionally intense interactions with other people.
- The GP states that the appellant continues to need home care and assistance with cleaning as outlined in his 2014 report. The appellant also requires a cervical pillow and mattress.

Independent occupational therapy ("OT") assessments, 2015 and 2016

- The appellant was assessed by two OTs: one of the OTs ("OT-A") saw the appellant for several appointments in 2015 and 2016 and the other OT ("OT-B") saw her for one appointment in 2015.
- The assessments by OT-A indicate the appellant attended the hospital Emergency department every few weeks for severe pain, and any bending, squatting or crouching caused pain in her neck.

- Various mental health assessments indicated "severe depression symptomology", as well as PTSD/anxiety, and an average pain rating of 7.5 out of 10. It was noted that the appellant's anxiety levels played a critical role in how she performed various activities. When the mental health questionnaires were re-administered, the appellant's depression had stayed the same, her scores for PTSD had increased, and she had a lower score on one of the pain measures.
- OT-A indicates the appellant had problems with bathing/showering, sleeping, medication management, community mobility, transportation, meal preparation, shopping, doing laundry, and cleaning. The appellant had stopped participating in leisure and social activities, and she required task modification and counselling with a psychologist. Homemaking services were not recommended at that time as medical information was still being obtained and the appellant was to undergo an active rehabilitation plan to provide her with the support to manage her pain.
- It was noted that the appellant's memory, attention, and concentration had changed since the motor vehicle collision and she has experienced low mood, anxiety, low self-esteem, and significant decreases in her social life. The appellant was able to socialize appropriately during the assessments but was anxious, would lose her train of thought (speak in tangents), and have difficulty remembering.
- The appellant continued to have problems with mobility (sleeping, walking, climbing stairs, and bed mobility) as well as transportation (driving, community mobility), money management, home maintenance and personal care (bathing, showering, and dressing).
- OT-B reported slow and gradual improvements in mood, physical stamina, and activities of daily living ("ADL") at an appointment in 2015 but the appellant continued to have pain flare ups and migraines, and her anxiety continued to have "a significant impact" on her social isolation and independence with ADL.
- Active rehabilitation including various therapies, and counselling were recommended by both OTs and OT-B also recommended housecleaning services.

Independent medical examination - neurologist, 2015

- The neurologist explained that the appellant was suffering from chronic migraines and several other types of headaches and the medical evidence indicated memory dysfunction, shoulder and neck pain, and degenerative disease in the cervical spine. The neurologist described the appellant's headaches as multi-factorial in nature and primarily caused by the accident. The neurologist noted that an enlarging aneurysm could also be a risk factor for headaches.
- The neurologist reported that chronic, severe headaches associated with neck and shoulder pain "significantly affected" the appellant's ability to perform ADL.
- The neurologist indicates that the appellant would remain with a degree of headaches, but a substantial improvement in pain and cognitive symptoms was still a distinct possibility.

Consultation reports - orthopaedic surgeon, 2015 and 2016

- The appellant sustained a fractured ankle in a fall; there was no operative indication and the appellant could gradually return to her activities as tolerated.

Prognosis for medical conditions - 2016

- With respect to the appellant's "possible traumatic brain injury", the GP reported that the appellant continued to have headaches, and cognitive and mood symptoms "consistent with brain injury." The GP indicated that the appellant's "brain injury had reached maximum medical improvement" and would likely be permanent.
- The appellant's spine conditions, which involve degenerative elements, will continue and are likely to worsen as she gets older. The GP states that the appellant's cervical spine injuries, tension (and migraine) headaches, and shoulder problems have a poor prognosis, have remained at "maximum medical improvement", and are likely permanent.
- The appellant's anxiety disorder, as well as her depressed mood, and PTSD remain unchanged, are likely to continue, and are likely permanent as well.

2. A letter from the GP dated July 15, 2019, written in support of the appellant's PWD application. The GP provides the following update on the appellant's conditions and restrictions:

- The appellant sustained multiple injuries in the MVA in 2012 and in a fall in 2015 and has "never recovered fully."
- The appellant suffers from chronic pain and developed depression and anxiety as a result of her injuries.
- The appellant's physical and mental conditions are "severe and prolonged", and "markedly affect all aspects of her life."
- The appellant's sitting and standing tolerance is "limited to 10 min. and 15 min. accordingly."
- The appellant is un-motivated and exhausted due to pain and she "needs daily assistance" from her family for household chores including housekeeping (cleaning and vacuuming), doing laundry, meal preparation, shopping, paying for purchases, and also with lifting and carrying anything over 10 lbs.
- The appellant struggles with dressing and bathing and these take "much longer than the average time for a person of her age and require prolonged rest after."
- Due to her mood disorders and cognitive difficulties, the appellant has been "unable to form and maintain any new relationships."
- The appellant is "significantly limited" in her ability to learn new information, problem solve, plan and organize, and cope with unexpected demands. She also "gets overwhelmed easily."

3. Photographs (3 provided) of the appellant pre-injury, submitted "to give you some idea of my physical changes."

Admissibility of Appendix A evidence

The panel finds that the medical-legal report (including the information from specialists) and the recent letter from the GP provide additional details and background information on the appellant's medical conditions, treatment outcomes, functional limitations, and restrictions to DLA that are the subject of the reconsideration decision. The ministry did not raise any objections to the panel admitting the evidence in the submission and the panel admits it under section 22(4) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the minister when the decision being appealed was made. Regarding the photographs that were submitted on appeal, the panel accepts them as part of the appellant's argument.

Second submission on appeal

The second submission (Appendix B) includes the following evidence:

The appellant provided an excerpt from a witness statement (paragraphs 91-108, and 115-120), undated, for her MVA court case. The witnesses describe the appellant before and after the accident and indicate that she was very social and energetic prior to her injuries. The witnesses have noticed the appellant frowning and grimacing frequently, due to pain, and have "observed her on a sunny day sitting in a dark room wrapped in a blanket with ice as a means of coping with pain."

The witnesses describe the appellant's behaviour in suddenly leaving conversations and community events because she is in pain. They note that it is hard to make plans with her because she often cancels due to pain. In addition, they have noticed her confusion and forgetfulness; for example, her need to repeat things when she is speaking.

A portion of the statement contains the appellant's testimony in which she states:

- Her headaches began right after the accident and she had varying levels of pain with neck pain that got continually worse over the next 6 months. The appellant describes having a headache "all the time" and she also has difficulty remembering things and once forgot where her dog was.
- She got some relief from medication, ice and heat packs, physiotherapy, and massage during the first 6 months after the accident but by 2013, the frequency and intensity of her headaches was increasing, and her memory problems "were very bad."
- Her neck pain "escalated considerably" in 2013 and when the pain was severe she could not function at all.
- An MRI exam resulted in a diagnosis of an aneurysm for which she had surgery that was successful. However, all of her symptoms returned after the high-dose painkillers were finished.

- Her cognitive difficulties and mood deteriorated with bouts of pain and migraines, and exercises are not very helpful for her headaches or neck pain.
- By 2014, her shoulder pain improved but her headaches, jaw, and neck pain "became much worse" with "flare ups" of 9.5 out of 10 on a pain scale.
- She would have to suddenly leave social/ community activities due to pain; she would be unable to drive herself home and she attended the hospital emergency room 7-8 times because of pain.
- She could not tolerate stronger medications (which did not help very much anyway); her mood plummeted and she became depressed.
- She tried several therapies and treatments and her headaches (and jaw pain) was worse as soon as the Botox injections wore off. Massage therapy helped with her sleep problems but she was no longer able to afford the sessions after her insurance funding ran out. She also "often missed or was late for appointments" due to pain. Similarly, she could not tolerate driving to her psychologist's office (due to pain with driving a longer distance) and the funding for counselling also ran out. The appellant reports that her family was involved in sports and she missed important games and other activities due to pain.
- She lost confidence being with friends and carries shame about her physical appearance, especially her weight gain. She does not care about personal grooming as she used to and only showers once every 3 days because her headaches tend to flare up during showers.

Admissibility of Appendix B evidence

The ministry objected to the witness statement, noting that the appellant's court case for the MVA was not before the minister at the reconsideration. The panel notes that an incomplete copy of the statement was submitted and the full context of the witness testimony cannot be determined, but the portions provided give additional details and background information on the appellant's medical conditions, treatment outcomes, functional limitations, and restrictions to DLA (including specific examples), that are the subject of the reconsideration decision. The panel admits the statement under section 22(4) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the minister when the decision being appealed was made.

The ministry relied on the reconsideration record and did not submit any new evidence.

Oral evidence

The hearing was a re-hearing of the appeal before a different panel. The ministry attended the hearing by telephone. The appellant attended the hearing with two witnesses who provided their testimony, then assisted the appellant as advocates while she gave her oral submission.

Witness A testimony

Witness A is a family member who lives with the appellant. He states that the appellant has suffered from "extremely bad headaches" since the day of the accident and she was also having trouble coping with shoulder pain. The appellant initially tried to "tough it out" but found that she could no longer drive the witness to sporting events and he had to find his own transportation "countless times" because the appellant's pain was so bad. Even when the appellant would attempt to drive the witness, she would suddenly need to stop on the shoulder of the highway due to her headaches.

Witness A reports that the appellant is not the "go to person" she used to be. Before the accident, she was very involved in family activities and community members could also rely on her for rides and to help out at events. Witness A reports that when even the appellant's pain is lower in intensity, it is still "always in the background" limiting her activities. Witness A states that the appellant is "always in pain" and can't stop crying when she wakes up with a headache at 4:30 AM, then "toughs it through the day."

In response to questions from the panel, Witness A reports that he helps the appellant "every day because she cannot maintain the house except to let the dogs outside in the yard." Witness A reports that the family "does everything from vacuuming to cleaning." The appellant cannot bend down to take the laundry out of the dryer and even when she intends to fold the laundry it sometimes gets left in a pile on the bed. Witness A reports that the appellant tries to help out with cooking but the only thing she can do is "flip the meat" and she cannot eat the meal until 1.5 hours later due to her headaches.

In response to further questions, Witness A reports that the appellant has only gone into the grocery store "2-3 times in the past 5 years" because the family does the shopping. Although the appellant has a couple of friends she only "texts once in awhile" and "she has only gone to hang out with a friend or grab a quick bite to eat 2-3 times in the past 5 years." Witness A reports that the appellant has "lost a lot of friends" because of her injuries.

Witness B testimony

Witness B is a family member who lives with the appellant. Witness B states that the appellant is not able to complete daily tasks, and "literally can't do anything around the house from cooking to cleaning." The appellant tries to do laundry "but it does not happen" and she "can't get off the couch most of the time" because of her severe pain.

In response to questions from the panel, Witness B reports that the appellant's problems with pain began within days of her accident in 2012. In terms of her social functioning, Witness B states that the appellant only has one friend whom she went for coffee with "a year or 2 ago". The appellant's friend will come over to "sit with the appellant" but doesn't stay long because the appellant's pain escalates during the visit. Witness B reports that "most of the time", the appellant does not feel well and is not able to go out.

In response to further questions, Witness B states that he is in charge of the banking/bill payments because the appellant "doesn't have the ability to go on-line herself" as she "doesn't feel good enough to look at screens." Witness B explains that when he states that the appellant is "ok or having a better day", it does not mean she is fine, because the appellant's pain level is still "5-6" (in severity), her headaches are still there; she may be "ok to drive" but "can't go out to do anything."

Witness B reports that even when the appellant pushes herself to go out anyway (for a birthday party or other special occasion), she has to leave the restaurant because of pain. Witness B explains that on "good" days, the appellant is in bed holding an ice pack and on her bad days she is "in the ER" and family "will have to sit beside her for hours on end."

Appellant's evidence at the hearing

The appellant provided her argument and also reports that her pain spikes every day; the spikes last from an hour to a week; and in between spikes, the appellant is still in "regular pain" of 6 out of 10 in severity. The appellant reports that when the pain is especially bad, she wants to "throw myself out a window" and she can neither sit up nor lie now to find any relief. The appellant reports that she ends up "hanging onto a pole on the corner" if she "tries to go for a 3 block walk."

In terms of her social functioning, the appellant states that she started "hiding out" after the car crash because her pain elevates so fast and so frequently that she is afraid to go out or to speak to an acquaintance that walks by. The appellant reports that her headache pain feels like "being hit in the back of the head with a sledge hammer" and even when the pain starts to subside, it comes back again.

The appellant reports that she tries to exercise "just a little each day" and although she has "gone to the fitness centre 12 times, the other 15 times I just sit in the car." The appellant states that she could not tolerate stronger medications because she would keep needing more and more and "just compound the problem." She has never gone off of her regular pain medications but "only takes it if she has a meeting or something or when her pain is most severe. The appellant states that she "bare knuckles it, except for maybe 3 times per week" when she takes the medication.

The appellant states that she suffered a traumatic brain injury and her short-term memory "Is very bad"; she forgets what she is doing when on the phone; gets overwhelmed with shopping and rarely goes into a store because it takes her "excessively long" to "grab two things and pay." The appellant explained that she forgets what she is doing when she tries to take out her credit card, and when she is "not in the flow with the rest of the world, other people get impatient and this happens every time at the till."

The appellant states that she cannot go to Tim Horton's because the pace is too fast for her. Her bank card is often declined, not because she doesn't have the money in her account, but because she "often puts in the wrong code." The appellant reports that she needs to "get a new bank card once a week" because she cannot remember where she left her card.

In response to questions from the ministry, the appellant stated that her MVA court award did not include funding for home care. When asked why the traumatic brain injury is not among the diagnoses in the PWD medical reports, the appellant stated that the GP included it in the medical-legal report. The advocates noted that the appellant's cognitive and mood symptoms are described throughout the application.

Admissibility of oral evidence

The panel finds that all of the oral submissions provide additional details and background information on the appellant's medical conditions, treatment outcomes, functional limitations, and restrictions to DLA (including specific examples), that are the subject of the reconsideration decision. The ministry did not raise any objections to the panel admitting the information but the appellant objected to the ministry's questions about her legal settlement. The panel admits the oral testimony under section 22(4) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the minister when the decision being appealed was made.

The ministry relied on the reconsideration decision and provided argument at the hearing.

APPEAL NUMBER:

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's decision that found the appellant ineligible for PWD designation is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. Was the ministry reasonable in finding that the following eligibility criteria in section 2 of the EAPWDA were not met?

- the appellant has a severe mental or physical impairment;
- the appellant's impairment, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform DLA either continuously or periodically for extended periods; and
- as a result of restrictions caused by the impairment, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

The ministry based the reconsideration decision on the following 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
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.

Analysis

Severe mental or physical impairment

To be eligible for the PWD designation, the legislation requires several criteria to be met including the minister being satisfied that the applicant has a severe mental or physical impairment. The ministry found the appellant was not eligible for PWD because not all criteria were met. "Severe" is not defined in the legislation but the diagnosis of a serious medical condition does not in itself establish a severe impairment of mental or physical functioning.

Mental impairment

To assess the severity of a mental impairment, the ministry must consider the extent of any impact on daily functioning as evidenced by limitations/restrictions with mental functions and emotion; restrictions with DLA requiring mental/social functioning; and whether significant help is required to manage DLA.

Arguments - mental impairment

Appellant

The appellant argues the ministry does not understand how she lives on a daily basis, with constant severe pain every day. The appellant submits that her experience with pain (after the two accidents) is like nothing she experienced in the past when she had sports injuries and always recovered. The appellant argues that the pain significantly decreases her mood and motivation and she is depressed, exhausted and ashamed from always trying to hide the extent of her distress and never finding a treatment that is truly effective.

The appellant argues that her social life is severely limited because pain restricts her participation in important family events, and she avoids the social and community events she used to enjoy. The appellant describes a life of isolation, rarely going out with friends or in public because of pain. The appellant describes low-esteem, cognitive difficulties, and feeling judged by others. The appellant argues that her brain injury severely impacts her memory and executive function and even when she tries to participate in life's demands, she often cannot complete tasks or she has to leave places suddenly due to pain surges that can happen very quickly.

Ministry

The ministry argues that the information provided in the PWD application does not establish a severe mental impairment because of inconsistencies in the GP's reports in the areas of communication and social functioning. In the AR in particular, the ministry notes that the appellant has problems with communication because of her cognitive issues but the GP also indicates that she has satisfactory or good ability in the areas of reading, writing, and speaking. Regarding the appellant's social functioning, the ministry argues that the GP does not describe what support or supervision the appellant requires to be maintained in the community.

In the reconsideration decision, the ministry acknowledges that the GP's information demonstrates the appellant has difficulty with memory and concentration and that she avoids social interactions in general due to her cognitive impairment. Despite these observations, the ministry argues that the information does not establish a severe mental impairment.

Evidence for mental impairment

The ministry summarizes all of the evidence in the reconsideration decision but pinpoints two discrete pieces of information in the AR (the tick boxes for communication, and the absence of a comment from the GP for community support/supervision) to conclude the appellant does not have a severe mental impairment. Looking beyond specific boxes and empty spaces on the forms, the panel views the evidence as a whole, in particular the GP's narrative in the MR and his comments throughout the forms, as sufficiently detailed to establish a severe impairment of emotional, cognitive, and social functioning. As well, the appellant's self-reports corroborate the GP's descriptions of her functioning in greater detail.

Communication

Regarding the appellant's ability to communicate, the GP check marks that her communication is satisfactory to good in the AR, but writes in the same report that the appellant avoids reading as it aggravates her headaches. The GP states that the appellant avoids communication in general ("major impact") due to her severe irritability from chronic pain. In his narrative in the MR (*Health History*), the GP further details the impact of chronic pain: "makes her very irritable, severely affects her ability to communicate and socialize."

The GP indicates the appellant also avoids communication due to her cognitive problems (MR: "difficulty finding words, impaired concentration, difficulty with following the conversation...and controlling emotions"). The appellant's significant, ongoing difficulties with communication are also detailed in the OT assessments that were cited in the medical-legal report.

The appellant may have the ability to read, write and speak (based on the tick boxes in the PWD forms) but the panel gives more weight to the GP's detailed narrative/comments as well as the functional assessments by two OTs. The narrative in all of the medical reports consistently illustrates severe restrictions with communication, to such extent that the appellant avoids communication by isolating herself from others.

Cognition

Regarding the appellant's cognitive difficulties, the ministry argued that the appellant is not diagnosed with a brain injury in the MR (section A - *Diagnoses*), but the panel notes that throughout the narrative sections of the MR and the AR, the GP states that the appellant has a cognitive impairment. The GP describes the associated limitations with memory and cognition as a whole and in the medical-legal report which the panel has admitted the appellant's cognitive and mood symptoms are described in detail and said to be consistent with a traumatic brain injury..

The neurologist stated in 2015 that a substantial improvement in cognitive symptoms (as well as head and neck pain) was "still a distinct possibility." The recent information from the GP (and the appellant) indicates that despite treatment, the impact of chronic pain as well as impairments in cognitive functioning and mood persist, significantly restricting the appellant's ability to function effectively as she was able to before the accident. The GP states that the appellant's cognitive impairment "significantly limits" her ability to learn new information, problem solve and cope with unexpected demands.

Social functioning

The GP's evidence indicates the appellant does need support in the community because she usually avoids going out at all due to pain (which can spike suddenly) as well as her mood symptoms which include "severe irritability" and embarrassment/low-self-esteem. The appellant has tried many different treatments but has not been able to find appropriate and affordable relief for her pain. The additional medical reports indicate the appellant needs counselling and ongoing psychological support but her funding for those sessions ended.

The narrative indicates the appellant is very socially isolated and the witnesses observe that she spends most of the time in her room. The record indicates that the appellant's family does the majority of her errands because she is in too much pain to go out and when she does go into a store (rarely), she becomes frustrated with the people at the checkout and feels they do not understand why she is slow to pay for her purchase.

OT-A's assessments included various mental health and pain questionnaires that indicate "severe depression symptomology" and increased anxiety/PTSD which play a "critical role" in how the appellant performs activities and functions emotionally and socially. Even when the appellant's mood problems slowly and gradually improved in 2015 (as reported by OT-B), she still had pain flare ups, migraines, and anxiety that continued to have a "significant impact" on her social isolation as well as her ability to perform ADL independently. The GP's recent letter of July 15, 2019 confirms that the appellant is "un-motivated and exhausted" due to pain. The appellant "gets overwhelmed easily" and is unable to socialize for the most part.

Panel's decision - mental impairment

The panel has considered the evidence in its entirety and finds that the ministry's decision on mental impairment is not reasonably supported by the record as a whole. The PWD medical reports as well as the additional information submitted on appeal show a consistent pattern of very restricted functioning due to chronic pain, mood disorders, and a severe cognitive impairment. The panel finds that the ministry unreasonably determined that a severe mental impairment under section 2(2) of the EAPWDA was not established on the evidence.

Physical impairment

To assess whether the applicant has a severe physical impairment, the ministry considers the information on the degree of restrictions to physical functioning, restrictions to DLA involving movement, and whether the applicant requires significant help or any assistive devices to manage DLA.

Arguments - physical impairment

Appellant

The appellant argues that she has a severe physical impairment because of "constant pain" that spikes up to 9.5 in severity during flare ups that can happen very suddenly. The appellant argues that even when her pain is at 6 or 7 in severity, it is always in the background leaving her exhausted and unable to function effectively. The appellant argues that her physical functions are restricted because she has difficulty bending her neck, standing, and sitting. As well, her sleep is disturbed by headaches and back pain and she cannot lie flat. The appellant argues she can only manage very limited walking and other exercise because she has to stop in the midst of those activities due to pain and she requires a long recovery time afterward.

Ministry

The ministry argues the appellant does not have a severe physical impairment because according to the information in the MR and AR, she is able perform her physical functions independently. The ministry acknowledges the appellant has limitations to physical functioning due to chronic pain and uses aids for her impairments (grab bars for bathing, and an adjustable bed) but argues that the GP's assessments speak to a moderate rather than severe physical impairment.

Evidence for physical impairment

The evidence in the MR is that the appellant is able to walk 2-4 blocks and climb 5 or more steps unaided, indicating a moderate to low degree of restriction on the rating scale. In the additional submissions on appeal, OT-A indicates the appellant was having difficulty with walking, climbing stairs, and transfers (bed) but does not provide any further detail such as how far the appellant can walk and many steps she can climb. The additional evidence, which the panel admitted, indicates the appellant was using a treadmill and walking up to 3 blocks for exercise even though walking was very painful. The GP prescribed swimming rather than walking, suggesting that the appellant is able to participate in low impact physical activity.

The appellant's limitations with lifting are also in the moderate range (5-15 lbs. in the MR) and the appellant confirms she can lift up to a maximum of 10 lbs. In the MR, the appellant is significantly restricted with remaining seated (maximum 10 minutes) and the GP reports that she cannot lie down (sleeps in a semi-sitting position). The GP indicates the appellant needs help or takes significantly longer than typical with physical DLA.

In the AR, the GP indicates the appellant is independent with most aspects of physical mobility including *Walking* (indoors and outdoors), *Climbing stairs*, and *Standing*. The GP notes that standing is limited to 15 minutes without a break. The GP indicates the appellant requires periodic assistance with *Lifting*, and *Carrying/holding* items that weigh more than 10 lbs.

The additional submissions on appeal indicate the appellant has permanent limitations with spinal range of motion, as well as "severe and prolonged" physical impairments. Nevertheless, the GP's most recent information (letter of July 15, 2019) describes the same restrictions for sitting, standing and lifting (10 minutes, 15 minutes, and a maximum of 10 lbs. respectively) with sitting severely restricted and lifting moderately restricted according to the rating scale in the MR. No new information was provided for walking or climbing stairs. The GP states in the letter that the appellant requires "daily help" with physical DLA.

Panel's decision - physical impairment

On review of the evidence in its entirety, the panel finds that the ministry reasonably determined the information provided confirms a moderate rather than a severe impairment of physical functioning. Despite the appellant's experience with "constant pain", she is largely independent with her physical functions. The appellant has significant duration limitations for sitting, but her ability to lift is within a moderate range of restriction in both the MR and the additional submissions on appeal.

Although the appellant reports that she has to "stop and grab onto a pole" when she walks (due to pain), only moderate restrictions to walking are reported by the GP (2-4 blocks unaided on a flat surface) and no restriction is indicated with climbing stairs. The information in the tick boxes and the narrative is consistent, indicating the appellant is independent with all of her physical functions despite chronic pain decreasing her endurance. The GP indicates the appellant needs "daily help" with physical DLA (letter of July 2019) but his assessments of the appellant's physical functioning in the MR, AR (and recent letter as well) consistently indicate a moderate level of impairment overall.

In order to be satisfied that the legislative requirement for a severe impairment is met, the ministry requires medical evidence of severe limitations with physical functioning (in the areas of walking, climbing stairs, lifting, physical DLA, etc.). The PWD medical reports and the additional submissions on appeal confirm the appellant's experience with chronic severe pain, but only one of her physical functions (sitting) is described in sufficient detail as having severe limitations. Based on the totality of the evidence, the panel finds that the ministry reasonably concluded a severe physical impairment under section 2(2) of the EAPWDA was not established on the evidence.

Restrictions in the ability to perform daily living activities

Subsection 2(2)(b)(i) of the EAPWDA requires the ministry to be satisfied that, in the opinion of a prescribed professional, a severe impairment directly and significantly restricts a person's ability to perform DLA either continuously, or periodically for extended periods. In this case, the prescribed professionals are the GP as well as the medical specialists who provided supplementary information for the medical-legal report submitted on appeal.

The term "directly" means there must be a causal link between the severe impairment and the restrictions to DLA. 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, the restriction must be for extended periods.

Inherently, an analysis of periodic restrictions must also include how frequently the activity is restricted. All other things being equal, a restriction that arises twice a month 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 on the duration and frequency of the restriction in order to be satisfied that this criterion is met.

DLA are defined in section 2(1) of the EAPWDR and are also listed in the MR, with additional details in the AR. Therefore, a practitioner completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the applicant's impairments either continuously or periodically for extended periods, and to provide additional narrative. DLA, as defined in the legislation, **does not include the ability to work**.

Arguments - DLA

Appellant

The appellant argues that she has significant and continuous restrictions with specific DLA and requires "a great deal of help" from her family. In the SR and RFR submissions, the appellant argues that she is restricted with cooking ("drops dinner in the middle of making it"), cleaning, and shopping/ running errands. The appellant reports that her neck pain gets worse with driving, "attempted shopping", or doing anything where she is turning her head a lot. The appellant submits that showering and bathing "put her over the edge" with pain, and she has to suddenly pull over while driving due to pain and anxiety. The appellant reports that she is able to fold laundry but often leaves it in a pile due to surges of pain.

The appellant argues that the most difficult part of her injury, besides her headaches and neck pain, is her "brain issues" which cause mood problems that impair her social interactions as well as cognitive difficulties with using her bank card, paying for purchases, and remembering what she did in the last hour (has to get a new bank card every week due to her memory problems). The appellant and her witnesses describe how she rarely socializes, has lost the friends and acquaintances she enjoyed being with before the accident, and currently has only one friend whom she rarely spends brief amounts of time with due to pain (has gone out only a few times in the past 5 years).

Ministry

The ministry argues that the DLA assessments by the GP (AR) are indicative of a moderate level of restriction because duration and frequency information is not provided for the DLA that are said to take significantly longer than typical or that require periodic assistance from another person. The ministry argues there is not enough medical evidence to confirm that the appellant's impairments significantly restrict DLA either continuously or periodically for extended periods.

Evidence from prescribed professionals

In the MR narrative (*Health History*), the GP describes how chronic pain makes the appellant very irritable and "severely affects" her ability to socialize. The appellant also struggles with personal care (dressing and showering) due to pain and low motivation. The GP reports that the appellant used to shower twice a day but she now does so three times per week due to pain combined with low mood and motivation. The GP reports that the appellant requires "constant assistance" from her family with almost all DLA and she has not developed new relationships since her accident and avoids social interactions in general, even with neighbours and community acquaintances. The GP indicates the appellant feels frustrated and judged as "slow" because of her memory and concentration problems and she has difficulty controlling her emotions and avoids communication and social interaction. The GP reports that the appellant is worried about who will help her in the future if her family members move out.

In the AR (DLA check lists), the GP marks only *Basic Housekeeping* (including laundry), and one area of *Shopping* (carrying purchases) as continuously restricted. Where periodic assistance is indicated (paying for purchases, food preparation, and cooking), the GP provides updated information in his July 2019 letter, stating that the appellant requires "daily help" with her physical DLA. The panel gives more weight to the letter because it provides a detailed narrative, rather than tick boxes, to indicate the appellant's restrictions with DLA.

In the AR (tick boxes), the appellant is reported as independent with all areas of *Pay Rent and Bills*, and with *Transportation* but in the comments in the AR (under *Shopping* - Paying for purchases), the GP notes the appellant's difficulties with financial transactions ("forgets PIN, difficulty finding cards"). The GP also documents the appellant's "severe" memory/cognitive problems throughout all of the reports.

In the additional submissions on appeal, OT-A confirms that the appellant's cognitive impairment causes her problems with money management. Both OTs indicate that the appellant's anxiety/PTSD symptoms combined with pain significantly impair driving as well as the appellant's ability to independently manage all ADL. The neurologist states that the appellant's chronic severe headaches and associated neck and shoulder pain significantly affect her ability to perform ADL.

Panel's decision - restrictions to Daily Living Activities

The panel has considered the evidence in its entirety and finds that the ministry unreasonably concluded that the information in the record contains insufficient detail or wasn't enough to establish that DLA are significantly restricted either continuously, or periodically for extended periods as required by the legislation. In the panel's view, the PWD medical reports as well as the additional evidence submitted on appeal demonstrate that DLA are continuously restricted. The appellant's mood problems and chronic pain affect her motivation to manage personal care, cook/prepare meals, do household chores, and go shopping or drive to places on a daily basis.

The GP's evidence indicates that the appellant rarely attends to personal grooming, and she showers only occasionally. Even when the appellant attempts to do household chores she has to stop what she is doing due to pain and she does not go shopping alone. In addition, the medical reports consistently state that the appellant's ability to manage financial transactions and social encounters is significantly restricted by her cognitive deficits and mood problems resulting in severe irritability and avoidance of stores and social events.

The most recent information from the GP (letter of July 15, 2019) confirms that the appellant has "been unable to form and maintain any new relationships." The record indicates that the appellant needs "constant" or "daily" help from family to perform DLA. Based on the information from prescribed professionals, the panel finds that the ministry unreasonably determined the criteria in subsection 2(2)(b)(i) of the EAPWDA are not met.

Help to perform daily living activities

Subsection 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 because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required. The appellant argues that she needs daily help with DLA and when she attempts to do household chores she often has to stop because of pain.

In his recent letter of July 15, 2019, the GP addresses an inconsistency in the MR and AR ("constant help" with DLA versus "periodic assistance" with paying for purchases, food preparation, and coking) by confirming that the appellant requires "daily help" with DLA. The ministry argues that the appellant did not receive home-making services as part of the court ordered award for her MVA, but the additional evidence indicates that "house cleaning services" were recommended by OT-B, and the GP and other professionals consistently indicate that the appellant's family provides daily help with DLA.

Panel's decision - help with Daily Living Activities

Under the legislation, confirmation of direct and significant restrictions to DLA is a precondition for needing help to perform DLA. The panel found that the ministry unreasonably determined that significant restrictions to DLA were not established by the information provided. On review of the evidence, the panel also finds that the ministry was unreasonable to conclude that the criteria for help under subsection 2(2)(b)(ii) of the EAPWDA are not met.

Conclusion

Considering the information in its entirety, the panel finds that the ministry's reconsideration decision that found the appellant ineligible for PWD designation was not reasonably supported by the evidence. The legislation requires all of the criteria to be met. Based on the functional skills and DLA assessments by prescribed professionals and the evidence as a whole, the panel finds that the ministry's reconsideration decision is not reasonable. In addition to the age and duration requirements, the evidence demonstrates that the appellant meets the requirements for severe impairment (mental impairment), significant restrictions to DLA, and significant help required for DLA. The panel rescinds the ministry's decision. The appellant is successful in her 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	
Margaret Koren	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/08/22

PRINT NAME	
Adam Rollins	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/08/29
PRINT NAME	
Kim Polowek	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/08/22