

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated August 8, 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* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that her impairment is likely to continue for at least two years. However, the ministry was not satisfied 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 determined that the appellant is not in any of the classes of persons set out in section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation* who may be eligible for PWD designation on alternative grounds.

PART D – RELEVANT LEGISLATION

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

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 2 and 2.1

PART E – SUMMARY OF FACTS

As the hearing was previously adjourned to allow the appellant an opportunity to receive assistance from an advocate, the appellant confirmed that she was prepared to proceed and represent herself on the hearing.

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the appellant's information and self-report dated February 19, 2019, a medical report (MR) dated February 19, 2019 and an assessor report (AR) dated February 27, 2019 completed by a nurse practitioner (NP) who has known the appellant since November 2018 and has met with her 2 to 10 times in that period.

The evidence also included the following documents:

- 1) Medical Imaging Report dated November 29, 2018 for an X-Ray of the appellant's thoracic and lumbar spine; and,
- 2) Request for Reconsideration dated July 4, 2019.

Diagnoses

In the MR, the NP diagnosed the appellant with chronic back pain, thoracic back, with an onset in 1996, anxiety and depression with an onset in 2016, and query PTSD [Post Traumatic Stress Disorder] with an onset in 1989. Asked to describe the appellant's mental or physical impairments that impact her ability to manage her daily living activities (DLA), the NP wrote in the AR: "back injury with swelling that inhibits client's ability to eat/sleep. Contributes to depression/ anxiety."

Physical Impairment

In the MR and the AR, the NP reported:

- In terms of the appellant's health history, the NP described physical abuse suffered by the appellant as a child and "continuing into her 20's." The NP wrote that the appellant has severe backpain after walking as short as a few blocks and can be in tears. She cannot sit or stand for longer than 2 to 3 hours.
- The appellant does not require any prostheses or aids for her impairment.
- In terms of functional skills, the NP reported that the appellant can walk 4 or more blocks unaided on a flat surface, climb 5 or more steps unaided, lift under 2 kg. (under 5 lbs.) with a note that the appellant "gets backpain with lifting more than 5 lbs.," and she can remain seated 1 to 2 hours.
- The appellant is not restricted with her mobility inside the home and she has periodic restrictions with her mobility outside the home, with a note by the NP: "mobility limited by backpain."
- In the AR, the appellant is assessed as being independent with walking indoors, with walking outdoors, with climbing stairs, and with standing. The NP wrote with respect to these activities "for limited periods of time." The appellant requires periodic assistance from another person with lifting and for carrying and holding, with no further comments by the NP.
- In the section of the AR relating to assistance provided, the NP indicated that no assistance is provided through the use of an assisted device and no equipment is required.

In the Medical Imaging Report dated November 29, 2018 relating to X-Rays of the appellant's thoracic and lumbar spine, the physician indicated the following:

- There is good alignment of thoracic spine.
- Twelve rib-bearing vertebra.
- Disc spaces and vertebral body heights are maintained. Mild marginal spondylosis only.
- Pedicles appear intact. No focal paravertebral soft tissue swelling.
- There is good alignment of the lumbar spine. Five lumbar type vertebra. There is sacralization of the L5 vertebral body on the left with pseudoarthrosis.
- Disc spaces and vertebral body heights are maintained.
- No spondylolysis. Posterior elements appear satisfactory.
- Visualized SI joints are maintained.

In her self-report, the appellant indicated:

- She has chronic backpain that began with physical abuse she suffered as a child and continued with a slip hitting her back at work and several motor vehicle accidents.
- Due to her chronic backpain, she cannot sit for long periods of time. She cannot sleep as it makes her arms or legs crampy or numb. She cannot eat some days as "it feels like my spine is going through my throat."
- She cannot stand for long as her legs feel weak, her back is stiff and her hips are sore.

In the Request for Reconsideration, the appellant wrote:

- Her back burns like she is lying or sitting on top of a stove.
- On good days she can move a little and that includes going to the bathroom. On bad days, she is lying in bed crying and wondering why she is "so useless."

Mental Impairment

In the MR and the AR, the NP reported:

- In terms of the appellant's health history, the NP wrote that the appellant has episodes of non-stop crying 2 to 3 times per month. The appellant worries that people will leave her and abandon her and she feels hopeless and despair. The appellant tried to overdose as a teenager. She was sexually assaulted as a young woman. The NP wrote that outwardly, the appellant appears friendly and personable, but inwardly she internalizes her feelings of anxiety and depression and has a severe mistrust of anyone.
- The appellant sees a counsellor for anxiety and depression and will likely need counselling long-term to deal with childhood trauma.
- The appellant has no difficulties with communication.
- The appellant has significant deficits with her cognitive and emotional functioning in the areas of emotional disturbance and motivation. The NP provided comments that the appellant "has to mentally prepare for any appointment or event 3 to 4 days in advance" and "2 to 3 times per month gets into crying episodes, feeling hopeless, hides emotion from others."
- The appellant is continuously restricted in her social functioning and the NP noted that the appellant "tends to isolate, only goes out for appointments because of anxiety, which worsens her depression."

- In the AR, the NP indicated that the appellant has a good ability to communicate in speaking, reading, writing and hearing.
- With respect to the section of the AR relating to daily impacts to the appellant's cognitive and emotional functioning, the NP assessed no major impacts. There are moderate impacts assessed in the areas of bodily functions, emotion, motivation, and other emotional or mental problems (e.g. hostility- explain). There are no impacts to the remaining 10 listed areas of functioning. The NP did not provide any additional comments.
- For social functioning, the appellant is independent with making appropriate social decisions, with developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.
- The appellant has marginal functioning in both her immediate and her extended social networks. The NP did not provide further comments to explain.
- Asked to describe the support/supervision required to maintain the appellant in the community, the NP left this section blank.

In her self-report, the appellant wrote:

- It all starts with the chronic back pain that makes the others' (depression and anxiety) severity go up or down.
- The appellant described physical abuse suffered as a child.
- All the pain usually leaves her feeling useless (she cannot work), hopeless (stressed that no one will help her and she will be all alone), worthless (the pain is so bad she blames herself for the abuse), and just sad.
- She loves interacting with others and working making money, being productive, but now she cannot.
- She has nightmares with lack of sleep due to stressing over making sure she is okay.
- She has depression due to pain. She has sadness with no motivation to get up or to move. She is crying all the time.
- She has anger at others, losing her temper at others due to pain.
- She has occasional suicidal thoughts, wanting the pain to stop. She gets no sleep.
- She has anxiety and irritability due to the constant pain and not being able to do things that she enjoys.
- She is frustrated over the lack of diagnosis of her mental and physical health.

Daily Living Activities (DLA)

In the MR and the AR, the NP reported:

- The appellant needs assistance with all ADL's [activities of daily living] because of the backpain.
- The appellant has been prescribed medication that interferes with her ability to perform DLA. The NP wrote that the appellant uses a topical analgesic for backpain. She has used treatments in the past that are no longer effective. The appellant wants to avoid heavy pain medication because of her history of an overdose attempt. The NP noted that the appellant "likely will need some form of pain analgesia lifelong off and on."
- The appellant is not restricted with several DLA, specifically: personal self care, management of medications, mobility inside the home, use of transportation, and

management of finances.

- The appellant is continuously restricted with the DLA meal preparation and basic housework. The appellant is periodically restricted with the shopping DLA and with her mobility outside the home. With respect to “periodic,” the NP wrote: “regarding meal preparation, fiancé does it because unable to stand more than 2 hours. Housework done by fiancé because of backpain, i.e. mopping and sweeping, cleaning tub. Needs help carrying groceries all the time. Mobility limited by backpain.” Regarding the degree of restriction, the NP wrote that “depending on the level of backpain, her physical activities are restricted daily.”
- Asked to describe the assistance that the appellant requires with DLA, the NP wrote: “Fiancé and friends assist with housekeeping, rides, groceries.”
- For the move about indoors and outdoors DLA, the appellant is independent with walking indoors and walking outdoors, both noted to be “for limited periods of time.”
- The appellant is independent in performing all of the tasks of the listed DLA, specifically the personal care DLA (dressing, grooming, bathing, feeding self, regulating diet, transfers in/out of bed and on/off chair), the basic housekeeping DLA (including laundry), the shopping DLA (going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home). The NP noted that “if experiencing chronic pain, client can experience greater distress and increased hostility.”
- The appellant is also independent in performing all of the tasks of the meals DLA (meal planning, food preparation, cooking, and safe storage of food), the pay rent and bills DLA (including banking and budgeting), the medications DLA (filling/refilling prescriptions, taking as directed, safe handling and storage) and the transportation DLA (getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation).

In her self-report, the appellant indicated:

- All the pain usually leaves her feeling useless because she cannot work. She loves interacting with others and working, making money, being productive, but now she cannot.
- Showering is sometimes hard. She is not as flexible as she used to be.
- She has anxiety and irritability due to the constant pain and not being able to do things she enjoys like cooking, cleaning, walking and working.

In the letter with her Request for Reconsideration, the appellant wrote that she would like to be able to work the way she used to.

Need for Help

The NP reported in the AR that the appellant receives help from friends and community service agencies. The NP indicated that the appellant does not use any assistive devices to help compensate for her impairment and no equipment is needed.

Additional information

In her Notice of Appeal dated August 14, 2019, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that she was not told what specific tests she

could get done to give more proof. Her daily activities have lessened even more with how bad her back has become.

At the hearing, the appellant submitted a letter dated September 25, 2019 in which the NP who prepared the MR and the AR wrote:

- The letter offers clarification to support the appellant's appeal.
- Over the last several months, the appellant's chronic backpain has become worse. She can walk a maximum of 2 blocks, she needs a handrail to walk up the stairs and, otherwise, cannot do it independently. She now is unable to carry a backpack on her back, which she had been able to do in the past. She is unable to lift more than 2 to 3 lbs.
- The appellant is of very short stature but is obese, which contributes to her backpain. She cannot stand for longer than 1 to 2 hours. She cannot sit for longer than 30 to 60 minutes.
- The pain disrupts the appellant's sleep 50% of the time.
- Since April or May 2019, the appellant's backpain has worsened which, emotionally, has caused her to isolate herself and cyclically exacerbated her anxiety and depression. She will only leave the house to go to scheduled appointments, otherwise she stays home 90% of the time. She is frightened to interact with any older male counterparts and avoids any situations with men other than her partner due to fear of bodily harm.
- The appellant has very disrupted functioning in her relationships with her immediate family as opposed to marginal functioning, as indicated on the form. Her mother is verbally and emotionally abusive. The appellant is presently alienated from her mother and her only brother, and she barely speaks to them. She has had physical altercations with her intimate partner. The appellant has poor social judgment in her relationships with immediate family.
- In terms of ADLs [activities of daily living], the appellant needs continuous assistance with meal preparation, housework, as well as shopping and mobility outside the home, as opposed to periodic assistance as indicated on the form. The appellant is dependent on her partner to do most of the housework, e.g. mopping, sweeping, and vacuuming. She does dishes and light housework, but requires frequent breaks and it takes her 75% longer to do these chores. Her partner does the grocery shopping 90% of the time.
- The appellant has to get around to appointments by cab or private rides. If she ends up walking, she has to take to bed for 3 to 4 days afterwards.

At the hearing, the appellant stated:

- When she showed the MR and AR to the NP, the NP was surprised by some of the responses that she had not filled in. The NP told the appellant that she had completed the MR and then delegated the completion of the balance of the AR to someone else in her office. The appellant is not sure specifically which parts have been completed by the NP. The NP provided the letter to clarify her responses in the MR and AR.
- In October 2018, she slipped and fell at work, falling onto her back. Although she had experienced back problems prior to this due to the physical abuse she suffered as a young person, the accident made it much worse and she was often bed-ridden and became more isolated.
- Although the NP had indicated that she is independent with walking indoors and

outdoors, she is no longer able to do that as much as she would like.

- On good days, she can do some work around the house, but on bad days she can lie around for a week staring at the ceiling. She becomes very “bummed out” that she cannot do things.
- She has family in the area but she is in too much pain and she is “too cranky” to be around them. She has young nephews and nieces and she would like to spend time with them but she cannot pick them up or play with them because of her backpain.
- Another consequence of the physical abuse she experienced is her fear of males older than her. Being around anyone with a personality that reminds her of her abusive family member makes her fearful.
- She has been seeing a counsellor and although it has been a few months since her last appointment, she has another appointment soon.
- She is only taking over-the-counter pain medications because she avoids opioids for the overdose potential. She tried to commit suicide when she was a teenager. She uses a treatment to help numb the pain in her back but it only works for a few hours.
- She can only sit for 30 to 60 minutes or her legs start to go numb.
- The NP sent her for an X-Ray and when the appellant asked for further testing, the NP said it was not necessary.
- She finds that stress can aggravate her backpain, and the stress usually comes from her finances. When she is stressed, she cannot eat. This results in bad days about 60% of the time and she has good days approximately 40% of the time.
- She does not live with her fiancé. When he is around, he helps as much as he can. She also has other family members in the area that she can call on to help when they have time. She had a fight with her fiancé that resulted in the loss of two of her front teeth.

The ministry relied on the reconsideration decision as summarized at the hearing. The ministry stated that the appellant is entitled to apply again, with a new MR and AR, if she is not successful on her appeal.

Admissibility of Additional Information

The ministry did not object to the admissibility of the letter from the NP. The panel considered the letter dated September 25, 2019 in its entirety and applied the test in Section 22(4) of the *Employment and Assistance Act (EAA)*. Section 22(4) provides that the panel may only 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 or 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 information that was before the ministry at reconsideration.

The panel finds that the information the NP provided in the letter did not substantiate or corroborate the information and records that were before the ministry at reconsideration but, rather, was contradictory to the information in the MR and AR. For example, in the MR, the NP indicated that the appellant can walk 4 or more blocks unaided and can climb 5 or more stairs unaided. In the AR, the NP further indicated that the appellant is independent with her mobility, including walking indoors and outdoors and climbing stairs. In the letter, the NP reported that the appellant can walk a maximum of 2 blocks unaided and she cannot climb any stairs

independently.

In the AR, the NP indicated that the appellant does not require assistance from another person or the use of an assistive device with any of the tasks of the listed DLA. In the letter, the NP reported that the appellant requires continuous assistance from another person with the DLA of meal preparation, the housework DLA and the shopping DLA. In the AR, the appellant was assessed by the NP as independent with all areas of social functioning, including making appropriate social decisions, and with marginal functioning in her immediate social network. The NP wrote in the letter that the appellant has very disrupted functioning with her immediate social network, with poor social judgment in her relationships with immediate family,

The panel finds that this information in the NP's letter changes the character of the appellant's application and that the ministry has not had an opportunity to consider this evidence. As the information in the NP's letter was not before the ministry at reconsideration and the panel finds that it was also not in support of information before the ministry at reconsideration, the NP's letter does not meet the requirements of Section 22(4)(b) of the *Employment and Assistance Act* and is, therefore, not admissible on the appeal.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for PWD designation, 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, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, it could not be determined that, as a result of those 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 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, or

(b) acting in the course of the person's employment as a school psychologist by

- (i) an authority, as that term is defined in section 1 (1) of the Independent School Act, or
 - (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the School Act,
- if qualifications in psychology are a condition of such employment.

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).

Eligibility under section 2.1 of the EAPWDR

In the absence of any evidence or argument respecting eligibility for PWD designation under section 2.1 of the EAPWDR, the panel finds that the ministry reasonably determined that it has not been established that the appellant falls within the prescribed classes of persons under that section. The panel's discussion below is limited to eligibility for PWD designation under section 2 of the EAPWDA and section 2 of the EAPWDR.

Eligibility under section 2 of the EAPWDA**Severe Physical Impairment**

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical impairment. The ministry acknowledged that the appellant was diagnosed by the NP with chronic back pain, thoracic back, with an onset in 1996. The ministry considered the Medical Imaging Report dated November 29, 2018, which related to X-Rays of the appellant's thoracic and lumbar spine and included the following findings: "good alignment of thoracic spine," "mild marginal spondylosis only," "no focal paravertebral soft tissue swelling," "good alignment of the lumbar spine" and "sacralization of the L5 vertical body on the left with pseudoarthrosis." In her self-report, the appellant wrote that she has chronic backpain that began with physical abuse she suffered as a child and continued with a slip and fall, hitting her back at work, and several motor vehicle accidents. At the hearing, the appellant stated that she slipped and fell at work in October 2018 and, although she had experienced back problems prior to this due to the physical abuse she suffered as a young person, the accident made it much worse and she was often bed-ridden and became more isolated.

The ministry considered the information in the appellant's Request for Reconsideration that her back burns like she is lying or sitting on top of a stove. The appellant wrote that on good days

she can move a little and, on bad days, she lies in bed crying and wondering why she is "so useless." At the hearing, the appellant stated that she finds that stress can aggravate her backpain and this results in bad days about 60% of the time and good days approximately 40% of the time. At the hearing, the appellant stated that she is only taking over-the-counter pain medications because she avoids opioids for the overdose potential since she tried to commit suicide when she was a teenager. The appellant stated that she uses a treatment to help numb the pain in her back but it only works for a few hours.

A diagnosis of a serious medical condition or conditions does not in itself determine PWD eligibility or establish a severe impairment. Section 2(2) of the EAPWDA requires that the ministry must be satisfied that the impairment is severe before the ministry may designate an applicant as a PWD. An "impairment" involves a loss or abnormality of psychological, anatomical, or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately, or for a reasonable duration. To assess the severity of the impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning.

The ministry considered the impacts of the appellant's diagnosed medical conditions on her daily functioning, reviewing the assessments provided in the MR and the AR. The ministry wrote that the NP reported in the MR that the appellant can walk 4 or more blocks unaided on a flat surface, climb 5 or more steps unaided, lift under 5 lbs., with a note that the appellant "gets backpain with lifting more than 5 lbs.," and she can remain seated 1 to 2 hours. At the hearing, the appellant clarified that she can only sit for 30 to 60 minutes or her legs start to go numb. The ministry also considered that the NP assessed the appellant in the AR as being independent with walking indoors, walking outdoors, climbing stairs, and standing, all of which the appellant can do "for limited periods of time." The ministry reasonably considered that the NP does not specify what is meant by a "limited period of time," or how long the appellant can perform each activity in order for the ministry to determine the extent of any limitations to her independent mobility that has been assessed by the NP at the high end of the functional skills continuum. At the hearing, the appellant stated that although the NP had indicated that she is independent with walking indoors and outdoors, she is no longer able to do that as much as she would like.

In the MR, the NP indicated that the appellant is not restricted with her mobility inside the home and she has periodic restrictions with her mobility outside the home. The note by the NP that the appellant's mobility is "limited by backpain" does not specify how often the appellant's mobility is restricted. The ministry also considered that, in the AR, the NP assessed the appellant as requiring periodic assistance from another person with lifting and for carrying and holding, with no further comments regarding the frequency or duration of the assistance required. The ministry considered the comment by the NP that the appellant gets backpain with lifting more than 5 lbs. and reasonably concluded that assistance is required for "heavier" weights in excess of 5 lbs.

Given the NP's assessment of independent physical functioning in the moderate range of functional skills limitations, with the exception of her limit for lifting weight in excess of 5 lbs., the panel finds that the ministry reasonably determined that the evidence is not sufficient to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

Severe Mental Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided was sufficient evidence of a severe mental impairment. The ministry acknowledged that the NP diagnosed the appellant anxiety and depression with an onset in 2016 and a query for PTSD, and referred to the NP's comments that the appellant has episodes of non-stop crying 2 to 3 times per month, that she worries that people will leave her and abandon her, and she feels hopeless and despair. The NP also commented about the appellant's health history that she tried to overdose as a teenager, she was sexually assaulted as a young woman and while the appellant appears friendly and personable, she "internalizes her feelings of anxiety and depression and has a severe mistrust of anyone." The NP indicated that the appellant sees a counsellor and will likely need counselling long-term to deal with her childhood traumas, and the appellant stated at the hearing that it has been a few months since her last appointment but she has an appointment with her counsellor soon.

In her self-report, the appellant wrote that it all starts with the chronic back pain that makes the others' (depression and anxiety) severity go up or down. The appellant wrote that all the pain usually leaves her feeling useless (she cannot work), hopeless (stressed that no one will help her and she will be all alone), worthless (the pain is so bad she blames herself for the abuse), and just sad. The appellant wrote that she loves interacting with others and working making money, being productive, but now she cannot. The appellant wrote that she has sadness with no motivation to get up or to move, she is crying all the time, and she loses her temper due to pain. The appellant wrote that she has occasional suicidal thoughts, wanting the pain to stop and she gets "no sleep."

The ministry also considered that the NP reported in the MR that the appellant has significant deficits with her cognitive and emotional functioning in the areas of emotional disturbance and motivation, and the NP wrote that the appellant "has to mentally prepare for any appointment or event 3 to 4 days in advance" and "2 to 3 times per month gets into crying episodes, feeling hopeless, hides emotion from others." The ministry noted that while the NP commented that the appellant requires 3 to 4 days of mental preparation to attend appointments, she also assessed the appellant as being independent with all listed areas of social functioning, or requiring no support or supervision from another person. The ministry also considered that, in assessing daily impacts to the appellant's cognitive and emotional functioning, the NP assessed no major impacts, with moderate impacts to the areas of bodily functions, emotion, motivation, and other emotional or mental problems (e.g. hostility- explain). The NP did not provide an explanation or

further comments regarding the appellant's cognitive and emotional functioning. After considering the assessed impacts to cognitive and emotional functioning, the panel finds that the ministry reasonably concluded that the appellant falls within the "minimal to moderate" range.

The ministry considered that the NP reported in the MR that the appellant has no difficulties with communication and, in the AR, that she has a good ability to communicate in all areas. The ministry highlighted the inconsistency between the report in the MR that the appellant is continuously restricted with her social functioning, with the comment that the appellant "tends to isolate, only goes out for appointments because of anxiety, which worsens her depression," and the assessment by the NP in the AR of independence in all areas of social functioning, specifically with making appropriate social decisions, with developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. At the hearing, the appellant stated that the NP was surprised by the way the reports were completed when she saw them as she told the appellant that she had completed the MR and then delegated the completion of the balance of the AR to someone else in her office. The appellant is not sure specifically which parts have been completed by the NP. The ministry considered that the NP reported that the appellant has marginal functioning in both her immediate and extended social networks but the NP does not describe any support/ supervision required to maintain the appellant in the community.

Given the minimal to moderate impacts assessed to the appellant's cognitive and emotional functioning, as well as the inconsistent evidence of impacts to the appellant's social functioning, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

Section 2(2) of the EAPWDA requires that a severe impairment directly and significantly restricts the appellant's ability to perform the DLA either continuously or periodically for extended periods, as confirmed by the opinion of a prescribed professional. The direct and significant restriction may be either continuous or periodic. If the restriction is periodic, it must be for an extended time. 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, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairment continuously or periodically for extended periods. In this case, the NP is the prescribed professional.

In the reconsideration decision, the ministry was not satisfied that the appellant has a severe physical or mental impairment that, in the opinion of the prescribed professional, directly and significantly restricts DLA either continuously or periodically for extended periods of time. The ministry considered that the NP indicated in the MR that the appellant had been prescribed

medication that interferes with her ability to perform DLA and the NP wrote that the appellant uses a topical analgesic for backpain and the appellant wants to avoid heavy pain medication because of her history of an overdose attempt. The NP noted that the appellant "likely will need some form of pain analgesia lifelong off and on."

The ministry reviewed the information in the MR and considered that the NP, as the prescribed professional, reported that the appellant is not restricted with some DLA, specifically: the personal self care DLA, the management of medications DLA, the use of transportation DLA, the management of finances DLA, as well as mobility inside the home. The ministry considered that the NP reported the appellant is continuously restricted with the meal preparation DLA and the basic housework DLA and is periodically restricted with the shopping DLA and with her mobility outside the home. The NP wrote with respect to "periodic" that "regarding meal preparation, fiancé does it because unable to stand more than 2 hours," "housework done by fiancé because of backpain, i.e. mopping and sweeping, cleaning tub," "needs help carrying groceries all the time," and "mobility limited by backpain." Regarding the degree of restriction, the NP wrote that "depending on the level of backpain, her physical activities are restricted daily."

The appellant stated at the hearing that on good days, she can do some work around the house, but on bad days she can lie around for a week staring at the ceiling and becomes very "bummed out" that she cannot do things. The appellant stated that she finds that stress can aggravate her backpain, and this results in bad days about 60% of the time and good days approximately 40% of the time. In her self-report, the appellant wrote that all the pain usually leaves her feeling useless because she cannot work. She wrote that showering is sometimes hard since she is not as flexible as she used to be. The appellant wrote that she has anxiety and irritability due to the constant pain and not being able to do things she enjoys like cooking, cleaning, walking and working. In the letter with her Request for Reconsideration, the appellant wrote that she would like to be able to work the way she used to. The panel notes that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

The ministry considered that when the NP was asked to describe the assistance that the appellant requires with DLA, the NP wrote in the MR: "fiancé and friends assist with housekeeping, rides, groceries." The ministry also considered that, in the health history section of the MR the NP wrote that the appellant "needs assistance with all ADL's because of the backpain." In evaluating the weight to place on the evidence, the ministry reasonably considered the inconsistency between the information in the MR and that in the AR. In the AR, the NP assessed the appellant as being independent with walking indoors and walking outdoors, and with performing all of the tasks of the listed DLA, specifically the personal care DLA (dressing, grooming, bathing, feeding self, regulating diet, transfers in/out of bed and on/off chair), the basic housekeeping DLA (including laundry), the shopping DLA (going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and

carrying purchases home), the meals DLA (meal planning, food preparation, cooking, and safe storage of food), the pay rent and bills DLA (including banking and budgeting), the medications DLA (filling/refilling prescriptions, taking as directed, safe handling and storage) and the transportation DLA (getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation). As previously discussed, the appellant stated at the hearing that the NP was surprised by the way the reports were completed when she saw them as she had delegated the completion of the balance of the AR to someone else in her office.

Given the NP's assessment of restrictions with some DLA, with insufficient information regarding the extent of the periodic restrictions and the inconsistency between the NP's comments in the MR and the NP's assessment of independence in the AR, the panel finds that the ministry reasonably concluded that the evidence is insufficient to show that the appellant's overall ability to perform her DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

In the reconsideration decision, the ministry held that, as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required. Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of being directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods, a person must also require help to perform those activities. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

The NP reported in the AR that the appellant receives help from friends and community service agencies. The NP indicated that the appellant does not use any assistive devices to help compensate for her impairment and no equipment is needed. As the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel finds that the ministry also reasonably concluded that, under section 2(2)(b)(ii) of the EAPWDA, it cannot be determined that the appellant requires help to perform DLA.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation pursuant to Section 2(2) of the EAPWDA, was reasonably supported by the evidence. The panel confirms the ministry's 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

S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019-09-30

PRINT NAME

Bill Haire

DATE (YEAR/MONTH/DAY)

2019-09-30

PRINT NAME

David Kendrick

DATE (YEAR/MONTH/DAY)

2019-09-30