

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated 16 October 2019 that denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in section 2 of the *Employment and Assistance for Persons with Disabilities Act*, section 2. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years and that in the opinion of a prescribed professional

(i) directly and significantly restricts the appellant's ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

(ii) as a result of those restrictions, the appellant requires help to perform those activities. The ministry determined that the appellant satisfied the other criterion of having reached 18 years of age.

The ministry also found that it has not been demonstrated that the appellant is in 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 by the appellant regarding alternative grounds for designation, the panel considers this 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) – sections 2 and 2.1.

**PART E – SUMMARY OF FACTS****Evidence before the ministry at reconsideration**

1. The appellant's PWD Designation Application dated 17 July 2019. The Application contained:
  - A Self Report (SR).
  - A Medical Report (MR), undated, completed by a psychiatrist who has known the appellant since January 2018 and has seen the appellant 11 or more times in the past year.
  - An Assessor Report (AR) dated 05 July 2019, completed by the same psychiatrist.
2. The appellant's Request for Reconsideration, dated 03 October 2019, attached to which is a submission from a friend dated 29 September 2019.

In the MR, the psychiatrist provides the following diagnoses related to the appellant's impairment: Major Depressive Disorder with onset December 2018, and Attention Deficit Hyperactivity Disorder (ADHD) with onset December 1996.

In the AR, the psychiatrist describes the appellant's impairment as "Attention/concentration/executive disfunction/ mood dysregulation/ depressed mood/ anxiety."

The panel will first summarize the evidence from the MR and the AR as it relates to the PWD criteria at issue in this appeal.

**Duration**

MR:

The psychiatrist indicates that the appellant's impairment is not likely to continue for 2 years or more. The psychiatrist explains, "Estimate some improvement in about one year."

**Severity/health history*****Physical impairment***

MR:

Regarding functional skills, the specialist indicates that the appellant can walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, and that there are no limitations regarding lifting or remaining seated.

The psychiatrist indicates that the appellant has not been prescribed medication and/or treatments that interfere with the ability to perform DLA.

AR:

Respecting mobility and physical ability, the GP assesses the appellant as independent for all listed areas of mobility and physical ability: walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding.

### *Mental impairment*

MR:

Under Health History, the psychiatrist writes:

“Long-standing history of attentional difficulties with established diagnoses of ADD/ADHD in childhood. Progressive and persistent difficulties in the work environment with dysfunction of executive tasking (i.e. executive dysfunction) in the context of child-rearing stress caring for [young child]. Developed mood (depression) symptoms in December 2018. On anti-depressant therapy but still significant mood disorder symptoms. Affect labile. Mood low or dysregulated. Fatigue. Impaired concentration and focus more so than baseline. Persistent anxiety as well.”

The psychiatrist indicates that the appellant has no difficulties with communication.

The psychiatrist indicates that the appellant has significant deficits with cognitive and emotional function in the areas of executive, emotional disturbance and attention or sustained concentration. The psychiatrist comments, “ADHD + Major Depressive Disorder + Anxiety.”

AR:

The GP assesses the appellant's ability to communicate as good for speaking and hearing and satisfactory for reading and writing.

The psychiatrist assesses the degree to which the appellant's mental impairment impacts daily functioning as follows:

- Major impact: emotion, attention/concentration and executive.
- Moderate impact: memory and motivation.
- Minimal impact: Impulse control, motor activity and language.
- No impact: bodily functions, consciousness, insight and judgment, psychotic symptoms, other neuropsychological problems and other emotional or mental problems

### *Ability to perform DLA*

AR:

The psychiatrist provides the following assessments of the assistance the appellant requires in performing DLA:

- Personal care – independent for all tasks.
- Basic housekeeping – independent for all tasks.
- Shopping – independent for going to and from stores, reading prices and labels, paying for purchases, and carrying purchases home; requires periodic assistance from another person for making appropriate choices.
- Meals – independent for all tasks.
- Pay rent and bills – requires periodic assistance from another person for banking, budgeting, and paying rent and bills.
- Medications – Requires periodic assistance from another person for filling/refilling prescriptions and taking as directed; independent for safe handling and storage.

- Transportation – independent for all tasks.

The psychiatrist comments, “Forgets appointments despite various reminders.”

### *Social functioning*

The psychiatrist provides the following assessments regarding support/supervision required (the psychiatrist’s comments in parenthesis):

- Making appropriate social decisions – periodic support/supervision required.
- Developing and maintaining relationships – periodic support/supervision required.
- Interacting appropriately with others – periodic support/supervision required.
- Dealing with unexpected demands – continuous support/supervision required (“[Parent] assists with stressors, e.g. when change to schedule occurs”).
- Securing assistance from others – independent.

The psychiatrist assesses the appellant's relationship with both immediate and extended social networks as “marginal functioning.”

### Help provided/required

MR:

The psychiatrist indicates that the appellant does not require any prostheses or aids to compensate for impairment.

AR:

The psychiatrist does not provide any information when asked to describe the support/supervision required which would help to maintain the appellant the community.

The psychiatrist does not indicate that the appellant requires the use of an assistive device.

The psychiatrist indicates that the appellant does not have an assistance animal.

The psychiatrist indicates that assistance is provided by family.

### Self Report

In the SR, the appellant provides the following disability description:

“Anxiety disorder and anxiety attacks.

Intense anxiety attacks that strike without warning.

High levels of social anxiety that causes vertigo and nausea.

Constant forgetfulness and irritability.

Insomnia and depression.

Muscle tension and spasms.

Constant episodes of dizziness and shortness of breath.

Suffer pain from constant sweating, stomach upset, constant back pain and migraines.”

The appellant then describes the impact of the disability as follows:

"I struggle with a disabling fear of driving, the traffic and other vehicles on the road spike my anxiety because I can't control the other drivers. I have to rely on public transit. I start to feel claustrophobic and my anxiety spikes when the bus is more than half full. When it spikes I feel like I need to go to the bathroom right away and have to get off at the next stop. Worse cases I get stomach issues and can even get diarrhea. When going downtown on the [public transit] I get anxious and have to get off at a station to take a breather.

Depression and anxiety have taken a toll on my ability to have fun and to do simple activities with my family and friends. In the 3 years I've moved to [city] I've made 3 new friends, I get locked up and can't talk to people. My son likes to play sports, and I have to constantly coach myself in my head to take deep breaths and mentally prepare hours before we need to go out. I get too anxious to take transit so we walk as much as we can. My anxiety makes us run late a lot, and my son often adds to the anxiety because he knows we need to leave which also creates more stress. He's often late to his practice and sometimes a few minutes late to school because I need that extra time to be able to deal with crowds at the school. When I do attend my son's games and practices I have to be away from the parents and other kids to keep my anxiety under control.

My anxiety makes it very difficult to be around more than 3 people at a time, even if they are close friends. I start to get social anxiety before I leave the house, or even the day before a visit. I suffer from uncontrollable intrusive thoughts, and always anticipating the worst out of most social gatherings. I constantly second guess myself, and fight with my thoughts about what things I may forget to bring or say, or that I'll look stupid because of what I say, from the thought of mingling or having to talk to people. This starts before I even leave the house, which spikes my anxiety and has caused constant sweating. When I have to meet someone new, like a new doctor, my anxiety spikes and I have felt like I started to have a heart attack (heart palpitations, chest pains) which triggers vertigo and more nausea.

I find myself getting easily irritable, frustrated and have irrational outbursts over small matters (like my son making a noise while playing). In the moment I am yelling, but I'm disconnected not aware of what I am saying then I suddenly snap back and realize what is going on I feel horrible. I start to cry uncontrollably for no reason, and have to lock myself in the bathroom to re-center myself. I just feel very sad everyday, depression sneaks in about 2 p.m. and stays with me until I go to bed. I'm extremely tired all day long and can't sleep at night. My muscle tension and spasms are constant, and prevent me from being able to sleep through the night. Cooking a meal, or doing the dishes, is physically taxing. My son helps unload the dishes, bending over to unload causes back pain. I have to take multiple breaks during meal prep, I can't stand the whole time from the pain. On occasions when I do have the energy, I feel hopeless and have no motivation to do simple household chores.

I wake up every morning my legs feel like they are on fire and feet, back and legs are in pain. I have to roll out of bed and movements for the first hour are very limited. I forget appointments and events. I use calendar and alarms, but still forget to enter them or when they go off if I am distracted by something else, I miss doing the task. I feel like I can't think for myself and am always asking for help on making simple decisions, like what

pants to wear or what shoes I should put on.”

### Request for Reconsideration

In the submission accompanying the Request for Reconsideration, the friend, who has known the appellant since the latter was 8 years old, provides background information, describing the appellant as follows:

- Having a learning disability – dysgraphia, a form of dyslexia.
- As a child, being verbally denigrated many times by a parent because of the learning disability.
- Despite the learning disability, being “smart as a whip” and “acing” the training in a chosen field of work to a high level of proficiency, taking all the exams orally, not in writing
- When first entering the workforce, subject to sexual harassment by a boss and eventually quitting that job.
- In subsequent jobs, being so good at the work it resulted in being given more and more work, leading to increased stress and not being able to hold a job for more than 2 or 3 years.

The friend writes that with this background it is possible that the appellant is suffering from PTSD, going “from being calm and reasonable to almost shrieking hysteria in less than five minutes” and the emotional and psychological stress and trauma causing the appellant to not be able to make simple decisions like what shirt to wear and to clench up so fiercely to the point of putting out a hip and tearing back muscles.

The friend stresses that the appellant is in much pain – emotionally, psychologically and physically – and needs help, not only financially but getting some sort of emotional or psychological counselling.

### **Notice of Appeal**

In submitting the Notice of Appeal, undated, the appellant wrote under Reasons for Appeal, “I need disability.”

### **The hearing**

With the consent of both parties, the hearing was conducted in writing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

The appellant did not provide a submission for the hearing.

In an email dated 20 November 2019, the ministry stated that its submission will be the reconsideration summary provided in the Record of Ministry Decision.

**PART F – REASONS FOR PANEL DECISION**

The issue in this appeal is whether the ministry decision that determined that the appellant did not meet all of the statutory requirements of Section 2 of the EAPWDA for designation as a person with disabilities (PWD) is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe physical or mental impairment that in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years and that in the opinion of a prescribed professional,

(i) directly and significantly restricts the appellant's ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

(ii) as a result of those restrictions, the appellant requires help to perform those activities. The ministry determined that the appellant satisfied the other criterion of having reached 18 years.

The following section of the EAPWDA applies to this appeal:

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.

The following sections of the EAPWDR applies to this appeal:

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.

### 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) 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).

### Analysis

#### Duration

In the SR, the appellant does not speak to the duration of impairment, and neither does the friend in the letter submitted at reconsideration.

In the reconsideration decision, the ministry noted that when answering the question "Is the condition likely to continue for two years or more from today?", the psychiatrist checks the "No" box and adds the comment "Estimate some improvement in about one year". The position of the ministry is that, based on the information provided, it cannot be established that, in the opinion of a medical practitioner or nurse practitioner, the appellant's impairment is likely to continue for



at least two years.

### Panel finding

Given the psychiatrist's statement that the appellant's impairment is not likely to continue for two years or more and that some improvement is expected in about one year. the panel finds that the ministry was reasonable in determining that the 2-year duration criterion has not been met.

### Severity of impairment

#### *Preliminary Considerations*

The designation of a person as a person with disabilities arises from the application of legislation – section 2 of the EAPWDA reproduced above. It is clear from this legislation that PWD designation is at the discretion of the minister. However, it is also clear that this discretion is limited, by requiring the minister to be “satisfied” that the applicant meets the criteria set out in section 2.

For the minister to be “satisfied” that the person's impairment is severe, the panel considers it reasonable for the ministry to expect that the information submitted by the independent and professional medical practitioner and prescribed professional (in this case the psychiatrist) completing the application provides the minister with sufficient information on the nature and extent of the impacts of the person's medical conditions on daily functioning. As the legislation requires the minister to make determinations regarding the degree of impairment, the degree of restrictions in the ability to perform DLA and the resulting degree of help required, it is therefore important that the MR and the AR include explanations, descriptions or examples in the spaces provided so that the minister has the information needed to make these determinations. Significant weight must also be placed on the evidence of the applicant, unless there is a legitimate reason not to do so. Such information provided by the applicant, while optional in the Application form, may be helpful in fleshing out the general picture provided by the medical practitioner/prescribed professional. The reconsideration process provides the opportunity for the prescribed professionals and applicant to clarify or add to the information provided on application, and the panel hearing an appeal must consider any information provided on appeal, as long as the panel finds it admissible.

As the ministry noted in its decision, the diagnosis of a serious medical condition or conditions does not in itself determine PWD eligibility or establish a severe impairment. An “impairment”, as defined by the ministry in the MR and AR, is a loss or abnormality of psychological, anatomical or physiological structure or function causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration. The panel finds this definition of impairment to be reasonable, given the emphasis in the legislation on restrictions and help required. To assess the severity of impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning.

#### *Physical impairment*

The psychiatrist has not diagnosed the appellant with any medical condition that would restrict

physical functioning. In the SR, the appellant refers to constant muscle tensions and spasms making sleep difficult and to back pain caused by bending over. In the Request for Reconsideration, the friend refers to psychological stress and trauma causing the appellant to clench up so fiercely to the point of putting out a hip and tearing back muscles. However, no such physical impacts have been confirmed by the psychiatrist, who in assessing how the appellant's mental impairment impacts daily functioning in the AR indicated "No impact" for bodily functions. In the MR the psychiatrist assessed the appellant as not being restricted in terms of physical functional skills (can walk 5+ blocks unaided, etc.) and in the AR as being independent in managing activities requiring mobility and physical ability (walking indoors and outdoors, etc.). The psychiatrist also indicated that the appellant does not require an assistive device for any impairment of physical functioning.

### Panel finding

Considering the lack of evidence from the medical practitioner that would point to any restriction in physical functioning, the panel finds that the ministry was reasonable in determining that a severe physical impairment has not been established.

### *Mental impairment*

The panel understands from the SR that the appellant views the anxiety and depression diagnosed by the psychiatrist as having a crippling impact on all aspects of daily functioning, clearly demonstrating a severe impairment of mental functioning.

In the reconsideration decision, the ministry reviewed the information provided by the psychiatrist in the MR and AR, by the appellant in the SR, and by the friend in the reconsideration submission. In particular, the ministry noted that in the MR the psychiatrist identified significant deficits with cognitive and emotional functioning in the areas of executive, emotional disturbance, and attention or sustain concentration, and in the AR indicated that there is a major impact on daily functioning in those three areas. Considering all the information provided, the ministry acknowledged that the appellant experiences impairments that have an impact on mental functioning, but was not satisfied that a severe impairment has been established. In reaching this conclusion, the ministry gave the following reasons, as summarized below:

- Although the psychiatrist indicates major impacts in three areas of daily functioning, the appellant is assessed as being independent in a large majority of DLA and does not require any continuous assistance with any area of DLA.
- Although the psychiatrist indicates that the appellant requires periodic assistance in a few areas of DLA, no information regarding the duration or frequency of periodic assistance is provided, making it difficult to determine the severity of impairment.
- Regarding social functioning, the psychiatrist indicates that the appellant experiences marginal functioning with both immediate and extended social networks, not "very disrupted functioning." When asked what help is required to maintain the appellant in the community, the psychiatrist leaves the section blank. Considering the information in the SR, the ministry would have expected that some outside support would be required if the impairment was considered severe, especially with the tasks associated with being a parent.

- Despite the appellant's long-standing mental health history, significant mood disorder symptoms (even with antidepressant therapy) and long-term psychiatry visits, the psychiatrist estimates that the appellant will show some improvement in about a year.
- The psychiatrist provides little narrative in the AR, but does mention that the appellant forgets appointments despite various reminders. The ministry noted however that the psychiatrist assessed issues with memory as having only a moderate impact on daily functioning.
- While the appellant is seeing a psychiatrist on a regular basis, takes medication to address mental health needs and experiences some degree of restriction to DLA, the ministry is not satisfied that the information provided by the psychiatrist establishes a severe impairment overall, given that the appellant is largely independent and the lack of information provided on what help the appellant receives or needs.

### Panel finding

The panel has some reservations regarding the above ministry analysis:

- The ministry acknowledged the appellant's mental impairment having a major impact in three areas of daily functioning but appears to minimize this by stating that "the appellant is assessed as being independent in a large majority of DLA". The panel notes that, in *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)* 2009 BCSC 1461, the court stated, "There is no indication that every one of the daily living activities listed must be affected. The ordinary meaning of the plural 'activities' in this section dictates that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two daily living activities."
- Contrary to the ministry's assertion that the appellant has not been assessed with requiring any continuous assistance with any area of DLA, the psychiatrist has identified continuous assistance required for DLA in one instance: as continuous support/supervision in the social functioning area of dealing appropriately with unexpected demands, commenting, "[Parent] assists with stressors, e.g. when change to schedule occurs." This area is an element of the DLA of making decisions about personal activities, care or finances. See below under *Direct and significant restrictions in the ability to perform DLA.*
- The panel is of the view that the adjudication of severity of impairment should be kept separate from that of its duration. Adjudicating severity of impairment using duration as an indicator of severity could lead to a misunderstanding that an impairment that a medical practitioner or a nurse practitioner confirms will continue for more than two years would automatically be considered severe.
- The panel is uncomfortable with making inferences on severity of mental impairment based on an assessment short of the most negative. For example, it would seem quite possible that a person's relationship with immediate/extended social networks could be assessed as "good functioning" or "marginal functioning," not "very disrupted," and still be found to have a severe mental impairment.

Despite these reservations, the panel finds that the ministry was reasonable in focusing on the lack of information provided regarding the help that the appellant receives or needs in dealing with the diagnosed mental health conditions. As noted above, an impairment is a medical

condition causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration. A severe impairment is one where there is a high degree of restriction in the ability to function. In the legislation, the emphasis is on restrictions to the ability to function independently, with the ability to function (i.e. to perform DLA) significantly restricted to the point where help is required. As the ministry explained in its analysis, little information is provided that would describe in any detail the nature of the assistance or support/supervision that the appellant needs, and how often, for how long and under what circumstances this assistance is required. While the psychiatrist indicated that a parent assists with stressors on a continuous basis, when stressors occur, how often this occurs and how this assistance is rendered is not explained. Without a clearer picture of the nature and extent, and frequency and duration of assistance required, the panel finds the ministry was reasonable in determining that a severe mental impairment has not been established.

#### *Direct and significant restrictions in the ability to perform DLA*

As noted above, the panel understands from the SR that the appellant views the anxiety and depression diagnosed by the psychiatrist as having a crippling impact on all aspects of daily functioning.

In the reconsideration decision the ministry, relying on many of the same reasons given with regard to severity of impairment, found that the information provided does not establish that impairment significantly restricts DLA either continuously or periodically for extended periods.

#### Panel finding

The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be the result of a severe impairment, a criterion not established in this appeal. The legislation – section 2(2)(b)(i) of the EAPWDA – requires the minister to assess direct and significant restrictions to DLA in consideration of the opinion of a prescribed professional, in this case the psychiatrist. This does not mean that other evidence should not be factored in as required to provide explanation of the professional evidence, but the legislative language is clear that a prescribed professional's evidence is fundamental to the ministry's determination whether it is "satisfied." And for the minister to be "satisfied," it is reasonable for the ministry to expect that a prescribed professional provides a clear picture of the extent to which the ability to perform DLA is restricted, as assessed in terms of the nature and duration of help required or the time it takes to perform a task, in order for the ministry to determine whether the restrictions are "significant." Any information submitted by the applicant or others could be useful in adding context and detail to the picture provided by the prescribed professional.

Under the legislation, there are two sets of DLA at issue in this appeal: the 8 DLA (prepare own meals, etc.) set out in paragraph (a) of EAPWDR section 2(1) applicable to a person with either a physical or mental impairment, and the 2 "social functioning" DLA set out in paragraph (b) of that section applicable only to a person with a mental impairment – make decisions about personal activities, care or finances (the "decision-making" DLA) and relate to, communicate or interact with others effectively (the "interacting with others" DLA). The panel notes that there is some overlap between the paragraph (a) DLA and the decision-making DLA for the following abilities: regulating diet (under personal care), making appropriate choices (shopping), meal

planning (food preparation), budgeting (pay rent and bills) and taking as directed (medications). Based on what the appellant wrote in the SR and the friend in the reconsideration submission, it appears that the former also experiences difficulties with decision-making with choosing what to wear – dressing under the personal care DLA.

In the AR, for the paragraph (a) DLA, the psychiatrist assesses the appellant as independent for most tasks, with the exception of requiring periodic assistance from another person for making appropriate choices under shopping, and banking, budgeting and paying rent and bills under pay rent and bills, and filling/refilling prescriptions and taking as directed under medications. Given the appellant's diagnosed mental health conditions, it would seem that these requirements for periodic assistance from another person would indicate difficulties with the decision-making DLA. However, as the ministry pointed out in its decision, the psychiatrist did not provide any information on the nature, frequency and duration of the periodic assistance required – leaving blank the column in the AR headed "Explain/Describe Include a description of the type and amount of assistance required."

Similarly, with regard to the paragraph (b) social functioning DLA, the psychiatrist has indicated that the appellant requires periodic support/supervision for 3 areas – making appropriate social decisions, developing and maintaining relationships and interacting appropriately with others – and requiring continuous support/supervision for dealing appropriately with unexpected demands, explaining that a parent assists with stressors. Again, with this latter exception, the psychiatrist has not provided any information in the column headed "Explain/Describe Include a description of the degree and duration of support/supervision required."

Given the lack of information provided by the psychiatrist as described above, it would be difficult for the ministry to determine whether the restrictions the appellant experiences in being able to manage the social functioning DLA are significant and are either continuous or periodic for an extended period.

Given that a severe impairment has not been established and considering the psychiatrist's assessments reviewed above, the panel finds that the ministry was reasonable in determining that the information provided does not establish that, in the opinion that a prescribed professional, the appellant's ability to perform DLA is significantly restricted either continuously or for extended periods

### Help required

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.

### Panel finding

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.

Although the psychiatrist has indicated that the appellant benefits from the assistance of a parent in dealing with unexpected demands, given that the psychiatrist did not report any detailed information on the nature, type, frequency or duration of assistance required from another person, the use of an assistive device or the services of an assistance animal, and since 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 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 that determined that the appellant was not eligible for PWD designation was reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant is thus not successful on appeal.

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

Richard Roberts

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019 December 12

PRINT NAME

Keith Lacroix

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 December 12

PRINT NAME

Wesley Nelson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 December 12