

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 December 9, 2019, which held that the appellant did not meet 2 of the 5 statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) for designation as a person with disabilities (PWD). The ministry found that the appellant met the age and duration requirements, and that the appellant had a severe mental impairment, but was not satisfied that:

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

PART D – RELEVANT LEGISLATION

EAPWDA, section 2

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

PART E – SUMMARY OF FACTS

On October 21, 2019 the ministry received the appellant's PWD application comprised of a Medical Report (MR) and an Assessor Report (AR) completed by the appellant's general practitioner (the "Physician") on October 11, 2019, and the appellant's self-report (SR) dated October 1, 2019.

The appellant also submitted the following documents:

- Photographs of the appellant's left arm and shoulder, right inner leg, back, right side, and torso
- Patient medical history report June 26, 2017 to November 14, 2019 listing the appellant's prescriptions
- Report from an addictions specialist (the "Specialist") dated October 25, 2017
- Management Action Plan of a disability insurer November 14, 2017 and psychiatric questionnaire (the "Questionnaire") undated
- Follow-up visit notes dated November 28, 2017 and January 29, 2018 of the Specialist
- Treatment form completed by the Specialist dated March 9, 2018
- Report of an ophthalmologist dated April 30, 2018
- Report of the Specialist dated May 5, 2019
- Clinical records from the Physician dated October 11 and November 13, 2019
- MRI brain requisition November 13, 2019
- Google printout indicating the distance from the appellant's home to a grocery store being 550 metres

The appellant's request for PWD designation was denied on October 25, 2019. On November 25, 2019 the ministry received the appellant's request for reconsideration form (RFR).

On December 9, 2019 the ministry completed its review.

On December 13, 2019 the tribunal received the appellant's Notice of Appeal dated December 12, 2019.

Summary of relevant evidence

Diagnoses

In the MR, the Physician indicates that the appellant was diagnosed with alcohol use disorder, adjustment disorder and mixed anxiety and depressed mood, and opioid use disorder (date of onset 2014), as well as attention deficit hyperactive disorder (ADHD) and unspecified anxiety disorder, date of onset indicated as "lifelong".

The Physician indicates that the appellant has been a patient for over 15 years and the Physician has seen the appellant two to 10 times in the past 12 months.

In the May 5, 2019 report, the Specialist indicates that the appellant was diagnosed with ADHD, mixed mood disorder with depressive/anxious features, and substance use disorder (opiates, in full remission).

Physical Impairment

In the MR for Functional Skills, the Physician indicates that the appellant can walk 4+ blocks unaided, can climb 5+ stairs unaided, and has no limitations with lifting or remaining seated.

In the AR, the Physician indicates that the appellant is independent with all aspects of mobility and physical ability.

In the SR the appellant reports severe leg pain and inability to walk more than 4+ blocks with problems sleeping due to leg pain.

In the RFR, the appellant reports knee pain of 9/10 and ongoing pain in the appellant's left knee, hip and back with reduced sensation in the left ankle and pain and numbness from the knees down the legs. The appellant reported being on a wait list for a "MRI Brain" which the panel takes to mean a MRI/brain scan. The appellant also reports ongoing vision issues after surgery for a detached retina that took place in spring 2018. The appellant states that further eye surgery is taking place in March 2020. The appellant also reports having a painful rash to face, arms and body for the last two years.

Mental Impairment

In the Health History portion of the MR the Physician indicates that the appellant has unstable mood, severe anxiety/panic, and irritability. The Physician indicates that there are no difficulties with communication.

The Physician did not check off the box indicating "yes" to significant deficits with cognitive and emotional function but checked off the boxes indicate that there were deficits evidence in emotional disturbance, motivation, impulse control, motor activity (agitation), attention or sustained concentration, and executive.

In the AR, the Physician indicates that the appellant has major impact to bodily functions (sleep disturbance), emotion, impulse control, insight and judgment, attention/concentration and other emotional or mental problems. The Physician indicates that the appellant has moderate impact to executive, memory, motor activity (extreme tension), language (extreme stuttering) and other neuropsychological problems. The Physician indicates that the appellant has minimal impact to consciousness and motivation and no impact to psychotic symptoms.

In the May 5, 2019 report, the Specialist indicates that the appellant has moderate difficulty with concentration and sadness, moderate to severe difficulty with being easily distracted and mood dysregulation/aggression, and severe difficulty with procrastination, memory, hyperactivity/intrusive thoughts, insomnia, social isolation, and lack of motivation/interest in activity. The Specialist indicates that the appellant has extreme difficulty with general impulsivity, verbal impulsivity and irritability/sensitivity.

The Specialist indicates that with treatment, the appellant's mood had stabilized, the ADHD was being treated and the appellant had experienced some improvement with cognitive function and was attending counselling. However, the Specialist indicates that in the last 18 months, the appellant had deteriorated and was experiencing significant distress, likely tied to being unable to see the appellant's child due to conflict with a former spouse. The Specialist recommended ongoing treatment with medications and psychotherapy.

In the RFR the appellant states that while the Physician indicated minimal impact for consciousness, the appellant reports feeling constantly in a daze and would rate orientation as moderate impact. The appellant rates executive/planning/problem solving as major impact and that memory difficulties are extreme. The appellant reports having been told that the memory problems could also be due to impacts required for the appellant's mood disorder.

In the RFR, the appellant states having had numerous times of psychotic symptoms. The appellant indicates that the Physician also questions whether the appellant may have posttraumatic stress disorder or bipolar disorder. The appellant reports that the ongoing rash affects the appellant's appearance and makes the appellant very self-conscious.

DLA

In the MR, the Physician indicates that the appellant has not been prescribed treatments that interfere with the appellant's ability to perform DLA.

In the AR, the Physician indicates that the appellant is independent with DLA of personal care, basic housekeeping, shopping, meals, paying rent and bills, medications, and transportation. With respect to social functioning, the Physician indicates that the appellant requires continuous support/supervision with making appropriate social decisions, interacting appropriately with others, and dealing appropriately with unexpected demands. The Physician indicates that the appellant requires periodic support/supervision with developing and maintaining relationships and securing assistance from others.

The Physician indicates that the appellant has very disrupted functioning with immediate and extended social networks.

In the May 5, 2019 report the Specialist indicates that the appellant's functional impairment to vocational is extreme, interpersonal/social is moderate, psychological is moderate, self-care/fitness/diet/sleep is moderate to severe, and mood regulation is severe. The Specialist indicates that the appellant is remarkably kind, deferential, and gentle. The Specialist indicates that the appellant is motivated to return to work to support the appellant's child.

In the SR, the appellant states that: "*I cannot remember where I put my keys, wallet... and that memory is by far 100% the worst side effects*". The appellant states feeling like "*I failed in life*", that the appellant's former spouse will not easily allow visits with their child, that the appellant has huge stressors, and it is hard to get up and motivated.

In the RFR the appellant states that the severe leg pain restricts walking more than 4+ blocks and that the pain is so severe it impacts the appellant's ability to sleep. The appellant states that ongoing knee pain is 9/10 with 10 being very severe. The appellant reports isolating from friends and family as the appellant has not had any interest in engaging with anyone and that has affected the relationship with the appellant's child, who lives with the appellant's former spouse. The appellant states that due to vision and medications the appellant has not driven for the last three years. The appellant also states: "*I barely speak to any of my immediate family*".

Need for Help

In the MR, the Physician indicates that the appellant does not require any prostheses or aids for the appellant's impairment.

In the AR, the Physician indicates that in terms of support/supervision required, the appellant requires psychiatric and addictions medicine follow up and group therapy. The Physician indicates that the help required is provided by friends and a partner that is very helpful. For assistive devices and whether the appellant has an assistance animal, the Physician indicates "N/A".

In the May 5, 2019 report the Specialist indicates that the appellant needs ongoing combination of medication and psychotherapy to bring the appellant's symptoms into remission.

In the RFR the appellant states that "*[t]he degree and duration of support required in all areas is continuous as I continue avoid social situation. I have distanced myself from my social network and family. I have had assistance from friends as stated*" by the Physician but this was "... a onetime event where a friend was concerned about my weight and bought some groceries. This is not ongoing support that I receive".

Additional information provided

With the Notice of Appeal the appellant provided a four page typed document indicating the reasons why the appellant disagrees with the ministry's reconsideration decision and providing further information regarding the appellant's impairments, impact to DLA, and help needed (the Submission"). The appellant also provided the following:

- ARK-1S eye examination data and note that left eye is 20/70
- X-ray report thoracic spine June 14, 2020 indicating a mild wedge compression fracture of one of the mid thoracic vertebral bodies, likely T7
- Canada Revenue Agency Disability Tax Credit Certificate completed by the Physician dated January 11, 2020
- Clinical record of the Physician dated January 22, 2020
- Hospital MR/Head report dated January 12, 2020 indicating a history of numbness, tingling, weakness, and low mood. The impression indicates: mild generalized cerebral volume loss with no focal abnormality

Prior to the hearing the appellant provided a letter from a counsellor (the "Counsellor") dated January 6, 2020 in which the Counsellor indicates working with the appellant for the past year.

The Counsellor indicates that the appellant has struggled with both substance use and depression issues and that the mental health challenges have affected all aspects of the appellant's life including work and personal relationships. The Counsellor supports the appellant with ongoing counselling for treatment and improvement of the appellant's functioning and emotional state. The Counsellor indicates that the appellant showed an excellent response to the cognitive behavioural approach in conjunction with supportive psychotherapy. The Counsellor recommends ongoing treatment at least twice per month.

Prior to the hearing the ministry provided a letter dated February 10, 2020 (the ministry submission) indicating that the ministry reviewed the appellant's Submission. The ministry indicates that the Submission is the appellant's self-assessment of restrictions, but the legislation requires that the significance of the restrictions be in the opinion of a prescribed professional. The ministry's position is that the Submission does not offer any information from a prescribed professional so the ministry relies on the information provided in the original ministry decision and request for reconsideration as its submission.

Admissibility of New Information

The panel has admitted the information in the Notice of Appeal, the Submission, the eye exam report, the x-ray report and the application for Disability Tax Credit as it is evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, in accordance with section 22(4) of the *Employment and Assistance Act*.

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

PART F – REASONS FOR PANEL DECISION**Issue on Appeal**

The issue on appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable when concluding it was not satisfied that

- the appellant has a severe physical impairment;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and
- as a result of those restrictions, in the opinion of a prescribed professional, the appellant requires help, as it is defined in the legislation, to perform DLA?

Relevant Legislation**EAPWDA**

2 (1) In this section:

"**assistive device**" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person 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.

(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.

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

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).

Panel Decision**Severe physical impairment**

The ministry's position is that the information provided does not establish that the appellant has a severe physical impairment. The ministry's position is that a diagnosis of a serious medical condition does not in itself establish a severe impairment. To assess the severity of a physical impairment the minister must consider the nature of the impairment and the extent of its impact on daily functioning as evidenced by limitations/restrictions in mobility, physical ability, and functional skills. The ministry also notes that for the purposes of determining PWD designation, an applicant's employability or vocational ability is not taken into consideration. The ministry's position is that the functional skills reported by the Physician in the MR and the AR do not demonstrate a severe degree of physical impairment.

The appellant's position is that ongoing knee, back, and hip pain cause limitations with walking and sleeping and that the information provided supports a severe physical impairment. In the SR the appellant reports severe leg pain and inability to walk more than 4+ blocks with problems sleeping due to leg pain.

In the RFR, the appellant reports knee pain of 9/10 and ongoing pain in the appellant's left knee, hip and back with reduced sensation in the left ankle and pain and numbness from the knees down the legs.

In the Submission, the appellant states that a severe physical impairment is evidenced by restriction in mobility resulting from: right knee injury with constant pain despite two surgeries, two car accidents in the last three years involving significant impacts, and a previous accident in 2009 that caused mid thoracic compression fracture. The appellant reports knee joint and shoulder pain (arthritic joint pain). The appellant also reports that as a result of a left femur

fracture 30 years ago the appellant has ongoing back and hip pain. The appellant also states that the detached retina left eye has caused early cataracts and affects the appellant's vision.

The panel finds that the ministry reasonably determined that the information provided is not sufficient to determine that the appellant has a severe physical impairment. In the MR, the Physician does not provide a diagnosis of any physical impairment and in the MR for Functional Skills, the Physician indicates that the appellant can walk 4+ blocks unaided, can climb 5+ stairs unaided, and has no limitations with lifting or remaining seated. In the AR, the Physician indicates that the appellant is independent with all aspects of mobility and physical ability.

In the RFR and the Submission the appellant explains why the information by the Physician is not accurate with respect to physical impairment and restrictions. In particular, the appellant states that due to severe leg pain the appellant does not walk more than 4+ blocks and avoids walking when possible. The appellant states that walking to the grocery store, which is only 500 meters away, is extremely difficult. The appellant reports significant difficulties with transfers from bed, showering and toileting due to physical pain. The appellant also reports hospital admission twice in the last year due to having lost total function of the appellant's legs in the last year but as the appellant reports, the Physician did not report any of these restrictions.

With the Submission the appellant provided the Disability Tax Credit application in which the Physician indicates that the appellant is markedly restricted in walking. The definition of markedly restricted on that application form indicates that the applicant is unable or takes an inordinate amount of time to walk and that this is the case all or substantially all of the time (at least 90% of the time). On the Disability Tax Credit application the Physician indicates that walking became a marked restriction in 2018.

The panel notes that the information reported on the Disability Tax Credit application form is not consistent with the information provided in the MR or the AR regarding the appellant's functional skills and the appellant has not provided any further information from the Physician to explain the inconsistencies. If the appellant's walking has been markedly restricted since 2018 it is not clear why the Physician indicated in the MR that the appellant can walk 4+ blocks unaided and can climb 5+ steps unaided. It is also not clear why the Physician indicated in the AR that the appellant is independent with walking indoors, walking outdoors, climbing stairs, standing, lifting and carrying and holding.

The panel also notes that while the Physician's clinical record of November 13, 2019 notes a report of left anterior knee pain, the Physician indicates that the appellant's left knee was stable with no swelling and that the appellant had normal range of motion in the hips. The Physician indicates reduced sensation left distal leg ankle but there are no comments about restrictions to mobility and physical ability. The Physician's clinical record dated January 11, 2020 indicates bilateral knee pain x 1 year, numbness on feet and tingling, hurts when walking, and pain with stairs, but that information is not consistent with the information provided by the Physician in the MR and AR which indicates that the appellant does not have limitations to functional skills and is independent with all aspects of mobility and physical ability.

The appellant provided the x-ray report thoracic spine dated June 14, 2010 indicating a mild wedge compression fracture of one of the mid thoracic vertebral bodies, likely T7 but there is no

further information from the Physician indicating that the appellant has ongoing back pain or restrictions due to back pain.

Given the different information reported by the Physician in the clinical records, the MR, AR, and the Disability Tax Credit application form it is difficult to obtain a clear understanding of the appellant's physical impairment, particularly without any diagnosis of a physical impairment identified in the MR.

The appellant notes that the 2017 report from the Specialist indicates pain from a knee injury that continues and the appellant reports that the pain is 9/10. The appellant also notes that the Specialist indicates that the appellant's Global Assessment of Functioning is in the low 60's, that the appellant walks with a limp, and is unable to return to any work. However, the Specialist's reports from 2017 and 2019 do not provide further information on the appellant's functional skills and employability is not a consideration in determination of PWD designation. While the Specialist indicates that the appellant has knee pain the panel finds that the ministry reasonably determined that the information provided does not provide evidence of a severe physical impairment.

The appellant also reports ongoing vision issues after surgery for a detached retina that took place in spring 2018. The appellant states that further eye surgery is taking place in March 2020 and provided an eye exam result and reports that the left eye vision is 20/70. The Physician's clinical record dated January 11, 2020 indicates cataracts but the Physician does not provide any indication that the appellant's vision issues are causing a severe physical impairment and there is no additional information from the ophthalmologist indicating how the appellant's vision may impact the appellant's functional skills.

The appellant also reports having a painful rash for the last two years on the appellant's face, arms and body that is extremely painful but the Physician does not provide any information to indicate that the rash is cause a severe physical impairment.

The appellant provided the Medical Imaging Report "MR Head" dated January 12, 2020, which indicates mild generalized cerebral volume loss with no focal abnormality. However there is no further information by the Physician or another specialist indicating how this impacts the appellant or causes a severe physical impairment.

Based on the above the panel finds that the ministry reasonably determined that the information provided does not establish that the appellant has a severe physical impairment.

Severe mental impairment

The ministry was satisfied that the appellant had a severe mental impairment.

Restrictions in the ability to perform DLA

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

periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether or not it is satisfied that the legislative criteria are met, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant.

Finally, there is a component related to time or duration – the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended periods. Inherently, any analysis of periodicity must also include consideration of how frequently the activity is restricted. All other things being equal, a restriction that only arises once a year is less likely to be significant than one that occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

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

The appellant's position is that as a result of a severe physical impairment and severe mental impairment the appellant is in constant pain, and has significant restrictions with DLA.

In the Submission, the appellant reports limitations and difficulties with dressing, transferring, sleeping, climbing stairs, vision (due to retina and cataracts), and sitting for long periods of time. The appellant states that it is difficult and painful to transfer out of bed, off the toilet, and that putting on pants and socks is difficult. The appellant states that due to past opiate addiction the appellant cannot take painkillers and the medications the appellant is able to take do not help very much because the pain is too great. The appellant states that sleep is constantly interrupted from the chronic pain. The appellant reports using the assistive aids that were put in the home for his father when his father was ill. In addition the appellant reports having to lie down constantly and to seek help from visitors. The appellant reports using hand bars to help in the washrooms to lift up and down from the shower and toilet.

In the Submission, the appellant states that while the ministry indicates that the Physician has not provided any narrative to describe the degree or the duration of the assistance that the appellant requires, the appellant states that because of the multiple mental disorders diagnoses, it is imperative that the appellant receives continuous support for the unforeseeable future. The appellant reports that support including counselling, addictions support groups and attendance with a social worker at a hospital once every six weeks. The appellant reports that having therapy is crucial to social functioning as it gives the opportunity to talk to professionals who can help the appellant work through issues in a positive non-judgmental way.

In the Submission, in terms of DLA, the appellant reports feeling overwhelmed when dealing with finances and paying rent and bills. The appellant reports credit problems due to lack of despair and motivation to pay bills. The appellant reports that impairments cause significant

restriction to ability to earn income and reliance on the appellant's mother in terms of a place to live and reduced rent.

In the Submission, the appellant reports that impact to memory impacts DLA of medications. The appellant reports restrictions to DLA of housework due to feeling overwhelmed and not knowing where to start with tasks. The appellant reports that *"[b]etween the chronic pain I feel and the mental stress I am complacent many days of the week which results in housework not getting done or many things are started and not finished. I periodically rely on a housekeeper to help me as much as I can afford to reduce stress and make sure the home is kept sanitary"*.

In the Submission, the appellant reports using grocery delivery as it is too difficult to walk to the grocery store and back due to knee and leg pain. The appellant reports that depression has led to major relationship breakdowns and restricts the ability to create new relationships and has severely impacted the relationship with the appellant's child. The appellant also reports low self-esteem, nervousness about meeting new people, and feeling like a failure.

In the Submission, the appellant reports agreement with the Specialist's opinion that the appellant is kind and gentle except that the appellant's mental disorders result in negative thought processes and that without therapy the appellant's moods get worse and become extremely depressed and anxious. The appellant also reports having had anger issues in the past leading to heated disputes with strangers where the police have been called to "mitigate the situation". The appellant states that therapy and medications are necessary to help control moods and use strategies learned in therapy to deal with communications.

The ministry's position is that while the information confirms that the appellant has a severe mental impairment, the information provided by the Physician is not sufficient to confirm that the severe impairment significantly restricts the appellant's ability to perform DLA continuously or periodically for extended periods. The ministry's position is that the legislative criteria has not been met.

The reconsideration decision indicates that the Physician reports that the appellant is independently able to manage all activities of DLA for personal care, basic housekeeping, shopping, meals, paying rent and bills, medication, and transportation. The ministry notes that the Physician indicates that the appellant requires continuous support/supervision with making appropriate social decision, interacting appropriately with others, and dealing appropriately with unexpected demands, and periodic support/supervision with developing and maintaining relationship and securing assistance from others. However the ministry's position is that as the Physician does not provide any narrative to describe the degree or the duration of the assistance required, the ministry is unable to determine that the appellant requires a significant degree of assistance for an extended period of time to help manage activities of social functioning. The ministry's position is that the information provided does not indicate a significant restriction in the appellant's ability to perform DLA continuously or periodically for extended periods.

The ministry also notes that while the Physician indicates that the appellant has very disrupted functioning with both immediate and extended social networks, no information is provided to explain that the appellant demonstrates aggression or abuse, overly disruptive behaviour, major

withdrawal, major social isolation or that the appellant is often rejected by others. The ministry notes that the report of the Specialist describes the appellant as remarkably kind, deferential, and gentle so it is unclear why the Physician indicates that the appellant has very disrupted social functioning.

The reconsideration decision indicates that the ministry relies on the medical opinion and expertise from the Physician and other prescribed professionals and that while the information provided indicates that the appellant experiences some restrictions to DLA as a result of medical conditions, there is not enough evidence to confirm that a severe mental or physical impairment significantly restricts the appellant's ability to perform DLA continuously or periodically for extended periods.

The ministry submission indicates that while the appellant's Submission contains self-assessments of restrictions, the legislation requires that the significance of the restriction be in the opinion of a prescribed professional, not information from the appellant.

The panel finds that the ministry reasonably determined that as the majority of DLA are performed independently and the support/supervision that the appellant requires to help manage social functioning remains unclear, the information from the prescribed professionals does not establish that the appellant's impairment restricts DLA either continuously or periodically for extended periods. The panel finds that the ministry reasonably determined that the information provided did not demonstrate that at least DLA are significantly restricted either continuously or periodically for extended periods.

The information provided by the Physician in the AR indicates that the appellant is independent with DLA of personal care, basic housekeeping, shopping, meals, paying rent and bills, medications, and transportation. The information provided by the appellant in the RFR and the Submission is considerably different and indicates significant restrictions with paying rent and bills, basic housekeeping, shopping and medications. However, section 2(2)(b)(i) indicates that it is the opinion of the prescribed professional that the ministry must consider in making its determination. The information provided by an appellant is helpful but when there is such stark inconsistency between the information of the appellant and the Physician it makes it very difficult to obtain a clear picture of the appellant's ability to perform DLA. The appellant has not provided further information from the Physician to clarify these inconsistencies.

In addition the appellant reports significant restrictions with dressing, putting on pants and socks, transfers from bed, and climbing stairs, but in the Disability Tax Credit application the Physician indicates that the appellant is not markedly restricted with dressing.

The panel notes that the May 5, 2019 Specialist report details the appellant's struggles with mental impairment, the report was not prepared to address restrictions with DLA. The Specialist indicates that the appellant has moderate to severe functional impairment with self-care/fitness/diet/sleep but does not provide further information regarding the nature or degree of these impairment or information indicating that periodic or continuous assistance is required from another person.

While the Specialist indicates that the appellant has severe social isolation this is under the heading "Mood Disorder (intermittent) and the Specialist does not provide further information indicating the frequency or duration of the social isolation or nature or degree of support/supervision required.

The panel notes that the ministry acknowledged that the appellant experiences some restrictions to DLA as a result of medical conditions but that there was not enough evidence to confirm that a severe mental or physical impairment significantly restricts the appellant's ability to perform DLA continuously or periodically for extended periods. The panel finds that the ministry reasonably determined that the support/supervision that the appellant requires to help manage social functioning remains unclear and that the ministry reasonably determined that the information from the appellant's prescribed professional does not establish that the appellant's impairment significantly restricts DLA either continuously or periodically for extended periods, so the legislative criteria have not been met.

The panel notes that the letter from the Counsellor indicates that the appellant's mental health challenges have affected all aspects of the appellant's life including work and personal relationships and that the appellant's functioning and emotional state improve significantly with counselling. However, EAPWDR section 2(2)(a) indicates that a "prescribed professional" means a medical practitioner, registered psychologist, registered nurse or registered psychiatric nurse, occupational therapist, physical therapist, social worker, chiropractor or nurse practitioner, so the Counsellor does not meet the legislative definition of a prescribed professional.

The panel finds that the ministry reasonably determined that although the information demonstrates that the appellant has some restrictions to some aspects of DLA, the information provided by the Physician and the Specialist was not sufficient to determine that the legislative criteria was met. In particular, the panel finds that the ministry reasonably determined that the information provided does not confirm that the appellant has a severe impairment that significantly restricts the appellant's ability to perform DLA continuously or periodically for extended periods.

Help to perform DLA

Section 2(2)(b)(ii) of the EAPWDA requires that, *as a result of direct and significant restrictions in the ability to perform DLA*, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform DLA.

The appellant's position is that the information provided should be sufficient to find that the appellant meets the criteria for designation as PWD. In the Submission, the appellant reports that ongoing support is needed from group therapy, medications, psychiatric supervision, mother's support, and ministry assistance.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that help is required.

While the information from the appellant indicates that the appellant is using assistive aids in the home, the information from the Physician indicates that the appellant does not require any prostheses or aids and the Physician indicates that the appellant is independent with DLA of personal care. The Physician also indicates that the help required is provided by friends and a partner that is very helpful. However, in the RFR the appellant states that the assistance from friends was a onetime event where a friend was concerned about the appellant's weight and bought some groceries. The appellant states that this is not ongoing support. The panel finds that the information from the appellant and the Physician is not consistent, so the information provided regarding the requirement for assistive aids is unclear.

The information from the Physician and the Specialist indicates that the appellant requires continuous medications and psychotherapy. The information from the Counsellor also confirms that the appellant benefits from ongoing counselling.

However, confirmation of direct and significant restrictions with DLA is a precondition of the need for help criterion. As the panel found that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel also finds that the ministry reasonably concluded that it cannot be determined that the appellant requires help to perform DLA as required by section 2(2)(b)(ii) of the EAPWDA.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was reasonably supported by the evidence and is a reasonable application of the applicable enactment, and therefore confirms the decision. The appellant is 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

Helene Walford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/03/01

PRINT NAME

Sarah Bijl

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/03/01

PRINT NAME

John Pickford

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/03/01