

**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 10 March 2020 that denied the appellant designation as a person with disabilities (PWD) under section 2 of the *Employment and Assistance for Persons with Disabilities Act*. The ministry found that the appellant meets the age requirement, but was not satisfied that:

- the appellant has a severe mental or physical impairment;
- the appellant's impairment, in the opinion of a medical practitioner or nurse practitioner, is likely to continue for at least 2 years;
- the appellant's impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform daily living activities ("DLA") either continuously or periodically for extended periods; and
- as a result of restrictions caused by the impairment, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

The ministry also found that the appellant is not 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* ("EAPWDR"). As there was no information or argument provided for PWD designation on alternative grounds, the panel considers that matter not to be at issue in this appeal.

**PART D – RELEVANT LEGISLATION**

*Employment and Assistance for Persons with Disabilities Act* (EAPWDA) – section 2  
*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) – sections 2 and 2.1.

## **PART E – SUMMARY OF FACTS**

### **Evidence before the ministry at reconsideration**

1. The appellant's PWD Designation Application signed on 20 January 2020. The Application contained:
  - A Self Report (SR) – see below.
  - A Medical Report (MR) dated 05 December 2019, completed by a general practitioner (GP) who has seen the appellant 2-11 times in the past year.
  - An Assessor Report (AR) dated 07 November 2019, completed by a Doctor of Chiropractic (DC) who has known the appellant since July 2018 and seen her 11+ times in the past year.
2. The appellant's Request for Reconsideration, dated 19 February 2020. Under Reasons, the appellant attaches a lengthy submission – see below.

In the MR, the GP provides the following diagnoses related to the appellant's impairment: Upper back pain (onset: June 2018). Under Health History, the GP adds, "Anxiety of the obsessive-compulsive variety," with no date of onset given.

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:

In response to the question, "Is the impairment likely to continue for two years or more from today?" The GP indicates "No."

#### Severity/health history

##### *Physical impairment*

MR:

Under Health History, the GP writes:

"Chronic back pain that has waxed and waned over time. Recently compounded with nursing and taking care of newborn. Pain has significantly affected daily activities like lifting and climbing. It has also affected sleep and her mood. X-Rays done show no obvious abnormality causing pain."

Regarding functional skills, the GP indicates that the appellant can walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, is limited to lifting 7 to 16 kg and can remain seated for 2 to 3 hours.

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

AR:

In describing the appellant's impairment, the DC writes:

"Patient has constant pain daily with her low back, hips, and neck thoracic. The pain affects everything she does, such as lifting, sleeping, bending, cooking, laundry, dishes. She has to do it, so she modifies them by changing her tasks frequently, so she is not doing a task for an extended period of time."

Respecting mobility and physical ability, the DC assesses the appellant as independent for walking indoors, walking outdoors ("2x as long to do it"), standing, and lifting ("minimally, <25 lbs.") and carrying and holding ("minimally"); and taking significantly longer than typical and uses an assistive device for climbing stairs ("uses a railing").

*Mental impairment*

MR:

Under Health History, the GP writes, "Anxiety of the obsessive-compulsive variety,"

The GP indicates that the appellant has significant deficits with cognitive and emotional function in the area of emotional disturbance, commenting "Features of obsessive-compulsive disorders."

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

AR:

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

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

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

*Ability to perform DLA*

MR:

The GP indicates that the appellant's impairment restricts the ability to perform the DLA of basic housework on a periodic basis. The GP assesses the ability to perform all other DLA requiring physical effort as not restricted. The GP does not provide an assessment for social functioning.

AR:

The DC 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, taking 2x as long to complete the listed tasks of laundry and basic housework.
- Shopping – independent for all tasks.
- Meals – independent for all tasks.
- Pay rent and bills – independent for all tasks
- Medications – independent for all tasks.
- Transportation – independent for getting in and out of a vehicle; N/A for using public transport and using transit schedules and arranging transportation.

The DC comments:

- “Periodic assistance: like a cleaning [person] to help with cleaning, laundry & dishes.”
- “There is a component of mental stress, for example anxiety & obsessive-compulsive disorder.”
- She is able to execute all of the above however with constant pain.”

Under Additional Comments, the DC writes:

“Patient battles daily with everyday tasks and sleep deprivation plays a role. Continued care is important and some assistance in the home would be beneficial.”

### *Social functioning*

The DC assesses the support/supervision required for social functioning as follows

- Making appropriate social decisions – independent.
- Developing and maintaining relationships – Independent.
- Interacting appropriately with others – independent
- Dealing with unexpected demands – independent.
- Securing assistance from others – independent

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

### Help provided/required

MR:

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

AR:

The DC indicates that assistance for DLA is provided by family.

Regarding help required but there is none available, the DC writes:

- “Caretaker for her child/ nanny.”
- “Cleaning [person] to assist with cooking, cleaning, etc.”

The DC does not indicate that the appellant uses any of the listed assistive devices but adds "Heating pad" as an "Other."

The DC explains: "Uses a heating pad frequently." And "Services used: chiropractic care and massage therapy."

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

### **Self-Report**

In the SR the appellant writes:

"Best described as living with chronic pain and extreme anxiety (OCD). Every day and night I struggle with upper and lower back pain, usually both. What causes this is just about everything: if I sit too long, if I do too many repetitive motions, i.e. cleaning, sitting, laying in one position, walking, laundry. Most day to day activities add to or cause more pain. My good days are usually around a level 5 and quite frequently go up to an 8. I am thankful that it hasn't been a 10 since shock wave therapy. Continuous and daily therapy (stretching, heating pad, essential oils, chiro) are a must. I don't go a day without something.

As far as my OCD and anxiety, some days are extreme, obsess about things, constantly worrying about things happening to my [child], scared of doing things that may cause me more pain, lose sleep, some days I cannot leave my house, driving causes anxiety, due to PTSD from car accidents. I get anxiety when I'm in public and there are lots of people or if I have to leave my daughter (for appointments).

Every day I struggle with mental health and physical pain. I try very hard to function normally to be the best mom I can."

### **Request for Reconsideration**

In the Request for Reconsideration, the appellant provides a lengthy submission. This submission is fully reproduced in the reconsideration decision. Highlights:

"My impairment, my OCD, anxiety, depression, chronic pain and scoliosis will not be done within the next two years; I have suffered from back pain since I was a teenager, as my first doctor did not catch my scoliosis (curve of spine, a hereditary condition) until I was 18 years old and fell off a ladder at work. Thus, began the major decline in my back health.

When I was [younger], I was [assaulted]... This was/is a huge cause of my mental health issues, including my PTSD...

I then turned to substance and alcohol abuse to numb my pain, which not only didn't fix my problem, but has since caused long term/lifelong damage. It was an attempted suicide and a night in the hospital that made me realize this was no solution. Now being sober [...], I have to take medication for my anxiety/depression just to try to have good days...

When I was [...], I got in a head-on collision that would yet again change my life forever... Whiplash and back injuries, sore knees and bruised face were my physical injuries. The emotional injuries are some of the hardest I've

been through.

I still get anxiety every time I get in the car...

My back and neck are a daily struggle, from hospital visits, from spasms, and of course, being irritable and depressed from constant pain. There is not a day the experience doesn't affect me...

Fast forward to being pregnant. My work was not accommodating and I pushed my back too hard and had to go on medical leave... Also experience numbness in hands that limits me from doing certain activities (prepping things, writing are examples, cooking cleaning).

My anxiety has increased like never before by becoming a mom. Struggling most days to leave the house or even get a good night's sleep. My pain most days keeps us (my [child] and me) from doing much. I barely can do basics, such as cooking, cleaning, laundry, all these basic activities cause me pain and numbness. Yes, I can do them to a certain extent, but some days I cannot. Some nights I cannot sleep due to pain and anxiety. Sometimes my OCD is so bad I tear apart my house looking for a missing sock my daughter has put somewhere and can't do anything else until I can find it.

I am requesting the assistance so I can continue with treatment and therapy/medications as recommended to me, I am very limited with what is provided by premium assistance, and with a growing [child], life is expensive and I struggle everyday and I am doing the best I can but I need help and am unable to work.

Do I require help? If it could happen, I would take it rather than doing things that cause me pain or anxiety.

My doctor and chiropractor believe this will be a lifelong issue, and both (anxiety and pain) will need consistent treatment.

Also, after having my daughter, I took a fall down a flight of stairs holding her, again re-awoke injuries and intensified them."

## **Notice of Appeal**

The Notice of Appeal is dated 16 March 2020. In an email of the same date, the appellant writes:

"[...] I am appealing the decision made about my PWD application. The information provided by my current doctor was not clear, and did not mention my scoliosis, or that I currently take medication for my anxiety. Also, I do not have access to my full medical history to verify my conditions. My former doctor retired without warning, and I am still in the process of getting my medical records.

I was diagnosed 10 years ago with scoliosis, and have since injured my back multiple times, and have daily pain with everyday activities like household chores and holding and carrying my [child]. I have struggled with mental illness for years, and find it challenging to complete tasks and leave my house. I have had to go to the hospital multiple times for both my back spasms and mental health. I am waiting on a formal diagnosis from my doctor relating to the numbness in my hands that I have had for over two years. My doctor has waited to diagnose it because it started while I was pregnant, and he hoped that it would go away after I gave birth. It has not gone away, and my [child is less than 2 years]. I am limited in what I can perform because the numbness causes me to drop things.

Living with chronic pain, anxiety, depression, PTSD and scoliosis is a constant struggle for me, and I'm asking for assistance to provide for my daughter and continue to get the proper care I need. These conditions will be lifelong and will continue to majorly affect my daily life. Based on my understanding of PWD benefits, I believe I meet the criteria. If given the time, proper medical evidence could be obtained to support what is missing in my application thus far."

### **Information submitted before the hearing**

In an email to the tribunal dated 30 March 2020, the appellant writes:

I was able to get a written letter from my doctor to clarify my disabilities. My previous medical file will still be 30 days or longer to acquire because of COVID-19. As well as I was not able to get an advocate, when I called I was told they are all closed due to COVID-19. Please see attached Letter from my physician.

The attached "To whom it may concern" undated letter from the GP reads:

"[The appellant] has been my patient since the fall of 2017. Prior to that she was seen by her previous doctor in [another city].

On seeing [the appellant] as a patient, I found out she has been diagnosed and managed for Scoliosis, Anxiety, Depression, [...] and Chronic Pain. She also reported neck pain and associated numbness in her hands.

[The appellant] has a current diagnosis of scoliosis which was seen incidentally on x-ray when she was 18 after complains[sic] of chronic back pain after consultation with her previous family Doctor when she was 18 years old. She currently attends regular chiropractic treatments and also uses [Acetaminophen] regularly. The appellant still suffers from pain that limits her daily activities.

[The appellant] also suffers from multiple injuries to her back, including two car accidents, pregnancy most recently, and a fall down a flight of stairs. We believed this may end up being a very chronic problem.

She also deals with numbness in her arms and hands and this first started when she was pregnant. Initially it seems like the numbness was due to changes from pregnancy but today she is about 17 months postpartum and still having the same complaint, we believe the neck/scoliosis, we believe the neck / scoliosis could be the cause as this is a known cause of upper limb numbness.

[The appellant] has also been diagnosed and managed with anxiety, Post-Traumatic Stress Disorder (PTSD), Obsessive Compulsive Disorder (OCD) and Depression. She is currently taking prescription medication daily for this and undergone Psychotherapy in the past.

The above disorders appear to be chronic and it seems she may continue to need medications and therapy to manage her symptoms."

## **The hearing**

At the hearing, the appellant covered much the same ground as she discussed in her earlier submissions, as well reviewing the contents of the GPs letter submitted on appeal. In particular, she described how every day is a struggle, being constantly in pain and with the pain increasing with any physical activity, while her anxiety and depression result in her rarely leaving the house. In answer to questions, the appellant stated that:

- She used to take muscle relaxants to ease her back pain, but because she is nursing her child, she has discontinued these and relies only on [acetaminophen] for pain relief.
- While she can lift and carry up to about 25 pounds, because of the pain she can only do so for a few minutes at a time.
- She can vacuum her small apartment without having to stop, but because of the pain she would need to rest for an hour after doing so.
- She manages to keep her apartment tidy but would need someone else for deep-cleaning tasks such as scrubbing the bathtub or cleaning under the bed.
- She has panic attacks maybe twice a week, often occurring when she can't find something, and her OCD takes over.
- Because of the PTSD related to a motor vehicle accident, she has heightened anxiety when driving or even seeing other cars; as a result, she limits her driving to going to medical appointments or shopping for necessities.

The appellant stressed that everything she does is with caution and with pain.

The ministry stood by its position at reconsideration.

## **Admissibility of additional information**

The panel finds that the information provided by the GP in the letter submitted on appeal and by the appellant in her testimony at the hearing is reasonably required for a full and fair disclosure of the matter under appeal, as it contributes to the panel's understanding of the medical conditions underlying the appellant's impairments, the duration and severity of which is at issue in this appeal. The panel therefore admits this information as evidence pursuant to section 22(4) of *the Employment and Assistance Act*.



## PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry decision that determined that the appellant did not meet four of the five 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 mental or physical impairment;
- the appellant's impairment, in the opinion of a medical practitioner or nurse practitioner, is likely to continue for at least 2 years;
- the appellant's impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform daily living activities ("DLA") either continuously or periodically for extended periods; and
- as a result of restrictions caused by the impairment, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

The ministry determined that the appellant satisfied the other criterion of having reached 18 years of age.

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**

### *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 legislation requires the minister to rely primarily on the evidence provided by the independent and professional medical practitioner and prescribed professional (in this case the GP and DC) completing the MR and AR. Given these legislative requirements, the panel considers it reasonable for the ministry to expect that the material submitted by the medical practitioner / prescribed professional 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.

### Duration

#### The appellant’s position

From the appellant’s testimony at the hearing, the panel understands the appellant’s position to be that the GP describes most of her medical conditions as “chronic.” For example, the GP describes how she suffers from scoliosis and multiple injuries to her back, including two car accidents, and a fall down a flight of stairs, and that this may end up being a “very chronic problem,” and states that her mental health disorders “appear to be chronic and it seems she may continue to need medications and therapy to manage her symptoms.” Given these assessments by the GP of the chronic nature of these conditions, it is unreasonable that the ministry would determine the GP has not provided an opinion that her impairments would continue for at least 2 years.

### The ministry's position

In the reconsideration decision, the ministry noted that the GP indicated that the appellant's impairment is not likely to continue for two years. At the hearing, the ministry representative stated that they had not been able to obtain definitive direction on the position to take on appeal as to whether the GP's statement in the letter regarding the chronic nature of the appellant's medical conditions would satisfy the requirement that a medical practitioner or nurse practitioner has confirmed that the impairment is likely continue for at least two years. With that caveat, the ministry representative offered the view that the GP's letter might meet that requirement.

### Panel finding

Section 2(2) of the EAPWDA is clear that the minister must be satisfied that the applicant for PWD designation 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. In the panel's view, this means that the medical practitioner or nurse practitioner (in this case the GP) provide a definitive opinion that the applicant meets this criterion. In the Application, this means the practitioner completing the MR check the "Yes" box in response to the question "Is the impairment likely to continue for two years or more from today?"

While the GP checked the "No" box in the MR, the panel has admitted as evidence the GP's letter on appeal, which contained the "chronic" assessments cited by the appellant.

The panel notes the following:

- Definitions for "chronic" tend to be inexact in terms of length of time – e.g. "continuing or occurring again and again for a long time" [Merriam-Webster], though Statistics Canada uses "conditions that are expected to last or have already lasted 6 months or more and that have been diagnosed by a health professional."
- In the medical context, the term "chronic" tends to be applied to "disease" or "medical condition."
- However, the legislation refers to an "impairment," not a medical condition, continuing for at least 2 years.
- As discussed more fully below under Severity of impairment, an impairment is more than a medical condition – it is the combination of a medical condition and its resulting restrictions on daily functioning ability.
- The GP in the letter submitted on appeal made limited reference, without providing any detail, to the restrictions resulting from the appellant's physical conditions ("The appellant still suffers from pain that limits her daily activities.") and none relating to her mental health conditions.

Considering the above analysis, the panel finds that the ministry was reasonable in determining that the GP has not confirmed that the appellant's impairments are likely to continue for at least 2 years and that therefore this legislative criterion has not been met.

### Severity of impairment

#### *Physical impairment*

### The appellant's position

The appellant submits that the ministry was not reasonable in its finding that she does not have a severe physical impairment. The appellant cites the diagnoses confirmed in the letter submitted on appeal by the GP of scoliosis, back injuries and numbness in the hands, and her testimony at the hearing that every day is a struggle, being constantly in pain and with the pain increasing with any physical activity.

### The ministry's position

The position of the ministry, as set out in the reconsideration decision, is that the information provided in the PWD application and in the Request for Reconsideration does not establish that the appellant has a severe physical impairment. In reaching this conclusion, the ministry reviewed the information provided by the GP in the MR and by the DC in the AR relating to physical impairment (see Part E above).

The ministry noted that the GP, in assessing the appellant's functional skills (able to walk 4+ blocks unaided, etc.) indicated that she is able to lift, carry and hold items 7 - 15 kg. In the ministry's view, the functional skills reported by the GP do not establish a severe degree of physical impairment.

In reviewing the AR regarding the appellant's mobility and physical ability, the ministry noted that the DC reports that the appellant is independent in walking indoors and outdoors, standing, lifting, and carrying and holding. While she is limited to lifting, carrying and holding items weighing less than 23 pounds, the ministry held that this level of physical ability does not confirm a severe degree of impairment. While she is reported to take two times longer to walk outdoors, the ministry found that taking two times longer is not indicative of a severe degree of impairment in this area. The appellant is reported to take longer climbing stairs, and use an assistive device, with the use of railings. However, the additional time required is not reported and the ministry held that using railings while climbing stairs (5 or more stairs independently in the MR) does not establish a severe degree of impairment. While the ministry recognized that the appellant has some limitations due to her medical conditions, a severe degree of impairment based on the information provided by the DC has not been established.

The ministry also considered the reported functional skills, mobility, and physical abilities in conjunction with the reports of the appellant's ability to perform DLA. In the MR, the GP reports the appellant requires periodic assistance with basic housekeeping, as family members assist with housework "sometimes." In the ministry's view, this information does not confirm a severe degree of physical impairment. In the Assessor Report, the DC indicates the appellant is independent in all. While the ministry recognized that the appellant completes her DLA with pain, this pain does not preclude her ability to complete DLA independently or establish a severe degree of impairment.

Based on the information provided in your Application and Request for Reconsideration, the ministry was not satisfied that the appellant has a severe degree of physical impairment.

### Panel finding

The panel notes that in the reconsideration decision the ministry made its determination on the severity of impairment based on an analysis of the degree of reported restrictions in the appellant's ability to perform DLA. The panel finds this approach reasonable for the following reasons:

- A. In the MR and AR forms, the ministry defines "impairment" as "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. Thus, a diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment – i.e. information on the nature and extent of the resulting restrictions is required to fully assess the severity of impairment.
- B. The panel notes that section 2(2) of the EAPWDA can be read as "The minister may designate a person ... as a person with disabilities ... if the minister is satisfied that the person ... has a severe mental or physical impairment that (b) in the opinion of a prescribed professional
- (i) directly and significantly restricts the person's ability to perform daily living activities ...
  - (ii) as a result ..., the person requires help to perform those activities."

It is clear from the sentence structure of section 2(2) that the clause that reads,

*"that (b) in the opinion of a prescribed professional*

*(i) directly and significantly restricts the person's ability to perform daily living activities ...*

*(ii) as a result ..., the person requires help to perform those activities,"*

means that restrictions in the ability to perform DLA and the resulting help required must be assessed in determining the severity of impairment.

Focussing then on the information provided by the GP and the DC regarding the appellant's ability to perform DLA (including the DLA of moving about indoors and outdoors), the panel notes,

- In the MR, the GP indicates that the appellant's impairment restricts the ability to perform the DLA of basic housework on a periodic basis. The GP assesses the ability to perform all other DLA requiring physical effort as not restricted, including mobility inside and outside the home.
- In the AR, the DC assesses the appellant as independent for all tasks of basic housekeeping but taking 2x as long to complete the listed tasks of laundry and basic housework. The DC assesses the appellant as independent for all other DLA requiring physical effort, including walking indoors and walking outdoors (the later taking 2x times to do it), except for climbing stairs, for which the DC indicates the use of railings as an assistive device. The panel does not consider that publicly available, building code mandated stair railings are captured by the definition of "assistive device."

The above considerations are along the same lines as the ministry's analysis.

The appellant's testimony at the hearing is consistent with the DC's remarks that, "[The appellant] has constant pain daily with her low back, hips, and neck thoracic. The pain affects everything she does, such as lifting, sleeping, bending, cooking, laundry, dishes. She has to do it, so she modifies them by changing her tasks frequently, so she is not doing a task for an extended period of time." The panel is sympathetic to the appellant's daily struggle with pain but must be mindful of the legislative wording: "**ability** to perform daily living activities." Despite the discomfort she experiences, she is able to work through the pain in performing DLA. The panel therefore finds that the ministry was reasonable in finding that a severe physical impairment, as defined in the legislation, has not been established.

### *Mental impairment*

#### The appellant's position

In the letter submitted on appeal, the GP has stated that the appellant has also been diagnosed and managed with Anxiety, PTSD, OCD and Depression, is currently taking prescription medication daily for this and has also undergone Psychotherapy in the past. The GP has stressed that the above disorders appear to be chronic and it seems she may continue to need medications and therapy to manage her symptoms. Further, in the AR, the DC has assessed major impacts of these mental health conditions on daily functioning in six areas. Surely this evidence from these professionals demonstrates a severe mental impairment.

#### The ministry's position

In the reconsideration decision, the ministry found the information provided in the PWD application and in the Request for Reconsideration does not establish that the appellant has a severe mental impairment. In making this determination, the ministry reviewed the information provided by the GP, including the cognitive and emotional deficit reported by the GP in the MR (emotional disturbance, with features of OCD), and by the DC in the AR assessing major impacts on daily functioning arising from the appellant's mental health conditions in 3 areas, and moderate impacts in one area,

The ministry noted, however, that no further information on the restrictions arising from the appellant's mental health conditions is provided, and the DC indicates that the appellant is independent in all daily living activities, including those activities related to making decisions regarding personal activities, care, and finances, as well as social functioning. For these reasons, the ministry held that a severe mental impairment cannot be established based on the information provided by the DC

The ministry acknowledged the multiple aspects of trauma, anxiety, and depression that the appellant has expressed in her self-reports. However, the ministry finds that this degree of impairment has not been reflected in the assessments provided by the prescribed professionals.

### Panel finding

The panel notes that in reaching the conclusion that a severe mental impairment has not been established, the ministry relied on the same approach as the for severity of physical impairment discussed above – that is, basing the test for severity on the information provided by the GP and the DC regarding the appellant’s ability to perform DLA. As discussed above, this approach follows from the wording of the legislation and the meaning of “impairment.” As is the case with physical impairment, the panel considers this to be a reasonable approach to assessing severity of mental impairment.

Under the legislation, there are two sets of DLA at issue for a person with a mental impairment: 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 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).

In terms of restrictions in ability directly resulting from the appellant’s mental impairments the DC has assessed the appellant as independent for the paragraph (a) DLA (though with some physical restrictions relating to the DLA of moving about indoors and outdoors and basic housekeeping discussed under physical impairment above); therefore, it cannot be said that the DC has assessed any restrictions for the “overlapping” decision making abilities. The DC has also assessed the appellant as independent with the social functioning area of making appropriate social decisions.

Regarding the “interacting with others” DLA, there is little indication that the appellant is restricted in this regard. Indeed, the GP and DC assess the appellant’s ability to communicate as good and the DC described the appellant’s relationships with both immediate and extended social networks as “good functioning.”

The panel notes that in the MR the GP did not diagnose the appellant with a mental health condition, though did identify one significant deficit in cognitive and emotional function. It was only later in the letter submitted on appeal that the GP noted the diagnoses of anxiety, PTSD, OCD, and depression, without explanation as to why they were not considered relevant for inclusion in the MR.

Despite the DC noting major impacts in 3 areas of daily functioning, these assessments are not reflected in those related to the ability to perform DLA. For example, the DC does not describe how the major impact on impulse control (presumably related to the appellant’s OCD) restricts her ability to manage her DLA.



Considering the lack of information pointing to the appellant being significantly restricted in social functioning, the panel finds that the ministry reasonably determined that a severe mental impairment has not been established.

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

In the reconsideration decision the ministry held that, based on the information provided by the GP, the appellant does not have a severe impairment that, in the opinion of the prescribed professional, directly and significantly restricts the ability to perform the DLA set out in the legislation. In making this determination, the ministry reviewed the same information upon which it based its findings that a severe physical or mental impairment has not been established.

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 GP and DC. 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 sufficient information as to 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.

As reviewed above, in the MR the GP indicated that the appellant is restricted on a periodic basis in the ability to perform the one DLA of basic housekeeping, without providing any information on the degree of restriction except that family members help sometimes, and in the AR the DC assessed the appellant as independent with all DLA. Given these assessments and the evidence from the DC, as corroborated by the appellant in her testimony at the hearing, that she can work through her pain in managing her DLA, the panel finds that 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*

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 GP noted that help required for DLA is provided by family sometimes, and in the AR the DC stated that some assistance in the home would be beneficial, neither the GP nor the DC reported 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. Because 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 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 not successful on appeal.

APPEAL NUMBER  
2020-00080

**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)

2020 April 14

PRINT NAME

David Handelman

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 April 14

PRINT NAME

Neena Keram

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 April 14