

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 May 28, 2020, which held that the appellant did not meet 4 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 was satisfied that the appellant met the age requirement but was not satisfied that:

- The appellant's impairment is likely to continue for two years or more;
- the evidence establishes that the appellant has a severe physical or mental impairment;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and
- as a result of 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 March 26, 2020 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 March 13, 2020, and the appellant's self-report (SR) dated March 4, 2020, which the appellant chose not to complete.

The appellant's request for PWD designation was denied on April 1, 2020. On May 20, 2020 the ministry received the appellant's request for reconsideration form (RFR) dated May 20, 2020, which was accepted late because it was delayed due to the COVID 19 pandemic. With the RFR was a letter from the Physician dated May 9, 2020 supporting a review of the PWD denial. The Physician indicated that the appellant was still waiting a specialist psychiatric review. The appellant also provided a mental health progress note from a psychiatric nurse dated May 13, 2020 (the "Progress Note").

On May 28, 2020 the ministry completed its review.

On June 15, 2020 the tribunal received the appellant's Notice of Appeal dated June 15, 2020.

Summary of relevant evidence

Diagnoses

In the MR, the Physician indicates that the appellant has been diagnosed with major depression, date of onset not completed. The Physician indicates that the appellant has been a patient for 1.5 years and has been seen 2-10 times in the past 12 months.

Degree and Course of Impairment

In the MR, the Physician indicates that the appellant's impairment is not likely to continue for two years or more. The Physician indicates that the appellant's mental health was well controlled when the appellant stopped treatment so the appellant should be able to reach that point again.

Physical Impairment

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

In the AR, the Physician indicates that the appellant is independent with walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding.

Mental Impairment

In the MR, the Physician indicates that the appellant has significant deficits with cognitive and emotional function in the area of emotional disturbance.

In the Health History portion of the MR, the Physician indicates that the appellant was initially seen on October 24, 2018 reporting that the appellant had stopped treatment for depression. The appellant experienced subsequent decline after two months of stopping treatment, so the appellant returned for more treatment. The appellant reported that working nights aggravated the appellant's condition so the Physician recommended an adjustment to work hours. The Physician indicates that the appellant developed anxiety with regards to attending work.

The Physician also indicates that as the appellant did not respond to treatment the appellant was referred to a psychiatrist, had a medication adjustment, subsequent improvement, and was then discharged from the psychiatrist's care. The Physician indicates that the appellant returned to work, but symptoms returned and the appellant was unable to work. The Physician also indicates that the appellant has poor drive and anxiety when faced with returning to work. The Physician indicates that the appellant is seeing a counselor and is awaiting a psychiatric follow up.

In the AR, the Physician indicates that the appellant's ability to communicate with speaking, reading, writing, and hearing are good.

For Section B, question 4 Cognitive and Emotional Functioning the Physician indicates that the appellant has major impact in the area of emotion, attention/concentration, executive, motivation and psychotic symptoms. The Physician indicates moderate impact to bodily functions, impulse control, insight and judgment, and memory. The Physician indicates minimal impact to consciousness and motor activity and no impact to language, other neuropsychological problems, and other emotional or mental problems.

The Progress Note indicates that the appellant has been struggling with depression and anxiety throughout the appellant's life and has been on and off medication for many years. The psychiatric nurse indicates that the appellant was diagnosed with major depression with anxiety in 2018, has had periods of time when the appellant has been able to work, but since October 2018 is unable to work. The Progress Note indicates that the appellant reported memory as consistently poor, has to write everything down, has notes everywhere in the appellant's home and feels embarrassed about memory issues. The appellant reported poor concentration and disrupted sleep, low energy, poor appetite and decreased pleasure and interest in activities.

The Progress Note indicates that new situations, social situations, and real or perceived expectations will trigger anxiety, which can be accompanied with physical symptoms including visible shaking, racing heart rate, increased breathing, dry mouth, sweaty palms and knots in the stomach.

DLA

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

In the AR, the Physician indicates that the appellant's mental impairment that impacts ability to manage DLA is anxiety/depression.

The Physician indicates that the appellant is independent with all aspects of DLA. The Physician comments that the appellant only experiences limitations periodically when feeling depressed or anxious. The Physician further comments that when the appellant has a bad episode of symptoms the appellant is able to perform tasks of DLA but it takes more time.

Under Part E – Additional Information, the Physician indicates that the appellant's symptoms are not continuous.

The Physician indicates that the appellant is independent with all aspects of social functioning. The Physician indicates that the appellant has marginal functioning with respect to immediate and extended social networks.

The Progress Note indicates that the appellant tries to keep the appellant's home relatively clean, feels overwhelmed with bigger tasks and has difficulty with laundry (does it when absolutely has to).

Need for Help

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

In the AR, the Physician indicates that the help required for DLA is provided by friends, commenting that the appellant has a friend that will assist with grocery shopping at times. The Physician does not indicate that the appellant uses any assistive devices and does not have an Assistance Animal.

Additional information provided

In the Notice of Appeal the appellant disagrees with the reconsideration decision as the appellant was not able to obtain and submit any information from the appellant's psychiatrist, which was delayed due to the Covid 19 pandemic.

Prior to the appeal the appellant provided a letter from a psychiatrist dated June 18, 2020 (the "Letter") indicating that the appellant was assessed on June 2, 2020, by a psychiatrist over the telephone. The psychiatrist indicates that the appellant was diagnosed with major depression and generalized anxiety disorder. The psychiatrist indicates that in collaboration with the psychiatric nurse, a thorough assessment has been completed and the appellant's symptoms are severe and significantly impact every aspect of the appellant's functioning. The psychiatrist indicates that the appellant has been struggling with depression and anxiety most of the appellant's life.

The psychiatrist indicates that the appellant's prognosis is poor and that the mental impairment will last more than two years. The psychiatrist also indicates that the appellant has a very low level of social functioning, and the appellant's ability to carry out tasks of DLA is severely

limited. The appellant was referred to a community resource to help create and support the appellant in a therapeutic setting. The psychiatrist indicates that the appellant has been receiving cognitive behavioral therapy with the psychiatric nurse. The psychiatrist indicates that the appellant needs ongoing support consisting of therapy, medication assessment and adjustment, and ongoing community support.

The ministry provided an email indicating that the ministry's submission will be the reconsideration summary provided in the Record of Ministry decision.

Admissibility of New Information

The panel has admitted the information in the Notice of Appeal as it explains the delay in providing the Letter from the psychiatrist. The panel has admitted the Letter as the information from the psychiatrist 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*. In particular, the new information relates to the appellant's prognosis, diagnosis, mental impairment, DLA, and help needed.

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's impairment is likely to continue for more than two years;
- a severe physical or mental impairment was established;
- 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

The legislation provides that the determination of severity of an impairment is at the discretion of the minister, taking into account all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed professional respecting the nature of the impairment and its impact on daily functioning. While the legislation does not define "impairment", the MR and AR define "impairment" as a "loss or abnormality of psychological, anatomical or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration." While this is not a legislative definition, and is therefore not binding on the panel, in the panel's opinion, it reflects the legislative intent and provides an appropriate analytical framework for assessing the degree of impairment resulting from a medical condition.

When considering the evidence provided respecting the severity of impairment, the ministry must exercise its decision-making discretion reasonably by weighing and assessing all of the relevant evidence.

Duration of Impairment

The ministry's position is that as the Physician in the MR indicated that the appellant's impairment is not likely to continue for two years or more from today, the appellant did not meet the legislated criteria.

The appellant's position is that the Letter confirms that the impairment is likely to continue for two years or more and that the legislated criteria is met.

The panel finds that in light of the new information from the psychiatrist in the Letter confirming that the appellant's impairment is likely to impact the appellant for more than two years, the reconsideration decision regarding duration of impairment is not reasonable. Although the Physician in the MR indicated that the appellant was well controlled before stopping treatment and should be able to reach that point again, the Psychiatrist indicates that the appellant's prognosis is poor and that the appellant's long history of depression and anxiety will continue.

The information provided from the psychiatric nurse in the Progress Note also indicates that the appellant has struggled with depression and anxiety for many years so the panel finds that the information provided by the psychiatric nurse and the psychiatrist is consistent, and that the psychiatrist's prognosis, as a specialist, should be given more weight than that of the Physician in terms of the prognosis as to duration of impairment.

Severe Physical Impairment

The ministry's position is that the functional skills reported by the Physician in the MR and the assessment of mobility and physical ability in the AR are not indicative of a severe physical impairment.

The appellant does not argue that the appellant has a severe physical impairment.

The Physician in the MR indicates that the diagnoses giving rise to impairment is major depression and there is no indication of any physical impairment. In addition, the MR indicates that the appellant is able to walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, and has not limitations with respect to standing or remaining seated. In the AR the Physician indicates that the appellant is independent with all aspects of mobility and physical ability.

Given that there is no diagnosis of a physical impairment and the appellant is not arguing a severe physical impairment, the panel finds that the ministry reasonably determined that the information provided did not establish that the appellant has a severe physical impairment as required by section 2(2) of the EAPWDA.

Severe Mental Impairment

The appellant's position is that the information provided by the Physician, the psychiatric nurse, and the psychiatrist confirm that the appellant has a severe mental impairment.

The ministry's position is that the information provided does not demonstrate a severe impairment of the appellant's mental functioning. The reconsideration decision notes that the

MR indicates that the appellant experiences significant deficits with cognitive and emotional functioning in the area of emotional disturbance. The reconsideration decision also notes that the AR indicates that the appellant has major impact in the areas of emotion, attention/concentration, executive, motivation, and psychotic symptoms, moderate impacts in the areas of bodily functions, impulse control, insight and judgment, and memory, and minimal impacts in the areas of consciousness and motor activity.

The reconsideration decision indicates that the ministry reviewed the Progress Note and the psychiatric nurse's reports of the appellant's symptoms and considered the MR which indicates that the appellant has poor drive and energy levels and has anxiety when faced with return to work.

The ministry's position is that a diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. The ministry's position is that "impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively. The ministry's position is that the assessments provided by the medical practitioner do not establish a severe mental impairment.

The panel finds that the ministry reasonably determined that the information provided does not demonstrate a severe mental impairment as required by section 2(2) of the EAPWDA.

While the Physician indicates that the appellant is faced with anxiety when faced with returning to work and the Progress Note indicates that the appellant has been unable to work since October 2018, the panel notes that employability is not a criterion for PWD designation.

The panel notes that there are inconsistencies in the information provided in the MR and the AR, and the Physician has not explained the reasons for the differences in the information provided. For example, the MR indicates that the appellant has significant deficits with cognitive and emotional function in the area of emotion but no other areas are checked. In the AR however, the Physician indicates that the appellant has five major impacts in the areas of emotion, attention/concentration, executive, motivation and psychotic symptoms, four moderate impacts in the areas of bodily functions, impulse control insight and judgment, and memory, and two minimal impacts in the areas of consciousness and motor activity. The Physician does not explain why only emotional disturbance was indicated in the MR if the appellant has the major and moderate impacts as reported in the AR. The inconsistency in the information provided by the Physician makes it difficult to obtain a clear understanding of the impact to the appellant's functioning.

The information provided by the Physician in the MR is also not consistent with the information provided by the psychiatric nurse in the Progress Note. For example, while the Progress Note indicates that the appellant reported poor memory, poor concentration, low motivation and disrupted sleep, the MR does not indicate that the appellant has significant deficits with cognitive and emotional function in the areas of memory, motivation, or attention or sustained concentration. While the Progress Note and the MR both indicate that the appellant reported low energy, the AR indicates that the appellant is independent with all aspects of DLA, so the information provided does not indicate that there is much impact to the appellant's functioning.

In the Letter, the psychiatrist indicates that the appellant's symptoms are severe and significantly impact every aspect of the appellant's functioning. The Letter also indicates that the appellant has a very low level of social functioning and the appellant's ability to carry out individual tasks of DLA are severely limited. However the psychiatrist does not provide further information or any examples to indicate what areas of cognitive and emotional function are impacted, how any specific tasks of DLA are restricted, or the degree of restriction. While the Letter indicates a more significant level of mental impairment, there is no indication that the psychiatrist reviewed the information provided in the MR or AR and there is no information to indicate whether the psychiatrist agrees or disagrees with the information from the Physician in the MR and AR.

Although the psychiatrist indicates that thorough assessments have been completed, the panel notes that the psychiatrist interviewed the appellant once over the telephone whereas the Physician has seen the appellant 2-10 times in the past year. Although the psychiatrist indicates that thorough assessments have been completed, the lack of detail in the Letter makes it difficult to obtain a clear understanding of the appellant's impairment or the degree of severity of mental impairment, particularly given the assessments provided by the Physician.

Given the inconsistencies in the information from the Physician between the MR and the AR, and the inconsistencies in the information from the Physician, the psychiatric nurse, and the psychiatrist, the panel finds that the ministry reasonably determined that the information provided is not sufficient to establish that the appellant has 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 the information provided establishes that a severe mental impairment directly and significantly restricts the appellant's DLA continuously or periodically for extended periods.

The ministry's position is that the information provided is not sufficient to confirm that the appellant has a severe impairment that significantly restricts ability to perform DLA continuously or periodically for extended periods, so the legislative criteria has not been met. The ministry notes that in the MR, the Physician indicates that the appellant has not been prescribed medication/treatment that interferes with the appellant's ability to perform DLA.

The ministry also notes that in the AR, the Physician indicates that the appellant is able to manage all aspects of DLA, noting that the appellant only experiences limitations periodically when feeling depressed or anxious. The Physician indicates that when the appellant has a bad episode of symptoms, the appellant is able to do the tasks but it takes more time, and the appellant has a friend that will do grocery shopping at times.

The ministry acknowledges that the appellant has certain limitations periodically resulting from feeling depressed or anxious, and that it takes more time to complete tasks during a bad episode. However, the frequency and duration of these periods or how much longer it takes the appellant to complete tasks has not been described in order to determine if they represent a significant restriction to the appellant's overall level of functioning. The ministry notes that a restriction that arises only once a month is less likely to be significant than one which occurs several times a week.

The ministry notes that the Progress Note indicates that the appellant "...tries to keep the appellant's place relatively clean, feels overwhelmed with bigger tasks, laundry is difficult, does it when absolutely has to". The ministry also notes that the Physician indicates that the appellant's symptoms are not continuous.

The ministry's position is that considering the appellant's medical history it is reasonable to expect that the appellant would encounter some restrictions to ability to perform DLA and require assistance as a result. However, the ministry's position is that there is not enough evidence to confirm that the appellant's impairment significantly restricts ability to perform DLA continuously or periodically for extended periods, so the legislative criteria has not been met.

The panel finds that the ministry reasonably determined that the information provided does not indicate that the appellant's impairment significantly restricts ability to perform DLA continuously or periodically for extended periods.

The information provided by the Physician indicates that the appellant is independent with all aspects of DLA, that the appellant's symptoms are not continuous, and that there are periodic restrictions when the appellant has a bad episode of symptoms. However, the Physician does not provide information to indicate how frequent the bad episodes occur or how long the bad episodes last.

The information provided by the psychiatric nurse does not indicate a significant level of restriction to DLA. For example, the Progress Note indicates that the that the appellant "...tries

to keep the appellant's place relatively clean, feels overwhelmed with bigger tasks, laundry is difficult, does it when absolutely has to" but there is no further information to describe what the "bigger tasks" are, or whether the appellant has difficulty with any other specific tasks of DLA besides laundry. Neither the Physician nor the psychiatric nurse provide information on how much longer than typical it takes the appellant to perform aspects of DLA when they are periodically restricted.

The Letter indicates that the appellant's ability to carry out individual tasks of DLA is severely limited, but the psychiatrist does not provide any information specifying how the DLA of personal care, basic housekeeping, shopping, meals, paying rent and bills, medications, or transportation are impacted. The psychiatrist does not indicate whether the appellant is independent with these tasks, whether the appellant requires periodic or continuous assistance from another person, or whether the appellant takes significantly longer than typical to perform tasks of DLA.

The Progress Note indicates that new situations, social situations, real or perceived expectations will trigger anxiety, which can be accompanied with physical symptoms including visible shaking, racing heart rate, increased breathing, dry mouth, sweaty palms and knots in the stomach. However, with respect to social functioning, the AR indicates that the appellant is independent with making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others.

The AR indicates that the appellant has marginal functioning with respect to immediate and extended social networks. The Letter indicates that the appellant has a very low level of social functioning. However, the psychiatrist does not provide any examples or further information describing the appellant's social functioning. In addition, the psychiatrist does not provide any indication that the MR or AR were reviewed and/or why the psychiatrist's opinion is different than the Physician's information. Given the inconsistencies in the information provided between the Physician, the psychiatric nurse, and the psychiatrist, it is difficult to obtain a clear picture of the appellant's ability to manage DLA.

The information provided demonstrates that the appellant experiences some limitations resulting in need for periodic assistance, but as the AR indicates that all DLA are performed independently the panel finds that the ministry has reasonably determined that the information provided does not confirm that the appellant has a severe impairment that significantly restricts ability to perform DLA continuously or periodically for extended periods.

The panel finds that the ministry reasonably determined that based on the information provided, the appellant did not meet the legislative criteria.

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 help is required with DLA because of a severe mental impairment.

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.

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

In the AR, the Physician indicates that the help required for DLA is provided by friends, commenting that the appellant has a friend that will assist with grocery shopping at times. The Physician does not indicate that the appellant uses any assistive devices and does not have an Assistance Animal.

The Letter indicates that the appellant requires ongoing cognitive behavioral therapy, medication assessment and adjustment from a psychiatrist, and ongoing community support.

While the information provided indicates that the appellant receives periodic assistance from a friend with grocery shopping, would continue to benefit from CBT and community support, and needs a medication assessment and adjustment, 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 not reasonable with respect to the duration of impairment. However, the panel finds that the ministry's reconsideration decision was reasonable in determining that the appellant does not have a severe physical or mental impairment, and that the appellant's DLA are not directly and significantly restricted either continuously or periodically for extended periods in which case it cannot be determined that the appellant requires significant help with DLA. As the reconsideration decision is reasonably supported by the evidence and is a reasonable application of the applicable enactment, the panel therefore confirms the decision. The appellant is not successful on appeal.

APPEAL NUMBER
2020-00160

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)

2020/08/11

PRINT NAME

Maryam Majedi

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/08/11

PRINT NAME

Daniel Chow

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/08/11