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PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated October 22, 2020, in which the ministry found the appellant was not eligible for designation as a Person with Disabilities ("PWD") under section 2 of the *Employment and Assistance for Persons with Disabilities Act* ("EAPWDA"). The ministry found that the appellant met the age and duration requirements but was not satisfied that:

• the appellant has a severe mental or physical impairment;

• 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 was not 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 - section 2

PART E – SUMMARY OF FACTS

The evidence and documentation before the minister at the reconsideration consisted of:

1. Information from the ministry's record of decision indicating that the PWD application was received on September 30, 2020 and denied on October 1, 2020. On April 8, 2020, the ministry received the signed *Request for Reconsideration* ("RFR") and completed the review of the RFR on October 22, 2020.

2. An RFR signed by the appellant on October 7, 2020, with a hand-written submission in which the appellant described their current health situation, history of trauma, and resulting restrictions. The appellant indicated depression and anxiety and the inability to work. The appellant described difficulties controlling behaviour and anger and not being able to socialize due to "extreme disruptive behaviour."

The appellant described difficulties with sleeping, eating, and concentrating due to anxiety, depression and past trauma, "can't sleep, eat, concentrate…I get nightmares". The appellant reported having no family or friends and staying alone most of the time to avoid problems with social interaction, "I cannot work or be around people. I'll be in jail for my behaviours so I stay to myself as much as possible."

3. The PWD application comprised of:

- the *Applicant Information* (self-report – "SR") dated August 23, 2020, in which the appellant described their anxiety and depression and as well as Post traumatic stress disorder ("PTSD") from being a victim of long term abuse.
- a *Medical Report* ("MR") dated August 26, 2020, signed by the appellant's general practitioner ("doctor") who has known the appellant for 2 years and has seen the appellant 2 to 10 times in the past 12 months; and an
- *Assessor Report* ("AR") dated September 22, 2020, completed by a registered nurse ("RN") who met the appellant one time for the purpose of the assessment and based the assessment on an office interview with the appellant.

4. A letter from an orthopedic surgeon ("Dr. L") dated December 10, 2012 [*panel note, only page 1(of 3) of the letter is included in the record*].

The letter states the appellant was referred for evaluation of the right hip. The appellant reported radiating pain for the past 4 years. The pain became very severe in the past year making labour intensive employment difficult.

The letter states that the appellant has a moderate limp and can tolerate walking 5-10 blocks without using a walking aid. The appellant is also able to climb stairs one step at a time, put on shoes and socks "on the right side with ease", sit in a high chair for half an hour, and get into a car "but driving for any period is difficult."

The letter states that treatment of hip pain with medications and physiotherapy has not been effective. The appellant has a confirmed tear in the right knee that also causes pain. The appellant's past medical history is Anxiety Disorder.

5. A letter from an orthopedic surgeon ("Dr. S") dated July 26, 2012, describing the appellant's right knee and thigh pain which limits walking at work ("after about 4 hours…can hardly walk") and restricts weight bearing activities. The appellant has been experiencing pain for the past 4 years and had a leg fracture 10 years ago. On physical examination, most range of motion was normal despite pain on compression/touch.

6. A letter from the ministry dated October 1, 2020 with attached *Denial Decision Summary*, advising that the appellant did not meet the criteria for PWD designation.

Summary of relevant evidence from the application:

Diagnoses

In the SR, the appellant indicated depression, anxiety, and PTSD that resulted from "the last two years of bad events."

In the MR, the appellant was diagnosed with mood disorders (onset, 1997).

Under Section B, *Health History*, the doctor stated that the appellant "has a lot of depression" including lack of interest, low mood, decreased appetite, poor sleep, and a hospital admission for anxiety and depression.

In the AR, the RN reported that the mood disorders are compounded by Attention Deficit Hyperactivity Disorder ("ADHD") and the appellant's anxiety has caused physical ailments including ulcers and a hiatus hernia which affect eating and sleeping. The RN reported post-traumatic stress from past family violence (the appellant witnessed a murder) as well as a history of abuse.

Functional skills

Self-Report

The appellant described mood and cognitive symptoms including, "can't control my crying…anxiety is off the roof. Can't sleep [nightmares]…can't concentrate, my mind is blank…no energy…moods change quickly, agitated…find it hard to sit still, uncontrollable twitches…flashbacks of terrifying experience."

The appellant reported struggling with anger, "yell when I'm upset talking with others" as well as difficulties with social relationships, "can't communicate with others…no trust in anyone…cannot socialize with others…worry about being judged, avoid people... agoraphobia - don't like to be alone, then it reverses where I want to be alone."

Medical Report

Under Section D - *Functional Skills*, the appellant can walk 4 or more blocks unaided on a flat surface; climb 5 or more steps unaided, and has no limitations with lifting or remaining seated. The doctor checked that the appellant has no difficulties with communication.

Under section D-6, when asked if there are any *significant* deficits with cognitive and emotional function, the doctor checked 7 of the 12 listed functions: *Executive*, *Memory*, *Emotional disturbance*, *Motivation, Impulse control, Motor activity, and Attention or sustained concentration*. The doctor left the spaces for comments, and additional comments blank.

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Assessor Report

Under Section B-2, *Ability to Communicate*, the RN indicated *good* ability for *Speaking* and *satisfactory* ability for *Hearing* (comment, “difficulty hearing when there is background noise”). The RN checked *poor* ability for *Reading* and *Writing*, explaining that the appellant’s speech is rapid and loud at times, “unable to have others interject in the conversation.” The RN stated that the appellant’s ability to read is impacted by visual difficulties and the inability to concentrate.

Under section B-3, *Mobility and Physical Ability*, the RN marked the appellant *independent* with 5 of the 6 areas listed: *Walking indoors*, *Climbing stairs*, *Standing*, *Lifting*, and *Carrying/holding*. The RN indicated a need for continuous assistance with *Walking outdoors* due to anxiety (comment, “is able to physically walk outside unassisted” but is “unable to go outside alone”).

For section B-4, *Cognitive and Emotional Functioning*, the RN provided information on impacts to functioning that are due to the appellant’s mental impairment:

- *No impact* in 1 of the 14 areas listed: *Insight and judgment*;
- *Minimal impact* in 4 areas: *Impulse control*, *Motor activity*, *Language*, and *Other neuro-psychological problems*;
- *Moderate impact* in 1 area: *Psychotic* symptoms;
- *Major Impact* in 8 areas: *Bodily functions*, *Consciousness*, *Emotion*, *Attention/concentration*, *Executive*, *Memory*, *Motivation*, and *Other emotional or mental problems*.

In an attached narrative, the RN detailed the appellant’s difficulties with eating and sleeping, cognitive function, and anxiety/depression.

Eating

The RN wrote that the appellant has no appetite and eats only once a day (comment, “does not have enough money for food”).

Sleeping

The appellant has difficulty falling asleep despite taking medication to help with sleep, “unable to settle”, and only sleeps for a few hours per night…does not ever wake up feeling rested...3 days a week does not sleep at all at night.”

Cognitive function

The narrative states that the appellant experiences confusion, “mind races, can’t think clearly - starts crying, fixates on one idea - not able to be part of current environment, always tired, wants to sleep/can’t focus.”

Anxiety

The narrative states that the appellant “is afraid to go outside - doesn’t trust anyone, has been hurt too many times so any situation outside [the appellant’s] personal space causes racing speech, inability to focus, agitation, increased verbal aggression”, and a lack of control over what is said, “things that come out of my mouth are not me.”

Depression

The RN wrote that the appellant cries a lot, “sad all the time, unable to go out, loss of family - loss of career”; feels abandoned and never felt loved.

Daily Living Activities

Medical Report

The doctor check marked *no* when asked if the appellant is prescribed medications or treatments that interfere with the ability to perform DLA.

In Section E - *Daily Living Activities*, the doctor checked *yes*, the impairment restricts the appellant’s ability to perform DLA. On the list of specific DLA, the doctor checked that 8 of the 10 DLA listed are not restricted:

- ***Personal self care***
- ***Meal preparation***
- ***Management of medications***
- ***Basic housework***
- ***Daily shopping***
- ***Mobility inside the home***
- ***Mobility outside the home***
- ***Use of transportation***

The doctor did not provide any information for ***Management of finances***.

The doctor checked that ***Social functioning*** is continuously restricted (comment, “patient feels anxious communicating with people, always anger, stressed”).

Assessor Report

In Section B-1, *Mental or Physical Impairment*, the RN wrote that anxiety/depression are the impairments that impact the appellant’s ability to manage DLA (comment, “difficulty going outside - chronic anger issues, unable to tolerate any increase in anger from others, physical - vocal - lack of trust in people - cries easily and frequently”).

In Section C, *Daily Living Activities*, the RN marked the appellant *independent* with all areas for 5 (out of 8) DLA listed on the form:

- ***Personal Care***: the appellant is independent with *Dressing*, *Grooming*, *Bathing*, *Toileting*, *Feeding self*, *Regulating diet*, *Transfers (in/out of bed)*, and *Transfers (on/off chair)*;
- ***Basic housekeeping***: the appellant is independent with *Laundry*, and *Basic Housekeeping*;
- ***Meals***: the appellant is independent with *Meal planning*, *Food preparation*, *Cooking*, and *Safe storage of food*;
- ***Pay Rent and Bills***: the appellant is independent with *Banking*, *Budgeting*, and *Pay rent and bills*;
- ***Medications***: the appellant is independent with *Filling/refilling prescriptions*, *Taking as directed*, and *Safe handling and storage*.

Restricted DLA

For 3 DLA: *Basic Housekeeping*, *Shopping*, *Meals*, and *Social Functioning*, the RN indicates the following restrictions:

- ***Shopping***: the appellant requires continuous assistance in one area, *Going to and from stores* (comment, "needs help to go to stores as is afraid to go out alone, also afraid to speak to employees as may say the wrong thing and anger people so has a friend to answer any questions"). The appellant is independent with the 4 remaining areas of *Shopping*: *Reading prices and labels*, *Making appropriate choices*, *Paying for purchases*, and *Carrying purchases home*.

- ***Transportation***: the appellant is independent with *Getting in and out of a vehicle*, but in regards to *Using public transit*, and *Using transit schedules and arranging transportation* the RN wrote, "does not use - social phobia."

- ***Social Functioning***: the appellant requires *periodic support/supervision* in all 5 areas listed:

  -*Appropriate social decisions*: comment, "easily angered - loss of focus in conversation - inappropriate conversations at times."

  -*Able to develop and maintain relationships:* comment, "close to brother - due to social anxiety does not make friends or participate in social activities."

  -*Interacts appropriately with others*; [same comment as *relationships*];

  -*Able to deal appropriately with unexpected demands*; comment, "increases anxiety";

  -*Able to secure assistance from others*: [no comment provided].

  The RN checked that the appellant has *marginal functioning* with their immediate social network, (comment, "has been abused by family members"). The appellant has *very disrupted functioning* with extended social networks, (comment, "recently accused of theft - one year ago, lost job and friends - was exonerated - had been on probation for a year - was innocent so lack of trust worsened").

  The RN did not provide a response for the questions that ask what support/supervision is required to help maintain the appellant in the community, and whether there are any safety issues/additional comments.

Need for help

Medical Report

In the MR (Part E - *Daily Living Activities*), the doctor did not provide a response when asked *what assistance does your patient need with Daily Living Activities?* In Part B, the doctor check marked *no*, the appellant does not require prostheses or aids for the impairment.

Assessor Report

In the AR, the RN checked that the appellant lives alone. Regarding the continuous assistance needed for *Going to and from stores*, the RN wrote that the appellant needs help due to social anxiety and anger issues; the appellant "has a friend to answer any questions."

In section D - *Assistance Provided for Applicant*, the RN check marked Community service agencies (comment, "sees mental health counsellor/ advocate periodically"). The RN wrote that if help is required but there is none available, the appellant would need "consistent mental health counselling to become well" but is not ready to have constant counselling "as can't make plans or think beyond the present minute."

For Part E - *Additional Information*, the RN wrote that the appellant had a resource worker for ADHD while in school. The RN wrote that the appellant will need a long time to recover due to long-standing problems and will hopefully get better when "able to get consistent counselling, emotional and financial support."

The RN left the section on *Assistance provided through the use of Assistive Devices* blank, then wrote that the appellant could possibly benefit from glasses and hearing aids but needs an optometry check up and hearing test.

For *Assistance provided by Assistance Animals*, the RN checked *no*.

Additional information

Subsequent to the reconsideration decision, the appellant filed a *Notice of Appeal* with a handwritten submission which the panel accepts as argument. Neither party provided additional documents or oral submissions that require an admissibility determination under section 22(4) of the *Employment and Assistance Act*.

The ministry relied on the reconsideration record and provided argument at the hearing. The panel considers both parties' arguments in Part F - *Reasons for panel decision*.

Procedural matter

The appellant did not attend the hearing. The panel confirmed that the appellant had been notified of the date and time for the hearing and teleconference instructions. The panel then proceeded with the hearing in a party's absence as authorized to do under section 86(b) of the Employment and Assistance Regulation.

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PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's decision that found the appellant ineligible for PWD designation was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. The panel's role is to determine whether the ministry was reasonable in finding that the following eligibility criteria in section 2 of the EAPWDA were not met:

• the appellant has a severe mental or physical impairment;

• the appellant's impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform 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 based the reconsideration decision on the following 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 is in a prescribed class of persons or that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

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,

Analysis

Severe mental or physical impairment

To be eligible for PWD designation, the legislation requires several criteria to be met including the minister being satisfied that the applicant has a severe mental or physical impairment. The ministry found the appellant was not eligible for PWD because not all of the criteria were met. "Severe" is not defined in the legislation but in the ministry's view, the diagnosis of a serious medical condition does not in itself establish a severe impairment of mental or physical functioning.

Mental impairment

To assess the severity of a mental impairment, the ministry considers the extent of any impact on daily functioning as evidenced by limitations/restrictions with mental functions and emotion. The ministry does not only look at the diagnosis or a medical practitioner's comment that the condition is "severe" but considers the bigger picture including whether there are restrictions to DLA requiring mental/social functioning and whether significant help is required to manage DLA. The panel finds that an assessment of severity based on mental and social functioning and restrictions to DLA is a reasonable interpretation of the legislation.

Arguments - mental impairment

Appellant

In their submissions (SR, RFR and *Notice of Appeal*), the appellant argued a severe impairment of mental functioning: anxiety, depression, and PTSD are severe because "moods are uncontrollable when I'm stressed." The appellant described a background of severe family violence and abusive relationships and argued that mood disorders and PTSD restrict relationships ("I have no family or friends").

The appellant reported spending most of the time alone and avoiding people because interactions have been marked with difficulty controlling anger and disruptive behaviour ("I'll be in jail for my behaviours"); betrayed trust ("abused mentally by ones you love. I cannot trust no one"); inappropriate communication, and social anxiety and avoiding social interactions. The appellant argued that eating, sleeping, and concentration are significantly impacted ("I can't sleep, eat, concentrate, my mind is cloudy"). The appellant argued also needing PWD support for financial reasons ("in rough shape financially…I'll become homeless soon").

Ministry

The ministry noted that the MR and AR indicate the appellant's mood disorders cause significant deficits/impacts in many areas (emotion, executive function, motivation, memory, and attention/concentration) but argued that the information in the MR and AR establishes a moderate rather than severe mental impairment. The ministry based that opinion on the absence of certain information in the reports; in particular, the doctor did not indicate what

assistance the appellant needs to manage social functioning and the RN did not explain the frequency or duration of the periodic support needed for social functioning or indicate what support/ supervision the appellant needs to be maintained in the community.

The ministry argued that because DLA in relation to a severe mental impairment (*personal care*, for example) were not marked as restricted, it has not been demonstrated that the emotional/cognitive deficits that were identified "restrict your ability to function independently or effectively."

The ministry argued that more weight should be given to the MR that was completed by the doctor because the AR was completed by the RN who had met the appellant only once to fill out the form. The ministry was concerned that the additional impacts to cognitive/emotional function identified by the RN (*major* or *moderate* impacts for *Consciousness* and *Psychotic symptoms*, for example) were not corroborated by the doctor. The ministry argued that the doctor who has known the appellant for 2 years with several visits in the past year "had the opportunity to develop an opinion based on a history of contact, experience, observations, and knowledge of your health."

Panel's decision - mental impairment

Section 2(2) of the legislation requires evidence of a severe impairment. The ministry concluded that the evidence established a moderate rather than severe impairment of mental functioning. The panel has considered the information in the PWD application as well as the submissions for the reconsideration and appeal. For the reasons that follow the panel finds that the ministry's decision was reasonable.

In the MR, the appellant was diagnosed with longstanding mood disorders characterized by "a lot of depression", lack of interest, low mood, decreased appetite and poor sleep. The doctor reported one hospital admission for anxiety/depression and the RN added information about ADHD (the appellant had a resource worker for that condition), and post-traumatic stress (the appellant witnessed extreme family violence that included a murder). No hospital record, or psychological test/ assessment results were included with the PWD medical reports.

Both the doctor and the RN reported *significant* deficits and *major* impacts for *Emotion*, *Executive function*, *Motivation*, *Memory*, and *Attention/concentration*. The RN indicated *major* impacts for other areas as well: *Bodily functions* (in particular, sleep disturbance), *Consciousness* (drowsiness from lack of sleep), *Psychotic symptoms*, and *Other emotional or mental problems* (difficulty managing anger). The doctor's information included "not sleeping well", and anger in relation to poor social functioning ("needs continuous assistance"). The panel notes that the only material deficit or impact that was added to the AR was *Psychotic symptoms* which the RN (and appellant) did not explain.

The panel is willing to give weight to the AR because even though the RN met with the appellant only once, the information on deficits/impacts appears to be based on a thorough assessment, including a separate page of detailed comments. By contrast, the doctor's information lacks sufficient detail, most comment lines/sections were left blank, and the form appears to have been completed quickly as some boxes were not checked.

Despite the additional detail in the AR, and most areas of cognitive and emotional functioning having significant deficits or major/moderate impacts across both of the medical reports, the panel finds that the ministry was reasonable in finding that the information as a whole does not establish a severe impairment of mental functioning. This is because both the doctor and the RN assessed the appellant as independent with most DLA. Although *Social functioning* was continuously restricted (MR), the appellant needed only periodic support with social decisions and interactions (AR).

The panel accepts as reasonable the ministry's argument that activities requiring motivation and attention (e.g., personal care, shopping, and managing finances and medications) would tend to be significantly impacted when there is a severe mental impairment. The ministry argued there would need to be more detail about the periodic assistance required for social functioning and the panel finds that information was reasonably required to confirm a severe mental impairment.

The evidence indicated the appellant suffers from low mood; very poor sleep; social anxiety and isolation, and difficulty controlling anger. It takes the appellant several hours to fall asleep (does not sleep at all 3 nights per week); they have no family or friends; they cannot go out alone and have interacted with the criminal justice system.

Despite needing "consistent counselling" over the long term in order to function, it is unclear why a greater level of support with social decisions, interactions, and demands was not described. It is unclear why the appellant does not require support with daily activities that require motivation and attention such as personal care, and managing finances and medications which may also involve talking to people or going out.

The panel finds that the ministry was reasonable to conclude that the appellant's ability to manage most DLA independently or with periodic support (that was not described in detail) does not support a severe impairment of mental functioning. The panel finds that the ministry's determination that a *severe* mental impairment under section 2(2) of the EAPWDA was not established on the evidence, is a reasonable application of the legislation.

Physical impairment

To assess whether the applicant has a severe physical impairment, the ministry considers information on the degree of restrictions to physical functioning, restrictions to DLA involving movement, and whether the applicant requires significant help or any assistive devices to manage DLA. The panel finds that the assessment of severity based on daily physical functioning is a reasonable interpretation of the legislation.

Arguments - physical impairment

Appellant

The appellant's focus is a mental rather than physical impairment. The appellant did not describe limitations to physical abilities but the record contains two letters from orthopedic surgeons that confirm the appellant had hip and knee ailments in 2012 with a restriction reported for sitting (maximum half an hour on a high chair). The RN said that the appellant can physically walk but is unable to walk alone outdoors due to anxiety.

Ministry

The ministry argued that the appellant does not have a severe physical impairment because the information provided did not indicate the need for any aids/protheses and no limitations were reported in the MR for walking, remaining seated or any other physical abilities.

Panel's decision - physical impairment

The panel finds that the ministry's decision on physical impairment (no *severe* impairment) was reasonably supported by the evidence. The panel has considered the ratings provided by the doctor in the MR for physical functional skills; no restrictions were reported. The appellant can walk 4 or more blocks unaided, climb 5 or more steps unaided; and has no limitations with lifting or remaining seated.

The letters from the orthopedic surgeons regarding hip and knee pain are dated from 2012. The ministry did not mention them in the reconsideration decision and the panel gives them little weight as no recent assessment by the surgeons was provided. The RN explained that the appellant's inability to walk outside alone is due to a mental rather than physical impairment. In addition, the RN indicated that any visual or hearing deficits still need to be assessed so impairments in these areas were not confirmed at the reconsideration.

The evidence in the MR and AR is that physical functions were not significantly impaired and the appellant's submissions describe a mental rather than physical impairment. For these reasons the panel concludes that the ministry reasonably determined that a severe impairment of physical functioning was not established on the evidence and the requirement for a severe impairment under section 2(2) of the EAPWDA was not met.

Restrictions in the ability to perform daily living activities

Subsection 2(2)(b)(i) of the EAPWDA requires the ministry to be satisfied that, in the opinion of a prescribed professional, a severe impairment directly and significantly restricts a person's ability to perform DLA either continuously, or periodically for extended periods. This means that restrictions to DLA must be confirmed by the appellant's doctor or one of the practitioners named in the legislation such as a registered nurse or psychologist.

The term "directly" means that the severe impairment must cause or result in restrictions to activities. The direct restriction must also be significant. This means that not being able to do DLA without a lot of help or support will have a large impact on the person's life.

Finally, there is a time or duration factor: the restriction may be either *continuous* or *periodic* under the legislation. Continuous means that the activity must generally be restricted all the time. The ministry views a periodic restriction as significant when it occurs frequently or for longer periods of time; for example, the activity is restricted most days of the week, or for the whole day on the days that the person cannot do the activity without help or support.

The panel views the ministry's interpretation of the legislation as reasonable. Accordingly, where the evidence indicates that a restriction arises periodically it is appropriate for the ministry to require information on the duration and frequency of the restriction as well as details about the help or support that is needed. With that information, the ministry can be satisfied that the legislative requirement is met.

DLA are defined in section 2(1) of the EAPWDR and are also listed in the MR, with additional details in the AR. Therefore, the doctor or other practitioner completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the applicant's impairments either continuously or periodically for extended periods and to provide additional details. **It is important to note that DLA, as defined in the legislation, does not include the ability to work. In addition, the legislation does not authorize the ministry to base eligibility for PWD assistance on the client's financial need.**

Arguments - DLA

Appellant

In their submissions the appellant argued that low mood/low energy, social anxiety, and difficulty controlling anger and communicating appropriately precludes being around other people. The appellant described having no family or friends, not trusting anyone, being very isolated, and unable to go out alone due to social anxiety.

Ministry

The ministry argued that the appellant's DLA were not restricted either continuously or periodically for extended periods of time based on the assessments by the doctor and RN. The ministry noted that most DLA were marked as *independent* and argued there was not enough evidence to confirm that periodic restrictions were for extended periods as required by the legislation.

Panel's decision - restrictions to Daily Living Activities

The panel has considered the evidence from the doctor and RN in its entirety and finds that the ministry's decision that DLA were not significantly restricted was reasonably supported by the evidence. In the MR, the doctor reported that the appellant was not prescribed any medications that interfere with DLA. Although the RN indicated the appellant has sleep medication (which is not effective), no side effects were reported but the appellant was described as being very tired and drowsy from lack of sleep.

In the MR, the appellant was assessed as independent with all DLA except *Social functioning* which was continuously restricted due to anxiety, anger, and stress. In the AR, extremely disrupted functioning with extended social networks was reported but no safety issues were described even though the appellant was recently involved with the criminal justice system (exonerated from false accusations) and is currently not ready to participate in consistent long term counselling to improve social interactions and avoid angry communication and being targeted by others.

In the AR, the appellant needed periodic assistance with all areas of *Social Functioning* but the frequency and duration of periodic support was not described. The RN indicated the appellant needs consistent, long term counselling which suggests a need for continuous support but at the same time, periodic support for social decisions, relationships, and interactions was checked.

The RN's evidence left unanswered questions. Does the appellant interact with people appropriately a few times a week (or less?) without someone there to monitor the interaction? Do they need someone with them more often than not to assist with social decisions and guide their relationships? The RN wrote that the appellant has inappropriate conversations "at times" due to being easily angered but without more detail about how often the appellant needs support for all areas of social functioning, the ministry was unable to confirm that periodic assistance was for extended periods as required by the legislation.

Regarding other DLA, the doctor did not provide any check mark or information for *Management of finances* but in the AR the RN did not report any restrictions with finances. The doctor did not indicate restrictions for *Daily shopping* and *Use of Transportation* but in the more detailed assessment by the RN restrictions were reported for these DLA. The appellant needed help with going to stores due to being afraid of angering the employees ("saying the wrong thing"). The appellant was able to travel in a car but avoids public transit due to social phobia.

The ministry argued that the restrictions reported for *Shopping* and *Transportation* were not sufficient to confirm that DLA are significantly restricted. The panel finds that the ministry's conclusion was reasonable because all other areas of *Shopping* were independent, in particular, *Paying for purchases* which usually requires interaction with store employees.

The panel has considered the evidence in both the MR and AR and finds that the assessments of DLA indicated the appellant was largely independent with most activities. The panel finds that the ministry's determination that the criteria in subsection 2(2)(b)(i) of the EAPWDA were not met, was reasonable based on the evidence from prescribed professionals.

Help to perform daily living activities

Subsection 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.

Arguments

In their submissions the appellant focused on the need for help in the form of financial assistance [which is not a criterion for PWD eligibility]. In the AR, the RN indicated the appellant receives help with DLA from community service agencies ("periodic counselling") and needs consistent long term counselling support. The RN wrote that the appellant is close to their brother and has a friend to "answer any questions" at stores.

The ministry's position in the reconsideration decision is that because it had not been established that DLA are significantly restricted, it cannot be determined that significant help is required.

Panel's decision - help with Daily Living Activities

The appellant did not describe any help that is provided for DLA, or what help they need for daily activities if none is currently provided. In the MR, the doctor did not indicate the need for any aids for the impairment or an assistance animal to help with DLA.

The evidence indicates that the appellant receives help with DLA from agencies but the frequency of that help was not described. The RN said that the appellant needs extensive counselling to become well but the appellant is not yet ready for constant counselling support.

The RN wrote that the appellant is close to their brother and has a friend to "answer any questions" but it was unclear whether the appellant's brother provides any help with DLA or how often the friend accompanies the appellant to stores. That information would be especially useful in determining whether significant help for DLA is required given that the appellant indicated not having any family or friends to trust and rely on.

Under the legislation, confirmation of direct and significant restrictions to DLA is a precondition for needing help to perform DLA. The panel found that the ministry's determination that significant restrictions to DLA were not established by the information provided was reasonable. The appellant was assessed as independent with most DLA despite significant deficits and impacts in most areas of cognitive and emotional functioning. On review of the

evidence from prescribed professionals (the doctor and RN), the panel finds that the ministry's conclusion that the criteria for help under subsection 2(2)(b)(ii) of the EAPWDA were not met was a reasonable application of the legislation.

Conclusion

The panel considered the information in its entirety and finds that the ministry's reconsideration decision that found the appellant ineligible for PWD designation was reasonably supported by the evidence. The legislation requires all of the criteria to be met. The ministry found that two criteria (age, and duration of impairment) were met.

The ministry was not satisfied that the information in the PWD application established a severe impairment that significantly restricted DLA to the extent that the appellant required significant help to perform DLA. In particular, the evidence from the doctor and RN showed that the appellant was independent with most DLA and the need for periodic assistance with social decisions and interactions did not confirm that the assistance was for extended periods of time. The panel finds that the ministry reasonably applied the legislative requirements to the information that was provided, The panel confirms the reconsideration decision. The appellant is not successful on appeal.

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	
Margaret Koren	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2020-12-18

PRINT NAME	
Sarah Bijl	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2020-12-18
PRINT NAME	
John Pickford	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2020-12-18