

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated November 16, 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 23, 2020 and denied on September 30, 2020. On November 4, 2020, the ministry received the signed *Request for Reconsideration* ("RFR") and completed the review of the RFR on November 16, 2020.
2. An RFR signed by the appellant on November 4, 2020, with a submission from a family member who described the appellant's need for financial assistance and help with finding community activities and employment. The family member explained that the appellant has challenges with numbers ("cannot manage money by herself"); verbal communication ("her verbiage can be very simplistic"); and personal hygiene ("needs reminders") but never received support from the government. The submission stated that the appellant was guided through school with family support, private schooling and a tutor. The appellant is currently spending a few days per week at school [post-secondary].
3. The PWD application comprised of:
  - the *Applicant Information* (self-report - "SR") dated June 15, 2020, in which the appellant described her heart condition ("hole in the heart called Tetralogy of Fallot") and learning disability with resulting restrictions;
  - a *Medical Report* ("MR") dated August 27, 2020, signed by the appellant's general practitioner ("doctor") who has known the appellant for 6 months and has seen the appellant 2 to 10 times in the past 12 months; and an
  - *Assessor Report* ("AR") dated August 27, 2020, also completed by the doctor who based the assessment on an office interview with the appellant and the patient medical chart.
4. A letter from the ministry dated September 30, 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 MR, the appellant was diagnosed with congenital heart disease and developmental disability (onset for both conditions 1992).

Under Section B, *Health History*, the doctor explained that the appellant's congenital heart disease was "Tetralogy of Fallot" repaired when the appellant was a young child. The doctor wrote that the appellant has a growth impediment (small stature) and a developmental disability, "learning disability, mild delayed speech."

***Functional skills*****Self-Report**

The appellant described her learning disability: "I can't read, I have hard time understanding and cannot compromise." The appellant explained that she was in a special class in school because of her learning disability. The appellant added that when she does work, she "can't focus and I have a hard time spelling." The appellant wrote that she sometimes has problems reading and sometimes makes bad decisions and choices. The appellant also described difficulties with DLA [summarized under *Daily living activities*].

Medical Report

Under Section D - *Functional Skills*, the appellant can walk 1 to 2 blocks unaided on a flat surface; climb 5 or more steps unaided; lift less than 5 pounds, and remain seated for 1 to 2 hours.

The doctor checked that the appellant has no difficulties with communication. Under comments, the appellant checked *other* as the cause of her communication difficulties, "I didn't start to talk until I got older." Under *Degree and Course of Impairment*, the appellant wrote, "I will always have problems. My developmental delays will not heal." [panel note, the appellant confirmed at the hearing that she filled in these comment sections. The doctor had left them blank].

When asked if there are any *significant* deficits with cognitive and emotional function (section D-6), the doctor checked *yes* and marked 1 of the 12 listed functions: *Memory* (comment, "subjective: slow learning uptake"). Under Part F - *Additional Comments*, the doctor wrote, "known for a short period but aware of her [family member's] disability challenges."

Assessor Report

Under Section B-2, *Ability to Communicate*, the doctor indicated *good* ability for 3 of the 4 areas listed: *Speaking*, *Writing*, and *Hearing*. The doctor checked *poor* ability for *Reading* and left the *Explain/Describe* section blank.

Under section B-3, *Mobility and Physical Ability*, the doctor marked the appellant *independent* with all 6 of the areas listed: *Walking indoors*, *Walking outdoors*, *Climbing stairs*, *Standing*, *Lifting*, and *Carrying/holding*.

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

- *No impact* in 4 of the 14 areas listed: *Consciousness*, *Psychotic symptoms*, *Other neuro-psychological problems*, and *Other emotional or mental problems*;
- *Minimal impact* in 8 areas: *Bodily functions*, *Emotion*, *Impulse control*, *Insight and judgment*, *Executive*, *Motivation*, *Motor activity*, and *Language*;
- *Moderate impact* in 2 areas: *Attention/concentration*, and *Memory*.

**Daily Living Activities**Self-report

The appellant states that it can be hard to look after herself. She has trouble understanding how to manage money; is unable to read, and sometimes needs to be reminded to have good hygiene,

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 4 of the 10 DLA listed are restricted.

The reported restrictions were:

- **Meal preparation** - continuously restricted
- **Mobility outside the home** - periodically restricted
- **Use of transportation** - periodically restricted
- **Management of finances** - continuously restricted

When asked to explain the periodic restrictions the doctor wrote that the appellant “will require supervision; periodic and situational.”

The doctor indicated that 4 DLA on the list are not restricted either continuously or periodically:

- **Basic housework**
- **Daily shopping**
- **Mobility inside the home**
- **Social Functioning**

The doctor did not provide any information for **Personal self care** or **Management of Medications**.

#### Assessor Report

In Section C, *Daily Living Activities*, the doctor marked the appellant *independent* with all areas for 2 (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*.

#### *Restricted DLA*

For 6 DLA: *Shopping, Meals, Pay Rent and Bills, Medications, Transportation, and Social Functioning*, the doctor indicated the following restrictions with check marks and did not provide any explanation or comments:

- **Shopping:** the appellant requires periodic assistance with all activities: *Going to and from stores, Reading prices and labels, Making appropriate choices, Paying for purchases, and Carrying purchases home.*
- **Meals:** the appellant needs continuous assistance in all areas: *Meal planning, Food preparation, Cooking, and Safe storage of food.*
- **Pay Rent and Bills:** the appellant requires periodic assistance with all activities: *Banking, Budgeting, and Pay rent and bills.*
- **Medications:** the appellant requires periodic assistance with all activities: *Filling/refilling prescriptions, Taking as directed, and Safe handling and storage.*
- **Transportation:** the appellant requires periodic assistance in all areas: *Getting in and out of a vehicle, Using public transit, and Using transit schedules and arranging transportation.*
- **Social Functioning:** the appellant is independent with 2 of the 5 areas listed: *Able to develop and maintain relationships, and Interacts appropriately with others.*

-The appellant requires *periodic support/supervision* in 3 areas: *Appropriate social decisions*; *Able to deal appropriately with unexpected demands*; and *Able to secure assistance from others*.

-The doctor checked that the appellant has *marginal functioning* with both her immediate and extended social networks.

-The doctor did not provide a response to the question about any safety issues.

### ***Need for help***

#### Medical Report

Under *Health History* (Part B), the doctor marked *no*, the appellant does not need any prostheses or aids for the impairment. In Part E - *Daily Living Activities*, the doctor explained the *periodic assistance* needed for *Mobility outside the home*, and *Use of transportation*, "patient will require supervision; periodic and situational." The doctor was asked specifically, *what assistance does your patient need with Daily Living Activities?* The doctor wrote, "supervision with finances, transportation, and meal preparation."

#### Assessor Report

In the AR, the RN checked that the appellant lives with family. Regarding the periodic support/supervision the appellant requires for *Social Functioning*, the doctor wrote that the appellant needs help from family members, close friends/contacts, and a social worker to be maintained in the community. The doctor did not provide an explanation for the help needed to manage the other DLA with reported restrictions but wrote, "requires periodic supervision for transportation and financial care."

In section D - *Assistance Provided for Applicant*, the doctor checked that family and friends help the appellant with DLA. The doctor left the section on *Assistance provided through the use of Assistive Devices* blank. For *Assistance provided by Assistance Animals*, the doctor checked *no*.

#### *Additional information*

Subsequent to the reconsideration decision, the appellant filed the *Notice of Appeal* with an attached letter from the appellant and her advocate (family member) dated November 20, 2020. The panel accepted the letter as argument.

Neither party provided additional documents or oral evidence that require an admissibility determination under section 22(4) of the *Employment and Assistance Act*. The ministry relied on the reconsideration decision and both parties provided argument at the hearing. The panel considers both parties' arguments in Part F - *Reasons for panel decision*.

**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 her submissions (SR, RFR and *Notice of Appeal*), the appellant argued a severe impairment of mental functioning because of her learning and developmental disabilities. The appellant submits that she has worked hard to overcome her challenges without being "part of the system" but there is a chance she could potentially fall if left to her own accord without financial support or help to find a job that she is capable of doing.

The appellant argued that the impairment "sometimes" restricts mental functions, especially reading and math, as well as the ability to focus and compromise, and make good choices and decisions. At the hearing, the appellant said that she thinks her learning disability is dyslexia but she has not had any psychological tests or assessments to confirm her restrictions. The appellant said she is not sure why she was never tested but a close family member also has a learning disability and dyslexia.

The appellant stated that she is currently in college two days per week and is comfortable using a computer for school. The appellant explained that she did not have her own doctor so she went to her family member's doctor to get the PWD forms filled out. The appellant confirmed that she only saw the doctor once even though the doctor said they had seen the appellant "2 to 10 times." The appellant explained that she is a new patient but the doctor is familiar with her family member's disability.

### *Ministry*

The ministry argued that the “limited information” from the doctor does not support a severe degree of mental impairment because only one significant deficit was reported for cognitive and emotional functioning in the MR (*Memory*), and no major impacts were reported in the AR. The ministry noted that *Attention/concentration* and *Memory* were the only functions that were moderately impacted by the appellant’s learning/developmental disability (AR) and most areas of cognitive and emotional functioning were assessed as *No impact* or *Minimal impact*.

The ministry further argued that the appellant’s *poor* ability with reading (AR) was not supported by the doctor’s assessments of DLA which said that the appellant was independent with activities that involve reading. The ministry acknowledged that the appellant has some difficulties with memory, learning, and reading but argued the doctor provided “very limited information” about the situational assistance the appellant requires for activities.

In response to questions at the hearing, the ministry confirmed that in PWD eligibility decisions, more weight is given to the doctor’s information than the appellant’s submissions but the decision maker assesses all of the evidence. The ministry stated that testing results could be included in the assessment. The ministry said it cannot give any medical advice but testing is recommended because “it might help explain what the disability is” and give more information on what help the appellant could benefit from.

The ministry explained that it requires detailed information about “periodic support” to gauge the severity of the impairment but in the MR and the AR the doctor just “ticked the boxes” and did not add anything “even though the instruction book says to add it.” The ministry explained that the decision maker does not give more weight to the AR versus the MR but looks at the information as a whole and cross checks the two reports for consistency.

The ministry explained that the purpose of the MR is to give an overview of the impairment and the assessor has the opportunity to add further detail in the AR. The ministry explained that they are not saying that the appellant does not have a disability but the limited information in the reports was not enough to show that the appellant’s disability significantly impacts her daily functioning resulting in a severe impairment.

### ***Panel’s decision - mental impairment***

Section 2(2) of the legislation requires evidence of a severe impairment. The ministry concluded that the evidence from the doctor did not establish a 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 a mental impairment: developmental disability and learning disability but the appellant’s communication ability was good in most areas (“mild” speech delay). The doctor did not indicate the speech problems reported by the appellant (unable to talk until she was older, and “verbiage can be very simplistic”).

The appellant’s reading ability was marked as *poor* but the doctor indicated that only periodic assistance was required with reading labels, schedules, medication containers, etc. The appellant also testified that she is comfortable using a computer for school, a task that can involve reading and following instructions.

Under *Additional Information* in the AR, the doctor described the family member’s disability (“mild disability challenges”) but did not comment on whether there was a hereditary component that led to the appellant’s impairment or whether the appellant’s impairment was also mild. The rest of the information on cognitive/emotional functioning suggests a mild impairment because the doctor indicated there was no significant deficit in most areas of cognitive/emotional functioning (AR).

Further, the appellant's impairment had only a mild impact or no impact for most cognitive and emotional functions. The appellant said that she sometimes makes bad decisions/poor choices but the doctor did not indicate any significant deficit or impact with *Insight and judgment*.

The doctor described the appellant's impairment in the area of *Memory* as significant (MR comment, "subjective" due to "slow learning uptake") and having a *moderate* impact (AR). The doctor did not add further details about the appellant's challenges with memory and the appellant indicated that she sometimes needs reminders for only one activity (hygiene).

The evidence was that the appellant has navigated her learning and developmental disabilities without any formal testing or help from professionals other than tutors at school. The appellant said at the hearing that there was a worker who assisted the family but the person wasn't a social worker. In her written submissions, the appellant and advocate described the appellant as "sometimes" needing help with cognitive functions such as reading, tasks involving numbers, and decision making, but most of the appellant's submissions focused on the need for financial and employment support rather than restrictions with learning and cognition.

The panel finds that the ministry reasonably concluded that the evidence as a whole did not show a severe impairment of the appellant's cognitive and emotional functions. Accordingly, the ministry was reasonable in applying the legislation to find that a *severe* mental impairment under section 2(2) of the EAPWDA was not established on the evidence.

### ***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 was on her learning disability rather than the physical impairments that were noted in the MR (congenital heart disease and growth impediment). The appellant described being born with a hole in her heart and having a surgical repair when she was young. The appellant did not talk about restrictions to her physical abilities. When asked at the hearing about any physical restrictions, the appellant argued that she has restrictions with walking and outdoor mobility (maximum 1 to 2 blocks - MR) because her heart condition "makes it a little hard to do physical things...gets tired...heart pounds if I walk too far."

##### *Ministry*

The ministry argued that the appellant does not have a severe physical impairment because the information in the PWD medical reports did not indicate the need for any aids/protheses, and all physical functions were marked *independent* in the AR despite restrictions in the MR for walking, lifting, and remaining seated.

***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 appellant has a heart condition (*Teterology of Fallo*) as well as a growth impediment (short stature) that could potentially cause some physical restrictions. However, the main limitation with the evidence is that the doctor's information on physical restrictions was inconsistent between the MR and the AR as explained under the headings that follow.

As well, the appellant confirmed at the hearing that she had added some check marks and comments to the MR. In reply, the ministry explained that the MR and AR need to be filled out by the medical person and the ministry cannot accept check marks or comments on those forms from the client. The panel finds the ministry's explanation reasonable because the client has the opportunity to provide their own information in the SR as well as additional submissions for a reconsideration or appeal of the ministry's decision.

***Walking***

In the MR, the check mark in the doctor's lighter ink indicated a restriction for walking (1 to 2 blocks unaided on a flat surface) which is a moderate restriction on the rating scale. In the AR, the doctor indicated the appellant needs periodic support with *Mobility outside the home* (the support needed is "situational") but there were no examples of situations where the appellant would need help. No additional details were provided.

The appellant reported that she gets tired and her heart pounds if she walks too far but she did not indicate the need for an assistive device. In the AR, the appellant was *independent* with walking (indoors and outdoors) and no assistive devices were prescribed by the doctor. The panel finds that the ministry reasonably determined on the evidence that the appellant did not have *significant* restrictions with mobility.

***Stairs***

In the MR, the doctor indicated a moderate restriction for stairs (2 to 5 steps) but in the AR the appellant was independent with *Climbing stairs*. The appellant's check mark in the MR (darker ink) indicated the lowest level of restriction for stairs (5+ steps). Based on the evidence from the doctor and the appellant, the panel finds that the ministry reasonably determined there was no significant restriction for climbing stairs.

***Lifting***

In the MR, the doctor does not appear to have given a check mark for *Lifting* but a significant restriction (able to lift less than 5 pounds) was checked by the appellant (darker ink). In the AR, the doctor marked *Lifting independent* and there was no additional detail on lifting from either the doctor or the appellant to confirm that lifting is restricted because of the appellant's physical impairments. The panel finds that the ministry reasonably determined on the evidence that the appellant did not have a significant restriction with lifting.

***Sitting***

In the MR, there does not appear to be any check mark from doctor (lighter ink) for *how long can the person remain seated*. The appellant checked 1 to 2 hours (darker ink) which is a low to moderate level of restriction on the rating scale. The appellant did not explain why her physical impairment would result in any restriction with sitting. The panel finds that the ministry reasonably determined on the evidence that there was no significant restriction for *remain seated*.

*All physical functions*

As the ministry noted, all physical functions were marked *independent* in the AR including the ones not assessed in the MR form: *Standing*, and *Carrying and holding*. Neither the doctor nor the appellant indicated the need for assistive devices for any physical functions. The panel finds that the ministry was reasonable to conclude that the evidence did not establish that the appellant's heart and growth conditions resulted in a severe impairment of physical functioning. The panel finds that the ministry reasonably determined that 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 psychologist or occupational therapist.

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 her submissions the appellant argued that she sometimes needs reminders about good hygiene and she has trouble managing money and is unable to drive. The appellant also said she makes bad decisions and choices sometimes. In the RFR submission, the appellant's family argued that the appellant "cannot manage money by herself without guidance and when challenges get to be too much for her, needs reminders about personal hygiene."

At the hearing, the appellant explained that she will remember to take a shower but then she gets sidetracked doing something else and needs to be reminded. The appellant said she is in school during the week but on the weekend she helps her family clean the house and look after younger family members.

Regarding her problems with numbers and managing finances, the appellant explained that she can read prices but she cannot count how much money she should pay. However, she sometimes goes to stores by herself but it is better when she has her family there to help her.

### *Ministry*

The ministry argued that it was difficult to establish the extent of the restrictions to DLA based on the information from the doctor. In particular, the doctor reported that the appellant needs periodic assistance support with most DLA but did not explain how often or for how long the appellant needs the help. The ministry argued that without information on the nature, frequency, and duration of periodic support, it is “difficult to establish that you are significantly restricted periodically for extended periods” as required by the legislation.

The ministry argued the information for DLA that were *continuously restricted* in the MR was not sufficient to confirm significant restrictions to DLA because there was no explanation “on how your medical condition directly restricts you in this area.” The ministry noted that the appellant required only *periodic assistance* with *Pay Rent and Bills* (AR - no details provided) despite that DLA (*Management of finances*) being continuously restricted in the MR.

Regarding *Social Functioning*, the ministry argued that the information from the doctor did not establish a significant restriction because despite marginal functioning with social networks (AR), there was no restriction for *Social Functioning* in the MR. The ministry noted a need for only periodic support/supervision in the AR, but argued that the check marks were insufficient without any explanation or description.

### ***Panel’s decision - restrictions to Daily Living Activities***

The panel has considered the evidence from the doctor in its entirety and finds 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. The appellant reported a restriction for *Personal Care* (sometimes needs reminders for hygiene) but the doctor marked the appellant independent with all areas of Personal care in the AR and did not provide any check mark or comments for *Personal self-care* in the MR.

In the MR, the appellant was assessed as independent or only periodically restricted with 6 out of the 8 DLA that had check marks. Although periodic support was described as “situational” (*Mobility outside the home*, and *Use of transportation*), the doctor did not give any detail about which situations gave rise to a need for help or support. As noted earlier, the appellant was assessed as being independent with *Walking outdoors* despite being limited to walking 1 to 2 blocks. Although the appellant said she cannot drive it was not confirmed that she cannot use public transportation. The appellant needed only *periodic assistance* with *Using transit schedules and arranging transportation* (AR) despite her learning disabilities and deficits with reading.

In the AR, most DLA required *periodic support* but as the ministry stated, the doctor did not explain how often or for how long the appellant needs support with *Shopping*, *Social functioning*, etc. The panel finds that the ministry’s argument that it was unable to determine on the evidence that periodic restrictions were for extended periods was a reasonable application of the legislation. *Shopping* was also not restricted in the MR.

Furthermore, the information for *Social Functioning* was not consistent between the MR and AR. In the AR, most areas of *Social functioning* required periodic support or supervision even though *Social Functioning* was not

restricted in the MR. Based on the lack of detail about periodic support as well as inconsistent information for *Social Functioning*, the panel finds that the ministry reasonably determined there was not enough evidence to confirm significant restrictions to DLA under subsection 2(2)(b)(i) of the EAPWDA.

For continuously restricted DLA, the evidence from the doctor either lacked detail or was inconsistent between the MR and AR as follows:

#### *Meals*

In the AR, the doctor did not provide any detail about the continuous assistance required for all areas of *Meals*. The panel finds that without more information, the ministry was reasonable to conclude that it was unclear how the appellant's impairment impacted her ability to plan meals, and prepare and cook food. As noted earlier, no significant deficits or impacts were reported for *Executive function* and neither the doctor or appellant indicated whether the moderate impacts for *Attention/concentration* and *Memory* (AR) affected the appellant's ability to plan or prepare meals.

#### *Finances*

The appellant highlighted her difficulties with counting and managing money throughout her submissions but the doctor did not provide clear and consistent information for *Management of Finances* between the MR and AR. In the MR, *Management of Finances* was continuously restricted, but in the AR, the appellant required only *periodic assistance* with *Banking, Budgeting, and Pay Rent and Bills*. At the hearing, the ministry asked, "how can [the appellant] be continuously restricted with finances but only need periodic assistance with paying bills?" The panel finds that the ministry was reasonable in finding that the evidence was not clear enough to confirm the appellant had a significant restriction with managing her finances, either continuously, or periodically for extended periods as required by the legislation.

#### *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 her submissions the appellant focused on the need for financial support and help with finding a job [which are not criteria for PWD eligibility]. As noted above, the person has to need significant help with specific DLA (*Personal Care, Shopping, Pay rent and bills, etc.*) in order to meet the help requirement under the legislation.

In the MR and AR, the doctor indicated the appellant needs supervision with finances, transportation, and meal preparation, and help from family, friends, and a social worker for her marginal social functioning. The ministry's position in the reconsideration decision was that because it has 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 described needing help with personal care, and finances "sometimes" but said she can still go to stores by herself although it is easier when family comes with her. In the MR, the doctor did not indicate the need for any aids for the impairment or an assistance animal to help with DLA and there were no details about the frequency or nature of periodic help or support to confirm that the appellant needs significant help with DLA.

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 because the appellant was assessed as needing periodic help or support with most DLA without further explanation and there were inconsistencies in the information in the MR and AR. On review of the evidence from the prescribed professional (the doctor), 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, most areas of cognitive and emotional function had no significant deficits and no major impacts based on the information from the doctor.

The appellant's evidence was that she is able to function in her daily life and attend school with family support and with no current help from a psychologist, social worker or other professional. The nature and impacts of the appellant's learning and developmental disabilities were unclear on the evidence because the appellant has never been tested. 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)

2020-12-23

PRINT NAME

Janet Ward

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020-12-23

PRINT NAME

Diane O'Connor

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020-12-23