

APPEAL NUMBER
2021-00109

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated May 6, 2021, 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"). At the reconsideration, the ministry found the appellant met the requirements for age, severe impairment (physical impairment), restrictions to daily living activities ("DLA"), and need for help, but was not satisfied that a medical practitioner had confirmed that the impairment is likely to continue for at least 2 years. Although the ministry found that the requirement for a severe impairment was met based on the appellant's physical impairment, the ministry was not satisfied that the appellant has a severe mental impairment as well.

The ministry 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 a complete PWD application was received by the ministry on March 19, 2021. On March 24, 2021, the ministry denied the application, finding that the appellant met only one of the criteria for PWD designation (Age - the appellant is over 18). On April 3, 2021, the appellant submitted a *Request for Reconsideration* ("RFR"). On May 6, 2021, the ministry completed the review of the RFR finding that the appellant met all but one of the PWD criteria. The ministry was still not satisfied that a medical practitioner had confirmed that the impairment will continue for at least 2 years as required under section 2(2)(a) of the EAPWDA.
2. The RFR signed by the appellant on April 23, 2021. The following documents were included with the RFR:
 - A typed submission from the appellant (5 pages) with argument regarding her mental and physical impairments.
 - A questionnaire seeking information about the appellant's physical impairment. Hand-written answers were provided by the appellant's neurosurgeon ("Dr. S.") who signed the form on April 21, 2021. Dr. S. describes continuous restrictions to the appellant's physical functions and ability to perform DLA. [Panel note: The appellant confirmed at the hearing that the questionnaire form was prepared by her advocate. The panel notes that there is no question on the form that asks how long the impairment is expected to last.]
 - A letter from the appellant's psychiatrist ("Dr. O.") dated December 11, 2020, confirming that the appellant suffers from Major Depressive Disorder, Generalized Anxiety Disorder and Obsessive-Compulsive Disorder ("OCD"). The letter states that the appellant takes medications and attends psychotherapy sessions to manage her symptoms but has "ongoing symptoms" and "needs to continue medication and psychotherapy."
3. The appellant's PWD application comprised of:
 - the *Applicant Information* (self-report - "SR") dated December 7, 2020;
 - a *Medical Report* ("MR") dated January 28, 2021, completed by the Dr. S. (neurosurgeon) who indicates having known the appellant since September 2020. Dr. S. states that the form was filled out via a telephone assessment due to Covid-19.
 - an *Assessor Report* ("AR") dated December 1, 2020, completed by a Registered Nurse ("Nurse M.") who met the appellant once for the purpose of the assessment.
4. The ministry's PWD *Decision Summary* with attached letter dated March 24, 2021, in which the ministry found that the appellant did not meet any of the criteria for PWD designation except the Age requirement.

Summary of relevant evidence from the application:

SR

The appellant describes her mental health diagnoses and says that she tends to self-isolate due to anxiety. The appellant says she feels "different" every day and tries to soothe herself, work with a psychiatrist (every 2 weeks as permitted during the pandemic), and take medications to manage her depression.

Regarding the duration of her physical impairment, the appellant says that she has suffered from osteo-arthritis and narrowing discs in her neck "for several years." The appellant indicates the condition has gotten progressively worse because she can no longer do activities she once enjoyed such as cooking and gardening.

The appellant states that she has a Magnetic Resonance Imaging ("MRI") test coming up because her doctor is considering surgery. However, when surgery was suggested in the past, the appellant reports she was too fearful to go through with it. The appellant says she gets "no relief" due to the combination of anxiety and osteo-arthritis and life is a challenge for her every day. The appellant reports suffering from "extreme fatigue" and having to take a lot of naps throughout the day as simple tasks make her "extremely exhausted."

MR

Diagnosis

In the MR (section A), the appellant is diagnosed with physical impairments: Cervical disc herniations, and Nerve compression.

Degree and course of impairment

In section C of the MR, the doctor is asked to answer the question: *Is the impairment likely to continue for 2 years or more from today?* The form has *Yes* or *No* boxes for the doctor to check as well as a space for any comments. Dr. S. checked *No*, and wrote, "assuming she has benefit from proposed surgery."

Mental impairment

In section D, *Functional Skills*, question 6 asks whether there are *any significant deficits with cognitive and emotional function?* Dr. S. checked *No*. The doctor filled out section E - Daily Living Activities in relation to the appellant's physical impairment. The doctor left *Additional Comments* (section F) blank.

AR

The ministry notes that Nurse M. completed the AR before the MR was completed by Dr. S. Nurse M. would not have seen the MR report at the time of the AR assessment.

Mental impairment

Nurse M. states that anxiety/depression causes the appellant to socially isolate, with an over-active mind, over-thinking things and "constantly reorganizing." The appellant needs physical/emotional/mental support to leave her home and go places.

Nurse M. checks on the form that the appellant's mental impairment impacts 8 of the 14 areas of cognitive and emotional functioning listed in section B-4 of the AR:

- *Emotion*: major impact
- *Bodily functions* and *Consciousness*: moderate impact
- *Impulse control, Attention/concentration, Executive, Memory, Motivation*: minimal impact

Nurse M. checked *No impact* for *Insight and judgment, Motor activity, Language, Psychotic symptoms, Other neuro-psychological problems, and Other emotional or mental problems.*

Nurse M. reports that the appellant requires periodic assistance/support from another person for *Shopping*: comment, "likes to shop where she knows there will be limited people about as it increases her anxiety." The appellant also needs periodic support for *Social Functioning* (appropriate social decisions and interacting with others) due to her anxiety: comments, "stays at home, socially isolates, fears the unknown and overthinks potentially dangerous situations. Maintains relationships with certain people through social media...Interacts when she has to but generally isolates when she's around too many people, OCD acts up and she is unable to think or concentrate clearly."

Nurse M. indicates the appellant has marginal functioning with her extended social network: comment, "Barely leaves home due to anxiety/decreased motivation/fear of Covid." Nurse M. states that the appellant requires emotional support from family to manage her activities, and she talks to a community mental health counsellor every 2 weeks.

Degree and course of impairment

In section B-2 (*Ability to Communicate*), Nurse M. indicates the appellant's ability to write has declined due to the physical impairments: comment, "writing is not good anymore due to pain, numbness, and tingling in the hand, limited to 5 minutes at a time."

Under *Additional Information* (section E of the AR), Nurse M. states that the appellant has had osteo-arthritis in her neck for the past 6-7 years, "progressively worse as it is chronically restricting activity, causing numbness and pain." Nurse M. states that the appellant requires surgery but is anxious about potential complications. The appellant has noticed increased neck pain as she gets older.

Nurse M. reports that OCD was diagnosed 2 years ago when a close family member became ill. Nurse M. writes that while medications and breathing techniques help to control the symptoms, "OCD is not cured, one only tries to best manage the disorder." While the appellant takes medications and speaks to a counsellor regularly, she realizes that she has "a lot of personal work to do" but her progress is affected by "ongoing physical symptoms" and illness among family members/friends. Nurse M. writes that it is "unknown how long or when [the appellant] will become functionally better."

Additional submissions

Subsequent to the reconsideration decision the appellant submitted new evidence to the Tribunal requiring an admissibility determination under section 22(4) of the *Employment and Assistance Act*. The appellant provided a letter from her psychiatrist, Dr. O. and a functional assessment by a Registered Social Worker ("RSW") both dated June 15, 2021.

1. The letter from Dr. O. summarizes the appellant's mental health conditions (depression and anxiety disorders, and OCD) and states that "these conditions run a chronic course and likely to continue for more than 2 years." Dr. O. states that over the course of a year and a half the appellant's mental state has been variable and she has required changes in her medication and feels drowsy during the day. "The patient will require medication and psychotherapy on an ongoing basis and will need to be monitored via outpatient reviews." The letter states that the appellant has had 9 appointments since her first contact with Doctor O. in December 2019 and she has further appointments scheduled.

The letter states that the appellant's conditions are severe to the extent that they affect her cognitive abilities. The appellant's impairment is continuous and she requires support to complete DLA. The appellant is "severely anxious" and "constantly worries a lot about lots of things including psychosocial issues and health problems." The appellant's concentration, attention, energy, and motivation are affected and her ability to interact socially is impaired. The appellant's depression is maintained by psychosocial stressors and "chronic back and neck pain." The appellant "is unable to maintain her maximal functional ability" or maintain "a reasonable quality of life" without support.

2. The RSW indicates conducting a telephone interview with the appellant on June 7 and 11, 2021. The RSW reviewed the appellant's medical chart information, the consultations with Dr. O., and the PWD application. While the assessment was primarily to gather more information on how the appellant's physical and mental health conditions affect her ability to do DLA the RSW provides the following information regarding the appellant's mental, emotional and social functioning:

Bodily functions: The RSW describes the impact as moderate. The appellant's anxiety and depression cause the appellant to overeat and also lead to a lack of appetite at times. The OCD symptoms cause the appellant "to spend a lot of time chewing her food, and she worries excessively that she could choke."

Emotion: The appellant's mental health conditions have a major impact due to her response to pain, lack of motivation, and anxiety around leaving the home. The appellant does not go out and exercise as much as she used to and her anxiety prevents her from leaving the home unless she has to for necessities. The appellant reported excessive worry and feeling overwhelmed "every day" and she often feels as though she is going to vomit.

Motivation: The appellant's depression has a major impact on her motivation as she often has low energy and a lack of motivation to get dressed, groom herself, or leave the home. The appellant needs to take frequent breaks throughout the day including naps of up to 3 hours, due to feeling exhausted from pain.

Motor activity: OCD has a moderate impact on motor activity as the appellant reported "ritualistic behaviour around chewing." The appellant spends a significant amount of time chewing her food a certain number of times because of her fear of choking. It takes the appellant up to 30 minutes to eat a bowl of cereal due to her worry about choking and her worry about breaking a tooth.

Social functioning: Due to anxiety and depression, the appellant requires periodic support when dealing with unexpected demands. The appellant requires her advocate's assistance to deal with the stress of navigating government systems which are very overwhelming for her. The appellant has marginal functioning with her immediate and extended social networks as she typically avoids socializing in person or leaving her home due to anxiety, lack of motivation, and low energy unless she has to for necessities.

Admissibility of doctor's letter and RSW functional assessment

The ministry did not raise any objections to the new letter or the assessment. The panel admits these documents as evidence under section 22(4) of the *Employment and Assistance Act*. The panel finds that the additional documents are admissible because they provide an update on the appellant's conditions and include in depth detail about the resulting limitations. The information is therefore reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The ministry provided argument in the reconsideration record and at the hearing and did not submit any new evidence.

Testimony at the hearing

At the hearing, the appellant provided more information about her medical conditions and the support she receives from her medical team. She said her family doctor is in another community and referred her to both the neurosurgeon and the psychiatrist, but it was difficult to get the PWD forms filled out due to limited medical services during the pandemic.

In response to questions, the appellant explained that her OCD "has been there forever" and although she has struggled with anxiety and depression as well, they were not diagnosed until 2 years ago when the appellant went through a family crisis. The appellant explained that her family issues made her realize she needed help with anxiety and depression.

In response to questions about the surgery that was recommended for her neck and back pain, the appellant said there has been no follow up on a date for the surgery due to her anxiety about having the operation "on a sensitive area of the spine." When asked if it is possible that she won't proceed with the surgery the appellant replied, "not sure", because of her anxiety and the delays caused by Covid-19.

Admissibility of oral evidence

The ministry did not raise any objections to the appellant's testimony. The panel admits the testimony as evidence under 22(4) of the *Employment and Assistance Act*. The panel finds the appellant's testimony is admissible because it provides further background information and an update on the proposed surgery. The panel finds that the information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Procedural matters

The appellant attended the hearing with a legal advocate. With the consent of the appellant, a ministry observer attended the hearing for training purposes. The Tribunal granted an adjournment from the original hearing date of June 14, 2021, as requested by the appellant to obtain additional information from her medical team.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's decision to deny the appellant PWD designation is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. Specifically, was the ministry reasonable in finding that the eligibility criterion for duration of impairment (impairment *to continue for a least 2 years*) in section 2(2)(a) of the EAPWDA was not met? Further, was the ministry reasonable to conclude that a severe mental impairment was not established on the evidence?

The ministry based the reconsideration decision on the following legislation:

EAPWDA

2 (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

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)*.

Analysis

Impairment likely to continue for at least 2 years

Arguments - duration of physical impairment

The ministry says that a medical practitioner (Dr. S. in the MR or Dr. O. in the submissions for the reconsideration) has not confirmed that the 2-year duration requirement was met as required by the legislation. The ministry notes that Dr. S. checked the *No* box in the MR when asked if the impairment is likely to continue for 2 years or more. The ministry acknowledges that Dr. S. qualified the answer by indicating the duration of the appellant's physical impairment depends on "benefit from proposed surgery."

In response to questions at the hearing, the ministry argued that "continuous" restrictions on their own do not confirm the duration of the impairment into the future. The ministry said it is up to the PWD adjudicator "to interpret what continuous means" and the ministry is looking for the doctor to check mark *Yes* on the form or to spell out "2 years or more" in the space for comments. The ministry argues that the check mark requirement is in accordance with the language used in the EAPWDA. In response to a question, the ministry said they did not know if the adjudicator would have taken into account any delay due to Covid-19 in relation to the surgery that the neurosurgeon recommended for the appellant.

In her submission for the reconsideration, the appellant argues that her osteo-arthritis is a chronic, progressive condition that she has already struggled with for several years to the point that she can no longer do activities that she used to enjoy. The appellant argues that the assessment by Nurse M. confirms the chronic and progressive nature of the condition.

Legislative requirement

The legislation requires all of the criteria in section 2 of the EAPWDA to be met to be eligible for designation as a PWD. Section 2(2)(a) requires a medical practitioner or nurse practitioner to confirm that the applicant's impairment is likely to continue for at least two more years.

The legislation does not specify the starting point for the assessment of the 2-year period but in section C-1 of the MR, the medical practitioner is asked to indicate whether the impairment is likely to continue for 2 years or more "from today." The doctor signed the MR on January 28, 2021. The legislative test is forward-looking and in the circumstances of the appellant, the appellant's impairment should persist until late January 2023 or beyond to meet the legislative requirement.

Panel's decision - duration of physical impairment

In section C-1 of the MR, Dr. S. checked *No* when asked if the impairment will continue for 2 years but qualified the answer with "assuming she has benefit from proposed surgery." The ministry indicates it interpreted Dr. S.'s answer to mean that the appellant's physical impairment has not been confirmed to continue for at least 2 more years. In the panel's view, the ministry's interpretation is unreasonable because the doctor is implicitly saying yes, the impairment will last for 2 years. But if the appellant has surgery and if the surgery provides a benefit, it is possible the physical impairment will not continue for 2 years. The appellant's evidence is that it was difficult to get a medical appointment during the pandemic except by telephone, and surgery had already been delayed by her anxiety as well as by the pandemic.

The AR was filled out by Nurse M., in advance of Dr. S. completing the MR, and the initial information from Nurse M. indicates the appellant has had osteo-arthritis for 6-7 years with worsening function over time and with age. At the reconsideration, the ministry accepted Dr. S.'s information that the appellant has a severe impairment of physical function with continuous limitations and restrictions.

While the 2-year duration of the impairment has to be confirmed by a Medical Doctor, rather than a Registered Nurse to meet the legislative requirement, the panel finds that the ministry was not reasonable to find that Dr. S. has not confirmed that the physical impairment would not continue for 2 more years. The panel finds that it was not

reasonable for the ministry to base its findings solely on a check mark in the MR form. The panel notes that while the medical practitioner provides PWD medical information on the forms prescribed by the minister, the ministry adjudicator is required to look at the information as a whole and make a global assessment of the evidence in the interest of fairness.

In the MR, Dr. S. has diagnosed the appellant with chronic, progressive physical impairments that the ministry accepts are severe and significantly restrict the appellant's physical functions and DLA. The evidence is that the appellant has not firmly committed to having surgery and the scheduling and results of any surgery are also unknown. The new letter from Dr. O., submitted on appeal, states that the appellant has chronic physical conditions.

The panel finds, on the balance of probabilities, and based on a global assessment of the evidence (including additional details from the appellant and Nurse M.) that Dr. S.'s information confirms a longstanding impairment that will continue for at least 2 more years. The panel finds that ministry's application of section 2(2)(a) of the EAPWDA was not reasonable in the circumstances of the appellant.

Arguments - duration of mental impairment

Regarding her mental health conditions, the appellant notes that in the RFR submission, Dr. O. indicates "ongoing symptoms" and the need to continue medications and psychotherapy. The appellant notes that the new letter from Dr. O., submitted on appeal, spells out that the mental impairments are chronic and will continue for at least 2 more years.

In the reconsideration decision, the ministry states "it is important to note that Dr. O. does not provide his opinion of the duration of for how long your mental impairment is likely to continue." The ministry did not object to the new letter from Dr. O. but did not make any submissions on it.

Panel's decision - duration of mental impairment

Based on the 2 letters from Dr. O., the panel finds that the ministry's conclusion that a medical practitioner has not confirmed the appellant's mental impairments will continue for 2 years or more was unreasonable. Dr. O. states in both letters that the appellant is diagnosed with mood disorders (anxiety and depression) as well as OCD. Dr. O. notes in the RFR letter that the appellant's symptoms and treatments are ongoing.

In the AR, Nurse M. provides information about the nature of the appellant's mental health conditions, explaining that OCD is "not cured" but only managed; that the appellant has "a lot of personal work to do" and that the appellant's mental health conditions are exacerbated by pain from the appellant's chronic physical impairment. In the letter submitted on appeal, Dr. O. spells out that the appellant's mental health conditions are chronic and "likely to continue for more than 2 years."

For these reasons, the panel finds that the ministry's application of section 2(2)(a) of the EAPWDA was not reasonable in the circumstances of the appellant. Based on the totality of the evidence, Dr. O., a medical practitioner under the legislation, has confirmed that the mental impairments are likely to continue for at least 2 more years.

Severe mental 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 legislative requirement for severe impairment was met because the ministry found that the appellant has a severe physical impairment. The appellant argues that she also has a severe mental impairment on the basis of her mental health conditions and their impact on her life. The ministry was not satisfied that the information provided with the PWD application and RFR demonstrated a severe mental impairment.

"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 functioning. To assess the severity of a mental impairment, the ministry considers the extent of any impact on daily functioning as shown 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 ("mental DLA") and whether significant help is required to manage those DLA. The panel finds that an assessment of severity based on cognitive and social functioning and restrictions to DLA is a reasonable interpretation of the legislation.

Arguments

Appellant

The appellant argues she provided sufficient documents to establish a severe mental impairment. The appellant says she explained that she self-isolates and can rarely go out alone; feels "different" every day, works with a psychiatrist and a counsellor as well; takes medications for her anxiety and depression; has OCD symptoms that make her mind race and over-think things, and suffers from extreme fatigue in response to pain and depression. The appellant argues that the ministry should not give the report from Dr. S. (MR) weight in terms of a mental impairment because although Dr. S. states the appellant is taking anxiety medications, [they] were not able to elaborate as Dr. S. specializes in neurosurgery.

Ministry

The ministry argues that a severe mental impairment was not established on the evidence because Dr. S. (MR) did not diagnose a mental impairment and Dr. S. notes that the appellant does not have any significant deficits with cognitive and emotional functioning. Although, the ministry acknowledges a letter from a psychiatrist was provided with the RFR, the ministry argues the letter didn't describe any impacts to DLA to establish a severe mental impairment.

The ministry acknowledges that the information from Nurse M. and the appellant indicate the appellant can "barely leave the house" due to anxiety, but argues that the appellant was assessed as able to independently manage most DLA. The ministry also said that Nurse M. did not indicate what support is required to maintain the appellant in the community.

Panel's decision - severe mental impairment

The panel finds it was not reasonable for the ministry to conclude that a severe mental impairment was not established on the evidence. The panel finds that the ministry's assessment of the evidence as a whole is unreasonable, especially the information from the appellant and Nurse M. Looking at the evidence in the PWD application cumulatively, the appellant summarizes wide-ranging impacts of her mental health conditions in the SR and RFR submission. The appellant describes how depression, anxiety, and living with pain, limit her daily functioning, especially her motivation, bodily functions (fatigue), and social functioning.

The appellant describes her need for regular appointments with her psychiatrist and counsellor. The appellant reports that her mental health conditions, which are exacerbated by pain and fatigue, impact her to the extent that she mostly stays home and only does errands if absolutely necessary, and even then she needs support from family or friends.

The information from Nurse M. and Dr. O. is consistent with the appellant's self reports. Dr. O. and Nurse M. emphasize that the appellant requires ongoing treatment for her mental health conditions (medication, psychotherapy, and counselling), not just short-term intervention. Nurse M. has therefore described what support is required to maintain the appellant in the community.

The panel finds the ministry has not given enough weight to the appellant's self-isolation despite acknowledging the appellant can "barely leave the house" due to anxiety. The ministry notes that specific "mental DLA" were assessed as independent and a minimal impact was reported for *Attention/Concentration*, *Executive*, and *Motivation*. However, Nurse M.'s detailed comments indicate a more severe degree of impairment in these areas, due to the appellant's depression and OCD symptoms in particular ("constantly re-organizing...unable to think or

concentrate clearly”). In the panel’s view, the narrative comments carry more weight in establishing the severity of the mental impairment than the check marks in boxes on the form.

In addition, the submissions on appeal (letter from Dr. O. and the assessment by the RSW) lend further evidence to a severe impairment of mental functioning. These reports indicate that the appellant’s mental impairment is continuous and she is “severely” anxious and socially impaired. The appellant’s concentration, attention, energy, and motivation (on account of depression), and social interactions are all impacted according to Dr. O.

The RSW further indicates that *Bodily Functions* are impacted to a moderate degree (especially eating, “worries excessively that she could choke”), and the impairment has a major impact on *Emotion* (“excessive worry and feeling overwhelmed”), and a major impact on *Motivation* (due to low energy and fatigue). The RSW reports that the appellant has marginal functioning with her social networks as she typically avoids social interactions due to anxiety and lack of motivation and anxiety (fear of leaving the home).

The panel gives significant weight to these reports because they are recent, very detailed, and the RSW assessment was conducted over two interviews instead of just one like the initial assessment by Nurse M. Based on the information in its entirety the panel finds it was not reasonable for the ministry to conclude that the appellant does not have a severe mental impairment. The evidence indicates the appellant has cumulative deficits and impacts in several areas of cognitive and emotional functioning across all of the reports due to her mental impairments combined with pain from her physical impairment. The panel finds it was not reasonable for the ministry to conclude that a *severe* mental impairment under section 2(2) of the EAPWDA was not established on the evidence.

Conclusion

The panel has considered the information in its entirety and finds that the ministry’s reconsideration decision that found the appellant was not eligible for PWD designation was not reasonably supported by the evidence. The panel further finds that the ministry’s decision and was not a reasonable application of the legislation, in terms of the duration requirement in particular (impairment likely to continue for 2 years). The EAPWDA requires all of the legislative criteria to be met and the evidence indicates the appellant has met all 5 criteria under section 2 of the EAPWDA. The panel rescinds the ministry’s decision and refers the decision back to the minister for determination on amount of disability assistance. The appellant is successful on appeal.

APPEAL NUMBER
2021-00109

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)

2021-06-30

PRINT NAME

Glenn Prior

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021-06-30

PRINT NAME

Melissa McLean

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021-06-30