APPEAL NUMBER
2021-0129

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated June 8, 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"). 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

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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 the PWD application was received on April 20, 2021 and denied on April 29, 2021. On May 26, 2021, the appellant submitted the *Request for Reconsideration* ("RFR"). On June 8, 2021, the ministry completed the review of the RFR.

2. An RFR signed by the appellant on May 26, 2021 (no narrative provided).

3. The PWD application comprised of:

- the *Applicant Information* (self-report - "SR") dated March 22, 2021 with a 2-page typed submission in which the appellant describes her mental and physical impairments and explains the impact on her daily functioning;
- a *Medical Report* ("MR") dated March 1, 2021, signed by the appellant's general practitioner ("doctor") who has known the appellant for approximately 15 years and has seen the appellant 11 or more times in the past 12 months; and an
- *Assessor Report* ("AR") dated March 18, 2021, completed by a Registered Nurse ("RN") who has known the appellant for 49 years and has seen the appellant 11 or more times in the past 12 months. The RN indicates they are a relative of the appellant and provide her with regular emotional support. The RN based the AR on a home assessment and information from family/friends.

4. A letter from the ministry dated April 29, 2021, with attached *Decision Summary* advising that the appellant did not meet all the criteria for PWD designation.

Summary of relevant evidence from the application:

Diagnoses

In the MR, the appellant is diagnosed with anxiety disorder (onset 2019), chronic rotator cuff tendinopathy (onset 2003), and degenerative disk disease ("DDD") - lumbar spine, onset 2003.

In Part B - *Health History*, the doctor explains that the appellant has chronic lower back symptoms with pain that radiates down her left leg. The appellant also experiences chronic left shoulder tendinopathy and numbness affecting her left hand, and chronic anxiety has gotten worse in the past year.

In Part F - *Additional Comments*, Dr. R. states that the appellant's left arm issues are "clinically not responding" to physiotherapy treatment and the appellant depends on medications for her symptoms and requires further investigation, "MRI pending."

Functional skills

<u>Self-Report</u>

Regarding her physical functions, the appellant reports the following limitations as a result of her physical impairments:

- the chronic rotator cuff injury causes decreased strength for long periods of time and is very painful and debilitating "at times" and "sometimes impossible to use as it's too painful;"

- the appellant has a "a really painful hip" and back pain which makes it very painful to climb stairs. The appellant says that she avoids stairs as much as possible;
- she has poor vision (diagnosed by her eye doctor). This can make simple, everyday tasks difficult and even with glasses the appellant has difficulty focusing and seeing details. The appellant says she avoids driving as much as possible and doesn't drive at night;
- incontinence prevents her from working independently because she "would need somebody to relieve [her] every 15 minutes" so that she can "rush to the bathroom to be comfortable." The appellant says she needs to stay close to home because incontinence makes it a struggle to go anywhere;
- unable to sit or stand for long periods of time and often has to lie down to rest her hips and back. The appellant says she can lift a maximum of 15 pounds "if ever necessary" but she can only lift for short periods of time;
- her hands "often go numb" and she has to wait until the feeling comes back before she can use them again which "can take a long time."

Regarding her mental functions, the appellant says she has an anxiety disorder that causes emotional, cognitive, and social difficulties that include:

- difficulty handling distractions;
- problems with self-control in social situations including verbally impulsive behaviour; "often I struggle with being very impulsive;"
- a hard time understanding directions (both written and spoken) resulting in frustration, confusion, and even anger;
- difficulty focusing, easily distracted, especially when making decisions (due to impulsiveness);
- abandoning tasks before completing them; often wastes time by spending too much time on the thought process;
- obsessing over her situation and the things she can't do;
- can succumb to the pressure, attempted suicide twice including earlier this year;
- has different and similar challenges "each and every day;"
- difficulty forming and keeping relationships which causes her support system to be "very small"; she does not have a lot of help which makes living alone difficult, but "impossible to live with somebody" due to anxiety and impulsive behaviour;
- nervous talking to strangers, fearful of losing her control, "getting angry and saying something I might regret later" due to impulsivity.

<u>Medical Report</u>

In Part D - *Functional Skills*, the appellant can walk less than 1-2 blocks unaided on a flat surface and climb 2-5 steps unaided. The doctor indicates the appellant is limited to lifting a maximum of 5-15 pounds. The appellant can remain seated for less than 1 hour.

The doctor indicates the appellant has difficulties with communication caused by her cognitive impairment; comment, "due to anxiety."

The doctor indicates significant deficits with cognitive and emotional function in 6 of the 12 areas listed on the form: *Consciousness*, *Executive*, *Memory*, *Emotional disturbance*, *Motivation*, and *Attention/sustained concentration*; comment, "anxiety affects the above and chronic pain."

<u>Assessor Report</u>

In Part B-2, *Ability to Communicate*, the RN indicates the appellant has *satisfactory* ability in 3 of the 4 areas listed: *Speaking*, *Writing*, and *Hearing*. The RN indicates the appellant has poor ability for *Reading*; comment, "needs to re-read numerous times to understand and retain information."

For Part B-3, *Mobility and Physical Ability*, the RN checked *Independent* for 2 of the 6 areas listed: *Walking indoors*, and *Walking outdoors*.

The RN indicates the appellant takes significantly longer than typical with *Climbing stairs* and with *Standing;* comment, "due to hip and back pain…can only be done in short periods."

The appellant requires *continuous assistance from another person* for *Lifting*, and *Carrying/holding*; comment, "no more than 15 pounds, decreased arm strength after long periods."

In Part B-4, *Cognitive and Emotional Functioning*, the RN provides information on impacts to functioning that are due to the appellant's mental impairment:

- *No impact:* None of the 14 areas are checked;
- *Minimal impact* in 4 areas: *Consciousness*, *Motivation*, *Language*, and *Psychotic symptoms*;
- *Moderate Impact* in 9 areas: *Bodily functions*, *Impulse control*, *Insight and judgment*, A*ttention/concentration*, *Executive*, *Memory, Motor activity, Other neuro-psychological problems*, and *Other emotional or mental problems;*
- *Major Impact* in 1 area: *Emotion*.

Daily Living Activities

Self-Report

The appellant describes the impacts of her mental impairment on DLA:

- able to pay bills "on time and very diligently;"
- has a "tough time with self-control" when in stores, "usually end up impulse buying;"
- sometimes acts inappropriately in conversations with other people, "easily overwhelmed" with conversations about her personal life; "easily upset and triggered" if asked why she is sad;
- sometimes reacts inappropriately in conversations with an "angry comeback" and shuts down the conversation or even the relationship;
- isolates herself.

Medical Report

The doctor did not check mark *yes* or *no* when asked if the appellant is prescribed medications or treatments that interfere with the ability to perform DLA. The doctor commented that the appellant is taking medications for pain and anxiety on a chronic basis.

Under *Health History*, the doctor states that the appellant is unable to work due to anxiety and reduced mobility.

In Part 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 indicates that 8 of the 10 DLA are restricted as follows:

5 DLA are continuously restricted:

- ***Personal self-care***
- ***Basic housework***
- ***Mobility inside the home***
- ***Mobility outside the home***
- ***Social functioning***; comment, "unable to interact socially, this is made worse by anxiety, anxiety very restrictive."

3 DLA are periodically restricted:

- ***Management of* medications**
- ***Daily shopping***
- ***Use of transportation***

2 DLA are not restricted:

- ***Meal preparation***
- ***Management of finances***

Assessor Report

In Part B, when asked what are the mental/physical impairments that impact the ability to manage DLA, the RN states that the appellant "experiences anxiety which often causes her to abandon tasks before being completed."

In Part C - *Daily Living Activities*, the RN indicates the appellant *takes significantly longer than typical* with some areas of 5 DLA (out of 8 DLA listed on the form):

- ***Personal Care:***
  -the appellant takes significantly longer for *Toileting*; comment, "overly focused on personal hygiene;"
  -the appellant is independent with the other 7 areas of *Personal Care: Dressing*, *Grooming*, *Bathing*, *Feeding self*, *Regulating diet*, *Transfers in/out of bed*, and *Transfers on/off chair*.

- ***Basic Housekeeping:***
  -the appellant takes significantly longer for all areas: *Laundry*, and *Basic housekeeping*; comment, "frequent breaks due to hip and back pain."

- ***Shopping*:**
  -the appellant takes significantly longer in 3 of the 5 areas listed: *Making appropriate choices* (comment, "impulsivity causes inappropriate choices"); *Paying for purchases* (comment, "due to impulse buying"); and *Carrying purchases home* (comment, "carry in small loads");
  -the appellant is independent with the 2 other areas of *Shopping*: *Going to and from stores* and *Reading prices and labels*.

The RN provided additional information for these DLA stating that the appellant has difficulty controlling impulse reactions and needs minimal distractions when completing tasks. The appellant experiences "great difficulties" in public situations when she is required to complete non-linear tasks. The appellant has difficulty completing the tasks and becomes more emotionally unstable as a result.

- **Pay Rent and Bills:**
  -the appellant takes significantly longer in 1 of the 3 areas listed: Budgeting; comment, "impulse buying makes budgeting difficult;"
  -the appellant is independent with the 2 other areas: *Banking*, and *Pay Rent and Bills*.

- ***Transportation:***
  -the appellant takes significantly longer when *getting in and out of a vehicle*; comment, "slow due to hip, back pain;"

  -the appellant is independent with the other 2 areas: *Using public transit*, and *Using transit schedules and arranging transportation*.

- ***Social Functioning***:

  The appellant needs *periodic support/supervision* with all areas:

  -*Appropriate social decisions*; comment, “difficulty following conversations due to being easily distracted, inappropriate reaction when asked about any personal issue;”
  -*Able to develop and maintain relationships*; comment, “chronic mistrust;”
  -*Interacts appropriately with others*;
  -*Able to deal appropriately with unexpected demands*; comment, “often needs to remove herself where unexpected situations arise;”
  -*Able to secure assistance with others*; comment, “isolates self when overwhelmed.”

  The appellant has *marginal functioning* with her immediate and extended social networks. Under *Additional Information*, the RN states that the appellant’s difficulties with work and social environments “have caused serious strain on her mental health. At times she isolates from everyone including her support network.” The appellant has also had 2 suicide attempts.

For 1 DLA listed in the AR, the RN indicates the appellant is independent with all areas:

- ***Meals:*** *Meal planning*, *Food preparation*, *Cooking*, and *Safe storage of food*.

Need for help

<u>Self-Report</u>

The appellant describes her challenges in getting help and support for her impairments:

- needs family support “to slowly withdraw from isolation a little bit at a time;”
- has family support but “can shut down for long periods of time” which is hard on her supporters;
- feels like “nobody can get close enough to help me.”

<u>Medical Report</u>

Under *Health History* (Part B), the doctor marked *no* when asked if the appellant requires prostheses or aids for the impairment. The doctor commented, “currently wears brace and has arm support for hand and arm symptoms.”

In Part E - *Daily Living Activities*, when asked what assistance the patient needs with DLA, the doctor drew a line through the space for comments.

<u>Assessor Report</u>

The RN indicates the appellant lives alone.

For *Social Functioning*, when asked what help or support the appellant requires to be maintained in the community, the RN wrote, “mental health counselling.”

In the AR (Part D), the RN indicates the appellant’s family as well as Health Authority professionals provide assistance with DLA; comment, “emotional support encouraging self-isolation periods to be brief.”

For *Assistance provided through the use of assistive devices*, the RN left the form blank and indicated the appellant does not use or need any assistive equipment or devices. For *Assistance provided by Assistance animals*, the RN checked *no*.

Additional information

Subsequent to the reconsideration decision, the appellant filed a *Notice of Appeal* followed by an 11-page submission from an advocate received by the Tribunal on July 21, 2021. The submission consisted of the following documents:

1. A 5-page typed submission from the advocate which provides argument on appeal as well as the following evidence regarding the appellant's impairments:

Medical conditions

The advocate reports that the appellant has been diagnosed with Anxiety disorder, chronic rotator cuff tendinopathy (left) and DDD (lumbar spine). The appellant also has an overactive bladder, poor eyesight, and learning disabilities that were diagnosed when the appellant was in school.

The symptoms from these conditions include chronic pain that is made worse by activity, left shoulder/arm weakness, numbness in the hands, anxiety, and difficulties with impulse control, focus, and completion of tasks. The appellant also has difficulty interacting and communicating with people and making decisions; reading, writing, following instructions, and problems with memory. The appellant experiences incontinence and frequent urination.

The advocate reports that the appellant is also dealing with a new injury to her left wrist and lower arm (since February 2021). The appellant is not making submissions with regard to this injury because the prognosis/duration is unknown.

2. A 4-page typed submission from the appellant, *Statement for Employment and Assistance Appeal Tribunal* ("Statement") signed by the appellant on June 25, 2021 and initialed by the appellant's doctor. The appellant provides argument on appeal as well as the following additional information about her conditions and restrictions. The doctor initialed each page that describes the appellant's medical conditions, functional limitations, and restrictions to DLA:

Diagnoses

- Anxiety Disorder
- chronic rotator cuff tendinopathy (left)
- DDD (lumbar spine)
- overactive bladder
- poor eyesight (even with glasses)
- learning disabilities

Functional limitations

Physical impairment

- chronic left shoulder/arm pain and weakness is made worse by activity. If the appellant uses her left arm for more than 30 minutes, "it starts burning and gets so bad" that she can't use that arm at all;
- chronic lower back/ hip pain is made worse by physical activity and sitting or standing for too long;
- right leg pain if the appellant moves too much or turns the wrong way. This happens on a daily basis and the appellant has to stop what she is doing and rest for 10-30 minutes;
- numbness in both hands on a daily basis occurs in the morning for about 30 minutes and periodically throughout the day. The appellant can't use her hands and drops things due to the numbness. The appellant has to wait until the numbness goes away to resume her activities;
- incontinence/ frequent urination;
- takes medication on a daily basis to manage pain;

- the appellant can walk a maximum of 2 blocks before she has to stop and rest for 5-10 minutes; sometimes she has to stop after half a block. The appellant avoids walking more than 2 blocks whenever possible. It takes the appellant 10 minutes to walk 2 blocks; she is slower because of pain;
- the appellant can climb 4 stairs unaided before she has to rest as stairs hurt her hips and lower back. The appellant avoids stairs because they cause her pain and she is slower on stairs. It takes the appellant 5 minutes to walk up 13 stairs to her doctor's office;
- the appellant can't lift more than 15 pounds and even lifting light objects can increase her pain. In stores, the appellant will usually get a cart, even to just carry her purse. The appellant can carry lighter grocery bags (under 15 pounds) for about 30 steps and needs help with lifting anything over 15 pounds;
- the appellant can sit for 10-20 minutes before the pain is so bad that she has to move. If the appellant sits for too long, it takes her about 10 minutes to get up and moving again and she has to hang onto the table and do some stretching before she can get up. Sometimes the appellant's back locks and she can't get up which usually happens if she "overdid it" the day before (it happens less often if she "takes it easy");
- the appellant can stand for 10-20 minutes. She avoids bending due to pain and does not get down on her hands and knees as she may be unable to get up;
- every day, usually a couple of times a day but sometimes more depending on how bad the pain is, the appellant has to lie down for 15-45 minutes to rest her back.

Mental impairment

- anxiety is made worse by crowds;
- difficulty with impulse control;
- difficulty focusing and completing tasks; the appellant is easily distracted; the "slightest thing" could distract her making it difficult to complete tasks. The appellant could be doing one thing, then start another without finishing what she was working on. The appellant has burned things on the stove because she started working on something else;
- difficulty with social interactions and communicating with other people;
- difficulty with decision making; the appellant overthinks things;
- difficulty with reading and writing; the appellant has a hard time reading a sentence and has to "read and re-read." The appellant gets frustrated because "most of the time it doesn't register." The appellant sometimes gets very frustrated with writing because she has a hard time spelling and figuring out the right words;
- difficulty following directions or instructions; sometimes the appellant needs more support to understand things. The appellant recently took a training course and when the instructor explained things "it went in one ear and out the other" and the instructor had to sit with the appellant one-to-one. The appellant becomes really frustrated when she feels she does not understand things;
- difficulty remembering things such as appointments;
- attempted suicide twice.

Restrictions to DLA and support needed

Personal Care:

- the appellant has to go to the bathroom every 10-15 minutes and toileting takes up a lot of time in her day. She doesn't like to leave the house because she always needs to be near a washroom which is frustrating and limiting;
- having a bath "is an issue" because it is hard to get in and out of the tub. The appellant mostly takes showers;
- some clothing is "hard to deal with." Putting on a bra is hard and the appellant avoids wearing jeans because it is hard to do up the buttons and zipper. The appellant wears more stretchy clothes and tying shoes is hard so she tries to get slip-on shoes. It used to take no time at all to get dressed but now she is slower and it takes her about 10 minutes.

Meals:

- preparing meals takes longer because of the problems/pain with the appellant's arm, hands, hip, and back; she can work for about 10-15 minutes but then has to sit down for about 10 minutes;
- the appellant tries not to use the oven because bending down is too hard;
- the appellant gets overwhelmed if a recipe calls for too many ingredients or has too many steps so she makes straightforward meals that don't take too long;
- if her shoulder is too painful or her hands are numb, the appellant won't make a meal and will eat something that doesn't require cooking;
- the appellant could use some help with meal preparation in order to eat more healthy food, "not just to eat garbage food;"
- Impulsive behaviour makes it easier for the appellant to eat "garbage food" than to make a meal that would last.

Housekeeping:

- the appellant can do housekeeping chores for about 15 minutes at a time, then she has to sit and rest for 10-15 minutes. In the past it would have taken the appellant 30 minutes to wash the floor but now it takes an hour and a half and the appellant has to lie down for about 10 minutes afterward to rest;
- the appellant is limited in how much she can do in a day because housework makes her pain worse and wears her out;
- the appellant is unable to do some tasks because she cannot get down on her hands and knees (to clean behind the toilet, for example). The appellant cannot wash the outside of her windows or clean her oven;
- the appellant could use help with housework.

Shopping:

- impulse buying; the appellant buys things she doesn't need;
- can only carry one grocery bag at a time (under 15 pounds);
- uses a cart to take groceries out to her car and then loads them one bag at a time;
- when the appellant gets home, she has to sit for 10 minutes and bring the groceries inside one bag at a time;
- the appellant needs to take breaks while putting the groceries away, including a break between putting the frozen items away followed by the rest of the groceries;
- the appellant tries to go shopping early in the day to avoid crowds and line ups as she has increased pain when standing in line;
- going to stores "takes a lot out of [her] physically and emotionally." After returning from shopping, the appellant can't do anything for the rest of the day. She could use help with shopping but it would "stress her out" to have someone help her and she would rather shop alone.

Transportation:

- the appellant avoids driving for long periods because it increases her pain. Any traffic congestion causes stress and the appellant gets irritated. She also avoids driving at night;
- the appellant used to be able "to bounce out of [her] car" but now she feels like "a creepy crawly old lady" when she gets out of the car which is harder the longer she sits for;
- if the appellant has to take public transit and "it is packed", she gets overwhelmed and irritated.

Making decisions about personal activities, care, or finances:

- two suicide attempts including a recent one in January 2021. After January, the appellant tried to see someone at community Mental Health but there were problems with the appointment booking. The appellant became too frustrated to re-book the appointment and has not been able to see anyone at Mental Health;
- difficulty making decisions because the appellant over-thinks things which makes them take longer. The appellant gets overwhelmed and upset and will sometimes avoid making decisions;
- the appellant requires schedules and routines and has a hard time breaking her routine;
- the appellant has a hard time asking for help. It takes her a long time to ask for help because she feels like a burden.

Relating to, communicating, or interacting with others:

- anxiety when dealing with people; the appellant "has no filter" and worries she could say the wrong thing;
- the appellant has a hard time communicating with other people as it is hard to follow the conversation and find the right words to express herself;
- the appellant "can't handle being asked questions about personal issues" and will say "this is my life, it is none of your business." The appellant gets angry when people cross what she feels are her personal boundaries;
- the appellant gets overwhelmed if there are a lot of people around. If she has to do errands she tries to go early when there are not as many people out. When there are crowds the appellant is a "panic for myself" and her head "is going a mile a minute";
- the appellant does not like social get-togethers and sometimes won't go to family functions. She recently declined an invitation to a relative's birthday party. When the appellant manages to attend a function, she can only stay for a short time because she "just needs to be on [her] own and can't handle the crowd;"
- self-isolation, especially when the appellant is feeling overwhelmed. Her family calls her every day to check up on her and they try and make sure she goes out;
- when the appellant is "thrown a whole bunch of questions" she gets overwhelmed and starts over-thinking;
- the appellant feels that she needs counselling once a week to have someone to talk to who is not a family member.

3. A letter from the appellant's doctor dated June 25, 2021, indicating that they completed the MR for the PWD application and have read the appellant's Statement. The doctor says that they would expect a person with the appellant's impairments to "experience the types of restrictions to her everyday living activities that she describes in her statement."

The doctor explains that they do not have the ability to watch their patients perform DLA but must turn to the patient for information and consider what they say, together with the doctor's knowledge of the patient's situation. The doctor accepts the Statement as "a credible description of the types of limitations a person in her condition would face." The doctor says they are signing the Statement and adopting it as their own.

4. A 1-page typed submission titled *PWD Eligibility Criteria: Judicial Review Sets Standards* that summarizes the BC Supreme Court decision *Hudson* v. *Employment and Assistance Appeal Tribunal* [2009 BCSC 1461] ("*Hudson* decision"). The panel accepts the submission as argument.

Admissibility of additional information

The ministry did not raise any objections to the appellant's additional documents but provided argument to say the additional information does not establish eligibility for PWD designation when assessed with the information in the MR and AR. The panel considers both parties' arguments in Part F - *Reasons for panel decision*.

The panel admits the testimony under section 22(4) of the *Employment and Assistance Act*, finding the additional information is admissible because it provides further details about the appellant's functional limitations and restrictions to DLA; expands on the information in the PWD application, and is endorsed by the appellant's doctor.

The additional information is therefore reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Oral submissions

The appellant attended the hearing with a legal advocate who provided argument. In response to questions, the appellant and advocate provided additional details about the impairments and PWD application:

- the appellant has been in receipt of disability benefits for a number of years from another Ministry program, *Persons with Persistent Multiple Barriers to employment*;
- the appellant does her own shopping because it is too stressful to have someone with her, "in a way it would help, but in another way having someone with me would not help;"
- the appellant makes mostly microwave meals and has considered getting someone to help her despite it being stressful to have someone in her spece;
- the appellant was with the doctor when the MR was filled out but it was a short appointment because the doctor was very busy; asked the appellant a few questions but "was mostly filling out the form quickly." The RN filled out the AR in a separate appointment;
- the advocate's organization interviews clients for 1-2 hours to get sufficient detail about the impairment and then has the doctor re-visit the information to explore questions in more detail where things were skipped over or missed;
- the appellant's "overactive bladder" was formally diagnosed by the doctor who prescribed medication which the appellant takes for the condition;
- the appellant's mobility restrictions are continuous (walking a maximum of 2 blocks and climbing 4 stairs);
- the restrictions to DLA (toileting, housekeeping, shopping, meals, transportation, as well as anxiety issues) are "continuous and ongoing;"
- washing the floor used to take the appellant 30 minutes but now it takes 2 hours: 1.5 hours for washing plus up to 30 minutes afterward to rest. The appellant "has to limit what she does in a day (every day)" and some chores such as cleaning that require bending or getting down on her knees do not get done;
- the appellant "had to figure out how to manage the best she can" on her own. She needs help with DLA but there is none available because she lives alone and has a lot of difficulty asking for help from family and especially strangers due to her anxiety and emotional reactions. The appellant requires counselling once a week for support.

To the extent the oral submissions contain evidence the panel admits the testimony under section 22(4) of the *Employment and Assistance Act*. The panel finds the appellant's additional information is admissible because it provides further detail about the medical conditions and restrictions to function and DLA and explains the process the appellant went through to complete the PWD application and obtain her doctor's additional endorsement. The oral evidence is therefore reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The ministry relied on the reconsideration record and did not submit new evidence at the hearing.

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. “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. The ministry looks at whether the appellant is able to function independently, effectively, appropriately, or for a reasonable duration based on the information in the PWD application and any additional information submitted for the reconsideration. The panel finds that the ministry’s interpretation of the legislation is reasonable.

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, emotion, and social functioning. The panel finds that an assessment of severity based on cognitive, emotional, and social functioning is a reasonable interpretation of the legislation.

The ministry said it considered the appellant’s information (SR) in conjunction with the assessments provided by the doctor and RN, but in the reconsideration decision the ministry refers to the MR and AR and did not refer to the evidence in the SR except to the extent the appellant says she is unable to work. The ministry notes that the impact on employment is not a factor in assessing PWD eligibility under the legislation.

The panel finds it was not reasonable to assess the information in the SR only in the context of employment. The appellant is very concerned about her inability to work (which is not a criterion for PWD designation under the legislation) but she explains in detail how her symptoms and specific limitations to physical and mental functioning impact her everyday life in the broader sense as well.

In the panel’s view, the EAPWD legislation requires the SR to be given some weight. The ministry requires the PWD application to be in the form that applicants are required to use. This form consists of 3 reports: SR, MR, and AR. Under ministry policy, the SR is optional as the applicant can check that they choose not to complete it. In this instance, the appellant completed the SR and the panel considers each report to carry weight and to be looked at together when the information provided is material to PWD eligibility.

Arguments - physical impairment

In the reconsideration decision, the ministry argues that the information in the MR and AR does not confirm a severe physical impairment because the appellant is able to manage her physical functions independently despite taking longer and needing rest breaks. The ministry argues that the “use of an arm brace alone” does not indicate a severe physical impairment. At the hearing, the ministry said it would give more weight to the doctor’s information because the MR has a fuller assessment of the appellant’s physical functions. The ministry argues that walking 2-4 blocks and lifting up to 15 pounds is sufficient for most daily activities and does not indicate a severe impairment.

The ministry acknowledged that the additional submissions provide more information on the impact of pain and how much longer activities take. The ministry argues the additional information does not establish a severe physical impairment because the appellant remains independent with walking, climbing stairs, lifting/carrying, and other physical functions as reported in the MR and AR.

The appellant argues that her pain symptoms and numbness, decreased strength, and mobility limitations add up to a severe impairment because she has to stop and rest during short bursts of activity and also has to rest afterward which takes up a lot of her time. In addition, the appellant argues her mobility is limited by bladder incontinence which makes it difficult to go out as she needs to go to the bathroom every 10-15 minutes throughout the day.

The advocate argues that the *Hudson* decision, which is binding on the ministry adjudicators and the Tribunal, requires the evidence to be reviewed in full and the tick boxes on their own are not sufficient to determine restrictions to functions and activities. The panel accepts the advocate's interpretation of *Hudson* as reasonable and gives more weight to the narrative descriptions which indicate that pain and numbness significantly impact walking, lifting/carrying and other physical functions.

Evidence of severity - physical impairment

Walking and climbing stairs

All of the reports indicate the appellant is independent with walking and climbing stairs, she does not require a cane or other assistive device or need assistance from another person for these functions. The assessments in the MR (*walk 2-4 blocks* and *climb 2-5 steps* unaided) fall within a moderate range of restriction on the ministry rating scales. The Statement (endorsed by the doctor) also indicates moderate restrictions to walking and stairs as it takes the appellant 10 minutes to walk 2 blocks and 5 minutes to go up the 13 stairs to her doctor's office with frequent rest stops.

Despite moderate restrictions to the distance walked, number of stairs climbed, and amount of time needed for these activities, the appellant said that stairs are "very painful" and she does her best "to not ever take them" (SR). The appellant said that the most she can walk on average is 2 blocks before she has to stop and rest for 5-10 minutes, then rest for 10-30 minutes afterward. The appellant avoids walking more than 2 blocks when she can.

The evidence indicates that although the appellant is independent with basic mobility, she experiences significant pain while walking a short distance. The appellant's need for rest breaks during and after physical activity along with trips to the bathroom every 10-15 minutes throughout the day further reduces her mobility and she avoids going out whenever possible. The ministry does not assess the impact caused by the appellant's bladder condition in either the reconsideration decision or oral submissions. The appellant is taking medication for the condition but still has to urinate frequently.

Lifting and Carrying/holding

All of the reports indicate the appellant can lift/carry a maximum of 15 pounds, a moderate level of restriction on the ministry rating scale in the MR. At the hearing, the ministry added that the additional information does not explain restrictions with the appellant's right arm.

While the doctor's diagnosis indicates rotator cuff tendinopathy on the appellant's left side, it goes without saying that the appellant would need to use both arms to lift/carry most objects up to 15 pounds. The evidence from the doctor indicates a severe impairment with arm and hand function because the appellant uses an arm brace for her left hand; her symptoms are not responding to physiotherapy, and she depends on medication for chronic pain.

The DDD, causing chronic back pain and radiating pain in the left leg would also have implications for lifting. Furthermore, the appellant describes numbness occurring in both hands, not just the left one. It follows that there could be a safety concern if the appellant was lifting or carrying a 15-pound object and her hands went numb.

Sitting and Standing

In the MR, the doctor indicates the appellant can remain seated for less than one hour, the highest degree of restriction on the ministry rating scale. The panel finds that the appellant's evidence corroborates the degree of restriction indicated by the doctor. In the SR and Statement, the appellant argues that her limitations with sitting and standing "makes things very difficult" because of the extra time needed (up to 40 minutes to get out of bed, plus 15-45 minutes to rest her back after activity).

The appellant needs to rest her back "usually a couple of times a day but sometimes more often depending on how bad the pain is." Not only is the appellant limited in how long she can sit and stand, in the panel's view, the time it takes to recover afterward must also be factored in when determining whether the physical impairment is severe.

Panel's decision - physical impairment

The panel finds the information is consistent between the MR and AR and that the SR and submissions on appeal provide a fuller, more detailed explanation of the restrictions reported in the medical and assessor reports. The panel finds that the cumulative impact of restrictions across physical functions is evidence of a severe physical impairment because the appellant quickly experiences significant pain even with moderate activity. The appellant

experiences decreased strength or numbness with physical movement despite being independent with her physical functions.

In addition, the appellant's mobility is significantly reduced due to the need for frequent bathroom breaks. With rest breaks required both during and after activities, the record suggests it would take the appellant most of the day to perform her basic physical functions. The panel finds that the ministry's conclusion that the physical impairment is not severe under section 2(2) of the EAPWDA is not reasonably supported by the evidence.

Arguments - mental impairment

The ministry argues the appellant does not a severe mental impairment because most of the impacts from the appellant's anxiety were assessed as moderate (AR). At the hearing, the ministry said it would give more weight to the evidence from the RN because the doctor provided no information on whether the significant deficits reported for cognitive or emotional functioning have a moderate or severe impact. The ministry argues that the appellant does not have significant problems with communication or social functioning because she can read labels, transit schedules, and other fine print and she needs only periodic assistance with social interactions (AR).

When asked if the ministry would factor in the appellant's suicidal tendencies in assessing the severity of the mental impairment, the ministry said that information would be balanced against the assessments in the AR that indicate most of the impacts for emotional functioning (and other mental functions) are moderate. The ministry argues the additional information on appeal "does not change the level of impact" because the appellant can manage most DLA independently (AR) despite significant deficits for emotional/mental functioning (MR).

The appellant argues that every day is very difficult because of her anxiety and cognitive deficits. The appellant argues that although she has problems with specific cognitive tasks and social interactions "sometimes," her anxiety and cognitive deficits are always there so that every day is filled with both "different and similar challenges" (SR).

Evidence of severity - mental impairment

Communication

As the ministry notes, the doctor said the appellant has difficulties with communication (due to anxiety and cognitive impairment) but did not check mark *Language* when asked to indicate whether there are significant deficits with specific cognitive and emotional functions. In the AR. a *minimal impact* was reported for *Language* but the appellant's ability to read is poor due to cognitive deficits (understanding, retaining information).

In the SR and Statement, the appellant describes her difficulties with understanding what people say, and finding the right words for both speaking and writing. The panel finds the appellant's evidence about communication difficulties more compelling because the appellant describes her impairment in greater detail with many examples.

Given the appellant's problems with focusing and seeing details (even with glasses) combined with her difficulties with comprehension and retention of information due to learning disabilities, it follows that the appellant would have difficulty reading fine print. The appellant made it clear in her appeal submissions (endorsed by her doctor) that the problems with communication and other cognitive functions are not intermittent but occur every day.

Other cognitive functions

In the MR and AR, *Executive*, *Memory*, and *Attention/sustained concentration* have significant deficits/moderate impacts due to anxiety and chronic pain. In the Statement, these deficits are also due to the appellant's learning

disabilities. The evidence for these functions is consistent between the reports but the appellant provides a fuller picture of the cumulative impact of the deficits, describing how her problems with processing directions create frustration, confusion, and even anger. The appellant describes being easily distracted "by the slightest thing" that makes her abandon what she was doing. The appellant "overthinks things" when making decisions. The appellant finds it difficult to remember appointments. The panel finds that the cumulative impact of these cognitive deficits is sufficient evidence of a severe impairment.

Emotion

Both the MR and AR indicate a *significant deficit*/*major impact* for emotion. Both the doctor and the RN mention the appellant's two suicide attempts including the recent one this year. In the SR, the appellant describes how she "succumbs to the pressure" when "everything becomes too much to handle." In the MR, the doctor indicates the appellant's "chronic anxiety" has gotten worse in the last year despite taking medication for the condition.

In the MR, the appellant has *significant deficits* with emotional functioning due to anxiety and chronic pain. Of the 5 areas that describe emotional functions: *Consciousness*, *Psychotic symptoms*, *Emotional disturbance*, *Motivation*, and *Impulse Control*, the doctor check marked significant deficits for 3 areas: *Consciousness*, *Emotional Disturbance*, and *Motivation*.

In the AR, the RN provides different information for *Consciousness* and *Motivation* indicating the appellant's conditions have a *minimal impact* in these areas compared to the *significant deficits* reported by the doctor. The appellant said that her frequent struggles with anxiety and pain "wear her out", creating a need for frequent rest breaks and making it difficult to do anything or go anywhere. The appellant indicates only going out when necessary. Based on the information from the appellant which provides more detail about restrictions to daily functioning, the panel finds there is sufficient evidence for a significant impact on motivation and consciousness.

While the doctor did not report any deficit for *Impulse Control*, the RN indicates a *moderate impact*. The narratives from the RN and the appellant describe significant problems with impulse control in stores/public settings including detailed examples of "impulse buying" and becoming "verbally impulsive." Based on the narratives, the panel finds there is sufficient, cumulative evidence for a significant deficit/ major impact for impulse control.

Despite most impacts checked as *moderate* in the AR, the panel finds there is sufficient evidence of a severe impairment of emotional functioning because the RN indicates some level of impact across all emotional functions. The suicide attempts, combined with significant deficits in most areas of emotional functioning (MR), illustrate that the impacts reported in the AR add up to a severe impairment. The evidence shows the depth of the appellant's emotional struggles even with medication for anxiety and emotional support from the RN/family.

Social functioning

The appellant explains her social difficulties: "nervous when dealing with strangers", verbal impulsivity, and difficulty understanding instructions/following conversations. The appellant said it is very difficult for her to relate to people, especially in public settings.

In private settings such as family functions, the appellant either does not attend the event, or only stays for a short while because she gets anxious when there are a lot of people around ("can't handle crowds"). The appellant has shut down conversations and ended relationships because she gets "especially overwhelmed" if asked about her personal life. The appellant isolates herself from her family especially when she is feeling overwhelmed. The RN confirms that the appellant has marginal functioning with her immediate and extended social networks.

The appellant describes specific social difficulties as happening "sometimes" and the RN indicates that the appellant requires *periodic support* (not *continuous support*) with all areas of social functioning. However, in the SR the appellant explains that it is all of her problems and conditions combined rather than single incidents, or isolated reactions, that make every day a challenge. In the MR, the doctor says the appellant is "unable to interact socially…made worse by anxiety" and anxiety is "very restrictive" in terms of social functioning.

In the panel's view, it is the cumulative impact of the appellant's social difficulties combined with her impaired emotional functioning (due to anxiety, pain, and suicidal tendencies) and difficulties with comprehension that

establishes a severe impairment of social functioning. Furthermore, the reactions that happen “sometimes” are characterized by serious outcomes such as verbal aggression, self-isolation, or loss of the relationship because the appellant “can’t handle being asked questions about personal issues.” A global assessment of the evidence indicates a significant impairment with social functioning.

Panel’s decision - mental impairment

The MR and AR, together with the information from the appellant, provides a complete and very detailed overview of the appellant’s cognitive, emotional, and social functioning. The panel finds it was unreasonable for the ministry to conclude that a severe mental impairment was not established on the evidence. The panel finds that the ministry under-estimated the severity of the appellant’s anxiety and chronic pain by focusing on the check marks in the AR without assessing the evidence in the SR in a broader sense other than inability to work.

The evidence across all of the reports and appeal submissions indicates the appellant has significant deficits and impacts in most areas of cognitive, emotional, and social functioning due to her anxiety, learning disabilities, suicide attempts, and impulsive tendencies. The appellant is easily frustrated and overwhelmed by her situation which is not limited to her inability to work or to reactions that occur “sometimes.” The evidence indicates the appellant is impacted on a daily basis by all of the challenges that stem from her medical conditions. The panel therefore finds it is not reasonable to conclude that a severe mental impairment under section 2(2) of the EAPWDA is not established on the evidence.

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 registered nurse.

The term “directly” means that the severe impairment must cause or result in restrictions to activities. The direct restriction must also be significant. A significant restriction will have a large impact on the person’s life because they are not able to do DLA effectively without an assistive device or a lot of help and support from others.

Finally, there is a time or duration factor: under the legislation the restriction may be either *continuous* or *periodic for extended periods*. 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 assess whether 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. The panel emphasizes that vocational ability/ ability to work and financial need are not criteria for PWD designation under the EAPWDA.

Regarding how many DLA need to be impacted for the legislative requirements to be met, the *Hudson* decision states that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two DLA. Not all DLA need to be affected by the severe impairment.

Arguments - restrictions to DLA

The ministry notes that where restrictions were assessed as periodic the doctor does not say whether the activity is restricted for extended periods of time. The ministry notes that where DLA are continuously restricted the doctor does not indicate what help is needed. The ministry argues that the legislative criteria were therefore not met based on the information in the MR.

The ministry argues there was not enough information in the AR to confirm that the restrictions are significant because the RN does not describe how much longer the appellant takes to do activities. The ministry notes that in the AR, the only DLA with reported restrictions across all activities is *Social Functioning*. While the appellant requires periodic support from family and healthcare professionals to help ensure that her periods of self-isolation are brief, the ministry argues there was not enough information to confirm a significant restriction for extended periods of time because the frequency of counselling was not indicated.

At the hearing, the ministry argued that despite additional detail about restrictions (appellant's Statement endorsed by the doctor), there was still no information to confirm that *Personal Care* (toileting and dressing) "are restricted every day." The ministry submits there is no information in the additional submissions to confirm how often the appellant has to stop and rest while preparing food or how often she will not make meals.

The ministry also argued that taking three times longer for housekeeping (30 minutes versus an hour and a half) is not a significant restriction; that the ability to drive is not a factor in determining PWD eligibility, and that the information still does not indicate how long it takes the appellant to get in/ out of a car. Regarding how much time housekeeping takes, the advocate explained that it actually takes the appellant two hours to wash the floor because she needs to rest for half an hour afterwards. Regarding the ability to drive, the panel notes that subsection 2(1)(a)(iv) of the EAPWDR includes the "use of personal transportation facilities."

The ministry argued that restrictions to DLA are "still not described at a continuous level" and the additional information "still doesn't provide a picture of whether [DLA] are taking a significant portion of each day" especially since the appellant can manage her physical functions independently albeit more slowly. The appellant argues that she has to limit what she does in a day.

In the submissions on appeal, the advocate argues that restrictions to DLA such as personal care, meals, housework, social functioning, etc. are significant and continuous and that more weight should be given to the appellant's Statement (endorsed by the doctor) which is consistent with the *continuous* restrictions reported in the MR and taking significantly longer (AR). The advocate was asked about inconsistent information on restrictions between the MR and AR as well as inconsistencies within the MR: DLA are far more independent in the AR and although DLA are continuously restricted in the MR there was no indication that help is needed.

The advocate (and appellant) explained that the assessments for the PWD application were done quickly by busy professionals who may skip over questions or not explore all areas in depth and conduct a thorough review of the patient's situation. The appellant provided a detailed and frank account of the application process and the panel accepts her explanation as credible and reasonable.

The advocate submits that the additional information provides further detail and explanation about restrictions. The advocate explained that the *Hudson* decision indicates there is no statutory requirement for confirmation of restrictions in both the MR and AR. The advocate argues that the *Hudson* decision requires the ministry to take "a whole view" of restrictions to DLA and not just look at the tick boxes on the PWD forms. When asked for any comment on the interpretation of the *Hudson* decision, the ministry argued that restrictions still need to be significant and if an activity is restricted the narrative needs to explain why the person can't do it by themself.

Evidence - Restrictions to DLA

In the MR, the doctor indicates that 8 of the 10 DLA listed are restricted either continuously or periodically. The doctor marked *Meal preparation* and *Management of finances* as not restricted. Aside from indicating that chronic anxiety and chronic pain affects the appellant's physical and mental functioning, the doctor provided narrative for *Social Functioning* only: continuously restricted, "unable to interact socially" because of anxiety.

In the AR, most DLA are assessed as independent on the checklists (Section C) but most areas of *Basic Housekeeping* and *Shopping*, and one area each of *Personal Care* (*toileting*), *Pay Rent and Bills* (*budgeting*), and *Transportation* (*Getting in and out of a vehicle*) take the appellant significantly longer than typical. The RN explains that toileting takes longer because the appellant is "overly focused on personal hygiene". Housekeeping, shopping, and getting in/out a vehicle take longer due to the appellant's hip and back pain. In addition, shopping and budgeting take longer "due to impulse buying."

In the Statement on appeal, the appellant describes significant and continuous restrictions to personal care (toileting) as she has to go to the bathroom every 10-15 minutes due to her overactive bladder. The appellant also describes difficulty with dressing, she can only wear certain types of clothing due to the impairment in her shoulder/hands.

The appellant says that meal preparation is difficult for a number of reasons including pain, needing to take frequent rest breaks, and difficulty with reading/ following recipes. At the hearing, the appellant added that she mostly makes microwave meals. The panel accepted the appellant's evidence (endorsed by the doctor) that she has functional restrictions with her arm/ hands on a daily basis as well as cognitive deficits that cause direct and significant restrictions to *meals*, *use of transportation*, and housework.

Across all of her submissions, the appellant explains in depth how shopping is restricted by anxiety when dealing with people/ line up's; "impulse buying" at stores; functional restrictions with lifting and carrying; and difficulty going out due to always needing to be near a washroom. In the SR, the appellant explains that she has difficulty focusing and completing tasks, "often abandoning tasks before completing them."

The appellant explains at length how social functioning is impaired by her difficulty understanding what people are saying; getting "easily upset" in social situations (especially when asked any personal questions); difficulty with decision-making, and self-isolation/ avoidance of social events. The panel finds that the additional details (endorsed by a prescribed professional, the doctor) corroborate continuous restrictions with *Shopping* and *Social functioning* as reported in the MR.

Panel's decision - restrictions to DLA

The panel has considered the evidence from the doctor in its entirety and finds that the ministry was not reasonable to conclude that DLA are not significantly restricted as set out in the legislation. The doctor indicates that DLA, especially *Shopping* and *Social Functioning*, are continuously restricted. The appellant takes significantly longer to manage DLA because of her mobility restrictions which are continuous (chronic pain "daily", frequent rest breaks, and needing to always be near a washroom). The appellant elaborates on the continuous nature of the restrictions, "every day" presents the "same or different challenges" due to her conditions.

The panel finds that the information in the forms, with additional details from the appellant, shows that DLA are directly impacted by the appellant's mental and physical impairments, and significantly restricted *continuously*. The panel therefore finds the ministry was not reasonable to conclude that DLA are not significantly restricted under subsection 2(2)(b)(i) of the EAPWDA.

Arguments - 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.

The ministry acknowledged the appellant uses a brace for her arm/hand (confirmed by the doctor) but argues that an arm brace alone does not meet the requirement for significant help under the legislation. However, under the EAPWDA, assistance from a device/ or equipment does not have to be significant. The ministry's main argument regarding the need for help is that because DLA are not significantly restricted, it cannot be determined that significant help is required.

The appellant argues that she does not have help with DLA because she lives alone and finds it very difficult to have someone in her space due to her anxiety and difficulties with communication and social interactions. The advocate argues that “even though [the appellant] has had to figure out how to do the best she can on her own, it doesn’t mean that she does not need help.” The advocate argues that “it is clear that [the appellant] could use some help of a significant nature.”

Evidence - need for help

The appellant acknowledged that she needs help with cleaning, shopping, and meal preparation, but she finds it especially difficult to ask for help from strangers. Regarding her tendency to self-isolate, the appellant explained that she needs her family to “coax her out of it” little by little. The appellant maintains that she needs counselling once a week but could not connect to Mental Health due her difficulty with the appointment booking process which caused her frustration and increased anxiety.

The appellant explained that without help, activities that require bending or getting down on her hands and knees don’t get done and the need for frequent rest breaks/or bathroom breaks also make it challenging to manage daily activities on her own.

The ministry focused on Section E of the MR (*Daily Living Activities*) where the doctor put a strike mark through the question that asks what assistance the patient needs to manage DLA. The panel accepts the advocate/ appellant’s explanation (as reasonable) that the doctor may have missed understanding the question due to being very busy. The doctor endorses the Statement in which the appellant explains her difficulties with securing help from others but acknowledges that she needs help with DLA. The appellant explains in all of her submissions that she tends to withdraw or become frustrated when family tries to help her.

Panel’s decision - help with Daily Living Activities

Under the EAPWDA, significant restrictions to DLA are a pre-condition for needing help. The ministry said that DLA are not significantly restricted, but the panel found that decision was unreasonable because there is sufficient evidence that DLA are significantly restricted, largely because of the appellant’s pain symptoms, limited mobility, and significant impairments to emotional and cognitive functioning.

With restrictions to DLA established, the evidence indicates the appellant needs an assistive device (brace) for hand/arm mobility. The appellant’s family provides significant help (“call her every day”) to provide emotional support, encourage the appellant to go out, and help her shorten the periods of self-isolation. Even with this help, the appellant’s social functioning is marginal.

The evidence indicates the appellant needs significant help with shopping, budgeting, preparing meals, and cleaning but finds it extremely difficult to ask anyone for help due to anxiety and communication barriers. On review of the evidence in the record, the panel finds the ministry’s decision that the help requirement under subsection 2(2)(b)(ii) of the EAPWDA were not met, was not 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 not reasonably supported by the evidence. The legislation requires all the criteria to be met. The ministry found that two criteria (age, and duration of impairment) were met but in the panel’s analysis, the evidence in the record satisfies all the requirements under section 2(2) of the EAPWDA.

The evidence across all of the reports and additional submissions establishes that the appellant has significant limitations with mobility and range of motion in her shoulder, arm, and spine as well as numbness in her hands that occurs intermittently throughout the day. The appellant suffers from chronic pain “daily” and her mobility is

significantly impaired due to her bladder condition and need for frequent rest breaks. The appellant requires an assistive device for her arm/ hand. The appellant has significant cognitive, emotional, and social deficits due to anxiety and difficulties with communication. The evidence further indicates the appellant requires significant help and regular counselling to manage DLA.

The panel therefore finds that the ministry's decision is not reasonably supported by the evidence. The panel rescinds the reconsideration decision and refers the matter back to the ministry for a decision on the amount of assistance. The appellant is successful on appeal.

APPEAL NUMBER
2021-0129

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) 2021-08-20

PRINT NAME Kevin Ash	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2021-08-20
PRINT NAME Nancy Eidsvik	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2021-08-20