

### **PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD) dated August 24, 2021, which found that the Appellant did not meet three of the five statutory requirements of Section 2 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) for designation as a person with disabilities (PWD). While the Ministry found that the Appellant met the age requirement and had an impairment which was likely to continue for at least two years, it was not satisfied that the evidence establishes that:

- The Appellant has a severe physical or mental impairment;
- The Appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- As a result of these restrictions, the Appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The Ministry also found that the Appellant is 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) and the Appellant did not appeal the decision on this basis. 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**

EAPWDA, Section 2

EAPWDR, Section 2

*Employment and Assistance Act* (EAA), Section 22(4)

The relevant legislation is provided in Appendix A.

## PART E – SUMMARY OF FACTS

The evidence before the Ministry at the time of the RD included the PWD Application comprised of the applicant information and self report (SR) completed by the Appellant on May 29, 2021, including a medical report (MR) dated May 25, 2021 and completed by the Appellant's General Practitioner (GP) who did not identify how long they have known the Appellant and who has seen the Appellant between 2 and 10 times in the past year, and an assessor report (AR) dated May 18, 2021, completed by a registered social worker (SW).

The evidence also included a Request for Reconsideration form (RFR) signed by the Appellant on August 29, 2021 in which she states that:

- She has anxiety which affects her focus and results her in having a mental block;
- She is very forgetful and tends to forget taking her prescription medication;
- She can communicate better in writing than verbally;
- Her brain and body are “*in avoidance mode due to post traumatic stress disorder (PTSD)*”; and
- She has regular back pain and was hospitalized due to leg pain.

Also included with the RFR was:

- A hand-written statement (the SW's Statement) by the SW in which the SW says that the Appellant's communication and speech are affected by anxiety, adding that “*speech can be pressured and rapid when affected by stress, often brought on by other people and new situations*”, and that the Appellant's emotional functioning is hampered by PTSD and anxiety, which is easily triggered, and which affects her ability to interact with others; and
- A two page letter dated Jul 15, 2021 from the SW (the SW's Letter) in support of the Appellant's application for PWD eligibility, describing the impairments the Social Worker has witnessed, the lack of support the Appellant receives from friends and family, and the difficulties she has with specific DLA.

### **Diagnoses**

In the MR, the GP diagnosed the Appellant with a mood disorder, and anxiety disorder and PTSD. The dates of onset of these impairments are not provided by the GP in the MR, although the GP does state that the Appellant's impairments are “*long standing*” and a “*lifelong condition*”.

### **Physical Impairment**

In the MR, the GP does not indicate that the Appellant has any physical impairments. With respect to functional skills, the GP reports that the Appellant can walk more than 4 blocks unaided on a flat surface, climb more than 5 steps unaided, and has no limitations with lifting and remaining seated. The GP has not made any comments in the section of the MR where asked to provide any additional information that might be considered relevant in understanding the significance of the Appellant's medical condition and the nature of her impairment.

In the section of the AR where the assessor is asked to indicate the assistance required related to impairments that directly restrict the applicant's management of mobility and physical abilities, the SW indicates that the Appellant is independent in walking indoors, standing, lifting, and carrying and holding,

and that she takes significantly longer than typical with walking indoors (“*slow due to pain*”) and climbing stairs (“*due to pain (in) knees and back*”). The SW has not provided any further comments in the space provided.

In the SW’s Statement, the SW says that, while the GP indicates in the MR that the Appellant’s lifting ability is unlimited, it would be more accurate to say that her lifting ability is limited to 5 – 15 lbs.

In the SW’s Letter, the SW writes that the Appellant has often had to go to the emergency facility at her local hospital for treatment of physical pain brought on while completing DLA, and that “*her back pain can slow her down with many (DLA which) take about twice as long as the ‘average adult’.*”

In the SR, the Appellant states that she has an overactive bladder and incontinence, and that she “*has all sorts of aches and pains everywhere*”, and that going up the stairs many times has caused her knee and back pain.

### ***Mental Impairment***

In the MR, under Health History the GP has written “*Patient has longstanding anxiety and depression. This limits her ability to care for herself and develop healthy relationships.*” In the section of the MR where the prescribed professional is asked if there are any significant deficits with cognitive and emotional function, the GP has ticked “yes” for the areas of consciousness, executive functions, memory, and emotional disturbance. No comments are given in the space provided.

In the section of the AR where the assessor is asked to identify any additional information that may be relevant to understanding the nature and extent of the applicant’s impairment, the SW has written “*anxiety disorder*”, “*mood disorder*”, and “*PTSD*”.

In the section of the AR where the assessor is asked to indicate the level of ability to communicate, the SW indicates that the Appellant’s abilities are “good” in writing, speaking, and reading and “poor” in hearing. In the section of the AR where the assessor is asked to indicate to what degree the applicant’s mental impairment restricts or impacts functioning, the SW has indicated a major impact on emotion, a moderate impact on bodily functions, consciousness, insight and judgment, attention/concentration, memory, and language, a minimal impact on impulse control, executive functioning, and motivation, and no impact on motor activity, psychotic symptoms, other neuropsychological problems, and other emotional or mental problems. With respect to social functioning, the SW indicates (with comments in *italics*) that the Appellant is independent in securing assistance from others (“*(The Appellant) can call (for) community outreach response support and crisis response team support*”), but needs continuous support in making appropriate social decisions, ability to develop and maintain relationships (“*only relationship is with mom, by phone*”), appropriate interaction with others (“*often engages in conflict*”), dealing appropriately with unexpected demands and ability to secure assistance from others (“*often relies on (regional health authority) mental health supports*”). The SW also indicated that the Appellant has marginal functioning with her immediate social network (“*poor relationships due to anxiety and mood disorder*”) and with her extended social networks (“*(exhibits minimal acts to fulfill basic needs) because of anxiety*”). The SW does not indicate that the Appellant requires support or supervision in social functioning in the space provided in the AR and makes no other comments or explanations.

In the SW’s Letter, the SW states that social functioning is a large part of why the Appellant struggles with DLA.

In the SR, the Appellant writes that she is living with PTSD and anxiety because she had a history of being bullied which started when she was still able to work, and that the bullying continued even when she became homeless. She said that her history of mental illness was used against her, and that even

the activity of using a bathroom is difficult because she has an overactive bladder and incontinence due to so much bullying, fault finding and being blamed “*for pretty much everything*”.

### ***Restrictions in the Ability to Perform DLA***

In the MR, the GP indicates that the Appellant has not been prescribed any medications or treatments that interfere with her ability to perform DLA, with no explanation given in the space provided. The GP has indicated that the Appellant’s social functioning activities are restricted, adding the comment “*Patient’s (in)ability to interact with others in public limits her ability to care for herself.*” Where asked to indicate whether the Appellant’s impairments restrict her activity in the areas of personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside and outside the home, use of transportation and management of finances, the GP has ticked “*no*” for all activities. The GP has not completed the section of the MR where the prescribed professional is asked to provide any additional information that might be considered relevant in understanding the impact of the Appellant’s medical condition on daily functioning.

In the AR, the GP states that the Appellant is independent with respect to the DLA of toileting, feeding herself, regulating her diet, making appropriate choices, reading prices and labels, and paying for purchases while shopping, all meal planning and preparation activities, paying rent and bills, managing medications and transportation. The SW indicates that the Appellant takes significantly longer than typical with dressing, grooming, bathing, and transfers in and out of bed and chairs (“*slow due to pain*”), basic housekeeping (“*due to pain*”), going to and from stores (“*slow if walking/pain*”), and carrying groceries home (“*slow if walking/uses delivery*”). No explanation or description of the type of assistance required or additional comments are noted in the space provided.

In the SW’s Letter, the SW says that travelling by public transit is a safety issue for the Appellant because of the risk of her experiencing back pain from harsh movements and sudden stops, and because it is an uncontrolled environment “*which can have a negative effect on (her) anxiety and PTSD*”.

In the RFR, the Appellant writes that she tends to forget to take prescribed medications and that pain in her back affects her ability to carry groceries home from the food bank. She also says that her back pain prevents her from sitting for long on the bus.

### ***Need for Help***

In the MR, under Health History the GP has written “*This patient needs an advocate for aid in her financial and social affairs.*”, adding “*(She) has been seeking help for her mental health - response so far has been limited.*” In the MR the GP indicates that the Appellant does not require any prostheses or aids for their impairment.

In the section of the AR where the assessor is asked about the applicant’s living arrangements, the SW has indicated that the Appellant lives alone, adding “*currently homeless, multiple evictions*”. In the section of the AR that asks who provides the help required for DLA, the SW has written “*mental health supports by (the Appellant’s regional health authority)*”. Where asked what assistance is provided using assistive devices, the SW has indicated that the Appellant does not use any of the listed devices. The SW also indicates that the Appellant does not have an assistance animal.

In the SW’s Letter, the SW says that the Appellant does not have people in her life to offer the required levels of support, as the regional health authority in her community does not have sufficient resources to meet her needs and she is often limited to contacting family by phone and a social media platform. The

SW also writes that the Appellant “*struggles with trusting people, as she has been taken advantage of and abused by people through her life*”.

### **Additional Information Submitted after Reconsideration**

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based on the requirements set out in the legislation and all admissible evidence.

The Appellant did not provide the reasons for her appeal in the Notice of Appeal (NOA).

At the hearing, the Appellant was represented by the SW, who served as her advocate and spoke on her behalf. The SW brought notes and other records to the hearing, which he consulted from time-to-time.

The Appellant said that, while the Ministry had initially treated her with respect and kindness, she began to feel bullied by some Ministry workers. She said it was important for the Panel to know that the original Ministry decision denying her the PWD designation was made by a Ministry office in one BC Community, while the RD came from a different Ministry location, which she felt indicated that “*not all (Ministry staff) are making decisions without bias*”.

The SW said he completely disagrees with the Ministry’s decision that the Appellant’s impairment does not meet the test of a severe mental disorder and stressed that the Appellant has major trust issues and has no family nearby to support her. He stated that it took a while for her to come to trust him, but after meeting with her several times she eventually did.

The SW stated that it was important to note that in trying to perform DLA outside of her home (for example, shopping for groceries), the Appellant has great difficulty. She will often feel extremely anxious and panicked by events such as perceived persecution or bullying by those with whom she has to deal with in the store or who pass her on the street. The SW referred to the GP’s assessment in the MR of the Appellants ability to walk four blocks or more on a flat service, noting that “*it doesn’t tell the whole story – (it might not be possible) if you are triggered by someone you meet on the street*”, adding “*(The Appellant) is an easy target. People sometimes pick up on that and she gets bullied a lot*”. The Appellant added that a few days ago she tried to take a bus to get groceries, but the bus was full, so she had to return home empty-handed. She also stated that she had kept a job for more than ten years, but she was often bullied at work and “*had to quit because they were teasing me*”.

Regarding the Appellant’s current living arrangements, the SW consulted his records and said that she was homeless between May 8<sup>th</sup> and 22<sup>nd</sup>, 2021 but currently has stable housing at a hostel, at which point the Appellant said that she “*is getting bullied there and might have to move out*”.

In response to a question from the Ministry about why he had indicated that the Appellant exhibits marginal functioning rather than very disrupted functioning with both her immediate and extended social networks, the SW said that when he had completed the AR in May 2021, he had only known the Appellant for a month and only met with her a few times. The SW said that he would have rated her functioning to be very disrupted if he were to complete the AR today, as he has assisted the Appellant many more times over the past several months and has a much better sense of her impairments. In response to another question from the Panel, the SW, after consulting with his appointment book, said that he had met with the Appellant most recently to provide her with support and assistance on September the 10<sup>th</sup> and 7<sup>th</sup>, August 5<sup>th</sup> and 9<sup>th</sup>, and on several dates in July, June, and May, averaging

about two meetings a month. In most cases the SW would meet with the Appellant after arranging an appointment in advance.

In response to a question from the Panel, the SW said that the walk-in clinic that the Appellant attended was located next door to the SW's work location. When asked by the Panel whether the SW knew if the Appellant was present when the GP completed the MR, the SW said that he didn't know because he wasn't there, but that the GP had met with the Appellant a total of three times and the SW gave the GP the MR to complete after the SW had completed the AR. When asked by the Panel whether the SW had any idea why there was a discrepancy in the GP's evidence in the MR concerning the Appellant's lifting and carrying abilities, the SW said no, but added that he would assess the Appellant's lifting and carrying capabilities as restricted to between 5 and 10 lbs., and that she uses a cart to pull or push her groceries, so bringing groceries home involves dragging or pushing rather than carrying. Even so, the SW said that the activity of using the cart gives the Appellant aches and pains, and she is concerned that it will leave her permanently disabled.

In response to a question from the Panel regarding the Appellant's evidence presented in the RFR that she sometimes forgot to take prescription medication and the GP's indication in the MR that the Appellant was not taking any prescription medications that interfered with her DLA, the SW said a different doctor at the walk-in clinic had prescribed two drugs for the Appellant, one of which was for anxiety, and that the GP would not have known this.

In response to another question from the Panel, the Appellant said that her family members included her mother, who lived in a distant foreign country and with whom the Appellant spoke sometimes by telephone, and that the Appellant occasionally sends messages using a social media platform to her half-sister, who does not respond, and to her brothers and cousins, none of whom are available to help her with DLA. The SW said that the Appellant used to rely on the services of a drop-in mental health centre in her community and that she now often relies on the local health authority's community outreach response (COR) and the crisis response team (CRT) for support, the Appellant adding that she had contacted the CRT for assistance most recently on September 25<sup>th</sup>. The SW said that the Appellant will also use the emergency services at her local hospital when she feels she needs help, and that "*there have been times when she is so anxious, she thinks she is having a heart attack and has called an ambulance.*"

The Ministry relied on the RD.

In response to a question from the Panel, the Ministry confirmed that the first two criteria (applicant's age and duration of impairment) had been met in this case, and that a prior court decision had determined that, because the legislation refers to "*daily living activities*" (in the plural), at least two DLA (but not necessarily more than two) would have to be directly and significantly restricted, either periodically or continually, for a PWD applicant to meet that test. The Ministry also said that, "*depending on the narrative presented*" regarding an applicant who had a severe mental impairment, the two DLA listed in EAPWDR Section 2(1)(b), i.e., the ability to make decisions about personal activities, care or finances and the ability to relate to, communicate or interact with others effectively, would be considered discrete DLA and, if an applicant were unable to perform both of them, could satisfy the legislative criterion without the applicant having to also be unable to perform at least one of the other eight DLA listed in EAPWDR 2(1)(a).

In response to a question from the Panel about how the Ministry deals with inconsistencies or contradictions in the application materials, the Ministry said it is not uncommon for a Ministry adjudicator to seek out additional information from an assessor or prescribed medical professional, and that if evidence is somewhat different but not entirely inconsistent an adjudicator might seek clarification.

However, the Ministry said, it is unlikely that an adjudicator would have sought to clarify matters in this case.

In response to another question from the Panel about whether an applicant who was denied the PWD designation could re-apply, the Ministry said that there was no limit to the number of times that a person could apply but there is a lot of time and work involved for both the Ministry and the applicant in proceeding with a PWD application and the Ministry "*would prefer that the decision comes from the Tribunal*".

***As to Whether the Panel Admits any of the New Evidence Presented at the Hearing***

As the information is all reasonably required for a full and fair disclosure of all matters related to the decision under appeal, the Panel admits the new verbal evidence presented by the SW or the Appellant at the hearing. Specifically, the Panel admits the SW's evidence that:

- The SW has met with the Appellant at least ten times in the past five months and that the Appellant regularly relies on COR and CRT and occasionally relies on medical emergency facilities for support;
- The GP who completed the MR is not her family physician but a walk-in clinic medical practitioner who has seen the Appellant three times, and that on other occasions the Appellant has been treated by different walk-in clinic medical practitioners;
- The SW would have assessed the Appellant's functioning with her immediate and extended social networks as "*very disrupted*" if he were to complete the AR now that he knows her better; and,
- Going out of the home to perform DLA can cause the Appellant significant trauma to the point where she has to abandon the errand and return home, or that after returning she is often unable to leave home for 24 to 48 hours afterwards.

As the new evidence above is provided by the same prescribed professional who completed the AR and was supported by case notes and other written records, the Panel gives all of the above new evidence full weight.

Regarding the new evidence presented at the hearing that the Appellant is taking two prescription medications, one of which was said by the SW to be for anxiety, the Panel admits the evidence but gives it no weight as a prescribed medical professional has not indicated that either of those treatments might interfere with the Appellant's ability to perform DLA.

## **PART F – REASONS FOR PANEL DECISION**

The issue under appeal is whether the Ministry's RD, which found that the Appellant is not eligible for designation as a PWD, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant. Was it reasonable for the Ministry to determine that the evidence does not establish that the Appellant has a severe mental or physical impairment, and that the Appellant's DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods? Was it reasonable for the Ministry to determine that because of any direct and significant restrictions it could not be determined that the Appellant requires the help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA?

### **ANALYSIS**

#### **Severity of Impairment**

Neither the terms "*impairment*" nor "*severe*" are defined in the EAPWDA. The Cambridge Dictionary defines "*impairment*" in the medical context to be "*a medical condition which results in restrictions to a person's ability to function independently or effectively*" and defines "*severe*" as "*causing very great pain, difficulty, worry, damage, etc.; very serious*". "*Impairment*" is defined in the MR and the AR sections of the PWD application form to be "*a loss or abnormality of psychological, anatomical, or physiological structure or function causing a restriction in the ability to function independently, appropriately or for a reasonable duration*". While the term is not defined in the legislation, the Panel finds that the Ministry's definition of impairment as set out in the MR and the AR is a reasonable definition of the term for the purpose of partially assessing an applicant's eligibility for the PWD designation.

In addition, a diagnosis of a severe impairment does not in itself determine PWD eligibility. Section 2(2) of the EAPWDA requires that in determining whether a person may be designated as a PWD, the Ministry must be satisfied that the individual has a severe physical or mental impairment with two additional characteristics: in the opinion of a prescribed professional, it must both be likely to continue for at least two years [EAPWDA 2(2)(a)] and it must directly and significantly restrict a person's ability to perform DLA continuously or periodically for extended periods, resulting in the need for the person to require an assistive device, significant help or supervision, or an assistance animal in performing those activities [EAPWDA 2(2)(b)]. Therefore, in determining PWD eligibility, after assessing the severity of an impairment the Ministry must consider how long the severe impairment is likely to last and the degree to which the ability to perform DLA is restricted and assistance in performing DLA is required. In making its determination the Ministry must consider all the relevant evidence, including that of the Appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from one or more prescribed professionals – in this case the GP and the SW.

#### **Severe Physical Impairment**

##### ***Physical Functioning***

The Appellant's position is that bullying has left her with an overactive bladder and incontinence, and that going up the stairs many times and not having anyone to help her carry groceries home have caused her knee and back pain.

The Ministry's position is that, although the SW has indicated that the Appellant suffers from mechanical back pain and poor hearing, the GP has not reported either of these conditions, and does not report any



physical impairments, nor difficulties with communication. As a result, the Ministry is not able to consider the information provided by the SW related to mechanical back pain and a hearing impairment. In addition, even if the Appellant's back pain and poor hearing had been confirmed by the GP, taking twice as long with DLA with no help required indicates a mild to moderate physical impairment to a person's ability to function independently or effectively.

### ***Panel Decision***

The Panel notes that the GP did not diagnose the Appellant with any physical impairments and does not indicate that the Appellant has any physical impairments in the MR. The Panel further notes that the SW has indicated in the AR and stated at the hearing that he would assess the Appellant's lifting and carrying capabilities as restricted to between 5 and 10 lbs. However, this assessment is not supported by the GP in the MR and no evidence has been presented to confirm the SW's assessment. Similarly, the Panel notes that any restrictions in the Appellant's ability to climb stairs have not been confirmed by a prescribed professional, and any restrictions to the distance the Appellant is able to walk on a flat surface are, according to the SW, the result of having her anxiety triggered by people she might meet while walking rather than from any physical impairment.

Despite the Appellant's assertion that she suffers from an overactive bladder and incontinence, and that going up the stairs many times and not having anyone to help her carry groceries home have caused her knee and back pain, no evidence has been presented to suggest that these ailments are significant enough to be reasonably considered a severe impairment, and, as mentioned above, despite situations where an applicant for the PWD designation argues that they have a severe impairment, physical or mental, the legislation is clear that the fundamental basis for determining whether an impairment is severe is the evidence provided by one or more prescribed professionals.

Based on all the evidence, the Panel finds that the Ministry reasonably determined that the information provided does not establish that the Appellant has a severe physical impairment.

### **Severe Mental Impairment**

#### ***Mental Functioning***

The Appellant's position is that her PTSD and anxiety disorder make her extremely anxious and panicked by events such as perceived persecution or bullying by those with whom she has to deal with whenever she is in public.

The Ministry's position is that, given the information provided by the GP and the SW concerning the Appellant's deficits with cognitive, emotional and social functioning, it has been established that her medical condition results in a moderate overall mental impairment to her ability to function independently or effectively, which does not establish that she has a severe mental impairment.

### ***Panel Decision***

The Panel notes that the legislation contains no formalized criteria to define what constitutes mild, moderate or severe cognitive deficits, or how many functions must be significantly impaired to establish a severe mental impairment. Prescribed professionals are asked to indicate in the degree of severity of mental impairments in the MR and the AR by assessing the skill areas affected by the deficit and applying a subjective interpretation as to whether the impairments are mild, moderate or severe. Despite the absence in the legislation of a clear description of the difference between mild, moderate or severe

cognitive deficits, or the number of functions that must be impaired in the legislation, in the RD the Ministry acknowledges that the Appellant's cognitive deficits, as presented in the MR, are moderate.

At the hearing, the SW said that, had he known the Appellant better at the time he completed the AR, he would have assessed the Appellant's functioning with her immediate and extended social networks as being very disrupted. The Panel notes that the AR describes very disruptive in relation to an applicant's immediate social network (family and friends) as "*aggression or abuse: major withdrawn: often rejected by others*", and in relation to extended social networks (contacts, acquaintances, storekeepers, etc.) as "*overly disruptive behaviour: major social isolation*". Both of these revised assessments by the SW represent a higher degree of severity than marginal functioning and are borne out by the examples provided in the Appellant's application and at the hearing. For example, in the AR, the SW stated that the Appellant "*often engages in conflicts (with others)*", and at the hearing, the SW said that when the Appellant has had to go out in public there have been times when she was so anxious that she has had to return home without completing an errand and has been unable to leave home for a day or two afterwards.

As mentioned above, the Panel has admitted the evidence that the SW had change his previous assessment of the Appellant's restrictions in social functioning because it was reasonably required for a full and fair disclosure of all matters related to the decision under appeal. A revised assessment based on the new evidence presented at the hearing strongly suggests that the Appellant's ability to function socially is significantly impacted by her mental impairments. For example, at the hearing the SW said that he now realizes that the Appellant can't function independently when trying to arrange transportation and that she is often so overwhelmed by the prospect of having to go out in public that she stays at home instead.

Based on all the evidence, including in particular the related evidence admitted at the hearing, the Panel finds that the Ministry's determination that the information provided does not establish that the Appellant has a severe mental impairment was not reasonably supported by the evidence.

### **Restrictions in the Ability to Perform DLA**

The Appellant's position is that her PTSD and anxiety disorder often cause her to have to abandon plans to perform DLA that require her to be outside her home, such as shopping for personal needs or using public transportation.

The Ministry's position is that, while the GP indicates that the Appellant has continuous restrictions with social functioning, her physical and mental impairments are not severe, and she is independent with most of her DLA. In addition, while the GP and the SW indicate that the Appellant has PTSD and her social functioning is adversely affected by events or situations with other people, a person having significant restrictions with social functioning who is also primarily independent is not considered directly and significantly restricted in performing their DLA.

### ***Panel Decision***

DLA are defined in Section 2(1) of the EAPWDR and are also listed in the MR and, with additional details, in the AR. Section 2(2)(b) of the EAPWDA requires that the Ministry be satisfied that a prescribed professional has provided an opinion that an applicant's severe impairment directly and significantly restricts their DLA, continuously or periodically for extended periods. Section 2(2)(a) of the EAPWDR defines "*prescribed professional*" to include a medical practitioner and a social worker. Therefore, the GP and the SW are considered prescribed professionals for the purpose of providing

opinions regarding the nature of the Appellant's impairment and its impact on the performance of DLA. The term "directly" means that there must be a causal link between the severe impairment and the restriction. In addition, the direct restriction must be significant. There is also a component related to time or duration: the direct and significant restriction must be either continuous or periodic. If periodic, it must be for extended periods. In the MR and the AR, prescribed professionals are instructed to check marked boxes and to provide additional explanations; for example, a description of the type and amount of assistance required and the frequency and duration of periodic restrictions.

The Panel notes that the two DLA listed in EAPWDR Section 2(1)(b), namely the ability to make decisions about personal activities, care or finances and the ability to relate to, communicate or interact with others effectively, are two separate DLA in relation to a person who has a severe mental impairment. The Panel further notes that the Ministry acknowledged that these two DLA did not need to also be represented by any of the eight DLA listed in EAMPDR Section 2(1)(a), and that only two DLA would have had to be directly and significantly restricted for this criterion to have been met. The Panel finds both of these acknowledgements by the Ministry to be reasonable and supported by the language in the EAPWDR.

As mentioned above, the Panel has admitted the evidence that the SW had changed his previous assessment of the Appellant's restrictions in social functioning to be severely disrupted. The Panel found the SW's explanation for the change, namely increased contact with the Appellant, to be a credible explanation. The Panel notes that a revised assessment based on the new evidence presented at the hearing strongly suggests that the Appellant's ability to make decisions about personal activities and her ability to communicate or interact with others effectively are both directly and significantly restricted. For example, at the hearing the Appellant said that she was fearful that she might lose her current housing and become homeless again because she felt she was being bullied by the people with whom she is now living.

In addition, as the Appellant often must return from grocery shopping without food due to anxiety attacks when in the presence of others, or sometimes must return home without having been able to board a bus, the Panel notes that the available evidence suggests that the Appellant is also directly and significantly restricted in the DLA of shopping for personal needs and using public transportation facilities.

As a result, based on all the evidence, in particular the related evidence admitted at the hearing, the Panel finds that the Ministry's determination that the information provided does not establish that the Appellant is directly and significantly restricted in her ability to perform DLA either continuously or periodically for extended periods was not reasonably supported by the evidence.

### **Help with DLA**

The Appellant's position is that she struggles with trusting people because she has been taken advantage of and abused by people through her life and, because she has no family living anywhere near her home community, she must rely on social workers, community outreach response, crisis response teams, and hospital emergency facilities, and that she has no one to help her carry her groceries home.

The Ministry's position is that it cannot be determined that the Appellant requires significant help from other persons because the information has not established that DLA are significantly restricted.

### ***Panel Decision***

Section 2(2)(b)(ii) of the EAPWDA requires that, “*as a result of direct and significant restrictions*” in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform one or more DLA.

The Panel notes that the GP has written in the MR that the Appellant’s anxiety limits her ability to care for herself and develop healthy relationships. In the AR, the SW said that the Appellant relied heavily on the mental health supports available through her regional health authority. At the hearing, the Appellant explained that she had no family living nearby and that the only family member she communicated with by telephone was her mother, who lives a great distance away and whom she doesn’t have the opportunity to visit.

The Panel finds that the evidence presented both in the Appellant’s application by both the GP and the SW and by the SW at the hearing clearly indicates that the Appellant needs significant help or supervision from other people to perform DLA as a direct and significant result of her severe mental impairments. This is borne out, for example, by her inability to complete errands such as shopping for groceries on her own due to fear that her anxiety will be triggered simply by passing others on the street or that she might be bullied on the bus.

Based on all the evidence, the Panel finds that the Ministry’s determination that, as a result of direct and significant restrictions in her ability to perform DLA, the Appellant did not need help with her DLA was not reasonably supported by the evidence.

### **Conclusion**

Having reviewed and considered all the admissible evidence and relevant legislation, the Panel finds that the Ministry’s RD, which determined that the Appellant was not eligible for the PWD designation under Section 2 of the EAPWDA, was not a reasonable application of the EAPWDA in the circumstances of the Appellant, and therefore rescinds the decision. The Appellant’s appeal, therefore, is successful.

## APPENDIX A - LEGISLATION

The criteria for being designated as a PWD are set out in Section 2 of the EAPWDA as follows:

### Persons with disabilities

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).

The EAPWDR provides as follows:

### 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 ...

The EAA provides as follows:

**Panels of the tribunal to conduct appeals**

22(4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

APPEAL NUMBER  
2021-0174

**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)

Section 24(2)(a)       or Section 24(2)(b)

**Part H – Signatures**

Print Name

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2021/09/30

Print Name

Julie Iuvancigh

Signature of Member

Date (Year/Month/Day)

2021/10/05

Print Name

Diane O'Connor

Signature of Member

Date (Year/Month/Day)

2021/09/30