

**Part C – Decision Under Appeal**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated December 29, 2021, which held that the appellant did not meet 3 of the 5 statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age and duration requirements, but was not satisfied that:

- the appellant has a severe mental and/or physical 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.

**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**

## Evidence at Reconsideration

- The appellant's PWD application comprised of a Medical Report (MR) [dated September 23, 2021] and an Assessor Report (AR) [dated September 27, 2021], which was completed by the appellant's general practitioner (the GP) who had known the appellant for 2 years and seen him 2-10 times in the past 12 months. The approaches and sources used to conduct the MR and AR included an office interview with the appellant, file/chart information and a rheumatologist's report dated April 8, 2020. The PWD application also included the appellant's Self-Report (SR) dated September 2021.
- A second PWD application was submitted with the Request for Reconsideration. It appears to be completed by the appellant and is not signed or dated by a prescribed professional. This PWD application included additional hand-written comments in both the MR and AR, and check marks in the AR indicating restrictions to DLA. The ministry considers the second PWD application to be the appellant's self-report.
- A letter from the appellant's rheumatologist, dated April 8, 2020, and indicated, in part, the following about the appellant:
  - Past history of anxiety and depression.
  - A long-standing history with fibromyalgia which started in one hip but progressed to the other hip, shoulders, and elbow, and severe muscle tightness in the neck and lower back.
  - The appellant reported pain worsening throughout the body and specifically in the neck, shoulders, elbow, hips, and lower back.
  - The appellant reported generalized pain to the point that light touch or a shower can be painful.
  - The appellant reported poor sleep.
  - Though there is a history of anxiety and depression the appellant's mood has been stable.
  - The rheumatologist discussed with the appellant proper sleep hygiene, increased her daily medication dose, and recommended exercise (a brisk walk) as a part of managing fibromyalgia.
- Request for Reconsideration (RFR), signed and dated October 30, 2019, in which the appellant described, in part, the following:
  - "I have mental and physical daily challenges that were not part of the report" because the current GP could not access information from the previous GP who retired. A \$40 fee is required to access previous file/chart information which the appellant does not have.
  - Depression and anxiety effects the appellant on a daily basis. She gets overwhelmed easily and shuts downs and can freeze.
  - She experienced depression after the birth of her two children and was hospitalized after the birth of her second child.
  - She experienced childhood trauma but has not been diagnosed with PTSD.
  - Her physical abilities are getting worse as indicated in the PWD application and she stated that she will need mobility devices very soon because her pain is debilitating.
  - Her skin hurts to the touch, and her body and back prevents her from moving most days.
  - She needs help with medications and needs household and shower devices.
  - She cannot sleep or even rest due to the pain.
  - When the pain starts in one area it spreads to the whole body and she then needs help to move.
  - Her husband has early onset Parkinson's disease.

### **Diagnoses**

In the MR, the GP diagnosed the appellant with fibromyalgia (onset 1999).

In the second MR, the appellant added depression and anxiety as diagnosed conditions but did not include the onset of these conditions.

**Health History**

In the MR, the GP indicated the following about the appellant:

- Initial pain was in left hip then progressed to the other hip, knees, elbow, and wrists.
- Oral medication has only helped partially. She has been prescribed a new medication but cannot afford it.
- Progressive pain limit[s] ability to walk even short distances.
- Doing house work exacerbates her pain as does bending and lifting.

**Duration**

In the MR, the GP indicated the following about the appellant:

- The impairment is likely to continue for two or more years.
- “patient will likely have this condition lifelong. It may get worse with age, depending on lifestyle choices (i.e., weight gain).

**Physical Impairment**

In the MR, the GP indicated the following about the appellant:

- She can walk 1-2 blocks and climb 2-5 steps unaided, lift under 5lbs, and stand for less than 1 hour.

In the AR, the GP indicated the following about the appellant:

- Limited mobility, difficulty with heavy lifting (under 10lbs), and difficulty with repetitive bending.
- Walking indoors and walking outdoors are performed independently and take significantly longer, with the comment: “limited due to pain”.
- Climbing stairs is performed independently and take significantly longer, with the comment: “able to do 1 flight of stairs”.
- Standing is performed both independently and requires periodic assistance, with the comment: “can tolerate 30 min[utes]”.
- Lifting requires continuous help, with the comment: “able to lift >20lbs”.
- Carrying and holding is performed with continuous help, the use of an assistive device, and takes significantly longer, with the comment: “unable to carry more than 10 pounds”.
- “Uses trolley to carry groceries”.

In the SR, the appellant stated the following:

- She has pain in the lower back.
- The muscles in the neck and shoulders tighten and cause pain in the neck, arms, elbows (which are sensitive to the touch), hips, legs, knees, ankles, feet, wrists, and hands.
- Bending when legs are straight is difficulty and straightening when legs are bent is difficult.
- The pain feels like burning and stinging.
- Clothes touching the skin hurts as does taking a shower.
- She wakes up in pain when sleeping and frequently has to change positions.

**Mental Impairment**

In the MR, GP indicated the following about the appellant:

- There is no diagnosed mental impairment.
- There are no difficulties with communication.
- There are no significant deficits with cognitive and emotional function.

In the AR, GP indicated the following about the appellant:

- Speaking, reading, writing, and hearing are good.
- There are no impacts with cognitive and emotional functioning.

- She independently performs all tasks under 'pay rent/bills and medications'.
- She independently performs all task under 'social functioning'.
- She has good functioning with immediate and extended social networks.

In the SR, the appellant made no mention of a mental impairment nor did she refer to depression or anxiety.

In the second AR, the appellant stated that under cognitive and emotional functioning, there are major impacts to 'bodily functions', 'emotions', 'memory', 'motor activity', 'other neuropsychological problems', and 'other emotional or mental problems'. There are moderate impacts to 'consciousness', 'insight/judgment', 'attention/concentration', 'executive', 'motivation', and 'psychotic symptoms'. There are minimal impacts to 'impulse control', and 'language'.

### ***Daily Living Activities***

In the MR, the GP indicated the following about the appellant:

- No medications that interfere with the ability to perform DLA have been prescribed.

In the AR, the GP indicated the following about the appellant:

- All listed tasks under DLA are performed independently under 'personal care, meals, pay bills/rent, medications and social functioning'.
- The appellant requires periodic assistance and takes significantly longer with all tasks under 'basic housekeeping', with the comment: "Takes longer due to pain. Gets assistance from family".
- Under 'shopping', 'carrying purchases home' requires periodic assistance and takes significantly longer, with the comment: "unable to carry groceries". 'Going to and from stores' is performed independently and takes significantly longer. The 3 remaining tasks in this category are performed independently. The GP commented: "son and husband assist as needed for housework, carrying groceries. Uses a cart
- Under 'transportation' independently performs and takes significantly longer with 'using public transportation' and 'using transit schedules and arranging transportation', with the comment: "takes longer to get to bus stop due to pain". 'Getting in/out of vehicle' is performed independently.
- She independently performs all task under 'social functioning'.
- She has good functioning with immediate and extended social networks.

In the SR, the appellant stated:

- Showering and bathing is painful because her skin hurts and therefore, she cannot bath for days.
- Housework takes longer to do an afterwards she is tired and sore all the time.

In the second MR, the appellant stated the following about restrictions to DLA:

- She continuous restrictions to 'personal self-care', 'meal preparation', 'basic housekeeping', 'daily shopping', 'mobility inside home', 'mobility outside home', 'use of transportation', and 'management of medications'.

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In the second AR, the appellant stated the following about DLA:

- She needs periodic assistance with all task related to 'social functioning' except 'able to secure assistance from others' and has marginal functioning with immediate and extended social networks.
- She needs periodic assistance with all task under 'pay rent/bills, and medications'.

- She needs periodic assistance with ‘meal planning, cooking and safe storage of food’, and continuous assistance with ‘food preparation’.
- She needs periodic assistance with ‘using transit schedules’, and continuous assistance with ‘getting in/out vehicle’, and ‘using public transit’.
- She needs periodic assistance with ‘dressing’, ‘grooming’, ‘toileting’, and ‘regulating diet’, and continuous assistance with ‘bathing’, ‘regulating diet’, and ‘transfers’.
- She needs continuous assistance with ‘laundry’ and ‘basic housekeeping’.
- She needs periodic assistance with ‘going to/from stores’, ‘reading labels/prices’, and continuous assistance with ‘making appropriate choices’, ‘paying for purchase’, and ‘carrying purchases home’.

### **Help**

In the MR, the GP indicated the following about the appellant:

- Requires no prostheses or aids for her impairment.

In the AR, the psychiatrist indicated the following about the appellant:

- The appellant lives with ‘family, friends or caregiver’.
- Help with DLA is provided by ‘family’, husband, and son.
- Under the section assistance provided through the use of Assistive Devices, with the comment: “2 wheeled cart for groceries”.
- No is provided by Assistance Animals.

In the SR, the appellant did not make mention of requiring assistance with DLA or that any is provided.

In the second MR, the appellant stated, “I need shower handles and mobility devices”.

In the second AR, the appellant stated that she needs mobility devices, (such as a cane, toiletry, and bathing aids) and help with medications.

### **Evidence on Appeal**

Notice of Appeal (NOA), signed and dated January 8, 2022, which described, in part, that the appellant’s current situation, and the following:

- She has been trying to help for 7 months.
- She has no money coming in.
- Her and her husband’s health is deteriorating.
- She cannot pay for medication or rent and need food.

The panel found that the information in the NOA consists of the appellant’s argument and does not require a determination of admissibility.

### **Evidence at the Hearing**

At the hearing the appellant submitted a 2-page written testimony which was prepared with the assistance of her advocate. The appellant relied on this submission as her testimony at the hearing. This submission was read out by the panel chair for the benefit of the ministry representative who did not have access to the document. This submission reiterated the information provide by the appellant at the time of reconsideration. The submission also provided more detailed and historical information regarding the appellant’s conditions. The following was described:

- The origins of the complex PTSD which dates back to childhood and continued into adulthood.
- The history of Major Depression, how it presents and the impacts it has in her current life.
- The history of Panic Disorder, how it presents and the impacts it has in her current life.

- The history of Severe Fibromyalgia, how it presents and the impacts it has in her current life.
- The restrictions she faces in her daily life in the areas of: walking, climbing stairs, lifting, sitting, communication, cognitive/emotional function, self-care, meal preparation, housework, medication management, mobility inside/outside the home, transportation, shopping, finance management and social functioning.
- The devices she needs in order to manage DLA (grab bars, shower chair and lumbar support).
- The areas in which she receives assistance (self-care, meal preparation/planning, housework, shopping, transportation, medication, and social functioning).
- The document also indicates that the appellant needs trauma-informed therapy.

The panel notes that the information contained in this submission was not verified by a prescribed professional. It is a detailed description of the appellant's opinion regarding her conditions and their impacts on her life. The panel finds that this submission is a self-report made by the appellant.

At the hearing, the appellant reiterated the information found in the RFR and NOA, and stated, in part, the following:

- Her son paid \$40 and now her GP has access to her previous medical files, but she did not have with her at the time of the hearing.
- When the PWD application was completed the GP did not have her previous medical files.
- She does not take medication for her impairments because she cannot afford the medications.
- When asked, the appellant stated that her GP asked her a few questions over the phone when completing the PWD. However, he did not have all of her medical information and she did not understand all of the question he asked.
- In response to the ministry presentation, the appellant stated that the GP did not ask many questions or go into detail with the question.
- This has been an 8-month process, the doctor did not take the time to complete the application properly and gave conflicting information. She does not have the money for medication. She is in so much pain on a daily basis.
- She supports her husband who has Parkinson's disease.
- The ministry has not given support, help or proper information, and she feels overlooked.

At the hearing, the ministry relied on its reconsideration decision.

***Admissibility of Additional Information***

The ministry did not object to the admission of the written submission that was presented at the hearing. The ministry noted that it considers this submission to be apart of the appellant's self-report.

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.

In this case, the panel determined that the information submitted at the hearing is admissible and keeping with the procedures stated above.

**Part F – Reasons for Panel Decision**

The issue on appeal is whether the ministry's reconsideration decision, 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 applicable enactment in the circumstances of the appellant. The ministry found that the evidence does not establish that the appellant has a severe mental or physical impairment and that his DLA are, in the opinion of a prescribed professional, directly, and significantly restricted either continuously or periodically for extended periods. Also, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person.

**Panel Decision**

The panel notes that, in the reconsideration decision, the ministry noted that the impairment the appellant described in the second PWD application is much more significant than what the GP described in the original PWD application. The ministry stated that this discrepancy made it difficult to determine which description is a more accurate reflection of the appellant's impairment and how it affects daily life.

The panel also notes that the information provided in the submission at the hearing does not address the concerns the ministry noted in the reconsideration decision. Namely, the document does not describe the type and duration of the assistance provided, and if it was not verified by a prescribed professional.

**Severe Impairment**

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical or mental impairment. Determining a severe physical or mental impairment requires weighing the evidence provided against the nature of the impairment and its reported functional skill limitations. A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. An "impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively. To assess the severity of an impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning.

The panel finds that employability is not a consideration for eligibility for PWD designation because employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

**Physical Impairment**

The appellant argued that due to her fibromyalgia she has severe pain in her hips, neck, wrists, lower back, upper back, knees, feet, and elbows. This causes her to have an unrestful sleep and is always exhausted as a result (chronic fatigue). If she does any normal activity she must rest for hours. She is weak, is in pain all over her body and is prone to injury.

The ministry argued that based on the information provided in the PWD application, a severe impairment of the appellant's physical functioning has not been established.

In its reconsideration decision, the ministry noted that the GP indicated that the appellant does not require prosthesis or aids for her impairment. The GP also indicated that the appellant can walk 1-2 steps and climb 2-5 steps unaided, lift less than 5lbs and remain seated for less than 1 hour. The ministry also noted that the GP indicated that the appellant takes significant longer when walking indoors/outdoors, ("limited due to pain"), and climbing stairs ("can only do 1 flight of stairs"). The ministry stated that neither the GP or the appellant indicated how much longer the appellant takes to complete these tasks, and therefore, the ministry is unable to determine that the extra time required is reflective of a severe impairment.



The ministry noted that the GP indicated that the appellant can stand independently, needing periodic assistance and wrote "can tolerate 30 min[utes]". The ministry stated that this is not reflective of a severe impairment of physical functioning.

In terms of lifting, carrying and holding, the ministry noted that the GP indicated that the appellant needs continuous assistance. However, the GP also indicated that the appellant is unable to lift more than 20lbs, unable to carry more than 10lbs and uses a trolley to carry groceries. The GP indicated in the MR that the appellant can climb 2-5 steps unaided and, in the AR indicated that the appellant can climb 1 flight of stairs. The GP indicated in the MR that the appellant can lift less than 5lbs and then in the AR indicated that the appellant can lift no more than 20lbs. The ministry concluded that the information provided by the GP in the MR conflicts with the information provided in the AR and the panel adds that it also conflicts with the appellant's SRs.

The ministry concluded that the information provided by the GP regarding the appellant's basic physical functioning and ability to manage activities requiring mobility and physical ability does not establish the presence of a severe physical impairment.

The panel finds the ministry's analysis of the evidence as stated here was reasonable and adds that the GP failed to provide an accurate assessment of the appellant's conditions and as such does not meet the legislative requirements.

The panel also considered the SRs provided by the appellant which includes extensive information about her fibromyalgia, bodily pain, and the impacts they have on her daily life. The panel empathizes with the appellant, however, it finds that, though this information is important to understand the full picture of the appellant's condition, it is not enough to satisfy the legislative requirements as it has not been confirmed by a prescribed professional.

Given the overall assessments of the appellant's functional ability, and mobility and physical ability in the PWD application and the lack of any additional information provided at appeal from a prescribed professional, the panel finds that the ministry was reasonable in its determination that the evidence does not support a finding that the appellant suffers from a severe physical impairment and that the legislative criteria outlined in Section 2(2) of the EAPWDA have not been met.

### Mental Impairment

The appellant argued that she suffers from a history of PTSD, anxiety, depression, and panic attacks, which restricts her ability to function day to day, make decision about medication or finances, or function socially. She feels helpless, hopeless and lack motivation to do anything. This is exacerbated by her physical condition and fatigue. She argued that her GP did not have access to her full medical history and therefore did not indicate that she suffers from depression and anxiety.

The ministry's position is that based on the assessments provided in the PWD application, a severe impairment of mental functioning has not been established.

In its reconsideration decision, the ministry noted that the GP did not confirm a diagnosis of depression and/or anxiety or identified a mental impairment. The ministry noted that the rheumatologist's reference to depression and anxiety is reflective of the appellant's self-report and not a known diagnosis. The ministry noted that the GP indicated that the appellant has no significant deficits with cognitive and emotional function, nor is there assistance required with making decision about personal activities, care or finances, or relating to communication, or interacting with others effectively. The ministry that in the second PWD application, the appellant identified several areas of cognitive and emotional functioning

that affect her daily life. However, this is not supported by the GP. The ministry concluded that the information provided does not establish that the appellant has a severe impairment of mental functioning.

The panel finds that the ministry reasonably concluded that the information provided by GP regarding the appellant's mental functioning does not support a finding of a severe mental impairment. That is, the GP did not provide a diagnosis a mental impairment, there is no indication of deficits with cognitive and emotional functioning or communication. The panel also considered the April 8, 2020 letter from the rheumatologist which indicated a history of anxiety and depression. However, the panel finds that this information is a representation of a self-report that the appellant provided and does not represent a diagnosis of a mental impairment by the rheumatologist.

The panel also considered the SRs provided by the appellant which includes extensive information about her depression and anxiety, and the impacts they have on her daily life. The panel empathizes with the appellant, however, it finds that, though this information is important to understand the full picture of the appellant's condition, it alone cannot satisfy the legislative requirements as it has not been confirmed by a prescribed professional.

Given the overall assessments of the appellant's mental, cognitive, and emotional ability and functioning in the PWD application and the lack of any additional information provided at appeal from a prescribed professional, the panel finds that the ministry was reasonable in its determination that the evidence does not support a finding that the appellant suffers from a severe mental impairment and that the legislative criteria outlined in Section 2(2) of the EAPWDA have not been met.

#### Restrictions in the ability to perform DLA

Section 2(2)(b)(i) of the EAPWDA requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether or not it is satisfied that the legislative criteria are met, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration – the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended periods. Any analysis of periodicity must also include consideration of how frequently the activity is restricted. All other things being equal, a restriction that only arises once a year is less likely to be significant than one that occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

DLA are defined in section 2(1) of the EAPWDR and are listed in both the MR and the AR sections of the PWD application with the opportunity for the prescribed professional to check marked boxes and provide additional narrative. DLA, as defined in the legislation, do not include the ability to work.

The appellant argued that due to her fibromyalgia, depression, and anxiety, she is unable to perform her DLA. The appellant argued that her GP did not have a full picture of her history and current situation but that she has provided an accurate description in her SRs.

The ministry argued that it is not satisfied that the information provided establishes that the impairment directly and significantly restrict DLA continuously or periodically for extended periods.

The ministry noted that the GP indicated that the appellant is not prescribed medications and/or treatments that interfere with her ability to manage DLA. The ministry noted that the GP indicated that the appellant is independent with most of the listed DLA. However, the GP indicated that the appellant needs periodic assistance and takes significantly longer with: using public transit/schedules, laundry/basic housekeeping, going to/from stores and carrying purchases home. The ministry also noted the GP's narrative that the appellant's son and husband assist with housework and carrying groceries. The ministry noted that the information provided in the second PWD application is not confirmed by a prescribed professional.

The ministry noted that, in regard to the tasks that require periodic assistance, the GP did not indicate the frequency and duration of the assistance provided. In regard to the tasks that take significantly longer, the GP did not indicate how much longer these tasks take.

The ministry concluded that not enough evidence is provided to establish that the appellant's ability to manage DLA is significantly and directly restricted either periodically for extended periods or continuously and that as a result she requires significant assistance from another person to complete them.

The panel finds the ministry's analysis of the evidence and its conclusion regarding the evidence as stated here was reasonable. The panel finds that being independent with the majority of listed DLA and lacking information regarding frequency and duration of the periodic assistance that is required does not satisfy the legislative requirements. Similarly, the panel finds that without information regarding how much longer specific tasks take to complete it would be difficult to determine if DLA are directly and significantly restricted by a severe impairment.

The panel also considered the SRs provided by the appellant which includes extensive information about her physical mobilities, functional abilities, and how her medical conditions impact her DLA. The panel empathizes with the appellant, however, it finds that, though this information is important to understand the full picture of the appellant's condition, it is not enough satisfy the legislative requirements as it has not been confirmed by a prescribed professional.

The panel considered the assessment by the GP in the PWD application of independence with almost all of the DLA, the lack of sufficient information indicating whether there is a restriction to perform some DLA either continuously or periodically for extended periods, and that insufficient additional or supporting information was provided from a prescribed professional at appeal to support the appellant's position. The panel finds that the evidence provided by the GP does not describe or indicate that a severe impairment restricts the appellant's ability to perform her DLA either continuously or periodically for extended periods. Given the evidence as a whole, the panel finds that the ministry reasonably concluded that the evidence does not establish that an impairment significantly restricts DLA continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

#### Help to perform DLA

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 in order to perform DLA.

The appellant indicated that she receives help her husband and son, as is indicated by the GP in the PWD application. She also requires assistive devices to manage daily life (grab bars, shower chair, and lumbar support).

The ministry argued that because it has not been established that DLA are significantly restricted, it cannot be determined that help is required.

The panel notes that, AR, the GP indicated that assistance is required from the appellant's husband and son. However, it was not indicated what assistance is provided, how often or for how long. The panel finds that without such information it is difficult to determine if the criteria of help has been met.

Given that confirmation of direct and significant restrictions with DLA is a precondition of the need for help criterion and because the panel found that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel also finds that the ministry reasonably concluded that it cannot be determined that the appellant requires help to perform DLA as required by section 2(2)(b)(ii) of the EAPWDA.

### **Conclusion**

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was reasonably supported by the evidence and is a reasonable application of the applicable enactment, and therefore confirms the decision. The appellant is not successful on appeal.

### **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, or

(b) acting in the course of the person's employment as a school psychologist by

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- (i) an authority, as that term is defined in section 1 (1) of the Independent School Act, or
- (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the School Act, if qualifications in psychology are a condition of such employment.

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**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

Neena Keram

Signature of Chair

Date (Year/Month/Day)

2022/01/27

Print Name

Kulwant Bal

Signature of Member

Date (Year/Month/Day)

2022/01/27

Print Name

Sarah Bijl

Signature of Member

Date (Year/Month/Day)

2022/01/27