Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD) dated September 15, 2022, 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 the Appendix.

Part E – Summary of Facts

The evidence before the Ministry at the time of the RD included the PWD Application comprised of an applicant information and self report (SR), signed by the Appellant on May 5, 2022, a Medical Report (MR) dated June 20, 2022 completed by the Appellant's General Practitioner (GP) who has known the Appellant for 22 years and who has seen the Appellant 2 - 10 times in the past year, and an Assessor Report (AR) also signed by the GP on June 20, 2022.

The Panel notes that the following sections of the AR appear to have been completed by the Appellant:

Section A – Living Environment

Section B 2 – Ability to Communicate

Section C – Daily Living Activities (except for the social functioning section)

Section D – Assistance Provided for Applicant

While the Appellant appears to have completed the above-noted sections of the AR, the Panel further notes that the GP has signed and dated the last page of the AR, the Panel concludes that the GP acknowledges the information on the pages of the AR that were completed by someone other than the GP.

The evidence available to the Ministry at the time of the RD also includes:

- A Request for Reconsideration form (RFR) signed by the Appellant on August 17, 2022. Relevant information from the RFR is summarized in the relevant sections below;
- A two-page document titled "*Emergency Documentation*", with a triage date of October 6, 2020 (the Emergency Department Report). The Emergency Department Report provides a history of the patient's current illness, past medical history, the results of a physical exam, and a treatment plan, all of which are summarized in the relevant sections below;
- The first page of a three-page document titled "*Consultations*", with the "*Date of Service*" identified as October 6, 2022 (the October 6 Consultation Report). The October 6 Consultation Report provides a past psychiatric history and an incomplete history of the Appellant's present illness (the narrative appears to continue on the second page, which is not included). Relevant information from this document is summarized in the relevant sections below;
- The third page of a four-page document also titled "*Consultations*" (the Second Consultation Report). The information at the top of the Second Consultation Report is untitled as it is a continuation of what appears on the previous page. It is likely that this excerpt from a consultation report contains additional information and different pagination, but otherwise the repeated text is identical to what appears near the end of the page in the October 6 Consultation Report (see the "Severe Mental Impairment" section below). The other narrative on the third page provides a summary of the

subject's past medical history, medications, social history and substance use, all of which is summarized in the relevant sections below;

- The third page of another four-page document also titled "*Consultations*" (The Third Consultation Report). The date of consultation is not identified, but the Third Consultation Report was printed on a different date than the other two consultation reports described above (in this case November 12, 2020). The third page of the Third Consultation Report provides information about the Appellant's substance use, the results of a mental state examination, a summary, and a management plan and recommendations, all of which is summarized in the relevant sections below; and
- A one-page note from the Appellant's GP, dated September 13, 2022, saying that the Appellant is unable to work for medical reasons and that a return to work date is unknown.

Diagnoses

In the MR, the GP diagnosed the Appellant with Generalized Anxiety Disorder (GAD) with an unknown date of onset, Personality Disorder Custer B also with an unknown date of onset, and Major Depression with a date of onset of 2019.

Severe Physical Impairment

In the MR, under Health History, where asked to indicate the severity of the applicant's medical conditions and how they impair the applicant, the GP has written "*Recurrent anxiety and suicidal ideation since 2020. Symptoms include panic attacks and agoraphobia. Physical self harm includes 'cutting' behaviours*".

With respect to functional skills, the GP reports that the Appellant can walk more than four blocks unaided on a flat surface, climb more than 5 steps unaided, lift 15 – 35 lbs., and can remain seated for 2 – 3 hours.

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 GP acknowledges that the Appellant is independent with walking indoors and outdoors, climbing stairs, standing and carrying and holding, but needs help with lifting "*if (the object is) too heavy*".

In the RFR, the Appellant says that she has been diagnosed with costochondritis and scoliosis. Her costochondritis "*inflames*" when she's sick, stressed, or anxious. As a result, she is unable to move and breathing becomes painful. She also says that her scoliosis causes her back to constantly hurt and she can't stand for very long. She says that her hips are also unaligned so she is also unable to walk or sit for very long.

The Appellant does not indicate that she has a severe physical impairment in any of the other documents provided.

Severe Mental Impairment

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 emotional disturbance and memory. No additional comments are made in the space provided.

In the section of the AR where the assessor is asked to indicate the level of ability to communicate, the GP acknowledges that the Appellant’s abilities are “good” in all areas (speaking, reading, writing and hearing). No explanations or comments are made in the space provided.

In the section of the AR designed to be completed for an applicant who has a mental impairment or brain injury, the GP has indicated a major impact to emotional functioning; a moderate impact in the areas of attention/concentration, memory and motivation; a minimal impact in the areas bodily functions, impulse control, executive functioning and psychotic symptoms; and no impact in the other areas (consciousness, insight and judgement, motor activity, language or other neuropsychological, emotional or mental problems). The AR instructions do not explain the distinction between a “*moderate*” and a “*major*” impact.

In the section of the AR where the assessor is asked if the applicant has any restrictions in social functioning, the GP has indicated that the Appellant is independent in all areas except ability to deal appropriately with unexpected demands, where the GP has indicated that the Appellant needs periodic support or supervision. No indication as to the degree of supervision or support required is given by the GP in the space provided. However the GP has written “*contact with social worker might be of benefit*” where the assessor is asked to describe the support or supervision required to help the Appellant maintain herself in the community. The GP has also indicated that the Appellant has marginal functioning with both her immediate and extended social networks with no comments made in the space provided.

In the Emergency Department Report, the attending physician writes that the Appellant “*has had increasing anxiety over the last 2 months … increasing depression and intermittent suicidality … (The Appellant’s) GP attempted to refer the (Appellant) to psychiatry … (the Appellant) went though intake in September. (The) GP was concerned regarding potential bipolar diagnosis given bouts of hypomania. (The Appellant) describes these as very rapid fluctuations in her mood lasting less than a day, may be up to 2 to 3 days …These events seem to get better on their own … (The Appellant) said that her mood was good but her anxiety is bad … She stated that her anxiety has been much worse to the point where she is struggling to function … Inability to concentrate*”. The attending physician also provides their impression: “*The (Appellant) … does not have great insight … Anxiety, depression and passive suicidality. I am concerned about (the Appellant) given (her) GP as well as her family members were worried to the point that she was told to come in … I have certified her under mental health act. I will ask the psychiatrist on call to see her.*”

In the October 6 Consultation Report the attending psychiatrist writes: “*(The Appellant) has been referred to us by the emergency physician for an assessment of query bipolar mood disorder … This is (the Appellant’s) first visit to the emergency department in hospital. She has*

had chronic suicidal ideation … Once she planned to commit suicide via overdose … She reports one incidence of self-harm during high school by cutting her arm … She mentioned to her mom that she does not want to live anymore, but she is scared of doing anything to hurt herself. She reports frequent mood swings every 2 – 4 weeks, started around 2 years ago and more evident during the last few months … She says that the mood swings usually last around half an hour to an hour, however, there have been incidents when the elevated mood lasted for about 2 – 3 days. In these periods she feels elevated, she has more energy … She also states that in those episodes when she feels down, and her mood is low, she has no energy, no motivation, poor concentration, poor memory and low appetite. She prefers to stay in bed for hours. She experiences … (end of page)".

In the Second Consultation Report the attending psychiatrist writes: "(beginning of page) *… in those episodes when (the Appellant) feels down, and her mood is low, she has no energy, no motivation, poor concentration, poor memory and low appetite. She prefers to stay in bed for hours. She experiences anhedonia. Her sleep has been a chronic issue … She has been having problems initiating sleep and once she is able to fall asleep she sleeps for about 9 – 11 hours. She has been also reporting some chronic suicidal ideation. She usually doesn't have any plan to proceed with. She states that she sometimes gets panic attacks and her symptoms include chest discomfort, trembling, shortness of breath and heart racing. She denies any PTSD, eating disorder, personality disorder, or ADHD. She was diagnosed with GAD, social anxiety disorder by a pediatric psychiatrist at age 17. (Her mother) has noticed that over the past few months (the Appellant's) mood has been changing between ups and down very quickly and even a few times in a day which may be triggered by trivial things … She gets frustrated easily.*"

In the Third Consultation Report the attending physician writes: "*(During the examination, the Appellant displayed) mild observable anxiety from time to time. She did not have any anxious cognitions on the day, but does report her subjective mood is low … Objectively, depression was not apparent and there was no evidence of depressive cognitions. There was no hopelessness or suicidality. There was no evidence of psychosis on the day*". In summary, the attending physician writes: *"(The Appellant's) longitudinal as well as current presentation is suggestive of GAD with social anxiety, as well as significant borderline/Cluster B traits in the form of emotional dysregulation, chronic although intermittent sense of unhappiness, intermittent suicidal ideation, especially in response to psychosocial stress, as well as maladaptive coping skills … She also presents with mild depressive symptoms … I do not think that there is sufficient evidence in her history or presentation at present to suggest bipolarity of mood …"*

In the SR the Appellant confirms the diagnoses provided by the GP and as expressed in more detail in the other appeal documents. She also says that her mental illness affects her mood and she has difficulty regulating her emotions, adding "*Not being able to regulate my emotions properly or process them and react correctly makes day to day situations difficult*".

The Appellant also writes: "*BDP affects my ability to regulate my emotions, so in some situations I may react or respond 'incorrectly' and because I cannot properly regulate my emotions I cannot control how I feel or react. I can have very quick and intense mood swings, so I can feel fine then in a split second I can feel devastated and be crying. It is hard for me to keep stable relationships because of this disorder and (I) constantly have a fear of abandonment. This disorder can also cause me paranoia, thinking people are watching or following me as well as seeing things that aren't actually there. I constantly feel empty which leads to impulsive behaviour so I can feel something for a little bit … the constant feeling of emptiness also means I sometimes feel suicidal or the urge to self harm. Those feelings can also present themselves when minor inconveniences happen, for example if my plans get cancelled".*

In the RFR, the Appellant writes: "*Back in 2020 I was admitted to the emergency room (ER) for my mental well being where I got diagnosed with BPD and they believe I have a chance of also having bipolar disorder as well. Previously before the ER I had visited an urgent care clinic many times for my mental health as well. My family GP also agrees that I am unable to work due to mental stability. I believe that my request should be reconsidered because my mental health causes me a severe impairment ...*".

Restrictions in the Ability to Perform DLA

In the section of the MR where the prescribed professional is asked if the applicant's impairment directly restricts their ability to perform DLA, the GP has ticked "yes" for the DLA of daily shopping and "unknown" for meal preparation. The GP indicates that the Appellant is not restricted in any of the other listed DLA (personal self care, management of medications, basic housework, mobility inside and outside the home, use of transportation, and management of finances).

The GP has also indicated that the Appellant is not taking any medications or treatment that interfere with her ability to perform DLA.

The GP has not completed the section of the AR where the assessor is asked what mental and physical impairments impact the applicant's ability to perform DLA.

The GP acknowledges that the Appellant is independent in all listed DLA functions relating to personal care, basic housekeeping, meals, paying rent and bills, medications, and transportation and all aspects of shopping except going to and from stores and carrying purchases home, where the GP acknowledges that the Appellant needs periodic assistance from another person.

In the SR, the Appellant describes in some detail the problems she has with social functioning: she says that it is hard for her to keep stable relationships because of her disorder and that it makes her paranoid, "*thinking people are watching or following me*". The Appellant also says that her disorder makes her feel empty "*which leads to impulsive behaviour*" and that she "*can't go out alone which makes my daily life very hard*".

In the RFR, the Appellant writes "*I have not been able to leave my home on my own without company in the last three years due to my mental health and post-traumatic stress disorder (PTSD). I need to be accompanied even to do basic tasks such as errands or going on a walk. I have been diagnosed with borderline personality disorder (BPD), generalized anxiety disorder (GAD), panic disorder, and social anxiety*", and that she has not been able to leave her home on her own "*without company*" in the past three years due to her mental impairments.

Need for Help

In the MR the GP indicates that the Appellant does not require any prostheses or aids for her impairment.

In the section of the AR that asks who provides the help required for DLA, the GP acknowledges that it is the Appellant's family and friends, and where asked what assistance would be necessary if the applicant requires help but none is available, the GP has written "*Contact with social worker may be of benefit*". In the section of the AR where the prescribed professional is asked what assistance is provided through the use of any of a list of assistive devices, none are identified.

In the SR, the Appellant writes "*I always need someone with me, even to just run a quick errand down the street*", and in the RFR, "*I need to be accompanied even to do basic tasks such as errands or going on a walk*".

Additional Information Submitted after Reconsideration

The Appellant provided a written submission on October 11, 2022 (The Appellant Submission). The Appellant Submission comprised of a one-page letter from the Appellant's mother (The Mother's Letter) and a one page letter from the Appellant (the Appellant's Letter).

Severe Mental Impairment

In the Mother's Letter, the Appellant's mother writes: "*From age 11 to 18 while in my care (the Appellant's) mental illness drastically impacted her quality of life … and her general wellness*".

In the Appellant's Letter, the Appellant writes: "*I not only have generalized anxiety, but also have social anxiety and panic disorder*".

Restrictions in the Ability to Perform DLA

In the Mother's Letter, the Appellant's mother writes: "*From age 11 to 18 while in my care (the Appellant's) mental illness drastically impacted her … abilities to be independent …She struggles daily to be a part of society, but she is incapable of doing what most do automatically*".

In the Appellant's Letter, the Appellant writes: "*As long as I can remember I have had severe anxiety which causes a huge fear for me to not only leave the house alone, but to make phone calls, or talk to strangers like ordering myself food*" and "*I deal with severe depression which makes it hard for me to take care of myself. Simple tasks like brushing my teeth, brushing my hair, and feeding myself seem like the hardest task*".

The Appellant did not provide any new evidence In the Notice of Appeal (NOA).

Admissibility of New Evidence

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), it must assign weight to the new evidence. Once the weight has been assigned to the new evidence, 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 the requirements set out in the legislation and on all admissible evidence.

No new evidence was provided in the NOA.

Most of the information in the Appellant's Submission was evidence that the Ministry had at reconsideration. New evidence contained in the Appellant Submission comprised the Appellant's comment that she finds it hard for her to perform personal care tasks (brushing her teeth and hair) and feeding herself. The Panel notes that this information is not consistent with the evidence in the AR, where the GP has indicated that the Appellant is independent with grooming and all listed activities associated with "*meals*" (identified as "*prepare own meals*" in the legislation). In addition, no information is included in the Appellant Submission to explain whether any significant restrictions in these activities are continuous or periodic, the frequency and duration of the restrictions if they are periodic, or whether she needs the help or supervision from another person or an assistive device to perform these activities. As a result, the Panel is not able to assign any weight to this new information.

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. In other words, 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 the lack 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 medical practitioner or a nurse practitioner it must both be likely to continue for at least two years [EAPWDA 2(2)(a)], and in the opinion of a prescribed professional 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)].

Physical Functioning

The Ministry's position is that the functional skill limitations described by the Appellant's GP do not describe a severe degree of physical impairment because the GP indicates that the Appellant is independently able to manage all aspects of physical functioning (except for lifting objects weighing more than 35 lbs, where no information is provided to explain the limitations),

and reports that the Appellant does not require the use of any prostheses or aids to manage her physical functioning.

The Appellant's position is that she has costochondritis which leaves her unable to move when it flames up, scoliosis which doesn't allow her to stand for very long, and unaligned hips which leave her unable to walk or sit for very long.

Panel Decision

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 assessing the severity of an applicant's impairment, 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 of prescribed professionals (in this case the GP) regarding the length of time that the severe impairment is likely to continue, and the impact on the Appellant's DLA and her need for help.

The purpose of the physical functioning assessment is to determine whether the Appellant's impairments have a significant impact on an applicant's ability to function physically based primarily on the information provided by a prescribed professional. The Appellant's GP has not diagnosed the Appellant with any medical conditions that would limit her physical functioning, other than that she is unable to lift more than 35 lbs or sit for more than 3 hours. No other information has been provided by the GP to indicate whether the Appellant's lifting restrictions are continuous or periodic, and the Panel notes that lifting an object weighting more than 35 lbs might pose a challenge for many people who do not have any physical functioning restrictions.

Having considered the evidence, the Panel finds that the Ministry reasonably determined that there was not sufficient evidence to confirm that the Appellant has a severe physical impairment.

Mental Functioning

The Ministry's position is that the GP says that the Appellant has moderate deficits to cognitive and emotional functioning in the areas of attention/concentration, memory and motivation, a major impact in the area of emotion, and no difficulties with communication. The Ministry concludes that this information demonstrates a moderate rather than a severe mental impairment.

The Appellant's position is that she has a severe mental impairment because her BDP affects her ability to regulate her emotions to the point where she can't control how she feels or reacts, and causes her to have quick and intense mood swings. As a result, she has periodic suicidal ideation, a tendency to want to harm herself, and she finds it hard to keep stable relationships. Her mental impairment also makes her paranoid to the point that she sees things that aren't actually there and she thinks people are watching or following her.

Panel Decision

In the MR and the AR, the GP describes the Appellant's mental impairments as "*recurrent anxiety and suicidal ideation*", with symptoms that include panic attacks, agoraphobia and a tendency to physical self harm including 'cutting' behaviours. However, the GP's reporting lacks detail on the frequency and extent of her recurring disorders.

In the RD, in addition to stating it's position based on the GP's assessment as summarized above, the Ministry wrote "*Additionally, you provide 6 pages of medical consultation reports from October and November 2020. The information provided is considered in conjunction with the Physician Report and the Assessor Report*". This is with reference to the Emergency Department Report and the three consultation reports described above. All of these reports were written by prescribed professionals, i.e. by individuals who have been "*authorized under an enactment to practise the profession of medical practitioner*" as required by the legislation. The Panel notes that there is no discussion of the information provided in these reports in the RD, and as a result it is not clear that any weight was given to this evidence by the Ministry in reaching it's decision.

As summarized above, the prescribed professional who completed the Emergency Department Report, having interviewed and examined the Appellant, provided the assessment that the Appellant suffers from anxiety, depression and passive suicidality, and as a result, certified her under the *Mental Health Act*. In the consultation reports, the prescribed professionals reported that the Appellant has "*chronic suicidal ideation*" *,* and in the Third Consultation Report that her "*current presentation*" suggests that she suffers from GAD with social anxiety, and has "*significant borderline/Cluster B traits in the form of emotional dysregulation, chronic although intermittent sense of unhappiness, intermittent suicidal ideation, especially in response to psychosocial stress, as well as maladaptive coping skills*".

In these reports, the prescribed professions also provide a detailed explanation of the frequency and duration of the Appellant's recurring mental impairments; information that was missing from the GP's reporting. For example, the First Consultation Report says that the Appellant told the psychiatrist that she has frequent mood swings (every 2 – 4 weeks) which started about 2 years ago and have become more evident over the past few months. These episodes last around half an hour to an hour and "*there have been incidents when the elevated mood lasted for about 2 – 3 days*". This is consistent with what the Appellant's mother has reported: she said in the Appellant Submission that she has also noticed the Appellant's mood has been "*changing between ups and down*" very quickly, even a few times a day, over the past few months.

Having considered all of the available evidence, in particular the evidence contained in the Emergency Department Report and the three consultation reports, the Panel finds that the Ministry was not reasonable in determining that there was not sufficient evidence to confirm that the Appellant has a severe mental impairment.

Restrictions in the Ability to Perform DLA

The Ministry's position is that, while the GP has indicated that the Appellant is continuously restricted in her ability to shop, no further information is provided to explain the nature of this restriction, and the GP has indicated that the Appellant can perform all other DLA independently. Regarding social functioning, the Ministry found that no evidence was provided to assess the Appellant's capabilities in any of the social functioning activities.

The Appellant's position is that it's hard for her to keep stable relationships because of her mental impairment, which makes her paranoid and leads to impulsive behaviour, and that she is unable to go out in public without a companion because she is afraid of strangers.

Panel Decision

DLA are defined in Section 2(1) of the EAPWDR and are also listed, in an expanded form and using different language, in the MR and in the AR forms. For example, the DLA of "*prepare own meals*" in EAPWDR Section 2(1) appears in the AR as "*meal planning*", "*food preparation*", "*cooking*" and "*safe storage of food*".

Section 2(2)(a) of the EAPWDR defines "*prescribed professional*" to include a "*medical practitioner*". Therefore, the GP, the attending physician, and the psychiatrist(s) who completed the Emergency Department Report and the three consultation reports are all considered prescribed professionals for the purpose of providing an opinion 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. The direct restriction must also 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.

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. 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 any periodic restrictions. The term DLA appears in EAPWDA Section 2(2)(b) in the plural ("*daily living activities*"), which means that at least two of the activities listed in Section 2(1) must be significantly restricted for this legislative criterion to have been met.

As mentioned above, the Appellant said in the Appellant Submission that her long-standing severe anxiety means that she can't leave the house alone, make phone calls, or talk to strangers, and that her depression makes it hard for her to take care of myself. She says that she finds simple tasks like brushing her teeth or hair and feeding herself difficult. However, the Panel was unable to admit this evidence because this information is not consistent with the evidence in the MR and the AR, where the GP has indicated that the Appellant is independent with grooming and all listed activities associated with "meals". In addition, no information is included in the Appellant Submission to explain whether significant restrictions in these activities

are continuous or periodic, the frequency and duration of the restrictions if they are periodic, or whether she needs the help or supervision from another person or an assistive device to perform these activities. For this evidence to be assigned weight, it would have to be supported by the GP, who is the Appellant's prescribed professional. In other words, the GP would have to have indicated in the MR and the AR that these DLA were significant and continuously restricted, or if periodically restricted, for extended periods, and what help she requires.

The Panel notes that the GP has indicated in the AR that the Appellant is independent with all DLA activities except going to and from stores and carrying purchases home, both of which the GP says require periodic assistance. However, as noted by the Ministry, the extent and duration of the assistance required with these two activities is not provided in any of the evidence, other than that the Appellant is unable to carry purchases home when they are too heavy. Because the GP has said that the Appellant can lift up to 35 lbs, these occasions would appear to be infrequent, and would not appear to be the result of a severe mental impairment. The Panel also notes that there is no information on the Appellant's ability to perform DLA in the Emergency Department Report or any of the consultation reports.

Having considered all of the evidence, the Panel finds that the Ministry reasonably determined that there was not sufficient evidence to confirm that the Appellant's impairments directly and significantly restrict her DLA, either continuously or periodically for extended periods.

Help with DLA

The Ministry's position is that it has not been established that the Appellant's DLA are significantly restricted either continuously or periodically for extended periods and therefore it cannot be determined that significant help is required from other persons or an assistive device.

The Appellant's position is that she requires the help of another person every time she has to go out of her home in public, which includes the DLA of shopping for personal needs and using public transportation facilities.

Panel Decision

Help is defined in EAPWDA Section 2(3)(b) 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.

Although the Panel has determined that a review of all of the admissible evidence demonstrates that the Appellant would reasonably be found to have a severe mental impairment, the legislation also requires that a severe impairment must directly and significantly restrict a person's DLA, which is a requirement that the Panel has determined was not met.

Having found that the Ministry was reasonable in concluding that the precondition for meeting the need for help criterion was not met, the Panel also finds that the Ministry reasonably concluded that it cannot be determined that the Appellant requires help to perform specified DLA.

Conclusion

Having reviewed and considered all the 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 reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the Appellant, and confirms the decision. As a result, the Appellant's appeal is not successful.

Appendix – Relevant 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 2022-0222

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) 2022/10/22

Print Name Mimi Chang	
Signature of Member	Date (Year/Month/Day) 2022/10/22
Print Name Janet Ward	
Signature of Member	Date (Year/Month/Day) 2022/10/22