Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated August 12, 2022, in which the ministry found the appellant was not eligible for designation as a Person with Disabilities ("PWD") under section 2 of the *Employment and Assistance for Persons with Disabilities Act* ("EAPWDA"). The ministry found that the appellant met the age requirement and the requirement for the impairment to continue for at least 2 years but was not satisfied that:

- the appellant has a severe mental or physical impairment;
- the impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform daily living activities ("DLA") either continuously or periodically for extended periods; and
- as a result of restrictions caused by the impairment, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

The ministry also found that the appellant was not one of the prescribed classes of persons who may be eligible for PWD designation on the alternative grounds set out in section 2.1 of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"). As there was no information or argument provided by the appellant for PWD designation on alternative grounds, the panel considers that matter not to be at issue in this appeal.

Part D – Relevant Legislation

The ministry based the reconsideration decision on the following legislation:

Employment and Assistance for Persons with Disabilities Act - EAPWDA - section 2

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - section 2

The full text is available in the Schedule after the decision.

Part E – Summary of Facts

The evidence and documentation before the minister at the reconsideration consisted of:

1. Information from the ministry's record of the decision indicating that the PWD application was submitted on June 9, 2022, and denied on July 14, 2022 with *Decision denial summary* explaining the criteria that were not met. On August 2, 2022, the appellant submitted a *Request for Reconsideration* ("RFR"). On August 12, 2022, the ministry completed the review of the RFR and found that the eligibility requirements for PWD designation were still not met.

2. The PWD application comprised of:

- the *Applicant Information* (self-report - "SR") signed by the appellant on December 21, 2021;
- a *Medical Report* ("MR") dated June 3, 2022, signed by the appellant's doctor, a General Practitioner ("Dr. A") who has known the appellant for more than 10 years and has seen her 2-10 times in the past 12 months;
- an *Assessor Report* ("AR") dated June 3, 2022, also completed by Dr. A who indicates they based the assessment on an office interview with the appellant, and file/chart information [consult reports were attached].

Summary of relevant evidence from the application

Diagnoses

In the MR, the appellant is diagnosed with left knee and ankle pain, date of onset "several years"; and anxiety and depression, date of onset "since 10 years and worse after [cancer] diagnosis." In Section B - *Health History*, Dr. A describes "illness anxiety disorder" and says that the appellant's cancer is "now considered cured." Section F - *Additional comments* was left blank.

The appellant elaborates on the diagnoses in the SR, stating that the cancer is still in remission. The appellant says that she is still enduring the aftermath of the disease, "my mental health has deteriorated causing me severe depression."

The appellant says that after her cancer treatment, her body underwent a lot of trauma "leaving behind inflammatory arthritis, panic disorder, major depressive disorder." The appellant says that she was recently diagnosed with diabetes "which was a major shock to me and has become another concern for my health." The appellant states that the diabetes diagnosis "has made my depression worse not knowing what the outcome will be."

Functional skills

Self-report

The appellant reports "daily and persistent discomfort" affecting her mid back, shoulders, elbows, wrists, hips, knees, and ankles. The appellant says that the discomfort is due to diffuse arthralgias which developed a month after completing chemotherapy.

The appellant describes the impact of cancer treatment on her mental health; her depression became so bad "I would not want to get out of bed, no motivation, no will power and even suicidal thoughts, which happens to this day." The appellant says that her mood swings "have been drastically worse" due to the trauma that her body endured.

The appellant reports that her anxiety results in panic attacks whenever her body senses the past traumas that she experienced. The panic attacks cause her to "shake and I can't control it and this can happen a couple of times a day." The appellant describes the anxiety as "constant as well, making my life very difficult to be normal."

Medical Report

In Section B - *Health History*, Dr. A indicates that the appellant "worries a lot, concentration issues". These symptoms started after the cancer diagnosis and the dosage of the appellant's anti-depression medication was increased more than once.

Dr. A reports that the knee pain diagnosis "causes pain with activity." In section D - *Functional Skills*, Dr. A checked that the appellant cannot walk at all unaided, and the number of stairs she can climb unaided is none. Next to the check mark for *walking* the doctor wrote, "7+ blocks increased pain left knee/ankle." Next to the check mark for climbing stairs the doctor wrote, "10 steps and then painful." For *remain seated*, Dr. A checked that the appellant is limited to sitting 1-2 hours "due to pain."

Regarding mental functions (questions D-5 and D-6), Dr. A indicates *no*, the appellant does not have any difficulties with communication. Dr. A checked that the appellant has significant deficits with cognitive and emotional function in 2 of the 12 areas listed: *Emotional disturbance*; and *Motivation* (comment, "sometimes"). The section for other comments was left blank.

Assessor Report

Under Section B-2, *Ability to Communicate*, Dr. A wrote, "no issues."

Under section B-3, *Mobility and Physical Ability*, Dr. A indicates the appellant is independent with all 6 functions listed on the form:

- *Walking indoors*
- *Walking outdoors*
- *Climbing stairs*
- *Standing*
- *Lifting*
- *Carrying and holding*

For all of these physical functions Dr. A wrote, "needs to rest frequently, every 30 minutes." The space for other comments was left blank.

In section B-4, *Cognitive and Emotional Functioning*, the assessor is asked to indicate what impacts the appellant's impairments have on various cognitive and emotional functions. For the 14 areas listed, Dr. A indicated impacts in 5 areas:

- Minimal impact for *Attention/*concentration, *Executive*, and *Memory*;
- Moderate impact for *Emotion*, and *Motivation*;

No major impacts were reported, and no impact was indicated for:

- *Bodily functions*
- *Consciousness*
- *Impulse control*
- *Insight and judgment*
- *Motor activity*
- *Language*
- *Psychotic symptoms*
- *Other neuropsychological problems*
- *Other emotional or mental problems*

The doctor commented, "see psych. consult enclosed."

Daily Living Activities

In the opinion of a prescribed professional (Dr. A), the following information is provided:

Medical Report
In Section B-3, Dr. A checked *no*, the appellant has not been prescribed medications or treatments that interfere with the ability to perform DLA.

In Section E – *Daily Living Activities*, the doctor checked *yes*, the impairment directly restricts the appellant's ability to perform DLA. Dr. A checked that 5 of the 10 activities are periodically restricted:

- *Personal self care*
- *Meal preparation*
- *Mobility inside the home*
- *Mobility outside the home*
- *Social Functioning*

When asked to explain the periodic restrictions Dr. A wrote, "knee pain means she needs to take breaks due to pain, anxiety at times – have increased medications to treat."

When asked to explain the impact for social functioning Dr. A wrote, "patient does not socialize…Social interactions reduced."

Dr. A checked that 5 activities are not restricted:

- *Management of medications*
- *Basic housework*
- *Daily shopping*
- *Use of transportation*
- *Management of finances*

Assessor Report
In Section B-1, Dr. A states that anxiety and left knee/ankle pain impact the appellant's ability to manage DLA.

In Section C - *Daily Living Activities*, Dr. A indicated that the appellant is independent with all areas of 6 of the 8 DLA listed on the form:

- *Personal Care*: independent with *dressing*, *grooming*, *bathing*, *toileting*, *feeding self*, *regulating diet*, *transfers* (*bed*), and *transfers* (*chair*);
- *Basic Housekeeping*: independent with *laundry* and *basic housekeeping*;

Shopping: independent with *going to and from stores*, *reading prices and labels*, *making appropriate choices, paying* for purchases, and *carrying purchases home.*

Under *Additional comments* for the above DLA the doctor wrote, "no safety issues. Does not need assistance with devices, etc."

- *Pay Rent and Bills*: independent with *banking*, *budgeting*, and *pay rent and bills*;
- *Medications*: independent with *filling/refilling prescriptions*, *taking as directed*, and *safe handling and storage*;
- *Transportation*: independent with *getting in/out of a vehicle*, and *using transit schedules and arranging transportation*. Dr. A wrote, "n/a drives herself" for *using public transit*.

The space for additional comments for the above DLA was left blank.

Restricted activities

Dr. A indicated restrictions for 2 DLA:

- *Meals*: the appellant requires continuous assistance from another person for meal planning; comment, "patient has no motivation to prepare meals (family does meals)."

The doctor checked *independent* for the remaining areas of *Meals*: *food preparation*, *cooking*, and *safe storage of food*. *Additional comments* regarding assistance required, and identification of any safety issues was left blank.

- S*ocial Functioning* the appellant was assessed as needing periodic support or supervision for 2 out of 5 areas:
  - *able to develop and maintain relationships* (comment, "does not socialize");
  -*able to deal appropriately with unexpected demands*

Dr. A checked *independent* for the remaining areas: *appropriate social decisions; interacts appropriately with others*.; and *able to secure assistance from others* (comment, "lives with family").

Dr. A checked *marginal functioning* when asked to describe how a mental impairment affects the appellant's relationship with her immediate and extended social networks. The appellant requires medication for anxiety and counselling support to be maintained in the community. For *Additional comments* the doctor wrote, "no safety issues."

Appellant's information on restrictions to DLA

In the SR, the appellant states that depression affects her everyday life and tasks due to her lack of motivation and not wanting to get out of bed. The appellant states that "everyday tasks like cleaning and doing laundry have been a challenge causing major exhaustion to my body." The pain in her joints does not make things easier. "I find myself getting overly tired at anything I do."

Need for help

Medical Report
In Section B4, Dr. A checked *no* when asked if the applicant requires any protheses or aids for their impairment. In Section E Dr. A wrote, "has an [assistance animal] to help with anxiety."

Assessor Report
In Section A-1, Dr. A checked that the appellant lives with family. In Section C the doctor indicated that the appellant does not need assistive devices to manage personal care, housekeeping, or shopping. The appellant's family prepares meals for her, and she requires help from family as well as counselling support for social functioning.

In Section D - *Assistance provided by other people* the doctor checked *family*. Dr. A wrote "n/a" for *Assistance provided through the use of Assistive devices*. The doctor checked *yes* the appellant has an assistance animal.

3. A 7-page Mental Health Services Unit progress assessment dated May 13, 2022, and dictated by a psychiatrist ("Dr. B"). The appellant was referred by Dr. A to outpatient mental health services for "treatment recommendations for depression and anxiety." The appellant had a previous screening assessment through a rapid access clinic on January 24, 2022, which indicated the appellant lives with family and does not have a psychiatrist or therapist.

The assessment by Dr. B includes the following information:

- the appellant endorsed "high anxiety" related to health concerns since her cancer diagnosis 4 years ago;
- the appellant has trialed 6 medications to target her depressive symptoms, anxiety, and sleep problems without much benefit. Some of the medications did not help at all. The appellant is tired of making medication adjustments and does not want to try any other medications due to side effects including too much sedation and

withdrawal symptoms when she tries to taper the dose. One of the sleep medications was helpful but caused headaches;

- the appellant received counselling resources in the mail but had not had time to look through them. Dr. B discussed the importance of counselling especially if the appellant is not finding medications beneficial. The appellant agreed to engage in counselling and follow up with Dr. A;
- the appellant was not endorsing suicidal ideation, intent, or plans;
- a psychiatric review of symptoms indicated:
  -**depression**: depressed mood, anhedonia, sleep changes, fatigue, poor concentration, increased appetite, and feeling worthless. The appellant denied suicidal ideation;
  -**anxiety**: excessive worry, restlessness, fatigue, poor concentration, muscle tension, and sleep changes;
  -**panic**: the appellant endorsed symptoms of panic. She denied mania, psychosis, and Post Traumatic Stress Disorder;
- the appellant is currently taking 4 psychiatric medications, a stomach medication, and a medication to control high blood sugar;
- the appellant's stage 4-B cancer was treated with chemotherapy and is in remission. The appellant first experienced depression and anxiety after the cancer diagnosis 4 years ago. The appellant engaged in counselling at a cancer facility and started medication to treat her depression and anxiety;
- the appellant's medical history includes several surgical procedures, diabetes, non-alcoholic fatty liver disease, and abnormal glucose tolerance;
- a mental status exam indicated normal speech, thought process, and memory as well as good judgment. The appellant's mood was described as "more anxiety." The appellant's affect was "very anxious; congruent with mood." Suicide risk was assessed as low. Physical functions were not reviewed;
- the appellant is experiencing "almost daily anxiety" with panic attacks occurring 1-2 times per week. She has a lot of concerns about her physical health and with "any physical sensation of pain she will become very anxious and worry about if her cancer is returning." The appellant states that she is "living in fear, every day having pain. It is horrible to live this kind of life."
- the appellant is preoccupied with recurrence of her cancer. While the cancer is in remission with no signs that it has reoccurred, the appellant "continues to be excessively preoccupied with relapse of her cancer. She is exhibiting high levels of anxiety about her health status." The appellant is also reporting symptoms of "depression, anhedonia, low energy, poor concentration, decreased appetite, poor sleep, and episodes of passive suicidal ideation."
- the Diagnostic and Statistical Manual ("DSM-5") diagnosis is Illness anxiety disorder and Major depressive disorder with anxious distress and panic attacks;

- treatment recommendations include psycho-education; supportive therapy; a safety plan; relaxation techniques; and therapy. Four psychiatric/sleep medications are to be continued and the appellant agreed to follow up with Dr. A for continued management.

4. A 2-page consultation report dated February 9, 2022, and dictated by a rheumatologist ("Dr. C"). The report from Dr. C includes the following information:

- the appellant has "longstanding non-specific musculoskeletal symptoms." The probability of "significant underlying systemic rheumatic disease" is likely to be low;
- the appellant is being assessed for underlying inflammatory arthritis. She saw another rheumatologist ("Dr. D") in 2016 with no specific rheumatologic diagnosis at that time;
- the appellant continues to describe intermittent and migratory musculoskeletal pains "including arthralgias and myalgias including involvement of the fingers, knees, ankles, shoulders and other areas." The appellant states that these symptoms are getting worse;
- the appellant describes finger swelling and occasional nocturnal symptoms. The appellant reports that the symptoms are worse in the morning but there is "no definite history of morning stiffness or gelling phenomenon. No associated constitutional symptoms. Connective tissue disease inquiry is negative." The appellant uses acetaminophen as needed. She is unable to tolerate "NSAIDS" due to her stomach problem;
- recent investigations indicated normal renal function but liver function tests are elevated presumably due to fatty liver. Rheumatoid factor is negative;
- x-rays of the appellant's left hand showed "osteoarthritic change as well as deformity/thickening of the radial cortex of the middle diaphysis of the left third finger metacarpal. Bone island in the distal radius. Osteoarthritic changes are noted in the right hand."
- Magnetic Resonance Imaging ("MRI") of the left knee and an x-ray of the left ankle were normal;
- past medical history included cancer, diabetes mellitus, depression, and chronic non-alcoholic liver disease. The appellant is taking diabetes and stomach medications as well as a psychiatric medication.

5. A 3-page letter to Dr. A from the appellant's rheumatologist, Dr. D. The appellant had a follow-up appointment with Dr. D on May 9, 2022, for inflammatory arthritis. The letter includes the following information:

- the appellant was diagnosed with cancer in 2015 and completed chemotherapy in 2016. She subsequently developed "significant arthralgias with mixed inflammatory/mechanical features affecting the mid back, shoulders, elbows, wrists,

MCPs, PIPs, hips, knees, and ankles." The differential diagnosis includes "chemotherapy-related side effects, steroid-withdrawal syndrome, a new onset inflammatory arthritis, or diffuse soft tissue mechanical pain."

- the appellant was prescribed topical pain medications and injections as she cannot take "oral NSAIDS" due to a perforated ulcer;
- the appellant's medical conditions include inflammatory arthritis, cancer (treated with 6 cycles of chemotherapy in 2016); perforated ulcer (diagnosed in 2015); past surgery; Major depressive disorder, and Panic disorder;
- the appellant continues to have "left knee pain and left ankle pain constantly" with no benefit from topical pain medication;
- Social history includes living with family members. Dr. D states "she is entirely independent for his [*sic*, her] ADLs and IADLs."
- On examination the appellant had "positive impingement signs" in both shoulders "but reasonable rotator cuff strength." The pain was "distinctly worse on active range of motion versus passive." Dr. D noted some knee abnormalities and remarked that the appellant's hips moved normally. Small joints were also unremarkable despite some finger swelling. There was some left ankle pain;
- Dr. D. confirms that the appellant's left knee pain is from early osteoarthritis and being overweight is certainly stressing her knee. The appellant will work on losing weight which is difficult for her as she cannot exercise, but she will be referred to a specific program;
- An x-ray showed early osteoarthritis and a previous MRI hinted at early cartilage degeneration;
- Treatment is conservative as the appellant cannot use "oral NSAIDS" due to the perforated ulcer that was previously diagnosed. A pain medication gel and acetaminophen have not been of benefit;
- The appellant's ankle pain could be related to her abnormal gait because of her knee abnormality. "Treatment is conservative other than if she wants to pay privately for a physical therapy assessment."

6. A 4-page letter from the rheumatologist, Dr. D to the appellant's oncologist, dated March 9, 2017. The letter contains the same information as Dr. D's May 9, 2022 update, but with some additional background information regarding knee pain in 2012 and back pain in 2014. The pain was severe and sporadic and would resolve spontaneously. The appellant developed a perforated ulcer and then cancer, followed by diffuse arthralgias after completing chemotherapy.

The appellant described her arthralgia pain as "daily, severe, and persistent"; and worse in the morning or with inactivity but not associated with stiffness. Dr. D states that "pain was overall better with activity." There was no associated swelling or deformity. The

appellant's hand and ankle symptoms improved "while other joints remain unchanged since onset." The appellant had a 50% response to Tylenol/codeine but the treatment was limited by dizziness. By 2017 there was no recurrence of cancer but the appellant continued to be "quite bothered by ongoing musculoskeletal symptoms."

7. A radiology report for a left knee x-ray dated May 3, 2022, which states: joint narrowing is present "in the medial compartment of the left knee. The joint spaces are otherwise preserved."

8. An RFR signed by the appellant on July 29, 2022, with 3 letters attached:

- A letter from a counsellor ("Counsellor A") dated July 28, 2022, written in support of the appellant's PWD application. The counsellor has been involved with the appellant's family since 2018 and reports that the appellant is unable to maintain regular employment due to increasing depression in the last 2 years. The letter says that the appellant "increasingly struggles to even leave the house some days and she states that she just wants to be left alone."

- A letter from Dr. A dated July 29, 2022, written in support of the appellant's PWD application. The letter confirms the diagnoses of "illness anxiety disorder" and depression and states that the appellant "suffers from panic attacks and anxiety which can occur at any time of the day." The appellant "feels incapacitated by her anxiety at times." The letter further states that the appellant "frequently feels overwhelmed and unable to function in her daily duties, and often feels exhausted."

- A letter from a counsellor ("Counsellor B"), undated. Counsellor B indicates having 10 online counselling sessions with the appellant between January and March 2022. The letter indicates that the sessions focused on a family issue that the appellant was dealing with in addition "to struggling with challenges with her own health." The appellant reported that she experienced pain in her body and was worried that her cancer was recurring. The appellant was in the process of arranging doctor's appointments and scans to see what was happening. The appellant reported that her family issue was further compromising her health.

Additional evidence – written submissions

Subsequent to the reconsideration decision the appellant submitted additional evidence requiring an admissibility determination by the panel under section 24(2) of the *Employment and Assistance Act* ("EAA"). The appellant provided a 28-page submission that was received at the Tribunal on December 7, 2022 and which consisted of the following documents:

1. A 2-page letter from a legal advocate ('the advocate") dated December 7, 2022. The letter contains argument on appeal and also lists medical conditions that the advocate says were diagnosed by the appellant's doctors:

- Major depression
- Anxiety
- Panic disorder
- cancer [specific type was noted]
- chemo-related side effects
- inflammatory arthritis
- osteoarthritis in right hand
- perforated ulcer
- surgery [specific type noted]
- bone lesions
- diffuse arthralgias which affect the appellant's mid back, shoulders, elbows, wrists, hips, and knees
- overweight
- cartilage degeneration

2. A 1-page letter from the rheumatologist, Dr. D, dated December 5, 2022. The letter states that the appellant is suffering from left knee osteoarthritis and she also had a bout of inflammatory arthritis.

3. A copy of Dr. D's March 9, 2017 letter with the following information highlighted in yellow:

- A CT scan in 2015 showed signs of cancer which was staged at 4-B given the appellant's "extensive disease and bony lesions";
- approximately one month after completing chemotherapy, the appellant developed diffuse arthralgias affecting her mid back, wrists, knees [and other parts of her arms and legs];
- the appellant had a 50% response to treatment for pain with Tylenol/codeine;
- the appellant is bothered by ongoing musculoskeletal symptoms;
- a PET scan from February 2017 showed some nodules in the appellant's back (left

upper quadrant);
- the appellant's knee pain is confirmed to be from early osteoarthritis.

4. A copy of Dr. D's May 9, 2022 letter with the following information highlighted in yellow:
- differential diagnoses include a new onset inflammatory arthritis, or diffuse soft tissue mechanical pain;
- perforated ulcer [diagnosed];
- the appellant's problems include inflammatory arthritis, Major depressive disorder, and Panic disorder;
- on examination, both shoulders had "positive impingement". Pain was "distinctly worse on active range of motion";
- both knees "are very valgus."

5. A copy of Dr. C's February 9, 2022 letter with the following information highlighted in yellow:
- the appellant has non-specific musculoskeletal symptoms;
- rheumatic disease;
- long-standing musculoskeletal symptoms;
- osteoarthritic change [left hand] as well as "deformity/thickening of the radial cortex of the middle diaphysis of the left third finger metacarpal."

6. Copies of letters from Dr. A (July 29, 2022), Counsellor B (undated) and a copy of the radiology report (May 3, 2022 - left knee). These documents were submitted with the application/RFR and contain no highlighting or other changes upon re-submission.

7. A 6-page article from healthline.com, titled *Unipolar Depression Explained – Plus Tips to Get Support*. The article was medically reviewed on October 14, 2022. The following information has been highlighted in yellow:
- unipolar depression is used as a synonym for major depressive disorder (MDD);
- according to a 2018 study, "a combination of "extreme guilt, anhedonia, and thoughts of suicide often suggests severe depression. But any combination of symptoms can feel overwhelming and severe, not to mention have an impact on your everyday life."
- MDD "also goes by the names major depression, clinical depression, or classic depression;"
- Unipolar depression can also include "persistent depression." Symptoms can include "emotional distress, such as feelings of guilt and thoughts of suicide, cognitive symptoms like brain fog, or physical symptoms like fatigue and changes in appetite."

8. A 1-page article from the Mayo Clinic on osteoarthritis. The following information has been highlighted in yellow:

- osteoarthritis symptoms "can usually be managed, although the damage to the joints can't be reversed."
- osteoarthritis symptoms "often develop slowly and worsen over time." Signs and symptoms include pain (during and after movement); stiffness (might be most noticeable upon awakening or with inactivity); tenderness (upon applying light pressure to or near the affected area); loss of flexibility (might not have a full range of motion in the joint); swelling (can be caused by soft tissue inflammation).

9. A 3-page article from nelumboconsultancy.com, titled *How depression affects your daily life*, and dated February 5, 2018. The following information has been highlighted in yellow:

- depression is "not simply an emotion or a state of mind; depression is a real, medical illness;"
- the most typical symptoms are "persistent sadness, seclusion, feelings of negativity, hopelessness and worthlessness, insomnia, decreased or increased appetite, fatigue, restlessness, suicidal thoughts and tendencies, and loss of libido."
- Depression is "a vastly complex and multifaceted psychological illness." Some people are biologically more vulnerable and more likely to develop depression;
- Some people become depressed because they are or have been a victim of abuse;
- depression "can affect numerous facets of your life" including sexual desires, work/school performance, and sleep and eating habits. Depression also leads to experiencing regular physical pain such as headaches and backaches;
- depression "will have an impact on everything you do in your everyday life. It is not possible to quickly and effortlessly recover from depression as one does from a cold or stomach-ache."
- depression is a "constant experience that does not go away…feeling down is a fleeting emotion, whereas depression is a constant battle with oneself. It slowly chips away at your mental, emotional and even physical strength until you begin to feel constantly fatigued and hopeless about life."
- depression causes withdrawal from society and "makes you feel constantly tired and weak;"
- you will notice that you are sleeping or eating too much or too little;
- depression causes a person to slowly become alienated from society, including loss of jobs, friends, and even loved ones at times.

Admissibility – appellant's additional documents

The ministry had no objections to the appellant's submission being accepted as evidence. The panel finds that the advocate's summary of medical conditions; the letters from Dr's. C and D confirming arthritis and other musculoskeletal problems; and the highlighted portions in the letters from the two rheumatologists, add additional breadth to the medical information in the record of decision. The panel finds that the articles on depression and osteoarthritis highlight various symptoms that the appellant is experiencing. The panel admits all of the documents under section 24(2) of the EAA as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Additional evidence at the hearing

Both parties stated their arguments and the ministry did not submit any new evidence. The panel will consider their arguments in Part F - *Reasons*. The appellant attended the hearing with 3 witnesses and a legal advocate. Each witness provided oral evidence regarding the help they provide the appellant as well as their knowledge of the appellant's impairments.

Witness A

Witness A is a family member who lives half a block away from the appellant. Witness A said that they clean and cook for the appellant up to 4 days per week as the appellant is unable to manage these activities. Witness A explained that they come over in the morning before work, to cook for the appellant and do things around the house. Witness A's spouse then does an evening shift from 5:00 to 8:00 PM to cook dinner and clean up. Witness A said they feel sorry for the appellant because they have seen a lot of change with her depression, "she doesn't want to do anything. I give her space when she doesn't want to talk."

Witness B

Witness B is a close family member who said that ever since the appellant was diagnosed with cancer, "her depression and anxiety have gotten really bad." Witness B has noticed that the appellant can't do things she used to do because "she is always tired, always sitting down." Witness B reports that laundry is difficult for the appellant because "her fingers hurt so it is hard to carry things."

Witness B reports that the appellant is "a lot more down and depressed. Sometimes getting out of bed is a struggle" so Witness B comes over and helps the appellant. In response to questions, Witness B explained that she comes over 'a couple of times a week to help the appellant out of bed and "2-3 times per week I help [the appellant] get up off the couch."

Witness C

Witness C is an individual who used to live with the appellant. Witness C explained that they have kept in touch with the appellant by visiting her on weekends since 2018 to help her with shopping. Witness C reports that in the last month they have noticed that the appellant "gets very tired and goes the wrong way" if she tries to drive to the store.

Witness C has noticed the appellant's depression getting worse in the past month, "always complaining about pain in her body and muscles and wants to lie on the couch and be bothered by no one." Witness C reports that the appellant has not been the same since her cancer diagnosis and has gained significant weight due to her medications. Witness C said that the weight gain "impacts her depression, anxiety, and self-esteem a lot. She has changed a lot, her life changed with cancer."

Appellant's evidence at the hearing

The appellant described her mood as "very sad" with depression and anxiety affecting her "every single day." The appellant said she "gets anxious waiting for the doctor; panic attacks; starts crying for no reason" and finds it hard to get out of bed.

The appellant said that Witness A, who lives close by, comes over 3 nights in a row sometimes; and also walks the appellant's assistance animal as she cannot do it anymore. The appellant said that she limps when she wakes up and can't move because her knee pain is so bad. She doesn't want to "answer calls or emails, or look at the phone…or go to the doctor to look at papers."

Admissibility of oral evidence

The ministry had no objections to the statements of the witnesses or appellant. The panel finds that the oral submissions provide additional details about the appellant's physical and mental functioning, and especially the help she receives from family and close contacts. The panel admits all of the testimony under section 24(2) of the EAA as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision that found the appellant ineligible for PWD designation was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. The panel's role is to determine whether the ministry was reasonable in finding that the following eligibility criteria in section 2 of the EAPWDA were not met:

- the appellant has a severe mental or physical impairment;
- the impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform DLA either continuously or periodically for extended periods; and
- as a result of restrictions caused by the impairment, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

Analysis

Severe mental or physical impairment

Arguments - Appellant

The appellant's position is that she meets the legislative requirement for a severe impairment because her multiple health conditions, both mental and physical, significantly limit her function every day. The advocate lists a wide variety of diagnoses including two types of arthritis and the most severe type of depression (MDD) and argues that the ministry has overlooked the cumulative impact of these conditions in assessing if the impairment is severe.

The appellant argues that she is still suffering the effects of her cancer treatment including daily pain and discomfort from arthralgias that limit her physical function. The advocate acknowledges the inconsistent information in the MR regarding the appellant's ability to walk and climb stairs but argues that more weight should be given to Dr. A's assessment of "none" for the distance the appellant can walk and the number of stairs she can climb. The advocate noted that the appellant "was only interviewed for 10 minutes for the application, and 7 blocks and 10 steps would only be on a good day which is seldom."

The advocate highlights major depression and argues that the ministry put too much focus on the brief assessments in the MR and AR and did not give sufficient consideration to the psychiatric assessment or the appellant's personal experience with depression and anxiety (SR) which, in the appellant's view, indicate a severe mental impairment. The

appellant argues that her depression and anxiety got a lot worse since her cancer diagnosis.

The appellant argues that the recent diabetes diagnosis further worsened her depression as it gave her an additional health issue to worry about. The appellant says that depression and anxiety affect her "every single day" and she gets very emotional. The appellant says she is not the same as she used to be, "there is something wrong, this is not me."

Arguments – Ministry

The ministry argues that the functional skills described by Dr. A do not demonstrate a severe degree of physical impairment because of inconsistent information. The ministry said it was unclear why the doctor indicated in the MR that the appellant can't walk or climb stairs without assistance but also indicated the appellant can walk up to 7 blocks and climb 10 steps before she is limited by left knee and ankle pain.

The ministry argues that the information in the AR also doesn't establish a severe physical impairment because Dr. A indicates the appellant is independent with all physical functions and can walk and climb stairs for 20 minutes despite having to rest frequently. The ministry argues that the information in the MR and AR does not confirm any significant limitations.

Regarding a mental impairment, the ministry acknowledges the significant deficits for emotion and motivation that Dr. A indicated in the MR as well as the appellant's problems with concentration and excessive worry. However, in the ministry's view, a severe mental impairment was not established on the evidence because the information from Dr. A indicated a moderate impact for emotion and motivation, and a minimal impact, or no impact for most areas in the AR.

The ministry argued a severe mental impairment was also not established on the evidence because Dr. A reported no difficulties with communication. The ministry notes that Dr. A also checked that the appellant is independent with most DLA involving decisions about personal activities, and most aspects of social functioning.

Ministry's position on the additional evidence

At the hearing, the ministry stated that it has reviewed the advocate's submission, highlighted medical reports and information articles. The ministry maintains that the additional information does not establish a severe mental or physical impairment. The

ministry argued that the highlighted information from the doctor's letters does not indicate that the appellant cannot walk the same distance (as indicated in the MR), etc. or detail any mental health impacts that show a worsening of the appellant's condition.

The ministry argued that while the on-line resources explain the conditions with symptoms highlighted, "there is no information on how symptoms affect daily functioning that is different from what the doctor said." The ministry argued that the medical conditions in the advocate's submissions and highlighted areas "explain symptoms but there is no further information to explain how the impacts or daily functioning have changed since the original application."

Legislative requirement

To be eligible for PWD designation, the legislation (EAPWDA section 2) requires several criteria to be met including the minister being satisfied that the applicant has a severe mental or physical impairment. The ministry found the appellant was not eligible for PWD because not all five criteria were met.

"Severe" is not defined in the legislation but an impairment is defined in the PWD application as a "loss or abnormality of psychological, anatomical, or physiological structure or function causing a restriction in the ability to function independently, effectively, appropriately, or for a reasonable duration."

In the ministry's view, the diagnosis of a serious medical condition does not in itself establish a severe impairment of mental or physical functioning. The PWD medical reports ask for information on functional skills and abilities and the ministry indicates that it also takes the appellant's information into account. The panel finds that the ministry's assessment of severity based on a fulsome review of daily function is a reasonable interpretation of the legislation.

Mental and physical impairment - specific considerations

To assess the severity of a mental impairment, the ministry considers the extent of any impact on daily functioning as evidenced by limitations/restrictions with mental functions and emotion. The ministry does not only look at the diagnosis or a medical practitioner's comment that the condition is "severe" but considers functional abilities and whether there are restrictions to DLA requiring mental/social functioning including any safety issues. The panel finds that an assessment of severity based on cognitive, emotional, and social functioning is a reasonable interpretation of the legislation.

To assess whether the applicant has a severe physical impairment, the ministry considers information on the degree of restrictions to physical functioning and whether the applicant requires significant help or any assistive devices to manage physical tasks. The panel finds that the assessment of severity based on daily physical functioning is a reasonable interpretation of the legislation.

Panel's decision - mental impairment

The panel finds that the ministry's decision is not reasonable. The ministry said that the information provided does not establish a severe impairment of mental functioning but in the panel's view, the original application with additional submissions on appeal, indicate a severe mental impairment. The ministry argues that moderate and minimal impacts for *Emotional disturbance*, *Motivation*, *Attention/concentration*, and *Memory* do not establish a severe impairment. The ministry noted no impact for *Bodily Functions* and other areas. However, the more recent psychiatric assessment by Dr. B cites many additional symptoms and impacts that demonstrate a greater level of severity.

In particular, Dr. B's report indicates that the appellant's daily functioning is impacted by anhedonia, sleep changes, poor concentration, fatigue, increased eating (consistent with weight gain), muscle tension, and passive suicidal ideation (although the appellant's risk of suicide was assessed as low). The panel gives more weight to the detailed descriptions in the psychiatric report which also indicate that bodily functions such as sleep and appetite are impacted by the appellant's mental health conditions.

In the MR, Dr. A indicates that the appellant's medication had to be increased on more than one occasion to deal with symptoms of excessive worry and poor concentration. In the psychiatric report, Dr. B corroborates trials and dosage increases for several medications, to manage symptoms of anxiety, depression, and sleep disturbance. Dr. B indicates the appellant requires additional treatment (counselling) to deal with her symptoms as she has not had a lot of benefit from the medications.

In the panel's view, the inability of current treatments to resolve symptoms points to a severe impairment. Without significant benefit from medications, the panel accepts the appellant's evidence that her depression and anxiety have gotten worse since her cancer diagnosis and that her mood continues to be very low with frequent worry, crying spells, and not wanting to get out of bed or do anything. This level of function is corroborated by the 3 witnesses who are close to the appellant and see her regularly.

The advocate notes that the ministry has not referred to the psychiatric report or the appellant's information (SR) in the decision and argues that the ministry unreasonably based its decision solely on the information from Dr. A. In the MR, Dr. A wrote "see psych. consult enclosed" indicating that the report was to be relied on for additional information.

The panel notes that the ministry mentions the psychiatric assessment "regarding medication management" and acknowledged that the report indicates "almost daily anxiety", panic attacks 1-2 times a week and the appellant's preoccupation that the cancer will recur. However, this information and other information from Dr. B and the appellant has not been assessed and weighed in the ministry narrative.

The panel finds that the ministry was not reasonable in giving little weight to specific information such as daily anxiety, the pattern of increased medication to deal with symptoms, and the additional cognitive and emotional deficits and impacts reported by Dr. B. In the panel's view, substantial weight should be given to the more detailed and complete psychiatric assessment which Dr. A enclosed as an important source of information.

In the letter of July 29, 2022, which the panel has admitted into evidence, Dr. A provided additional information about the appellant's mental functioning. The appellant "suffers from panic attacks and anxiety which can occur at any time of the day" and leaves the appellant feeling incapacitated. The appellant mentioned in the SR that panic attacks can cause her to shake uncontrollably a couple of times a day.

While these attacks occur once or twice a week, the unpredictable nature of the attacks and severity of the symptoms, as well as sadness and anxiety on a daily basis and difficulty getting out of bed or off the couch, demonstrate a severe impairment of mental functioning. Dr. B describes the appellant's excessive preoccupation and worry about her health. The appellant's medical history, cited by both Dr. B and Dr. C, mentions the diabetes diagnosis, which the appellant says also increases her worry and depression.

The evidence as a whole indicates a long history of depression (including MDD) as well as "Illness anxiety disorder" which makes the appellant very worried about her health to the point of having unpredictable panic attacks. The evidence indicates the appellant's daily functioning is limited by her low mood and deficits in many areas of cognitive and emotional functioning including lack of motivation, poor concentration, and fatigue. The appellant suffers from anxiety on a daily basis.

The panel finds that the information submitted for the application and appeal establishes a severe mental impairment. The requirement for a severe impairment under section 2(2) of the EAPWDA is therefore met on the basis of mental functioning.

Panel's decision - physical impairment

The panel has considered the evidence in its entirety and finds that the ministry was reasonable to conclude the appellant does not have a severe physical impairment. Although the appellant is diagnosed with a number of physical conditions including significant arthralgias causing pain in her mid back, wrists, knees, ankles and other areas, she is able to walk, lift, carry, etc. independently without the aid of an assistive device.

While the advocate asks the panel to accept Dr. A's information that the appellant cannot walk any distance or climb any steps unaided due to the assessment being only a 10-minute interview, the panel notes that most of the information in the MR and AR does not support a severe level of restriction. For example, all of the physical functions in the AR are assessed as independent, showing more consistency with the comments in the MR which indicate the appellant can walk a moderate distance and climb 10 stairs unaided before being limited by knee and ankle pain. The evidence in the AR is that the appellant needs to take breaks every 30 minutes, indicating a reasonable level of endurance despite the appellant's experience with "daily and persistent discomfort" in many parts of her body.

The two rheumatologists have diagnosed arthritis; long-standing musculoskeletal pain; degenerative changes in the appellant's left fingers, right hand and left knee; and a knee problem that causes "valgus knees" and abnormal gait. The knee problems are exacerbated by the appellant being overweight. The rheumatologists acknowledge the appellant's "constant left knee pain and left ankle pain" and the limitations of topical and acetaminophen-based medications, but note that some investigations (MRI, x-rays) showed normal features as well as degenerative changes.

Furthermore, as noted by the ministry, the additional evidence including the highlighted symptoms and the article from the Mayo clinic indicating the progressive nature of osteoarthritis, do not speak to limitations with mobility or other physical functions that are specific to the appellant. As noted by the ministry, the additional submissions do not confirm that the appellant's physical impairments are getting worse. The appellant clearly experiences ongoing pain but there is insufficient information on how pain, limping, and other symptoms limit the appellant's function to a significant degree.

The panel therefore finds that the ministry was reasonable to conclude that the requirement for a severe impairment under section 2(2) of the EAPWDA is not met on the basis of physical impairment. But as noted earlier, the legislative requirement is met because the evidence demonstrates a severe mental impairment.

Restrictions to daily living activities

Arguments - Appellant

The appellant's position is that her DLA are significantly restricted by both her mental health and physical health diagnoses. In the SR the appellant argues that it is "difficult to get out of bed and do things" due to the lack of motivation her depression causes. The appellant argues that everyday tasks such as cleaning and laundry are difficult due to "major exhaustion to my body" and the pain in her joints further limits her activity. The appellant says that she finds herself "getting overly tired at anything I do."

The appellant says she is "suffering every single day." She argues that her social functioning is significantly restricted because she gets even more anxious when she "sees people laughing and happy" as she sits in front of the window, thinking about nothing and not wanting to answer calls, or emails or look at her phone to connect with the outside world. The appellant says that she has to be "even more careful when it comes to my health and the foods I ingest" due to her diabetes diagnosis. She depends on her family for meals because "I can't do it myself."

Arguments – Ministry

The ministry's position is that the information from the prescribed professional (Dr. A) does not establish that the appellant's impairments significantly restrict DLA continuously or periodically for extended periods as required by the legislation. The ministry acknowledges that periodic restrictions were reported for some DLA including meal preparation and meal planning, as well as social functioning. The ministry argues that it was difficult to confirm that periodic restrictions are for extended periods as required by the legislation because Dr. A did not report on how often or for how long DLA are restricted or the frequency and duration of the support needed for developing and maintaining relationships.

The ministry argues that lacking motivation to meal plan "does not confirm an overall restriction in your ability to complete the daily living activity of meals." The ministry argues that DLA are not significantly restricted because no safety issues or assistive devices were reported. The ministry argues that the appellant's increased anxiety is managed by medication adjustments.

Legislative requirement

Subsection 2(2)(b)(i) of the EAPWDA requires the ministry to be satisfied that, in the opinion of a prescribed professional, a severe impairment directly and significantly restricts a person's ability to perform DLA either continuously, or periodically for extended periods. This means that restrictions to DLA must be confirmed by the appellant's doctor or one of the practitioners named in the legislation such as a psychologist or psychiatric nurse.

The term "directly" means that the severe impairment must cause or result in restrictions to activities. The direct restriction must also be significant. This means that not being able to do DLA without a lot of help from other people, or support from an assistive device will have a large impact on the person's life.

Finally, there is a time or duration factor: the restriction may be either *continuous* or *periodic* under the legislation. Continuous means that the activity must generally be restricted all the time. The ministry views a periodic restriction as significant when it occurs frequently or for longer periods of time; for example, the activity is restricted most days of the week, or for the whole day on the days that the person cannot do the activity without help or support.

The panel views the ministry's interpretation of the legislation as reasonable. Accordingly, where the evidence indicates that the appellant needs periodic assistance to manage an activity as was indicated in the AR for several DLA, it is appropriate for the ministry to require information on they type and frequency of the help or support that is needed. With that information, the ministry can assess whether the legislative requirement is met.

DLA are defined in section 2(1) of the EAPWDR and are also listed in the MR, with additional details in the AR. Therefore, the doctor or other practitioner completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the applicant's impairments either continuously or periodically for extended periods and to provide additional details. It is important to note that the ability to work is not considered a DLA under the legislation.

Regarding how many DLA need to be impacted for the legislative requirements to be met, the BC Supreme Court decision *Hudson* v. *Employment and Assistance Appeal Tribunal* [2009 BCSC 1461] states that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two DLA. Not all DLA need to be affected by the severe impairment.

Panel's decision - restrictions to DLA

The panel finds that the ministry's decision is not reasonable. The panel concluded that a severe mental impairment is established on the evidence. The panel further finds that there is enough evidence from a prescribed professional to confirm that DLA are directly and significantly restricted by the appellant's anxiety and depression.

Where Dr. A has indicated periodic restrictions and assistance for activities involving a mental or social component, the appellant has filled in the details regarding how often the activities are restricted as well as the nature and frequency of the support required. For example, Dr. A indicates that *Meal preparation* is periodically restricted and the testimony from Witness A indicates that they prepare most of the appellant's meals. Witness A comes over to cook breakfast up to 4 times a week, and their spouse takes the "evening shift" to make dinner for the appellant. The appellant says she is unable to manage meals due to her lack of motivation and worry about how her food intake will impact her diabetes.

Therefore, the information from a prescribed professional, with additional details from the witness and appellant, establishes that meal preparation is restricted for extended periods as the family prepares breakfast and dinner for the appellant most days of the week. In addition, Dr. A indicates that the appellant requires continuous assistance with meal planning because "patient has no motivation to prepare meals."

The legislation [EAPWDR section 2(1)(b)(i)] indicates that in relation to a mental impairment, restrictions in decision-making about personal activities, care or finances and restrictions in the ability to relate to, communicate or interact with others effectively are taken into consideration. The evidence for *Meals* is that the appellant's anxiety, depression, lack of motivation, struggle with weight gain, worry about diabetes, and "major exhaustion" significantly limit her ability to prepare and plan meals.

With regard to social functioning, Dr. A indicates in the narrative (MR) that social interactions are reduced because the appellant "does not socialize." In the AR, the doctor again states that the appellant "does not socialize." While the doctor checked that the appellant requires periodic support to develop and maintain relationships, the panel gives

more weight to the narrative comments, emphasized in both reports, which indicate a continuous restriction to social functioning given that the appellant "does not socialize."

The information from Witness B and Witness C details that the appellant is "always tired, always sitting down…wants to lie on the couch and be bothered by no one" and is given space by family and friends "when she doesn't want to talk." The appellant reports not wanting to talk on the phone or check her email.

The panel finds that this evidence is in support of Dr. A's comments. Specifically, the appellant's social functioning is continuously restricted because she does not socialize due to her depression, anxiety, and lack of motivation. In addition, while the ministry notes that the letter from Counsellor A focuses on the appellant's inability to work (which is not a consideration for PWD eligibility), the counsellor added a general comment, stating that the appellant "increasingly struggles to even leave the house some days and she states that she just wants to be left alone."

Additional information from Dr. A, (letter from July 2022 submitted with the RFR) states that the appellant "frequently feels overwhelmed and unable to function in her daily duties, and often feels exhausted." The ministry has not referred to this evidence in the decision (other than indicating that the letter was received), but additional details from the appellant confirm her struggles with "daily duties." The appellant reports "getting overly tired in managing cleaning and laundry."

The panel therefore finds that Dr. A's narrative, with additional details from the appellant, establish that DLA are continuously restricted despite the check marks on the PWD forms which were entered quickly during a 10-minute appointment. The appellant reported that she is emotional, tearful, and very anxious during her doctor's appointments.

The ministry said that the appellant's increased anxiety is managed by medication adjustments, but the information from Dr. B and the appellant indicates that the appellant continues to be bothered by symptoms that affect her daily activities despite many medication trials and adjustments. While Dr. A did not indicate any safety concerns, they confirmed that the appellant needs counselling support to be maintained in the community.

With regard to Dr. D's letters which say that the appellant is "entirely independent" with her "ADLs and IADLs," the panel notes that Dr. D is a rheumatologist who assessed the appellant's musculoskeletal problems, arthritis, and physical symptoms and not her mental health conditions. The panel has considered the reasonableness of the ministry's decision in the context of a severe mental impairment which the panel found has been

established on the evidence. The panel concludes that there is sufficient evidence from Dr. A, with supplemental information about function from Dr. B, Counsellor A, and the appellant, to confirm that DLA are directly and significantly restricted by the appellant's depression and anxiety.

The panel has considered the evidence in its totality and finds that there is enough information to confirm that at least two DLA are significantly restricted continuously or periodically for extended periods as required by the legislation. The information from Dr. A indicates that *Meals*, *Social Functioning*, and "daily duties" are significantly restricted by the appellant's depression and anxiety including her lack of motivation, extreme fatigue and daily struggle with anxiety which leaves her feeling overwhelmed. The panel therefore finds that the ministry's decision was not reasonable because the criteria in subsection 2(2)(b)(i) of the EAPWDA are established on the evidence.

Help with daily living activities

Arguments - Appellant

The appellant's position is that she needs extensive help with DLA from her family and friends. The appellant also relies on her assistance animal to help manage her anxiety but argues that she needs help taking care of the animal because she can no longer do it.

Arguments – Ministry

In the reconsideration decision, the ministry acknowledged Dr. A's information that the appellant gets help and support with DLA from family and friends and has an assistance animal for her anxiety. The ministry argues that the criteria for help was not met because DLA are not significantly restricted, and it could therefore not be determined that significant help from other persons, or help from an assistive device, is required.

Legislative requirement

Subsection 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA. An "assistive device" is defined in section 2(1) of the EAPWDA as a device specifically 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.

Panel's decision - help with daily living activities

The panel finds that the ministry was not reasonable in finding that the help criteria were not met. Dr. A confirms that the appellant relies on help from her family and friends and assistance animal and she needs counselling support as well for her mental impairment. The witnesses described in detail how they assist with meals and household tasks. They help the appellant "get up off the couch" or out of bed (several times a week) when she doesn't have the motivation or energy to do anything or talk to anyone.

The legislation requires confirmation of direct and significant restrictions to DLA as a precondition for needing help to perform DLA. The panel found that the ministry's determination that significant restrictions to DLA were not established on the evidence was not reasonable for the reasons stated earlier. The panel therefore finds that the ministry's conclusion that the criteria for help under subsection 2(2)(b)(ii) of the EAPWDA were not met, is not a reasonable application of the legislation in the appellant's circumstances.

Conclusion

The panel finds that the reconsideration decision is not reasonably supported by the evidence. The panel rescinds the decision. The appellant met the requirements for age and for the impairment to continue for at least 2 more years but in the ministry's view, the information provided did not confirm a severe impairment that significantly restricts DLA so that the appellant needs help to perform DLA.

The panel finds that these determinations were unreasonable because the record as a whole, including witness testimony and additional evidence provided on appeal, establishes a severe mental impairment that directly and significantly restricts DLA continuously or periodically for extended periods. The appellant's anxiety and depression cause daily symptoms that are difficult to manage and persist despite treatment with medication. The appellant is unable to manage DLA without family support, the service of her assistance animal, and counselling for her anxiety and depression.

The panel rescinds the reconsideration decision and sends the panel's decision back to the ministry for a determination on the amount of disability assistance the appellant can receive. The appellant is successful with her appeal.

Schedule – Relevant Legislation

EAPWDA

2 (1) In this section:
"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;
"daily living activity" has the prescribed meaning;
"prescribed professional" has the prescribed meaning.
(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person is in a prescribed class of persons or that the person has a severe mental or physical impairment that
(a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and
(b) in the opinion of a prescribed professional
(i) directly and significantly restricts the person's ability to perform daily living activities either
(A) continuously, or
(B) periodically for extended periods, and
(ii) as a result of those restrictions, the person requires help to perform those activities.
(3) For the purposes of subsection (2),
(a) a person who has a severe mental impairment includes a person with a mental disorder, and
(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires
(i) an assistive device,
(ii) the significant help or supervision of another person, or
(iii) the services of an assistance animal.
(4) The minister may rescind a designation under subsection (2).

EAPWDR

Definitions for Act
2 (1) For the purposes of the Act and this regulation, "daily living activities",
(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:
(i) prepare own meals;
(ii) manage personal finances;
(iii) shop for personal needs;
(iv) use public or personal transportation facilities;
(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
(vi) move about indoors and outdoors;
(vii) perform personal hygiene and self-care;
(viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

(i) make decisions about personal activities, care or finances;

(ii) relate to, communicate or interact with others effectively.

(2) For the purposes of the Act, "prescribed professional" means a person who is

(a) authorized under an enactment to practise the profession of

(i) medical practitioner,

(ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner,

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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 Margaret Koren	
Signature of Chair	Date (Year/Month/Day) 2022/12/30

Print Name Bob Fenske	
Signature of Member	Date (Year/Month/Day) 2022/12/30
Print Name Robert McDowell	
Signature of Member	Date (Year/Month/Day) 2022/12/30