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### PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated January 6, 2017, which denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in the *Employment and Assistance for Persons with Disabilities Act*, section 2. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment, which in the opinion of a prescribed professional:

- (i) directly and significantly restricts his ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,
- (ii) as a result of those restrictions, he requires help to perform those activities.

The ministry determined that the appellant satisfied the other 2 criteria: he has reached 18 years of age; and his impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

### PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act* (EAPWDA) – section 2  
*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) – section 2

## PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD Designation Application. The Application contained:
  - A Self Report (SR) completed by the appellant, dated 25 May 2016.
  - A Physician Report (PR) dated 23 June 2016, completed by a medical practitioner (GP) who had not seen the appellant in the last 12 months.
  - An Assessor Report (AR) dated 15 June 2016, completed by a nurse practitioner (NP) who has known the appellant for 2 months and seen him 2-10 times over that period.
2. A Request for Reconsideration form dated 05 December 2016, which was completed by the appellant's friend, included the following information:
  - The appellant and his friend met with the appellant's NP on December 1 about his health and this decision. NP asserts that the appellant is unable to work. NP suggested requesting an extension to obtain collateral information.
  - The appellant's friend is helping the appellant with this process. The friend is not aware of the administrative requirements. The friend is "learning as I go".
  - The appellant has no method of transportation. The friend lives in another community and needs to travel to the appellant's place of residence in winter conditions to get his signature.
3. A letter from the NP, dated 28 April, 2016 indicating that:
  - The appellant has multiple chronic health conditions, including: hypertension, coronary heart disease, chronic documented low back problems, and arthritis of the shoulder that will require eventual replacement.
  - The cumulation of these make it difficult if not impossible to work.
  - The letter also contains a number of hand-written annotations, which are signed by the appellant's friend and the appellant and appear to be written by the appellant's friend.
4. A copy of the Employment and Assistance for Persons with Disabilities Regulation, section 2 containing several annotations, signed December 11, 2016 by the appellant's friend. These annotations include (annotations in quotations, legislative provisions in italics):
  - "[The appellant] has a court order with family maintenance, he was with the mother of his daughter for 2 years (or so)." at the top of the page
  - "once a day" beside *prepare own meals*
  - "no" beside *manage personal finances*
  - "barely" beside *shop for personal needs*
  - "no" beside *use public or personal transportation facilities*
  - "barely" beside *perform housework to maintain the person's place of residence an acceptable sanitary condition*
  - "OK" beside *move about indoors and outdoors*
  - "with limitations + often needs to be told" beside *perform personal hygiene and self care*
  - "no – takes when he wants, not regularly" beside *manage personal medication*
  - "not really" beside *make decisions about personal activities, care or finances*
  - "1 friend" beside *relate to, communicate or interact with others effectively*
  - "[Appellant] is unable to manage personal finances. He has adverse information on his credit file. He owes money on credit cards, etc. he has not used a bank since he moved to BC."
5. A copy of the AR with several added annotations including:
  - "[Appellant] and I re-did this form"

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- “I am not an advocacy worker. I am [appellant’s] friend + need to advocate for him. I am his only friend + the only person he trusts. When I assisted [appellant] with this form I wasn’t able to accurately [illegible text]”
6. A typed page listing the address and contact information for a walk-in clinic and the address and contact information for three doctors, with the following annotations:
    - Beside one of the doctor’s contact information – “needed follow up stress test, [appellant] went there and nurses were not nice to him (rude to him) so he left without treatment. He was overwhelmed.”
    - Beside another doctor’s contact information – “([Appellant] quit this doctor + the doctor fired [appellant], they couldn’t get along)” and “Dr. [name removed] – locum for Dr. [name removed]”
  7. A letter from the appellant’s friend dated December 4, 2016, in which she recounts details from the appellant’s personal, medical and work history, as well as how she came to know him and the assistance she provides to him.
  8. A letter from the owner of the property on which the appellant lives, dated November 29, 2016, in which she explains the appellant’s extreme pain due to his medical conditions as well as the difficulty this creates for him in relation to personal hygiene and social functioning. She indicates that it is impossible for the appellant to work.
  9. A letter from the appellant’s friend dated November 28, 2016, in which she indicates that she is authorized to act on [appellant’s] behalf for Income Assistance and everything else pertaining to his health and business matters. The purpose of the letter, the author indicates, is to provide information about a telephone conversation with a Mental Health Rural & Remote Substance Use Nurse. The author reports that the nurse is unable to provide a written report for the appellant until he has seen her actively for 6 months according to the applicable health authority guidelines. The author also reports on the difficulty the appellant has in making it to his appointments with the nurse and indicates that she will take him to his next appointment.
  10. A letter from a music therapist and specialized energy kinesiologist dated November 1, 2016, in which she explains that she sees the appellant as a “Person with Multiple Barriers” and deserving of serious help. She explains that she knows the appellant as a volunteer at a food-sharing society where she is the overall coordinator. The author explains that the appellant has “serious constant pain and debilitating mental health issues” that impact his ability to deal with people and stresses.
  11. A letter dated December 6, 2016, from the NP who completed the AR. This letter indicates that even though she is his family practitioner, she was unable to complete the PR as a medical doctor must complete it. The author states that the “letter is intended to provide better insight into his situation and request” and summarizes the appellant’s situation as follows: “[Appellant] faces many barriers to employment, including mental illness, physical disabilities, low education, criminal record and lack of secure housing.”
  12. A Request for Reconsideration form dated 11 December 2016, which included the following information:
    - A request for the ministry to reconsider because the appellant is not mentally or physically able to work.
    - The appellant’s body and mental health have “high mileage”. He is depressed and in extreme pain and can’t sleep. It is difficult for him to maintain a daily existence. When he does things it causes him more pain from toileting to sleeping, putting on his shoes and getting dressed. The best position for the appellant is propped on pillows in a laying

position.

- The appellant thinks the ministry decision is incorrect due to a lack of proper documentation, lack of information, lack of understanding of the process.

Below is a summary of the evidence from the PR and the AR as it relates to the PWD criteria at issue in this appeal.

#### Severe Mental or Physical Impairment

In the PR, the GP diagnoses the medical conditions related to the appellant's impairment as:

- Severe OA (osteoarthritis) right shoulder
- Anxiety
- Chronic back pain
- Low education

The GP provides the following comments "[appellant] lives alone and is isolated due to his mental health disorder. He is unable to work, and barely able to perform ADLs [sic] due to pain and loss of function."

In the AR, the NP indicates that the medical conditions related to the appellant's impairment are: anxiety; poor sleep; irritability, social isolation; worry; chronic severe OA right shoulder; limitations in range of motion, strength; lumbar spondylosis/arthritis; chronic pain; decreased ability stand, sit for long periods and walk long distances.

#### Ability to perform DLA

##### *Moving about indoors and outdoors*

PR:

The GP indicates that the appellant is able to walk 1-2 blocks unaided on a flat surface, can climb 5+ steps unaided, is limited to lifting 2 to 7 kg and can remain seated for less than 1 hour.

AR:

The NP assesses the appellant as independent with walking indoors, walking outdoors, climbing stairs and standing. The NP indicates that the appellant requires periodic assistance lifting and continuous assistance with carrying and holding. The NP comments, "severe OA Rt shoulder limit his carrying capacity to less than 10 pounds."

##### *Impacts of mental impairment on daily functioning*

PR:

In answer to the question as to whether there are any significant deficits with cognitive and emotional function, the GP indicates "Yes" in the PR and has checked the following as areas where deficits are evident: Executive, Memory, Emotional disturbance and Attention. There are no comments provided.

AR:

The NP assesses the impact of the appellant's mental impairment on daily functioning as having a no impact on Impulse control, Insight and judgement, Psychotic symptoms, Other emotional or mental problems. The NP assesses a minimal impact in the areas of Bodily functions, Consciousness, Attention/concentration, Executive, Memory, Motor activity, Language, Other

neuropsychological problems. The NP assesses the impact of the appellant's mental impairment on daily functioning as having a moderate impact on Emotion and Motivation.

The NP comments:

- “1. Untreated anxiety – social isolation, poor sleep, irritability all of which lead to poor social functioning
2. Arthritis also has an impact on his mental well being.”

#### *Communication*

PR:

The GP indicated that the appellant has cognitive difficulties with communication, and adds the comment “due to anxiety”.

AR:

The NP assessed the appellant’s ability to communicate as “good” in relation to speaking and hearing and “satisfactory” in relation to reading and writing. The NP comments, “Grade 8 education” beside reading and “Low education” beside writing.

#### *Daily living activities*

PR:

In answer to the question as to whether the appellant's impairment directly restricts his ability to perform DLA, the GP indicates, “Yes.” The GP indicates that the appellant is restricted on a continuous basis for personal self care, basic housework, mobility inside the home, mobility outside the home and use of transportation.

The GP indicates that the appellant is not restricted for the DLA of meal preparation, management of medications, daily shopping and management of finances.

The GP comments, “due to pain and loss of function R shoulder, difficulty with tasks noted above.”

AR:

The NP assesses the assistance required to perform DLA as follows (NP comments in parentheses):

- Personal care – independent (right arm unable to reach left underarm to wash)
- Basic housekeeping – independent
- Shopping – independent (as long as it is light)
- Meals – independent
- Pay rent and bills – independent (doesn’t use bank)
- Medications – independent
- Transportation – independent getting in and out of vehicle (slow); N/A for transit (none available)

The NP comments, “At this point [appellant] remains as independent as possible with routine activities of daily living but is unable to work in his usual field of construction. His education is low”.

### Social functioning

PR:

The GP has left the social functioning DLA blank and does not include any comments about social functioning.

AR:

The NP assesses the support/supervision required in the following areas (the NP's comments in parentheses):

- Making appropriate social decisions – independent
- Ability to develop and maintain relationships – independent
- Interacting appropriately with others – independent
- Ability to deal appropriately with unexpected demands – periodic support/supervision (hard to help friends, sometimes has to say no)
- Ability to secure assistance from others – independent
- Other – continuous support/supervision (feels hard to be accepted for who he is)

The NP assesses how the appellant's mental impairment impacts his relationship with his immediate social network and extended social network as marginal functioning. The NP comments, "socially isolated, one remote friend" in relation to immediate social network and "avoids social contracts" in relation to extended social networks.

### Help required

PR:

The GP writes, "Nothing at this time."

AR:

The NP indicates that the appellant is provided help from friends and in relation to the use of assistive devices adds the comment "uses surroundings, like".

### Self Report

In his SR, the appellant writes that he is a 51 year old man with a grade 8 education. He writes that he suffers from:

- Severe arthritis in his rights shoulder, which requires a complete shoulder replacement, that a specialist told him he could have surgery within 2 weeks and that he declined to have the surgery because he was told that his recovery period would be 6 months
- Severe degenerative disc and severe arthritis in his lower back
- Severe diverticulitis, which can be crippling
- Coronary heart disease and hypertension, which he believes may be genetic, and has suffered a minor heart attack
- Severe anxiety and depression
- Arthritis in his right knee, which has previously been operated on, and his left knee
- Something wrong with left forearm and elbow
- Little strength and feeling in his left hand
- Severe bunion on his right foot, which leads to trouble walking and can be very painful
- Vision issues at night and "floaties"
- Difficulty with sleeping due to body soreness, so he is tired and needs to nap

## **Notice of Appeal**

The Notice of Appeal, dated 15 December 2016, includes the following information:

- Pending Medical Documentation
- Self medicates with alcohol. Used to use “oxycotin”, crystal methamphetamine, still copious amounts of marijuana. [Appellant’s] comprehension of daily living is poor due to his health issues. [Appellant] is severely impaired mentally and physically.
- Within 10-15 min of work [appellant] has to sit or lay down. Shoulder, back, legs, his hands (left) go numb. Working on getting documentation.
- He can’t get in a bathtub, he has trouble having a shower and his hygiene is terrible. His landlord has become his caregiver.
- He is unemployable. He is waiting for an MRI and/or CAT scan and testing for nerves. Also waiting for colonoscopy.

## **At the hearing**

### Appellant

At the hearing the appellant was joined by two representatives, one of whom is described as his caregiver and the other a friend. The friend provided information explaining how difficult it is to get medical diagnoses for [appellant] because he has difficulty trusting doctors and has avoided them in the past. The friend explained that the appellant had a difficult past, growing up in a community where he suffered from racism and bullying and that he did not have the opportunity to develop life skills when he was younger. The friend also explained that the appellant has difficulty with personal relationships and is unable to work, despite being a hard worker. The friend also explained that the appellant has carpal tunnel, fetal alcohol syndrome and learning disabilities. The friend also explained that the appellant, with assistance, is making efforts to have appropriate medical care, including diagnostic testing and treatment for his untreated medical conditions.

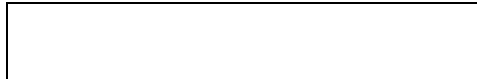
The caregiver explained that the appellant is living on her property in a recreational vehicle donated to him by the friend but that it is unheated so he spends a lot of time in her house, particularly in the winter months. The caregiver described the appellant’s difficulty with showering and toileting on his own and indicated that he often requires assistance; as well, he cannot cook and she is using her own money to feed him despite being unable to afford supporting him. The caregiver also explained that the appellant misunderstands or misinterprets many things that are said to him, which causes him to become frustrated and lose his temper. The caregiver described the appellant’s difficulty with trusting new people and explained that this impacts his medical care because he does not open up to let the NP and GP “know what’s going on”.

### Ministry

The ministry relied on its reconsideration decision at the hearing.

## **Admissibility of Additional Information**

The panel determined the information provided in the Notice of Appeal as well as the additional information provided at the hearing was admissible under s. 22(4) of the EAA as it was in support



of, and tended to corroborate, the evidence before the minister at reconsideration.

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## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision, which determined that the appellant is not eligible for designation as a PWD, was reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. Specifically, the ministry determined: that the appellant does not have a severe physical or mental impairment: that his DLA are not directly and significantly restricted either continuously or periodically for extended periods; and that he does not require 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 following section of the EAPWDA applies to this appeal:

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 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.

The following section of the EAPWDR applies to this appeal:

2 (1) For the purposes of the Act and this regulation, "daily living activities",

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

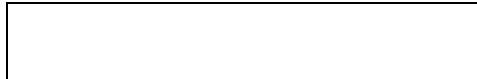
(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;



- (vi) move about indoors and outdoors;
  - (vii) perform personal hygiene and self care;
  - (viii) manage personal medication, and
  - (b) in relation to a person who has a severe mental impairment, includes the following activities:
    - (i) make decisions about personal activities, care or finances;
    - (ii) relate to, communicate or interact with others effectively.
- (2) For the purposes of the Act, "**prescribed professional**" means a person who is
- (a) authorized under an enactment to practise the profession of
    - (i) medical practitioner,
    - (ii) registered psychologist,
    - (iii) registered nurse or registered psychiatric nurse,
    - (iv) occupational therapist,
    - (v) physical therapist,
    - (vi) social worker,
    - (vii) chiropractor, or
    - (viii) nurse practitioner, or
  - (b) acting in the course of the person's employment as a school psychologist by
    - (i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or
    - (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*, if qualifications in psychology are a condition of such employment.

### **Severe Mental or Physical Impairment**

Section 2(2)(a) of the *EAPWDA* provides that when addressing the issue of a severe physical or mental impairment in the context of a person applying for a PWD designation, that person must be found to have a severe physical or mental impairment that, in the opinion of a medical practitioner (or nurse practitioner as of September 2016), is likely to continue for at least 2 years. Diagnosis of one or more serious medical conditions does not in itself determine PWD eligibility or establish a severe impairment.

### **The appellant's position**

The appellant argues that the medical information in the package does not adequately describe his medical condition. The appellant's representative argued that the doctor did not know him, only saw him for half an hour, and hasn't included all of the information that is needed; as well, the NP said she could not fill out the medical form. The appellant argues that even on a good day, with medication, he has high blood pressure. The appellant's representatives argue that the appellant cannot function on his own, can no longer work, and he needs a significant amount of assistance on a daily basis.

### **The ministry's position**

The ministry's position is that the information provided in the PWD application forms is reflective of moderate and not severe mental and physical impairment. The ministry acknowledges that the appellant has some limitations with lifting, carrying and holding, but argues that the appellant is able to manage most mobility and physical ability tasks independently.

The ministry further argues that the appellant's deficits in areas of cognitive and emotional functioning are moderate rather than severe as there are minimal to no impacts on the appellant's daily functioning, as indicated in the AR by the NP. The GP, the ministry argues, has also indicated that there are no major impacts. The ministry also emphasizes that employability is not a criterion for

consideration in a PWD application.

The ministry acknowledged that if the GP did not know the appellant very well, the GP might not have all of the information that the appellant's representatives have and this may be why information that would be required was not included.

Panel decision

The legislation indicates that the minister must be satisfied that a severe impairment exists. In making its determination, the ministry must consider all relevant evidence, including that of the appellant. As noted previously, diagnoses of serious medical conditions do not by themselves determine that severe impairment exists.

The ministry's position is that despite some physical limitations, the appellant is able to manage most mobility and physical ability tasks independently and reflects a moderate impairment. Both the PR and AR indicate that the appellant has limitations related to holding, lifting and carrying. The PR also indicates that the appellant is restricted on a continuous basis for personal self care, basic housework, mobility inside the home, mobility outside the home and use of transportation but does not require any assistance with these activities. The AR indicates that the appellant lives alone and is independent all of these areas. The appellant's position is that his ability to function in these areas is severely impaired.

Based on the available information, the panel acknowledges that the appellant experiences some limitations to his physical functioning but finds that the ministry reasonably determined that the assessments provided in the PR and AR reflect moderate rather than severe physical impairment.

The ministry's position is that despite some limitations to cognitive and emotional functioning, the appellant's mental impairment is moderate rather than severe. The PR indicates that the appellant has limitations related to executive, memory, emotional disturbance, attention and cognitive difficulties with communication due to anxiety. The AR indicates that while the appellant has moderate anxiety, there are no major impacts on the appellant's cognitive and emotional functioning and he does not require assistance in these areas. The appellant's position is that his ability to function is severely impaired as a result of mental illness.

The panel finds that the ministry reasonably determined that the assessments provided in the PR and AR reflect moderate rather than severe mental impairment.

**Direct and significant restrictions in the ability to perform DLA**

The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be due to a severe mental or physical impairment.

The appellant's position

The appellant's position is that his ability to perform DLA is directly and significantly restricted as a result of his medical conditions. The appellant's caregiver and friend provided information indicating that the appellant requires assistance with bathing, toileting, meal preparation, laundry, medication management, social interactions and communication.

### The ministry's position

The ministry argued that for those DLA where assistance is required, there is no information provided in the PR as to the type and frequency of assistance needed. The ministry argued that there is not enough evidence to confirm that the appellant's impairment significantly restricts his ability to perform DLA.

### Panel decision

The panel notes that direct and significant restriction in the ability to perform DLA must result from severe impairment, a criterion that has not been established in this appeal. The legislation requires that direct and significant restrictions of DLA be assessed in relation to the opinion of a prescribed professional, in this case the appellant's GP and/or NP.

While the PR indicates the appellant is restricted on a continuous basis for personal self care, basic housework, mobility inside the home, mobility outside the home and use of transportation, it also indicates that the appellant is "barely able to perform ADLs" and the assistance required is "nothing at this time". The AR indicates that the appellant is independent all of these areas. The AR indicates that the appellant requires support/supervision in two areas of social functioning: other and dealing appropriately with unexpected demands, but does not explain the type of assistance required.

In light of the information provided, the panel finds that the ministry reasonably determined that the information from the prescribed professional does not establish that impairment significantly restricts daily living activities either continuously or periodically for extended periods as required by section 2(3)(b) of the EAPWDA.

### Help with DLA

Section 2(2)(b)(ii) of the *EAPWDA* requires that, as a result of being directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods, a person must also require help to perform those activities. The direct and significant restriction of DLA is a precondition of the need for help criterion. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform DLA.

### The appellant's position

The appellant's position is that he requires significant assistance from other people, including the friend and caregiver in order to perform many DLA. As well, the appellant's friend indicated that he would benefit from a bathroom and shower with handrails.

### The ministry's position

The ministry argued that since DLA are not significantly restricted, it cannot be determined that significant help is required from other persons.

### Panel decision

The panel notes that in the PR the GP answers "none at this time" in relation to the assistance required with DLA. The AR indicates that friends provide assistance for DLA and the appellant "uses surroundings". The appellant's evidence is that he receives significant assistance with DLA. It is clear that the appellant does have assistance from another person with some of his DLA, but the information in the PR and AR is not consistent with this evidence.

Further, a finding that a severe impairment directly and significantly restricts a person's ability to manage his or her DLA either continuously or periodically for an extended period is a precondition to a person requiring "help"; this precondition has not been satisfied. As such, the panel finds that the ministry reasonably concluded it could not be determined that the appellant requires help with DLA as defined by section 2(3)(b) of the EAPWDA.

**Conclusion**

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's Reconsideration Decision, which determined that the appellant was not eligible for PWD designation under section 2 of the EAPWDA, was reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the appellant. The panel confirms the reconsideration decision. The appellant is not successful in his appeal.