

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 27, 2017 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that her impairment is likely to continue for at least two years. However, the ministry was not satisfied the evidence establishes that:

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

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

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

The evidence before the ministry at the time of the reconsideration decision included the appellant's Persons With Disabilities (PWD) Application comprised of the appellant's information and self-report dated November 22, 2016, a medical report (MR) and an assessor report (AR) both dated December 2, 2016 and both completed by a general practitioner (GP) who has known the appellant since September 2011 and has seen her 11 or more times in the past 12 months.

The evidence also included the appellant's Request for Reconsideration dated March 8, 2017 with attached written statement by the appellant.

Diagnoses

In the MR, the GP diagnosed the appellant with psoriasis, with an onset of "many years," psoriatic arthritis with an onset in 2014, hiatus hernia repair, cholecystectomy [surgical removal of the gallbladder], and abdominal incisional hernia with an onset in 2016. There was no diagnosis of a condition within the mental disorders diagnostic category of the MR. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities (DLA), the GP did not comment.

Physical Impairment

In the MR and the AR, the GP reported:

- With respect to the health history, the appellant has a history of psoriasis for years and "her condition is not well-controlled and complicated with psoriatic arthritis which involve her both hands, feet, and knees. This caused enlargement of her finger joints with feet. She has difficulty to work with her hands and walking long distances due to her pain in multiple joints" and "her condition got worse gradually."
- The appellant does not require any prostheses or aids for her impairment.
- Regarding the degree and course of impairment, the GP wrote: "psoriasis/psoriatic arthritis is chronic condition, could get worse."
- In terms of functional skills, the appellant can walk less than 1 block unaided on a flat surface, climb 2 to 5 steps unaided, lift 2 to 7 kg. (5 to 15 lbs.), and remain seated 1 to 2 hours.
- The appellant is assessed as being independent with some aspects of mobility and physical ability, specifically: walking indoors and walking outdoors and standing. The appellant requires periodic assistance from another person with climbing stairs, lifting, and carrying and holding. The GP wrote: "not able to function normally with her pain at feet/knees/hands."
- In the section of the AR relating to assistance provided, there are no assistive devices identified as being routinely used by the appellant to help compensate for her impairment and the GP wrote "no need yet."
- The appellant does not have an assistance animal.

In her self-report, the appellant wrote:

- Her disability has made day-to-day living challenging.
- Her hands are swelling and getting deformities from arthritis. Her feet and other joints are deforming. The psoriasis is spreading through her body.
- She has a lot of pain during flare-ups. Flare-ups happen often and winter months make it worse with cold, damp air.
- She finds it hard to sleep from pain.
- Her blood pressure is up due to psoriatic arthritis.

- She has difficulty walking, climbing stairs. Walking distances is not possible without excruciating pain.
- Lifting things gives her pain.
- Medication makes her feel ill.

In her Request for Reconsideration, the appellant wrote:

- Her disease has progressed very quickly.
- Her skin condition is very rough and painful.
- There is not enough information and knowledge about psoriasis and psoriatic arthritis. It is an incurable disease.
- She is being treated for blood pressure, which is caused by this disease.
- She cannot do full living activities without the aid of someone else.

Mental Impairment

In the MR and the AR, the GP reported:

- The appellant has no difficulties with communication and no significant deficits with cognitive and emotional function.
- The appellant has a good ability to communicate in speaking, reading, and hearing, and a satisfactory ability with writing (note: “has pain with her hands”).
- With respect to daily impacts to the appellant’s cognitive and emotional functioning, the GP reported that there are minimal impacts in emotion and motivation, and no impact in the remaining aspects. The GP commented that the appellant “feels sad because she is in pain every day. Her condition is not under control and it is chronic condition.”
- Regarding the impacts to the appellant’s social functioning, the GP indicated that the appellant is independent in all aspects, specifically: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.
- The appellant has good functioning in her immediate social network and marginal functioning in her extended social networks, with a comment by the GP that the appellant “doesn’t like to interact with people because of her pain and skin condition.”
- Asked to describe the support/supervision required that would help maintain the appellant in the community, the GP wrote: “family.”

In her self-report, the appellant wrote:

- She feels depressed due to her skin condition and pain.
- Her social life is less now.

Daily Living Activities (DLA)

In the MR and the AR, the GP reported:

- The appellant has been prescribed medication and/or treatments that interfere with her ability to perform DLA, specifically pain medication [twice a day and as needed] and this “could be long-term.”
- The appellant is independent with walking indoors and walking outdoors.
- The appellant is independent with all of the tasks for the personal care DLA, the pay rent and bills DLA, the medications DLA, and the transportation DLA.
- Regarding the basic housekeeping DLA, the appellant is independent with doing laundry and requires periodic assistance from another person with basic housekeeping, with no comments provided.
- For the shopping DLA, the appellant is independent with the tasks of going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases, and she

requires continuous assistance from another person with carrying purchases home.

- The GP provided additional comments that the appellant is “not able to work well with her hand, not able to walk far due to chronic pain.”
- For the meals DLA, the appellant is independent with meal planning and safe storage of food, and requires continuous assistance from another person with food preparation and cooking, with the note: “due to hand pain, difficulty to lift heavy or cut.”

In her self-report, the appellant wrote:

- Her disability has made day-to-day living challenging.
- She has a lot of pain during flare-ups.
- Food preparation is very difficult.
- She needs help to do household chores.
- Her knees make it difficult to get up after sitting or bathing.

In her Request for Reconsideration, the appellant wrote that her arthritic disease is progressing quickly and her ability to get and maintain employment is very challenging.

Need for Help

With respect to the assistance provided by other people, the GP reported in the AR that help required for DLA is provided by family. The GP did not identify any of the assistive devices as being used by the appellant and noted “no need yet,” and the appellant does not have an assistance animal.

Additional information

In her Notice of Appeal dated April 6, 2017, the appellant expressed her disagreement with the ministry’s reconsideration decision and she wrote that her disease progresses quickly. She cannot stand long enough or lift items. She also has high blood pressure that is increased by stress. Her feet are not strong enough to stand.

The ministry relied on the reconsideration decision as the ministry’s submission on the appeal.

Admissibility of Additional Information

The ministry did not raise an objection to the admissibility of the information in the appellant’s Notice of Appeal. The panel considered the information provided by the appellant as being in support of, and tending to corroborate, the impact from medical conditions referred to in the PWD application and the Request for Reconsideration, which were before the ministry at reconsideration. Therefore, the panel admitted this additional information in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for PWD designation, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the evidence does not establish that the appellant has a severe mental or physical impairment and that her DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, it could not be determined that, as a result of those restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

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

Persons with disabilities

2 (1) In this section:

"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person is in a prescribed class of persons or that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

The EAPWDR provides as follows:

Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

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

- (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self care;
 - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.

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

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

- (i) medical practitioner,
- (ii) registered psychologist,
- (iii) registered nurse or registered psychiatric nurse,
- (iv) occupational therapist,
- (v) physical therapist,
- (vi) social worker,
- (vii) chiropractor, or
- (viii) nurse practitioner, or

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

- (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.

Part 1.1 — Persons with Disabilities

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2 (2) [persons with disabilities] of the Act:

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the Community Living Authority Act;
- (d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the Community Living Authority Act to assist that family in caring for the person;
- (e) a person who is considered to be disabled under section 42 (2) of the Canada Pension Plan (Canada).

Severe Physical Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical impairment. The ministry acknowledged that the appellant was diagnosed by the GP with several medical conditions, specifically psoriasis, psoriatic arthritis, hiatus hernia repair, cholecystectomy, and abdominal incisional hernia, and referred to the GP's description of her condition in the health history as "...not well-controlled and complicated with psoriatic arthritis which involve her both hands, feet, and knees."

A diagnosis of a serious medical condition or conditions does not in itself determine PWD eligibility or establish a severe impairment. An "impairment" is a loss or abnormality of psychological, anatomical or physiological structure or functioning causing restriction in the ability to function independently, effectively, appropriately, or for a reasonable duration. To assess the severity of an impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning.

The ministry considered the impacts of the appellant's diagnosed medical conditions on her daily functioning, beginning with the assessments provided in the MR and the AR. The ministry wrote that the GP reported in the MR that the appellant does not require an aid for her impairment and she is able to walk less than 1 block unaided on a flat surface, climb 2 to 5 steps unaided, lift 5 to 15 lbs. and remain seated 1 to 2 hours. The ministry wrote that although the GP's functional skills assessment indicated some limitations in the appellant's abilities, the assessment in the AR confirmed that the appellant is independent walking indoors, walking outdoors, and standing, and that she requires periodic assistance climbing stairs, lifting and carrying and holding. The GP noted that the appellant is "not able to function normally with her pain at feet/knees/hands," but did not comment regarding how often the appellant requires assistance due to pain. The GP noted in the health history of the MR that that appellant "has difficulty to work with her hands and walking long distances due to her pain in multiple joints;" however, the GP did not clarify the reference to "long distances" or indicate a need for assistance due to her difficulty.

The ministry referred to the appellant's self-report that she experiences a lot of pain during "flare-ups," which happen "often" and are worse during the winter, and concluded that neither the GP nor the appellant provide details regarding the frequency and duration of the flare-ups or those times during which the appellant requires periodic assistance with climbing stairs, lifting and carrying and holding. The panel finds this conclusion reasonable considering the GP's assessment of the appellant's ability to climb 2 to 5 steps unaided and lift 5 to 15 lbs. and in the absence of information to clarify if this assessment is during a flare-up of her condition. In her Notice of Appeal, the appellant wrote that she cannot stand long enough as her feet are not strong, she cannot lift items, and she also has high blood pressure that is increased by stress. There was no further information provided by the appellant or her GP on the appeal to confirm that the appellant's blood pressure is high, or to clarify the frequency or duration of flare-ups to the appellant's condition and whether her functional skills are an indication of her ability on a good or a bad day.

For the ministry to be "satisfied" that an impairment is severe, the panel considers it reasonable for the ministry to expect that the information provided by the medical practitioner and prescribed professional presents a comprehensive overview of the nature and extent of the impacts of the medical conditions on daily functioning, including by providing the explanations, descriptions or examples in the spaces provided in the MR and in the AR forms.

The ministry concluded that the assessments of physical functioning are not consistent as the GP reported in the MR that the appellant is able to walk less than 1 block unaided on a flat surface, while her assessment in the AR indicated that the appellant is able to walk indoors and outdoors

independently rather than taking significantly longer or requiring assistance. In her self-report, the appellant wrote that walking distances is not possible without excruciating pain, although she did not explain what she meant by “distances,” and she wrote that lifting things gives her pain, without specifying whether she experiences pain lifting any weight, or weights heavier than her moderate functional skill range of 5 to 15 lbs.

The GP commented regarding the degree and course of impairment, that “psoriasis/psoriatic arthritis is chronic condition, could get worse” and the appellant wrote in her Request for Reconsideration that her disease has progressed very quickly and she cannot do full living activities without the aid of someone else. The appellant also wrote in her Notice of Appeal that her disease progresses quickly. However, the GP reported in the AR that, at the time, there were no assistive devices routinely used by the appellant to help compensate for her impairment, the GP wrote “no need yet,” and there was no additional information provided by the GP on the appeal to indicate that the appellant’s condition has deteriorated since the time of the reports in December 2016.

In her Request for Reconsideration, the appellant wrote that her arthritic disease is progressing quickly and her ability to get and maintain employment is very challenging. An emphasis was placed by the appellant on her inability to work, and the panel finds that the ministry reasonably determined that employability is not a consideration for eligibility for PWD designation as employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

Given the GP’s assessment of independence with the appellant’s mobility, the lack of a description of the frequency of the “flare-ups” and resulting need for periodic assistance with some areas of mobility and physical ability, as well as the emphasis placed by the appellant on her inability to work, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

Severe Mental Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided was sufficient evidence of a severe mental impairment. The ministry considered that the GP did not diagnose a mental disorder and the GP reported that the appellant has no difficulties with communication and no significant deficits in cognitive and emotional functioning. The ministry also considered that while the GP indicated that there were minimal impact to daily functioning in the areas of emotion and motivation, with the comment “feels sad because she is in pain every day,” the GP assessed no impact in the remaining areas and this section of the report applies specifically to those with an identified mental impairment or brain injury. The GP reported in the MR that the appellant takes pain medication every day as needed. In her self-report, the appellant wrote that she feels depressed due to her skin condition and pain, and that her social life is less now. The ministry wrote that the GP indicated that the appellant is able to function independently with all aspects of social functioning and that she has good functioning with her immediate social networks, with marginal functioning in her extended social network described by the GP as “doesn’t like to interact with people because of her pain and skin condition.” There was no additional information provided on the appeal to indicate a formal diagnosis or any referral to mental health specialists.

Given the absence of a diagnosis of a condition within the mental disorders diagnostic category of the MR and the lack of evidence of significant impacts to the appellant’s cognitive and emotional and social functioning, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

In the reconsideration decision, the ministry was not satisfied that the appellant has a severe physical or mental impairment that, in the opinion of the prescribed professional, directly and significantly restricts DLA either continuously or periodically for extended periods of time.

According to the legislation, Section 2(2)(b) of the EAPWDA, the ministry must assess direct and significant restrictions to DLA in consideration of the opinion of a prescribed professional, in this case the appellant's GP. This does not mean that the other evidence is not factored in as required to provide clarification of the professional evidence, but the legislative language makes it clear that a prescribed professional's evidence is fundamental to the ministry's determination as to whether it is "satisfied." Therefore, the prescribed professional completing the assessments has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairments either continuously or periodically for extended periods.

In the reconsideration decision, the ministry reviewed the information provided in the MR and noted that the GP indicated that the appellant has been prescribed medications that interfere with her ability to perform DLA as she takes pain medication twice a day and as necessary and the anticipated duration "could be long term." The ministry considered that the GP assessed the appellant as being independent with all of the tasks of several DLA, specifically the personal care DLA, the pay rent and bills DLA, the medications DLA, and the transportation DLA, with no need for assistance from another person or an assistive device. Regarding the 'move about indoors and outdoors' DLA, the appellant is assessed by the GP as independent with both walking indoors and walking outdoors, while able to walk less than 1 block unaided, and this discrepancy has not been clarified by the GP, as previously discussed. In her self-report, the appellant wrote that her knees make it difficult to get up after sitting or bathing; however, the GP, as the prescribed professional, assessed the appellant as being independent in all tasks of personal care, specifically: dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed, and transfers on/off chair.

The ministry wrote that the GP indicated that the appellant requires continuous assistance when carrying purchases home, preparing food, and cooking; however, the ministry was not clear why the appellant would require continuous assistance when the GP's physical functional skills assessment indicated the appellant requires periodic, rather than continuous, assistance climbing stairs, lifting, and carrying and holding. The GP commented regarding the task of carrying purchases home when shopping that the appellant is "not able to work well with her hands, not able to walk far due to chronic pain," and with respect to the tasks of food preparation and cooking that "due to hand pain, difficulty to lift heavy or cut." The panel finds that the ministry reasonably considered that the GP does not take the opportunity to clarify how far the appellant can walk independently and whether the assistance is required for "heavy" weights in excess of the functional skill range of 5 to 15 lbs., particularly given the GP's assessment of the need for periodic assistance with some of the appellant's basic physical functional skills.

The ministry considered that the GP reported in the AR that while the appellant is independent with doing laundry, she requires periodic assistance with the task basic housekeeping, with no description or explanation provided to indicate the frequency and duration of those times during which the appellant requires periodic assistance to allow the ministry to determine that the appellant is significantly restricted with this task for extended periods of time. In her self-report, the appellant wrote that her disability has made day-to-day living challenging. The appellant wrote that she has a lot of pain during flare-ups, food preparation is very difficult, and she needs help to do household chores; however, the appellant did not elaborate regarding any need for assistance with food preparation, or the frequency of her need for assistance with "household chores." In her Request for

Reconsideration, the appellant wrote that her arthritic disease is progressing quickly and her ability to get and maintain employment is very challenging. As previously discussed, employability is not a consideration for PWD designation.

Given the GP's report of the appellant's independence with many tasks of DLA and the lack of a description by the GP of the extent and frequency of the assistance required for some tasks of DLA, in consideration of the evidence of periodic "flare-ups" in her condition and her need for periodic assistance with some areas of mobility and physical ability, the panel finds that the ministry reasonably determined that the evidence is insufficient to show that the appellant's overall ability to perform her DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

In the reconsideration decision, the ministry held that, as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required. 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. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting 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 a DLA.

While the GP reported that the appellant receives help from family, as the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel finds that the ministry also reasonably concluded that, under section 2(2)(b)(ii) of the EAPWDA, it cannot be determined that the appellant requires help to perform DLA.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation pursuant to Section 2(2) of the EAPWDA, was reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant's appeal, therefore, is not successful.