

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 23, 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 his 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

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 May 31, 2016, a medical report (MR) and an assessor report (AR) dated September 29, 2016 and completed by a general practitioner (GP) who has known the appellant for less than 1 month and saw the appellant once in the past 12 months prior to completing the PWD application.

The evidence also included the appellant's Request for Reconsideration dated May 5, 2017 which in part stated:

- Since the PWD application the appellant has had 3 heart attacks.
- The specialist told the appellant that he cannot work where physical labour or stress is required.
- If he goes for a walk, he does so slowly.
- Household chores are very difficult as they result in chest pain and shortness of breath (SOB).
- He tires easily.

### ***Diagnoses***

In the PR, the GP diagnosed the appellant with coronary artery disease (onset unknown).

### ***Physical Impairment***

In the MR and AR, the GP reported:

- Patient has had multiple episodes of ACS – first in 1995 – and multiple PCI's done.
- He continues to smoke despite this. Patient has to stop smoking to mitigate ischemia.
- He may have angina but there is no mention of this in his medical records.
- The appellant can walk 2-4 blocks and climb 5+ steps unaided, and lift and remain seated with no limitations.
- The appellant is not restricted with any listed items of DLA.
- The appellant functions independently with all listed items of mobility and physical ability.

In his self-report, the appellant stated in part that:

- He suffers from coronary artery disease and has had 5 stints.
- He has been told by the specialist that his condition will not improve.
- When it is very warm outside he starts to see stars and experiences the feeling of passing out.
- He can only walk 2-4 blocks before he has to stop and rest due to chest pain and his arm getting numb.
- Heavy lifting, physical labour and going up stairs causes him to have chest pain.
- Even when relaxing and sleeping he experiences chest pain.

### ***Mental Impairment***

In the MR and AR, the GP reported:

- The appellant has no difficulties with communication.
- The appellant has no significant deficits with cognitive and emotional function.
- He is not restricted in the area of social functioning.
- In terms of communication, the appellant's reading, speaking, hearing and writing is good.
- In terms of cognitive and emotional functioning, the GP reported 'no impact' for all listed areas.
- In all listed tasks under 'pay rent and bills', filling/refilling and 'medications', it is reported that the appellant is independent .
- In terms of social functioning, the GP indicated that the appellant is independent in all listed tasks, and no impairment in regards to immediate and extended social networks.

In his self-report, the appellant stated did not argue that he suffers from a mental impairment.

### ***Daily Living Activities (DLA)***

In the MR and the AR, the GP reported:

- The appellant has not been prescribed any medication and/or treatment that interfere with his ability to perform DLA.
- The appellant is independent with all listed tasks of mobility and physical ability.
- The appellant is independent with all listed tasks of DLA.

In his self-report, the appellant stated in part that:

- Walking more than 2-4 blocks and climbing stairs cause chest pain.
- Heavy lifting and physical labour cause chest pain.

### ***Need for Help***

With respect to the assistance provided by other people, the GP did not report that the appellant receives help. The GP indicated that the appellant does not use any assistive device or animal, and does not require a prostheses or aid for his impairment.

In his self-report, the appellant stated did not argue that he requires assistance from another person, animal or device.

### ***Evidence on Appeal***

In his Notice of Appeal (NOA) dated May 19, 2017, the appellant stated that his heart condition is severe and it restricts the amount of exercise he can do (such as shoveling snow, mowing the lawn, long walk, stairs and stress).

### ***Evidence at the Hearing***

At the hearing the appellant submitted a letter from the GP, which is signed and dated June 7, 2017. The letter states in part that the appellant suffers from severe atherosclerotic cardio vascular disease, his condition has declined recently and the appellant is limited to sedentary activity.

At the hearing the appellant's advocate stated in part:

- The appellant will not last after his next heart attack.
- His condition has deteriorated so 'bad' since the PWD application.
- He is afraid of dying alone so someone is with him 24 hours per day.
- He meets the severity test because his condition has changed and he no longer smokes.
- He no longer can mow the lawn, shovel the snow, and carry groceries.
- His walking is limited as to how far he can go and he is affected by climbing stairs in the house.
- He cannot complete basic housekeeping.
- He does not need assistance at this time.
- Anything can upset him and the fear is he will suffer another heart attack.
- The appellant cannot read due to poor eyesight.

At the hearing the ministry relied on its reconsideration decision.

### ***Admissibility of Additional Information***

The ministry did not object to the admissibility of the appellant's oral testimony or the letter.

The panel considered the information from the appellant's advocate, for the most part, 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 oral testimony in accordance with Section 22(4)(b) of the *Employment and Assistance Act*. The panel did not admit the advocate's testimony regarding the appellant's eyesight as there was no mention in the materials at reconsideration about the appellant's eyesight and, therefore, this is not in support of information and records before the ministry at reconsideration.

The panel considered the information in the letter from the GP dated June 7, 2017 as being in support of or corroborating the information in the PWD application and the Request for Reconsideration, which were before the ministry at reconsideration. Therefore, the panel did admit the letter in accordance with Section 22(4)(b) of the *Employment and Assistance Act*. However, the panel places little weight on the information provided in the letter because the GP did not explicitly explain how the appellant's medical condition changed from 'might have angina' in the PWD application to 'ongoing angina' in the letter, how the appellant's medical 'condition declined recently' and the impact of the recent change in medical condition on the appellant's ability to perform his DLA either continuously or periodically for extended periods and whether or not assistance is required from another person, animal or assistive device.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a PWD, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the evidence does not establish that the appellant has a severe mental or physical impairment and that his DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, 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 or mental impairment. Determining a severe physical impairment requires weighing the evidence provided against the nature of the impairment and its reported functional skill limitations. A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. An “impairment” is a medical condition that results in restrictions to a person’s ability to function independently or effectively 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.

In the self-report, request for reconsideration and at the hearing, the appellant emphasized his inability to work. Employability is not a consideration for eligibility for PWD designation because employability is not a criteria in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

The ministry noted that the appellant’s functional skills are indicated as he can walk 2-4 blocks unaided, climb 5+ steps unaided, remain seated and lift with no limits. It also noted that the appellant is independent in all listed tasks of mobility and physical ability, such as walking indoors/outdoors, climbing stairs lifting and standing. The ministry’s conclusion was that it was not satisfied that the evidence of the appellant’s functional skills, mobility and physical abilities, as presented by the GP and the appellant’s self-reports, was indicative of a severe physical impairment. The ministry also noted that at the time of Reconsideration, no new information from a medical practitioner or nurse practitioner was submitted. Finally the ministry noted that the GP comment ‘as per patient’ suggests that the assessment is based on the appellant’s self-assessment as opposed to a medical assessment.

Given the GP’s report in the MR and the AR of the appellant’s good functional skills, independent physical functioning and with no revised assessment provided by the GP on the appeal, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment pursuant to 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 GP did not diagnosis a “mental condition” in the MR. The ministry noted that the GP did not report a significant deficit with cognitive and emotional functioning. The ministry noted that in the AR, the GP reported that the appellant has good hearing, speaking, writing and reading skills. In the AR, under the impacts to cognitive and emotional functioning, the GP indicated “no impact” for all listed areas. Finally the ministry argued that the GP reported that the appellant is not restricted with social functioning, and is independent with all listed areas of social functioning. In regards to tasks related to making decisions about personal activities, care and finances the GP indicated that the appellant is independent.

Given the lack of evidence of significant impacts to the appellant’s cognitive, 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 AR and noted that the GP did not assess the appellant as restricted in his ability to perform any of the listed DLA and that the appellant has not been prescribed medication or treatments that would interfere with his ability to perform DLA. Furthermore, the ministry noted that regarding the assistance required by the appellant, the GP writes "None" and the GP indicated that the appellant performs all of the listed DLA independently. The ministry wrote "based on the assessments provided by [the GP] in the PWD application and [the appellant's] self-reports, the ministry finds there is not enough evidence to confirm that [the appellant has] a severe impairment that significantly restricts [his] ability to perform [his] DLA continuously or periodically for extended periods.

Given the assessment by the GP of independence with all DLA and the lack of evidence on appeal, the panel finds that the ministry reasonably determined that there was insufficient evidence from a prescribed professional to establish significant restrictions. Therefore, the panel finds that the ministry reasonably concluded that the evidence is insufficient to show that the appellant's overall ability to perform his 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.

In the AR, under assistance provided, the GP wrote "None needed for ADLs". The panel notes that throughout the PWD application did not indicate a need for assistance either from another person, animal or device. Given the GP's evidence in its entirety, the panel finds that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, and therefore 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.