

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated May 16, 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

The ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the appellant's information dated January 17, 2017, with no self report completed, a medical report (MR) and an assessor report (AR) both dated January 29, 2017 and completed by a general practitioner (GP) who has known the appellant for 13 years and has seen her 11 or more times in the past 12 months.

The evidence also included the appellant's Request for Reconsideration dated May 8, 2017 along with a letter from the GP dated April 29, 2017.

Diagnoses

In the MR, the GP diagnosed the appellant with depression and anxiety, with an onset in June 2016, myofascial pain with an onset in October 2016 and migraine headache with an onset in June 2016. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities (DLA), the GP wrote: "myofascial pain/ back pain/ depression."

Physical Impairment

In the MR and the AR, the GP reported:

- With respect to the health history: "May 2016- neck with thyroid mass/ nodule, November 2016 left thyroidectomy. Since May 2016, increased ...myofascial pain/ headache."
- The appellant does not require any prostheses or aids for her impairment.
- In terms of functional skills, the appellant can walk 2 to 4 blocks 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 not restricted with her mobility inside the home or with her mobility outside the home.
- The appellant is assessed as being independent with her mobility, with walking indoors and waling outdoors and also with standing. She requires periodic assistance from another person with climbing stairs, lifting, and carrying and holding. The GP did not provide an explanation or description or further comments.
- 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.
- The appellant does not have an assistance animal.

In the April 29, 2017 letter, the GP indicated:

- The appellant suffers from three major medical problems causing her not to be able to work.
- The appellant suffers from chronic neck and back muscle pain and fatigue. She has myofascial pain over her neck, arms and legs. She has been treated with medications.
- She still complains of ongoing pain with daily activities.
- She has been unable to return to her previous job because of difficulty with walking from pain.
- In addition, the appellant has been disabled with frequent migraine headaches requiring time off.
- Despite medical therapy, the appellant had been unable to work for the past year and continues to remain disabled.

Mental Impairment

In the MR and the AR, the GP reported:

- The appellant has no difficulties with communication.
- The appellant has no significant deficits with cognitive and emotional function.
- The appellant is not restricted with social functioning.
- The appellant has a good ability to communicate in all areas, specifically: speaking, reading, writing, and hearing.
- With respect to daily impacts to the appellant's cognitive and emotional functioning, the GP reported that there is a major impact in the area of emotion and moderate impacts in bodily functions, motivation, motor activity (also a minimal impact) and other emotional or mental problems (also a minimal impact) that are not explained. The GP did not provide comments.
- Regarding the section of the AR assessing impacts to the appellant's social functioning, the appellant is independent in all areas, 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 both her immediate and extended social networks.

In the April 29, 2017 letter, the GP wrote:

- The appellant has had an anxiety problem for several years, aggravated with discovery of a thyroid mass in May 2016 and she underwent partial thyroid resection and no cancer was found.
- The appellant developed severe worsening anxiety and depression and required treatment with several anti-depressant medications. She continues to have persistent anxiety symptoms and was seen by a psychiatrist for ongoing treatment.

Daily Living Activities (DLA)

In the MR and the AR, the GP reported:

- The appellant has not been prescribed medication and/or treatments that interfere with her ability to perform DLA.
- The appellant's impairment directly restricts her ability to perform DLA. The appellant is not restricted with any listed DLA, and it is unknown if she is restricted with the meal preparation DLA and the management of finances DLA.
- Asked to describe the assistance the appellant requires with DLA, the GP wrote: "none."
- The appellant is independent with walking indoors and with walking outdoors.
- The appellant is independent with all of the tasks for the pay rent and bills DLA, the medications DLA and the transportation DLA.
- With respect to the personal care DLA, the appellant is independent with all but the one task of dressing. She is independent with grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/ off chair.
- Regarding the basic housekeeping DLA, the appellant requires periodic assistance from another person with doing laundry and basic housekeeping. The GP did not provide an explanation or description.
- For the shopping DLA, the appellant is independent with the tasks of making appropriate choices and paying for purchases. The appellant requires periodic assistance from another person with the tasks of going to and from stores, reading prices and labels and carrying purchases home.
- The GP commented: "according to patient."
- Regarding the meals DLA, the appellant is independent with all tasks, specifically: meal planning, food preparation, cooking and safe storage of food, while also requiring periodic

assistance from another person with safe storage of food. The GP did not provide an explanation or description of the assistance required.

- For additional information, the GP wrote “high functioning, communicates in writing. Episodic flares of knee/hand pain make fine motor skills and walking difficult.”

In the April 29, 2017 letter, the GP wrote:

- The appellant suffers from three major medical problems causing her not to be able to work.
- She suffers from major depression with anxiety, generalized pain with myofascial tenderness, and frequent migraine headaches.
- Despite medical therapy she had been unable to work for the past year and continues to remain disabled.

Need for Help

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 she does not have an assistance animal.

Additional information

In her Notice of Appeal dated May 25, 2017, the appellant expressed her disagreement with the ministry’s reconsideration decision and she wrote that she is unable to work and is mentally upset.

At the hearing, the appellant stated:

- She recently had some blood work conducted and it was discovered that she has low B12, no iron, more white and few red blood cells.
- She cannot sit for too long because her feet turn blue, and her circulation is not good. She has to put her legs straight in order to sit for any length of time.
- She can only walk for half an hour and that is all.
- She cannot stand for more than 10 to 15 minutes.
- She is a single mother and her son had to drop out of school to work.
- She is mentally not well. She sees a psychiatrist every 6 weeks.
- She cannot carry anything so she cannot do the shopping.
- She cannot feel the tips of her fingers. She thinks this may be the side effect of the medication she is taking.
- She cannot do the dishes because of the loss of feeling in her fingers.
- She used to be an active woman who spent many hours volunteering and now she feels so bad that she cannot do anything. She cannot walk more than 30 to 45 minutes by herself and that makes her so depressed.
- She does not understand the ministry’s denial. She has worked for more than 25 years and she was never late and did not take days off. She had to raise her children.
- No one wants to sit at home, but her body is not allowing her to do things.
- In 2008 she had a car accident and could no longer perform the work she had been doing.
- Her daughter does most of the laundry. She cannot lift anything.
- She had surgery on her throat but she needs to see the specialist again because her left ear is bothering her with unusual sounds.
- She had heart problems and was taken to the hospital for monitoring. Then she ended up with pneumonia.
- Since the reports were completed in January 2017, her health has deteriorated and other conditions have developed. She is losing blood. She does not have a copy of the blood work report with her.

At the hearing, the appellant's daughter stated:

- She usually does the cleaning, does the dishes, and makes a list of things that need to get done.
- She takes her mother for walks but once they walked for about an hour and her mother could not make it back.
- She keeps her mother busy and talks with her. She is with her mother "24/7."
- She was with her mother at the appointment with her doctor when he completed the MR and the AR. She explained to the doctor how much she helps her mother.

The ministry did not attend the hearing and relied on the reconsideration decision.

Admissibility of Additional Information

The panel considered the information provided in oral testimony on behalf of the appellant as being, for the most part, 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*.

The panel did not admit the information about the appellant's abnormal blood work as there was no evidence before the panel that this condition was related to the medical conditions diagnosed and referred to in the PWD application and at reconsideration. The ministry has not been provided an opportunity to consider health conditions other than those diagnosed, namely myofascial pain and migraine headache.

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 myofascial pain and migraine headache and that there has been increased and persistent pain since May 2016. The ministry referred to the April 29, 2017 letter from the GP

and noted that emphasis was placed on the appellant's inability to work. The ministry reasonably concluded that employability or ability to work is not a consideration for the purposes of determining eligibility for PWD designation.

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 a 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 considered that the GP reported that the appellant does not require any prostheses or aids for her impairment and she is able to walk 2 to 4 blocks unaided on a flat surface, climb 2 to 5 steps unaided, lift 5 to 15 lbs., and remain seated for 1 to 2 hours. The ministry wrote that the GP indicated the appellant is independent with walking indoors and walking outdoors and standing. The ministry considered that while the GP reported that the appellant requires periodic assistance for climbing stairs, lifting and carrying and holding, the GP did not indicate how often she requires assistance, making it difficult to determine the overall level of restriction to physical functioning. Given an opportunity in the April 29, 2017 letter to provide detail regarding the level of assistance needed with some aspects of her physical ability, the GP emphasized the appellant's inability to work and wrote that despite medical therapy, she had been unable to work for the past year and continues to remain disabled.

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.

When asked to clarify at the hearing, the appellant stated that she cannot sit for too long because her feet turn blue, and her circulation is not good. She can only walk for half an hour and that is all. The appellant stated that she cannot stand for more than 10 to 15 minutes, and she "cannot lift anything." The appellant stated at the hearing that her condition has deteriorated since the time the MR and the AR were completed; however, the GP did not address his assessments of the appellant's physical functioning in his April 29, 2017 letter to indicate that there had been a change in her lifting ability of 5 to 15 lbs, and no further information was provided from a medical professional on the appeal.

Given the original assessments by the GP of physical functional skills within a moderate range, the lack of a description of the frequency of the need for periodic assistance with some areas of physical ability, as well as the emphasis by the GP on the appellant's 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 reported that the appellant has no significant deficits in cognitive and emotional functioning, although he indicated that emotion has a major impact on her daily functioning and there are moderate impacts in the areas of bodily functions, motivation, motor activity and other emotional or mental problems. The GP did not provide comments to explain the nature of these impacts to cognitive and emotional functioning,

particularly to explain the area of other emotional or mental problems. The ministry considered that the GP reported that the appellant does not have any difficulties with communication and her level of ability is good with speaking, reading, writing, and hearing. The ministry noted that the GP indicated that there is no requirement for support or supervision with any aspect of social functioning and the GP indicated in the MR that the appellant has no restrictions to social functioning. The ministry noted that the GP reported good functioning in both the appellant's immediate and her extended social networks.

At the hearing, the appellant stated that she is mentally not well and she sees a psychiatrist every 6 weeks. The appellant's daughter stated at the hearing that she keeps her mother busy and talks with her and that she is with her mother "24/7." The GP wrote in the April 29, 2017 letter that the appellant developed severe worsening anxiety and depression and required treatment with several anti-depressant medications, and that she is seen by a psychiatrist for ongoing treatment. However, there was no detail provided by the GP in his letter of the impacts to the appellant's cognitive and emotional and social functioning, and no information provided by the psychiatrist on the appeal.

Given 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 not been prescribed any medications or treatments that interfere with her ability to perform DLA. The ministry wrote that while the GP indicated that the appellant's impairment directly restricts her ability to perform DLA, the GP indicated that it is unknown if her impairment restricts her ability to perform the meal preparation DLA and the management of finances DLA, and all other listed DLA are not restricted. The ministry considered that when the GP was asked to describe the assistance that the appellant needs with DLA he wrote "none."

The ministry considered the assessment by the GP in the AR that the appellant is independent with many tasks of DLA and, for those tasks for which the appellant requires periodic assistance from another person (dressing, laundry, basic housekeeping, going to and from stores, reading prices and labels, carrying purchases home, and safe storage of food) the GP commented "according to patient" and did not describe the frequency and duration of the periodic assistance to allow the ministry to determine if there is a significant restriction to the appellant's overall functioning.

At the hearing, the appellant stated that she cannot carry anything so she cannot do the shopping. She cannot do the dishes because of the loss of feeling in her fingers. The appellant stated that her daughter does most of the laundry as she cannot lift anything. The appellant stated that since the

reports were completed in January 2017, her health has deteriorated. The appellant's daughter also stated at the hearing that she usually does the cleaning, does the dishes, and makes a list of things that need to get done. She also keeps her mother busy and talks with her, and she is with her mother "24/7." The appellant's daughter stated that she was with her mother at the appointment with her doctor when he completed the MR and the AR and she explained to the doctor how much she helps her mother. While the appellant and her daughter spoke of restrictions to DLA based on her inability to lift and to carry items, and also as a result of her need for ongoing supervision, there was no information provided from the GP as the prescribed professional to confirm a reduction in the appellant's lifting ability of 5 to 15 lbs. or to explain the extent of her need for assistance with some tasks either due to a physical or a mental impairment.

Given the appellant's reported independence with most tasks of DLA and the lack of a description by the GP of the extent of periodic assistance required for some tasks of DLA, 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 and the appellant stated she is reliant on her children, 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.