

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated May 2, 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

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:

Persons With Disabilities (PWD) Application comprised of the appellant's information and self-report dated January 13, 2017, a medical report (MR) dated December 28, 2016 and an assessor report (AR) dated January 12, 2017 and completed by a general practitioner (GP) who has known the appellant since August 6, 2015 and saw the appellant 2-10 times in the past 12 months prior to completing the PWD application. The information the GP used to complete the PWD application was an office interview with the appellant and file/chart information.

The evidence also included the appellant's Request for Reconsideration (RFR) dated May 8, 2017, which is completed by the appellant's GP and stated, in part, that the appellant "suffers from bilateral severe to profound hearing loss" and that the appellant is to "avoid loud noise exposure to prevent worsening of his condition".

Diagnoses

In the MR, the GP diagnosed the appellant with bilateral severe to profound hearing loss (onset unspecified).

Physical Impairment

In the MR and AR, the GP reported:

- that the appellant "suffers from bilateral severe to profound hearing loss" and he is to "avoid loud noise exposure to prevent worsening of his condition".
- The appellant can walk 4+ block and climb 5+ steps unaided, lift without limitation and remain seated without limitation.
- The appellant is not restricted with 'meal preparation, basic housework, daily shopping, mobility inside/outside the home' and it is unknown whether or not the appellant is restricted with 'personal self-care, management of medications, use of transportation and management of finances.
- The appellant is restricted continuously with social functioning and the GP comments: "communication is a problem due to hearing impairment" and "hearing aid dependent".
- The appellant independently performs all listed items under 'mobility and physical ability'.

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

- He cannot vocalize letters since birth and He cannot hear because of an accident but the hearing aid helps him a little bit now.
- He experiences headaches when his head is down for more than 2 minutes and he experiences pain in his knees and legs through movement.

Mental Impairment

In the MR and AR, the GP reported:

- The appellant has sensory difficulties with communication and commented: "hearing aid dependent".
- The appellant has significant deficits with cognitive and emotional function in the area of emotional disturbance.
- In the MR the GP indicated that the appellant is restricted continuously with social functioning.
- In terms of communication, the appellant's reading, speaking, hearing and writing are indicated

as being poor.

- In terms of cognitive and emotional functioning, the GP reported moderate, minimal or no impacts to all listed areas of cognitive and emotional functioning, including emotional disturbance. The GP added the comments “waiting for psychiatric opinion”, “has a lot of mental and emotional stress causing dysfunction” and to avoid noise exposure at work.
- All listed tasks related to ‘paying bills/rent’ and ‘medications’ are listed as ‘uses assistive device’ and ‘takes significantly longer than typical’. The GP added the comment “dependent on wife” and no indication as to what assistive device is used for these tasks.
- In terms of social function, 3 items require periodic support/supervision, ‘able to develop and maintain relationships’ requires continuous support/supervision (the GP commented: “doesn’t like to make friends due to disability”, and ‘able to secure assistance from others is listed as independent. Immediate and extended social networks are indicated as ‘very disrupted functioning’. In terms of the support/supervision required, the GP commented: “needs to find work that doesn’t involve loud noise exposure and suitable to his skills” and “recommended psychiatric assessment due to anxiety and mental effect of illness”.

In his self-report, the appellant did not indicate his mental impairment or describe how a mental illness impacts his ability to function and perform his DLA.

Daily Living Activities (DLA)

In the MR and the AR, the GP reported:

- The appellant is not restricted with ‘meal preparation, basic housework, daily shopping, mobility inside/outside the home’ and it is unknown whether or not the appellant is restricted with ‘personal self-care, management of medications, use of transportation and management of finances.
- The appellant is independent with all listed items with ‘personal care’, basic housekeeping’, ‘meals, and ‘transportation’.
- The appellant requires an assistive device and takes significantly longer with all listed items under ‘pay rent and bills’ and ‘medications’ and the GP added the comment: “dependent on wife”.

In his self-report, the appellant stated that his “health issues make many barriers to do anything to help [himself] or help [his] family”.

Need for Help

With respect to the need for help, the GP reported that the appellant requires a hearing aid a prosthetic or aid for his impairment, family helps with DLA, that the hearing aid is the communication device which provides assistances and the appellant does not use an assistance animal.

In his self-report, the appellant did not describe the help he requires, how much help is required, which DLA require help or who provides help.

Additional information

In his Notice of Appeal (NOA), signed and dated May 11, 2017, the appellant stated in part that his GP “does not want him to work in order to maintain what is left from [his] hearing”, and that when he does work he gets headaches due to an injury.

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 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 or mental 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.

Severe Physical Impairment

In his NOA, the appellant emphasized his inability to work. The panel finds that employability is not a consideration for eligibility for PWD designation because 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.

In the reconsideration decision, the ministry concluded that it is not satisfied that the information provided is evidence of a severe physical impairment. The ministry noted that the GP noted that the appellant can walk 4+ unaided, climb 5+ steps unaided, lift without limitations and remain seated without limitation. The ministry noted that the GP indicated that in terms of mobility and physical ability, the appellant can independently manage all activities, including walking indoors/outdoors, climbing stairs, standing, lifting and carrying/holding.

Given the GP's report in the MR and the AR of the appellant's functional skills, independent mobility and physical functioning, with no revised assessment provided by the GP on the appeal, the panel finds that the ministry reasonably determined that the evidence does not 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 established that the appellant suffered from a severe mental impairment because the information provided is more keeping with a moderate degree of impairment. The ministry noted that in the MR, the GP did not diagnose the appellant with a mental impairment. In terms of significant deficits with cognitive and emotional function, the GP indicated a significant deficit with emotional disturbance and commented: "Patient has history of head injury resulting in severe emotional disturbance". However, in assessing the impact of cognitive and emotional function on daily living, the GP does not indicate a major impact with emotional disturbance. The ministry also noted that the GP as indicated only moderate, minimal or no impacts to cognitive and emotional functioning in the AR. The ministry also noted that the appellant is "waiting for psychiatric opinion" and the GP indicated that he has a lot of mental and emotional stress causing dysfunction but no additional information is provided to explain the mental and emotional stressors that impact the appellant's daily living.

The ministry noted that no information is provided to explain the type or the degree and the duration of the assistance that is required to manage social functioning. Consequently, the ministry is unable to establish that the appellant's ability to perform social functioning is impacted to a severe degree. The ministry also noted that no information is provided to explain the degree of anxiety or the mental effects that the appellant experiences as a result of his hearing loss.

After reviewing the evidence provided by the GP and appellant, the panel finds that the ministry was reasonable in its determination that the evidence did not support a finding that the appellant suffers from a severe mental impairment as required by 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 noted that in the MR the GP indicated that the appellant's the ability to perform social functioning is restricted continuously but all other listed categories are either not restricted or it is unknown whether they are restricted or not. The ministry noted that the GP indicated that appellant requires assistance with reading labels and prices, and making appropriate choices when shopping and also noted "illiterate". The ministry noted that the GP indicated that a hearing aid is used as an assistive device to manage all listed items under 'pay bills and rent', 'medication', and most items under 'shopping'. The ministry noted that the GP also indicated that the appellant takes significantly longer than typical to perform all listed items under 'pay rent and bills' and 'medications'. The ministry noted that no information was provided to explain the type or the degree of the assistance required with 'pay rent and bills' and 'medication'. Nor did the GP provide information as to how much longer it takes the appellant to complete the listed items under 'pay rent and bills', 'medication' and most items under 'shopping'. The ministry noted that in all other areas of daily living, the GP has reported that the appellant is independent.

The ministry concluded that as the majority of the DLA are performed independently or require little help from others, the information from the GP does not establish that impairment significantly restricts DLA either continuously or periodically for extended periods.

Given the assessment by the GP in the PWD application, the panel finds that the ministry reasonably determined that the assessments provided do not establish that impairment significantly restricts DLA. Therefore, the panel finds that the ministry reasonably concluded that the evidence did not establish that the appellant's 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.

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.