

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated June 1, 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

nor was the ministry satisfied that the appellant fit with in one of the five classes of persons eligible for PWD designation under section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act* (EAPWDA), Section 2(2)

*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), Sections 2 and 2.1

## PART E – Summary of Facts

### **Documents and Information Before the Minister at Reconsideration**

The evidence before the ministry at the time of the reconsideration decision included

**A. The Persons with Disabilities (PWD) application dated February 16, 2017**, Applicant Information Section, in which the appellant's medical conditions are described by an advocate as

- Diabetes Level 1
- Neuropathy
- Major Depression,

which, because of exhaustion, depression and anxiety from coping with his depression and diabetes make him feel too overwhelmed to even begin let alone complete basic tasks, and his personal care suffers from neglect; he skips meals because his depression impedes motivation, and food shopping increases his depression and on occasion anxiety causes him to leave without making purchases. He cannot do housekeeping due to depression and lack of motivation, and finds managing his finances overwhelming. He also finds managing public transportation to be too overwhelming to attempt and his diabetic neuropathy makes his feet to sore for him to be mobile. His anxiety and depression make it very difficult for him to function socially.

**B. The Persons with Disabilities Designation Denial Decision Summary dated April 12, 2017**

The adjudicator reports that the appellant is 18 years of age or more and that his impairment is likely to continue for two or more years, repeats some of the information in the PR and the AR and acknowledges that the appellant has some restrictions based on the evidence but says that it has not been confirmed that the appellant is physically impaired to such a degree that his ability to function independently is severely limited. In a later part of the Decision Summary the adjudicator says it cannot be determined that there is a severe impairment that directly restricts the Appellant's DLA and as a result requires help of a significant nature. There is no analysis as to how the conclusion was reached. The adjudicator does not explain why he or she has not mentioned the physician's statement that the impairment directly restricts the appellant's ability to perform DLA.

**C. A Medical Report (MR) completed by an endocrinologist dated February 3, 2017**, which included a section reporting on the Appellant's Daily Living Activities (DLAs), reporting that the appellant

- had no restrictions with the DLA of Personal Self-Care, Meal Preparation, Medication Management, Use of Transportation or Financial Management
- was continuously restricted in the DLA of Basic Housework, Daily Shopping and Mobility outside the Home, and
- was periodically restricted in the DLA of Mobility Inside the Home, and the restriction was periodic because it varied with and was dependent on the severity of the appellant's peripheral neuropathy, and that

the appellant's impairment directly restricted the appellant in his ability to perform DLA.

The endocrinologist stated "Yes" in answer to the query "*Does the impairment directly restrict the person's ability to perform Daily Living Activities?*".

The appellant has been the endocrinologist's patient for 17 months, and the endocrinologist has seen the appellant between 2 and 10 times in the past year.

The endocrinologist diagnosed the appellant with Type 1 Diabetes since age 9, painful Sensory Neuropathy affection function affecting activity and work, Diabetic Retinopathy, Variable Glycemic Control with frequent hypoglycemia. The appellant requires frequent medication adjustments and does not require a prosthesis or aids.

The endocrinologist reported that the appellant could walk 1 to 2 blocks unaided, climb 5 or more steps unaided, could remain seated for 2 to 3 hours, but that it was unknown if the appellant experienced limitations in lifting.

**D. An Assessor's Report (AR) dated February 22, 2017** and completed by a Registered Nurse who has known the appellant for 2 weeks and has seen him between 2 and 10 times in the past year. She reports that the appellant's mental or physical impairments that impact his ability to manage DLA are Diabetes Type 1 with diabetic peripheral neuropathies, Diabetic Retinopathy, Depression, Anxiety, Glaucoma and Cataracts. She reports the appellant is "good" or "satisfactory" in the 4 tasks under Ability to Communicate. Respecting Mobility and Physical ability, the appellant requires periodic assistance from another person in 2 of the 6 tasks. He takes significantly longer than typical in 5 of the 6 tasks. In the 14 areas under Cognitive and Emotional Functioning, the appellant experiences a major impact in 10 of them, a minimal impact in 2 of them, and no impact in 2 of them, but she observes that with an increase in blood sugar concentration the appellant's depression and anxiety increases, causing him problems with communication and his speech is not coherent.

For DLA, the assessor reports that she has obtained her information from the physician's file/chart, but not from the appellant, the home assessment, friends, other professionals, community services or other sources. She reports that with the DLA of

- Personal Care, where there are 8 listed tasks, the appellant is independent in 2, and takes significantly longer than typical in six but does not require periodic or continuous assistance or the use of an assistive device in any
- Basic Housekeeping, the appellant requires periodic assistance, provided by friends, in both listed tasks
- Shopping, where there are 5 listed tasks the appellant is independent in 1, requires periodic assistance in 1, such assistance being described as being required if carrying purchases home are too heavy, and takes significantly longer in 3 of the tasks, but does not require continuous assistance or an assistive device in any of the 5
- Meals, where there are 4 listed tasks, the appellant is independent in 1 and takes five times longer than typical in the remaining 3
- Pay Rent and Bills, the appellant is independent in all three listed tasks
- Medications, the appellant is independent in all three listed tasks
- Transportation, the assessor does not rate the appellant's ability in any of the three listed tasks but does say that he takes three times longer than typical and five times longer when he has pain, due to his anxiety and peripheral neuropathies
- Social Functioning, which is only to be completed if the appellant has an identified mental impairment, where there are 4 listed specific tasks, the appellant is independent in 3 and requires continuous support or supervision in the remaining 2, but there is no explanation as to what sort of support or supervision is required although there is a space to include that explanation, and

the assessor describes that the mental impairment causes the appellant very disruptive functioning in his relationship with both his immediate social network and his extended social network.

The assessor provides an opinion that help is required in the form of an insulin pump which monitors blood sugar and releases insulin, presumably as needed and that while the appellant does not have an assistance animal, he would benefit from having a service dog.

## **Information Provided on Appeal**

### **Appellant's Additional Evidence**

#### *Written Evidence*

The appellant submitted a letter dated June 22, 2017 written by his advocate in which it is indicated that the endocrinologist's letter was for the ministry to justify the appellant not having to look for work at this time, and that the appellant's anxiety and depression is prolonged and severe enough to last as long as the appellant's other disabilities.

#### *Ministry Position on Additional Written Evidence*

The ministry was not opposed to admission of the appellant's additional written evidence.

#### *Panel Finding on Additional Written Evidence*

The panel finds that the Appellant's additional written evidence is in support of the information and records that were before the minister when the reconsideration decision being appealed was made and admits that additional evidence pursuant to section 22(4) *Employment and Assistance Act (EAA)*.

#### *Appellant's Additional Oral Evidence*

The appellant gave evidence of his diabetic neuropathy, said that he is not curable and he manages it using pain medication. He said that some days he cannot put his socks or shoes on because of the pain. He said that the pain was a "little like walking on broken glass" and that it is present with him 24 hours a day seven days a week. He said that about 1½ years ago he was capable of working but now he cannot and he struggles financially.

He said that his GP has now prescribed a cane for him because of his neuropathy, but he was not using a cane at the time of his application nor at the time of his request for reconsideration.

#### *Ministry Position on Appellant's Additional Oral Evidence*

The ministry was not opposed to admission of the appellant's additional oral evidence.

#### *Panel Finding on Appellant's Additional Oral Evidence*

The panel finds that the Appellant's additional oral evidence, except for the evidence concerning the prescription for and use of the cane, is in support of the information and records that were before the minister when the reconsideration decision being appealed was made and admits that additional evidence pursuant to section 22(4) *EAA*.

The panel notes that in the MR the endocrinologist stated "No" in answer to the question "*Does the applicant require any prostheses or aids for his/her impairment?*"

The appellant said that his GP prescribed the cane about 1 ½ months ago, and the panel notes that at the time the Request for Reconsideration was received by the ministry on May 17, 2017, there was no evidence the appellant required an assistive device, specifically a cane.

The panel finds that the oral evidence concerning the prescription for and use of the cane is not admissible as, pursuant to section 22(4) *EAA*, at the time of the reconsideration decision the appellant had not been prescribed and was not using the cane, which is an assistive device.

#### *Witness' Additional Oral Evidence*

The witness gave evidence that she is a friend, not a paid support worker. She goes to the appellant's home daily as he is depressed and has trouble getting out of bed. When at the appellant's home she makes coffee, cleans for him, makes meals, helps with the shopping, carrying groceries, and with the laundry. She said the appellant has difficulty doing these tasks on his own and his

condition is going downhill, rather than improving, and now he uses a cane. She also checks to make sure the appellant is taking his medications because he is a Type 1 Diabetic. She said that she does the chores enumerated on a daily basis and if she was not there, the appellant would likely lay on the couch and do nothing more.

*Ministry Position on Witness' Additional Oral Evidence*

The ministry was not opposed to admission of the witness' additional oral evidence.

*Panel Finding on Witness' Additional Oral Evidence*

The panel finds that the witness' additional oral evidence, except for the evidence concerning the prescription for and use of the cane, is in support of the information and records that were before the minister when the reconsideration decision being appealed was made and admits that additional evidence pursuant to section 22(4) EAA.

The witness' oral evidence concerning the cane is not admissible for the same reason as the appellant's evidence concerning it is not admissible.

**Ministry's Additional Evidence**

The ministry did not submit additional evidence.

## PART F – Reasons for Panel Decision

### Issue on Appeal

The issue on appeal is whether the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated June 1, 2017, to deny the Appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment, namely section 2(2) *EAPWDA* and sections 2 and 2.1 *EAPWDR*, in the circumstances of the Appellant. The Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated June 1, 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

nor was the ministry satisfied that the appellant fit with in one of the five classes of persons eligible for PWD designation under section 2.1 of the *EAPWDR*.

### Relevant Legislation

#### ***Employment and Assistance for Persons with Disabilities Act (EAPWDA)***

(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.

#### ***Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)***

**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.

#### **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).

#### **General Scheme of the Legislation**

The general scheme of section 2 *EAPDWA* and sections 2 and 2.1 *EAPDWR* is that in order to be designated as a Person With Disabilities (PWD), an applicant must satisfy the Minister that he has a severe mental or physical impairment which is likely to continue for at least 2 years, and that impairment, in the opinion of one of the members of a prescribed class of professionals, directly and significantly restricts his ability to perform Daily Living Activities continuously or periodically for extended periods, and as a result he requires help to perform them. Alternatively, if an applicant fits within any 1 of 5 classes of people described in section 2.1 *EAPDWR*, the person may be designated as a PWD.

## **Parties' Positions at Appeal**

### **Analysis**

#### **Section 2(2) *EAPDWA***

##### **Age and Duration and Severe Impairment Requirement**

Section 2(2) *EAPWDA* requires that an applicant for PWD status must be 18 years of age or older, have a severe mental or physical impairment, and that in the opinion of a prescribed professional, is likely to continue for at least 2 years.

At reconsideration the ministry found that the Appellant met the age requirement, and that the Appellant, in the opinion of a physician, had neither a severe physical impairment nor a severe mental impairment. The ministry found that while the Appellant had significant defects with cognitive and emotional functioning in the area of emotional disturbance and motivation, the physician indicated that the impairment was minimal to moderate, not severe, and that the minimal to moderate impairment was likely to continue for at least 2 years.

Thus the requirements of section 2(2) of the *EAPWDA* as to age and duration had been met.

#### **Severe Physical Impairment**

At reconsideration the ministry found that the appellant did not have a severe physical impairment.

The legislative requirement respecting DLA set out in section 2(2)(b) of the *EAPWDA* is that the minister be satisfied that as a result of a severe physical or mental impairment a person is, in the opinion of a prescribed professional, directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods. Consequently, while other evidence - such as that of the witness and of the appellant - may be considered for clarification or support, the ministry's determination as to whether or not it is satisfied is dependent upon the evidence from prescribed professionals. DLA are defined in section 2(1) of the *EAPWDR* and are listed in both the PR and the AR sections of the PWD application with the opportunity for the prescribed professional to check marked boxes and provide additional narrative. While there was evidence from the endocrinologist and the appellant to the effect that the appellant was unable to work, DLA, as defined in the legislation, do not include the ability to work.

In this case, the prescribed professionals who have provided information respecting the appellant's ability to perform DLA are the endocrinologist for the MR, and the Registered Nurse for the AR.

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.

To assess the severity of an impairment, the ministry must consider both the nature of the impairment and the extent of its impact on daily functioning as evidenced by functional skill limitations and the degree to which the ability to perform DLA is restricted. In making its determination the ministry must consider all the relevant evidence, including that of the appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a prescribed professional – in this case, the endocrinologist and the Registered Nurse.

#### ***Appellant's Position***

The appellant's position was that he was severely physically impaired, but submitted no further

evidence other than as contained in the MR and the AR, his oral evidence and that of his witness. The witness' evidence was that he would not accomplish the household chores without her assistance, and would just lie down, and do little. The appellant's position was that he needed the witness' assistance to shop, prepare meals, clean his home, and get him up and doing the things which had to be done.

#### *Ministry's Position*

The ministry relied on the reconsideration decision. In that decision it was stated that the appellant did not require any aids or prosthesis. It was also stated that according to the endocrinologist's opinion set out in the MR, the appellant was able to perform the functional skills set out in the MR unaided. It was also stated that while the appellant has continuous or periodic restrictions with some DLA, but reading the MR together with the AR indicates that the assistance required is because the appellant takes significantly longer than typical to manage some tasks. It also observed that the appellant's mobility and physical ability fluctuates with the level of his blood sugars, rather than him being unable to perform those DLA.

The ministry argued that because of the appellant's reported ability in the MR, specifically the lack of a need for aids or prosthesis, and of the appellant's ability to walk 1 to 2 blocks and climb five or more steps, and to remain seated for 2 to 3 hours, that these indicia pointed more to a level of moderate rather than severe physical impairment. The ministry also referred to the difficulties the appellant experienced with DLA in the AR, in which the assessor noted that the appellant took significantly longer than typical to complete some of the tasks within each DLA, rather than being unable to complete them. The assessor stated that how much longer the appellant took to complete DLA was largely dependent upon his blood sugar levels. Taking these factors in the MR and AR together, the ministry argued that these factors were more indicative of a moderate rather than a severe physical impairment.

#### *Panel Finding*

The panel notes that the Registered Nurse completed the AR using only file/chart information from the appellant's doctor.

The panel finds that the ministry's review of the appellant's functional skills, as set out in both the MR and the AR, are indicative of an individual whose impairment, while it may directly restrict the appellant's ability to perform DLA and while those restrictions may be significant, are more indicative of a moderate level of impairment causing the appellant to perform DLA more slowly, than they are of a severe impairment restricting the appellant from performing one or other DLA entirely.

The panel finds that the ministry's decision at reconsideration that the appellant does not have a severe physical impairment was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the appellant.

#### **Severe Mental Impairment**

At reconsideration the ministry found that the appellant did not have a severe mental impairment.

#### *Appellant's Position*

The appellant's position was that due to his anxiety and depression, he had a severe mental impairment. The witness supported the appellant's position with her evidence of the assistance she provides him with DLA on a daily basis, and without which he would lay on the couch, and not take care of the necessary household duties.

### *Ministry's Position*

The ministry relied on the reconsideration decision. In the MR the endocrinologist reported that the appellant did not experience significant deficits with cognitive and emotional functioning but in the AR the Registered Nurse noted there were major impacts on 10 of the 14 subject areas. The ministry said it was unable to determine why the Registered Nurse indicated so many areas of major impact when the endocrinologist indicated that the appellant did not suffer from any significant defects to cognitive and emotional function. The ministry gave greater weight to the endocrinologist's report in the MR because he had known the appellant for about 1 ½ years while the Registered Nurse had known him for only two weeks, and she also used the doctors chart to complete the AR.

In the reconsideration decision it was noted that the appellant had very disrupted functioning in his immediate and extended social networks, but there was no indication that the appellant required help in order to maintain himself in these communities.

In the reconsideration decision the ministry pointed out that the endocrinologist did not describe any specific restrictions on the appellant's DLA due to a mental impairment. The ministry noted that in the MR, the physician noted that the appellant did not experience significant deficits with cognitive and emotional functioning. The ministry said it was unable to determine why the Registered Nurse, despite reporting 10 areas of major impact with the appellant's cognitive and emotional functioning, indicated only that the appellant was unable to manage public transit, and his emotional functioning was dependent on his blood sugar levels. The ministry also said that it was unable to determine why the Registered Nurse, in the AR, indicated a high level of impact to cognitive and emotional functioning when the physician indicated none existed at, and the ministry argued that the physician's opinion in the MR should have more weight given to it because the physician had known the appellant about a year and ½ whereas the assessor had only known him for two weeks and relied upon medical reports and nothing else in completing the AR. The ministry therefore determined that, based on the conflicting information, in the lack of functional restrictions, the appellant did not have any severe mental impairment.

### *Panel Finding*

The panel notes that the endocrinologist did not identify any mental impairment and in fact indicated "No" in response to the question "*Are there any significant deficits with cognitive and emotional function?*", and that the Registered Nurse, when asked to comment in the AR on the appellant's mental or physical impairments noted his physical impairments of diabetes, retinopathy, neuropathy, glaucoma, cataracts. She also noted depression and anxiety, but said that the depression and anxiety would increase with an increase in blood sugar, not that they rose to such a level of severity that the appellant was unable to function independently or effectively, but only that it caused him to take longer to accomplish DLA. Specifically, the panel notes that the assessor reported it took the appellant longer with the DLA of Personal Care, Shopping, Meals, and Transportation, not due to mental impairment but due to diabetic neuropathy.

The panel finds that the ministry's decision at reconsideration that the appellant does not have a severe mental impairment was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the appellant.

## **Section 2(2)(b)(i) & (ii) EAPWDA**

### **Direct and Significant Restriction in the Ability to Perform Daily Living Activities**

Section 2(2)(b)(i) *EAPWDA* requires that a prescribed professional provide an opinion that the Appellant's mental or physical impairment directly and significantly restrict the person's ability to perform daily living activities either continuously or periodically for extended periods.

Section 2(2)(b)(ii) *EAPWDA* requires that a prescribed professional provide an opinion that as a result of the direct and significant restrictions of the Appellant's ability to perform Daily Living Activities, the Appellant requires help to perform those activities.

#### *Appellant's Position*

The appellant's position, from the evidence of the witness, was that the appellant requires daily assistance with various chores, and without the assistance he would lay on the couch and did not do them.

#### *Ministry's Position*

The ministry relied on the reconsideration decision.

In that decision the ministry reasoned that it could not be determined that the appellant had either a severe physical impairment or a severe mental impairment. The reconsideration officer said that impairment is a medical condition that results in restrictions to a person's ability to function independently or effectively and that the evidence was that the appellant was slower at performing DLA due to his physical ailments, not that he was prevented from performing them independently or effectively, and that therefore any impairment was not severe.

The ministry also noted that while the assessor (RN) reported that the appellant suffered major impacts in 10 of the 14 Cognitive and Emotional Functioning areas, she gave no explanation as to how these directly and significantly restricted the appellant, did not note if they were "severe" or not, but only that they were of a "major impact". She did not report that they affected the appellant's ability to perform DLA, but only that they caused the appellant to take longer to perform his DLA and why.

The ministry concluded that as no prescribed professional indicated any direct and specific restrictions with DLA due to any physical or mental impairment, that the appellant had not established any direct and significant restriction in the appellant's ability to perform DLA. The reconsideration officer determined that the evidence was indicative of a moderate level of restriction, and that there was no severe impairment significantly restricting DLA either continuously or periodically for extended periods.

#### *Panel Finding*

The panel notes that the determination of whether or not there is a direct and significant restriction of the Appellant's ability to perform Daily Living Activities is to be determined by the opinion of a medical practitioner (or nurse practitioner) and that while the opinion of the appellant is of assistance, the determination is that of the professional.

The panel finds that no prescribed professional determined that the appellant has a severe physical or mental impairment which directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically.

The panel finds that the ministry's determination at reconsideration that the appellant does not have a severe mental impairment that directly and significantly restricted the appellant's ability to perform

DLA either continuously or periodically for extended periods was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the appellant.

### **Alternative Grounds – Section 2.1 EAPWDR**

As an alternative to an applicant for a PWD designation under section 2(2) *EAPWDA*, where the applicant must show that he has a severe mental or severe physical impairment which in the opinion of a physician or nurse practitioner is likely to continue for at least two years, and which in the opinion of a prescribed professional directly and significantly restricts his ability to perform DLA either continuously or periodically and that as a result of such restrictions he requires help to perform those activities, an applicant for PWD designation will be granted that designation if he falls under any of five classes of persons prescribed in section 2.1 *EAPWDA*, which are:

- He is enrolled in Plan P under the Drugs Plans Regulation
- he has at any time been determined is an eligible individual to be the subject of payments made through the Ministry of Children and Family Development's At Home Program
- he has been at any time determined as eligible to receive community living support under the *Community Living Authority Act* by Community Living British Columbia
- he is a member of a family which has been at any time determined to be eligible to receive community living support under the *Community Living Authority Act* so as to assist his family in caring for the person, as determined by Community Living British Columbia, or
- he is a person considered to be disabled under section 42(2) of the *Canada Pension Plan*

#### *Appellant's Position*

The appellant did not make an application for PWD designation based on any of the 5 alternative grounds, and did not advance such a claim at the appeal.

#### *Ministry's Position*

The ministry determined at reconsideration that the appellant had not demonstrated that he fell within one of the 5 classes of people who may qualify for PWD designation on alternative grounds.

#### *Panel Finding*

The panel notes that although the reconsideration decision addressed the appellant's eligibility under section 2.1 *EAPWDR*, the appellant had not applied for PWD designation under section 2.1 *EAPWDR*. Why the ministry would make a finding on the appellant's eligibility on the alternative grounds of section 2.1 *EAPWDR* when no application had been made is not known.

### **Conclusion**

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

The appellant is not successful in his appeal.