

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of June 8, 2017, which found that the appellant did not meet three of five statutory requirements of section 2 of the *Employment and Assistance for Persons With Disabilities Act* (“EAPWDA”) for designation as a person with disabilities (“PWD”). The ministry found that the appellant met the age requirement and that in the opinion of a medical practitioner the appellant’s impairment is likely to continue for at least two years. However, the ministry was not satisfied that:

- 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
- that as a result of those restrictions, the appellant requires the significant help or supervision of another person, an assistive device, or the services of an assistance animal.

PART D – Relevant Legislation

EAPWDA, section 2

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”), section 2

PART E – Summary of Facts

Information before the ministry at reconsideration

The information before the ministry at the time of reconsideration included the following:

- The appellant's PWD application form consisting of: the appellant's undated self-report ("SR"); a medical report ("MR") completed by the appellant's general practitioner (the "GP") on March 3, 2017; and an assessor's report ("AR") completed by a registered social worker (the "SW") on March 14, 2017.
- A consultation letter from a rheumatologist dated November 21, 2016.
- A Request for Reconsideration form dated May 29, 2017, and one additional page.
- A letter from the GP dated May 24, 2017.

The GP indicated he has known the appellant since January 31, 2017, and has seen her 2 to 10 times during that period. The SW indicated she has known the appellant since May 2016 and has seen her 11 or more times in the past 12 months.

Information provided on appeal

In addition to the appellant's Notice of Appeal, received by the tribunal on June 15, 2017, the appellant submitted a 2-page email on July 4, 2017, in which she provided information about RA and its impact on her, and an email on July 7, 2017, in which the appellant identified the online medical resources she used when preparing the July 4, 2017 email. As the additional information in the July 4, 2017 email was consistent with the appellant's SR and reconsideration submission, it was admitted under section 22(4) of the Employment and Assistance Act by the panel as written testimony in support of the information before the ministry at reconsideration.

The ministry did not provide additional evidence on appeal and relied on its reconsideration decision.

The panel assessed the evidence as follows.

Diagnoses

In the MR the physician diagnosed the appellant with rheumatoid arthritis (RA), onset 2015.

Physical Impairment

In the MR, the GP reported:

- Severe arthritis affecting multiple joints. Affects mobility and function of arms. Daily pain.
- Under care of rheumatologist.
- The appellant can walk 4+ blocks unaided on a flat surface, can climb 2 to 5 steps unaided, is limited to lifting under 5 lbs., and can remain seated for 1 to 2 hours.

In the AR, the assessor reported:

- Walking indoors and outdoors is managed independently and is not reported to take significantly longer than typical.
- Standing is managed independently.
- Climbing stairs (“uses railing”), lifting, and carrying and holding require periodic assistance from another person. Pain sometimes inhibits ability to use stairs, carry groceries etc. Grandson has assisted at times with these tasks.
- The appellant’s pain has been affecting her for an extended period of time and she continues to manage it with medication.

The rheumatologist describes changes to medications, including increased dosages. In the rheumatologist’s opinion, the appellant is disabled for any work and this could be considered indefinite.

In her written submissions, the appellant writes that she has RA in her feet, knees, shoulders, hands, wrists, and back. Her wrists, hands, shoulders and feet are in constant pain, although some days are better than others. Her hands and feet are starting to deform. When her feet swell, it feels like someone has a vice grip and is squeezing and squeezing. Her feet slow her down considerably as she can’t walk at as quick a pace as she used to. She has had a couple of close calls when her knees gave out and she almost fell, saving herself using furniture. She awakes every morning between 5 and 6 am from the pain and needs to sit with a heating blanket, usually for 2 – 4 hours, and then the pain is bearable. She is not as strong as she used to be, and has to get help to open jars and lift things. At times, what she is holding slips out of her hands. She is unable to use mobility devices, including a cane or crutches, because it would hurt her wrists. She cannot go outside much when it is cold or damp due to the pain and stiffness. A flare-up can happen any time of the day or night. The appellant explains that the inflammation destroys cartilage and bone, and weakens the tendons and ligaments that hold the joint together, resulting in deformity.

Mental Impairment

In the MR, the GP reported:

- The appellant has no cognitive difficulties with communication.
- The appellant has no significant deficits in cognitive and emotional function in any of the listed areas.

In the AR, the SW reported the following:

- The appellant has a good ability to communicate for speaking, reading, and writing. Hearing is satisfactory, with the SW commenting that sometimes things have to be repeated to the appellant.
- The appellant’s cognitive and emotional functioning suffers no major impact on daily functioning. A Moderate impact is reported for attention/concentration, executive, and memory. “... sometimes needs support for her memory (schedule, contact information, navigating services etc. When overwhelmed and during periods of stress memory concerns are amplified.”) Either minimal or no impact is reported for the remaining 11 listed areas.
- The appellant’s cognitive and emotional functioning suffers moderate impact in emotion, impulse control, and other emotional or mental problems (“depression, mood swings that are erratic and unpredictable making it difficult to maintain employment”).
- Four areas of social functioning (appropriate social decisions, able to develop and maintain relationships, interact appropriately with others, and able to secure assistance from others) are managed independently. The fifth area (able to deal appropriately with unexpected demands)

requires periodic support/supervision from another person. "... can struggle with presenting needs and concerns during periods of stress or unexpected change."

- The appellant has marginal functioning in her relationships with immediate social networks ("acknowledges frustration in her relationships w/family mbrs & requires support at times to problem solve"). Good functioning with extended social networks.
- Minimal assistance being provided by youth family worker to assist in budgeting boundaries with others, caregiving, etc.

DLA

In the MR, the GP reports:

- The appellant has not currently been prescribed any medication or treatments that interfere with her ability to perform DLA.
- The appellant is not restricted in her ability to perform personal self-care, meal preparation, management of medications, mobility inside the home, use of transportation, management of finances, and social functioning.
- The appellant is directly restricted, continuously, in her ability to perform basic housework, daily shopping, and mobility outside the home, No additional commentary is provided.

In the AR, the assessor reports:

- The appellant requires periodic assistance from another person with climbing stairs (Move about indoors and outdoors), laundry (Basic Housekeeping), going to and from stores (Shopping), budgeting and pay rent and bills (Management of Finances), and ability to deal appropriately with unexpected demands (Social Functioning).
- Requires assistance from others/railings at times when going up and down stairs and when carrying, lifting and performing strenuous tasks. Grandson assists with some of these tasks when the appellant is in chronic pain.
- Presently meeting with a youth and family worker who assists with budgeting as appellant struggles with meeting her needs in addition to her grandson's when stressed/overwhelmed. Presently has debt which is causing her stress and impacting her wellness overall.
- Continuous assistance from another person is required for basic housekeeping "for some tasks" (Basic Housekeeping) and carrying purchases home (Shopping).
- All tasks of Personal Care and Medications, as well as all other tasks of all other DLA are managed independently.
- Appellant acknowledges experiencing chronic pain related to her arthritis which at times inhibits her from performing daily tasks (household duties, mobility, groceries, chores etc.)

In her SR and additional written submissions, the appellant describes difficulties opening jars, lifting heavy objects and with holding onto things. She can no longer have baths because sitting on the hard surface hurts her legs, hips and lower back. It hurts her wrists and shoulders to write and do any art work for extended periods. If her grandson wasn't living with her she possibly would be in assisted living as she needs help in some daily living skills.

Help

In the MR, the GP reported that the appellant does not require any prostheses or aids for her impairment. The GP did not provide a response when asked what assistance is needed with DLA. The SW reports that assistance is provided by family, the appellant's grandson, and a youth family worker. The appellant does not have an assistance animal.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant 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. In particular, was the ministry reasonable in determining that the appellant does not have a severe physical or mental impairment, and that, in the opinion of a prescribed professional, the appellant's impairments do not directly and significantly restrict her from performing DLA either continuously or periodically for extended periods, and that as a result of those restrictions the appellant does not require help to perform DLA?

The relevant legislation is as follows:

EAPWDA

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 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).

EAPWDR

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.

(3) The definition of "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

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).

Panel Decision

Severe Physical or Mental Impairment

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 one must consider 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 performing DLA is restricted. A medical barrier to the appellant’s ability to engage in paid employment is not a legislated criterion for severity. The legislation makes it clear that the determination of severity is at the discretion of the minister, and that the fundamental basis for the analysis is the evidence from prescribed professionals—in this case, the physician and assessor—though the appellant’s evidence must also be considered.

Physical Impairment

The appellant argues that she has a severe physical impairment resulting from the constant pain and physical disabilities caused by RA. The ministry’s position is that while the information provided by the GP and the SW, as well as the appellant, indicates limitations with regards to the appellant’s ability to lift heavy weight, a severe impairment of physical functioning has not been established. As noted by the ministry, the information from the rheumatologist does not speak to the appellant’s physical functioning or ability to manage DLA. The evidence from the GP and the SW is that the appellant remains able to walk indoors and outdoors independently for distances of 4+ blocks, which the panel finds is not inconsistent with the appellant’s self-described inability to go on long walks. The GP’s subsequent letter states that the appellant’s mobility outside is affected by her RA, but the GP does not provide any further description of those affects. While the appellant reports that walking is done at a slower pace, due to the symptoms of RA, neither the GP nor the SW indicates that the appellant takes significantly longer than typical to walk, despite both the MR and AR forms providing that response as an option. The GP reports that the appellant is able to remain seated for 1 to 2 hours, which was reasonably viewed by the ministry as not being indicative of severe impairment. Respecting the ability to climb stairs, both the GP and the SW report that the appellant can manage some steps independently, with the GP indicating 2 to 5 steps, and the SW identifying the need for periodic not continuous assistance, with the comment “pain sometimes inhibits her ability to use stairs.” As the ministry notes, while the SW reports the need to use a railing for climbing stairs, a railing is not an assistive device as defined in the legislation, and there is no description of the frequency or duration of the periodic assistance required for climbing stairs. In terms of lifting, the GP reports the appellant is limited to weights under 5 lbs., and the SW reports the need for periodic assistance as pain “sometimes” inhibits the appellant’s ability to carry groceries and that “at times” the appellant has received assistance from her grandson. However, as the ministry notes, again the SW does not further describe the frequency or duration of the assistance, making it difficult to establish a severe impairment of functioning based on the SW’s assessment.

For the foregoing reasons, the panel has concluded that the ministry was reasonable in its determination that the evidence respecting the appellant’s physical functioning has not established a severe physical impairment.

Mental Impairment

The appellant does not expressly take a position respecting severe mental impairment, and as the ministry notes, the GP does not diagnose a mental impairment or brain injury. As the ministry also notes, although there is no mental health diagnosis made by the GP, and the GP reports no significant deficits with cognitive and emotional functioning or restrictions with social functioning, the SW indicates a number of impacts on daily cognitive and emotional functioning. None of the impacts on daily functioning are major and the commentary reflects that support is required “at times” to problem solve and that memory is impacted “sometimes” when overwhelmed and during periods of stress, without indicating how often these times occur, or how long they last. In the absence of these details respecting cognitive and emotional functioning and as the SW reports that four of five areas of social functioning are managed independently, with only periodic support/supervision required for the remaining area, the ministry reasonably concluded that it is difficult to establish a severe impairment of mental functioning based on the SW’s assessment. Accordingly, the panel concludes that the ministry was reasonable in determining that the information from the GP, SW and appellant has not established a severe impairment of mental functioning.

Significant Restrictions to DLA

Section 2(2)(b)(i) of the EAPWDA requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant’s ability to perform DLA either continuously or periodically for extended periods. While other evidence 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. The term “directly” means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration – the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended periods. Inherently, any analysis of periodicity must also include consideration of the frequency. All other things being equal, a restriction that only arises once a year is less likely to be significant than one that occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be “satisfied” that this legislative criterion is met.

DLA are defined in section 2(1) of the EAPWDR and are listed in both the MR and the AR sections of the PWD application with the opportunity for the prescribed professional to check marked boxes and provide additional narrative. DLA, as defined in the legislation, do not include the ability to work.

The appellant argues that she is having difficulties with basic living skills and that but for the assistance of her grandson, she might be living in assisted care. The ministry argues that there is not enough evidence to confirm that the appellant’s impairment significantly restricts her ability to perform DLA, either continuously or periodically for extended periods. As the ministry notes, while the GP reports direct continuous restrictions with basic housework, daily shopping, and mobility outside the home, the GP does not describe the nature of the restrictions or assistance needed, making it difficult to establish that the restrictions are significant.

Respecting the SW’s assessment, the ministry notes that the SW identifies restrictions with management of finances when the GP reported no restrictions. The panel finds that the commentary from the SW appears, at least in part, to reflect restrictions associated with a lack of financial

resources rather than cognitive impairment, and that the assistance provided with budgeting is described by the SW as “minimal.” The SW reports the need for continuous assistance with two DLA tasks – basic housekeeping and carrying purchases home – but also provides commentary and information indicating that assistance is not required for all basic housekeeping or carrying. In particular, the SW comments that assistance with basic housekeeping is for “some household tasks” without identifying the tasks and when previously assessing the appellant’s ability to lift/carry/hold, the SW reported the need for periodic assistance. For other DLA tasks, including laundry, going to and from stores, budgeting, and dealing appropriately with unexpected demands, the SW assesses the need for periodic assistance/support which is described as “sometimes”, “at times”, and “during periods of stress”, without any further explanation. As the ministry argues, this information is valuable when determining both the significance of the restriction and whether it is for extended periods. Finally, as the ministry notes, the SW assesses the appellant as independently managing most DLA tasks.

Based on the foregoing analysis, the panel concludes that the ministry was reasonable to determine that there is not enough evidence to confirm that the appellant has a severe impairment that significantly restricts her ability to perform DLA either continuously or periodically for extended periods.

Help with DLA

A finding that a severe impairment directly and significantly restricts a person’s ability to manage DLA either continuously or periodically for an extended period is a precondition to a person requiring “help” as defined by section 2(3)(b) of the EAPWDA. 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 DLA.

The appellant argues that without the assistance provided by her grandson she might have to reside in assisted living. The ministry’s position is that since it has not been established that the appellant’s DLA are significantly restricted, it cannot be determined that significant help is required from other persons.

As the panel has found that the evidence falls short of satisfying that precondition, the panel also finds that the ministry reasonably concluded it could not be determined that the appellant requires help with DLA as defined by section 2(3)(b) of the EAPWDA.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation and for the reasons provided above, the panel finds that the ministry’s decision finding the appellant ineligible for PWD designation is reasonably supported by the evidence. The panel therefore confirms the ministry’s decision. The appellant is not successful on appeal.