

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated June 19, 2017 which found that the appellant did not meet two 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, that the impairment is likely to continue for 2 years or more and that the appellant has a severe physical impairment. However, the ministry was not satisfied the evidence establishes that:

- 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 appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

The following evidence was before the Ministry at the time of reconsideration:

Persons with Disabilities (PWD) Application comprised of the appellant's information and self-report dated November 3, 2016, a medical report (MR) and an assessor report (AR) dated November 23, 2016 and completed by a specialist in Rheumatology (Specialist) who has known the appellant for 1 year and saw the appellant 2-10 times in the past 12 months prior to completing the PWD application. The information the Specialist used to complete the PWD application was an office interview with the appellant, other assessments (physical exam) and file/chart information.

Additional evidence consisted of a Request for Reconsideration (RFR) which was signed and dated May 12, 2017 and included:

- An advocate prepared document (questionnaire) that included a series of statements which required the Specialist to either agree or disagree with the statement provided and to show agreement with a check mark. This document also presents the appellant's argument that the Specialist confirms that she suffers from a severe physical impairment, that the Specialist has confirmed that her DLA (in the areas of dressing, laundry, housekeeping, going to/from stores, paying for purchases, carrying purchases home, meal planning, food preparation, cooking, banking getting in/out of a vehicle, and the use of public transportation) are restricted, and that the Specialist confirms she requires continuous assistance with her DLA.

Diagnoses

In the MR, the Specialist diagnosed the appellant with psoriatic arthritis (on-set 2011).

Physical Impairment

In the MR and AR, the Specialist reported that:

- The appellant "has psoriatic arthritis causing pain, swelling, stiffness and weakness in [the] hands, wrists, knees and feet. This causes her constant pain, reduced mobility and function making it difficult to perform normal activities of daily living. She cannot stand on her feet all day, or even for an hour, required at work. She can't grip or lift >5 pounds".
- The appellant can walk less than 1 block unaided, climb 2-5 steps unaided, lift under 5lbs and remain seated without limitation.
- Psoriatic arthritis attacks the joints. Systemic inflammation also causes profound fatigue like having the flu all the time. Medical treatment thus far has not helped and the Specialist fears it will not help in the future.
- The appellant takes significantly longer with walking indoors, climbing stairs and standing. She requires continuous assistance with carrying/holding because she cannot grip properly and requires periodic assistance with lifting.
- The appellant uses a cane for walking outdoors and the Specialist commented: "cane for longer walks".

In her self-report, the appellant stated that her disability is psoriatic arthritis and it really hurts every day in her knees, hips, hands and feet. She also described how her daily functioning was impacted as a result of her medical condition.

Mental Impairment

In the MR and AR, the Specialist reported that:

- The appellant does not have difficulties with communication or any significant deficits with cognitive and emotional function.
- The appellant has good speaking, reading, writing and hearing.
- In terms of cognitive and emotional functioning, the appellant experiences a moderate impact to bodily functions and all other listed items in this category have either a minimal or no impact. The Specialist commented: “No mental impairment”.
- The appellant is independent with all listed tasks under paying rent/bills and medications and with social functioning, the Specialist crossed out all listed tasks.

In her self-report, the appellant did not argue that she suffers from a mental impairment but did state that “having the pain in my life all the time really takes over my ability to think positive and keep moving but I have no choice right now”.

Daily Living Activities (DLA)

In the AR, the Specialist reported that:

- Medication and/or treatments do interfere with her ability to perform her DLA. The Specialist did not explain how her DLA are impacted by medication and/or treatment.
- The appellant is independent with performing: ‘regulating diet, reading prices/labels, making appropriate choices, paying for purchases, meal planning, safe storage of food, using transit schedules/arranging transportation and all listed tasks under pay rent/bills and medications’.
- The appellant takes significantly longer to perform: ‘dressing, grooming, bathing, toileting, feeding self, transfers (in/out of bed), transfers (on/off chair), and getting in/out of a vehicle’.
- The appellant requires the use of cane to use public transit.
- The appellant requires periodic assistance with performing: ‘laundry and carrying purchases home’.
- The appellant requires continuous assistance with performing: ‘food preparation, cooking, and basic housekeeping’.

In her self-report, the appellant described the challenges she faces with her day-to-day activities.

Need for Help,

In the MR and AR, the GP reported that:

- The appellant does require a prostheses or aids for her impairment and commented: “cane to help ambulation and balance”.
- Family provides the help required for DLA.
- No assistance is provide by assistance animals.

Additional information

In her Notice of Appeal (NOA), signed and dated June 23, 2017, the appellant stated that “I am in so much pain every day. Harder and harder to function (daily tasks)”.

Evidence at the Hearing

At the hearing the ministry relied on its reconsideration decision.

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's 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 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).

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 found that due to inconsistencies between the information provided by the Specialist in the PWD application and the information provided in the questionnaire, it is difficult to develop a clear and coherent picture of the degree of which the appellant's abilities to perform her DLA are impacted by her impairment. Thus, the ministry found that not enough evidence was provided to establish that the appellant's ability to manage DLA is significantly restricted either continuously or periodically for extended periods of time and that as a result she requires significant assistance from others to complete them.

The ministry noted the Specialist did not indicate how the appellant's medications/treatments interfere with her ability to perform her DLA, thus making it difficult to determine the significance of the restrictions she faces. While the ministry notes that in the AR the Specialist indicated that the appellant takes significantly longer than typical to perform some of her DLA (i.e. dressing, grooming, bathing, toileting, and feeding self), he did not indicate how much longer, thus making it difficult to determine the appellant's overall level of functioning and the significance of the restrictions she faces. In the questionnaire the Specialist agreed with the statement that these DLA take 2-3 times longer to perform. The ministry concluded that taking 2-3 times longer to perform a DLA is not considered to be significantly longer than typical.

Furthermore, the ministry notes that DLA, which were identified as requiring assistance from another person to perform (i.e. food preparation, cooking, laundry and housekeeping) in the AR, are indicated as taking significantly longer to perform in the questionnaire and the Specialist did not provide an explanation to explain the discrepancy. The ministry found that this contradictory information makes it difficult to determine which depiction accurately reflects the appellant's abilities and therefore the ministry is unable to determine the overall level of functioning in these areas.

The ministry noted that the Specialist indicated that the appellant uses a cane to walk outdoors, with the comment "cane for longer walks", and for the use of public transit. The Specialist commented "uses cane for outside/travel outside home". The ministry determined that occasional use of a simple device such as a cane is not indicative of a significant restriction. When asked to comment on the Specialist's agreement in the questionnaire with the daily use of the cane, the ministry representative at the hearing stated that this is again an example of inconsistent information from the Specialist.

The ministry noted that the Specialist does not describe the nature of the continuous assistance that is required with basic housekeeping, food preparation and cooking as indicated in the AR. Therefore the ministry is unable to determine the appellant's overall level of functioning in these areas and the significance of her restriction.

Section 2(2) of the *EAPWDA* requires that in the opinion of a prescribed professional on whether a person's ability to perform DLA is directly and significantly restricted either continuously, or periodically for extended periods. The panel finds that the ministry's decision that this criterion is not met is a reasonable application of the legislation as the information provided by the Specialist is inconsistent and unclear for specific areas DLA, as outlined above. As well the Specialist has provided insufficient evidence in terms of the frequency and duration of the assistance required to perform DLA such as laundry and carrying purchases home. Furthermore, the panel finds that the ministry's determination that taking 2-3 times longer to complete a tasks does not in and of itself constitute a significant restriction is reasonable as the legislation requires that a restriction be direct, significant and be either continuous or periodic for extended periods. The panel finds that the ministry was reasonable in determining that taking a longer time in the absence of evidence of continuous or periodic restrictions for extended periods does not meet this requirement. Therefore, the panel finds that the ministry reasonably concluded that the evidence is insufficient to show that the appellant's overall ability to perform his DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the *EAPWDA*.

Help to perform DLA

In the reconsideration decision, the ministry held that, as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required. Section 2(2)(b)(ii) of the *EAPWDA* requires that, as a result of being directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods, a person must also require help to perform those activities. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

The panel finds that as the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that the appellant requires help to perform DLA under section 2(2)(b)(ii) of the *EAPWDA*.

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.