

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated June 28, 2017 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that her impairment is likely to continue for at least two years. However, the ministry was not satisfied the evidence establishes that:

- the appellant has a severe physical or mental impairment;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

PART D – Relevant Legislation

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

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 2

PART E – Summary of Facts

The appellant did not attend the hearing. The appellant completed a Release of Information designating her father as her representative and her father attended the hearing on her behalf.

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the appellant's information and self-report dated January 27, 2017, a medical report (MR) and an assessor report (AR) both dated January 27, 2017 and completed by a general practitioner (GP) who has known the appellant since October 2016 and has seen her 2 to 10 times in the past 12 months.

The evidence also included the following documents:

- 1) Letter dated June 9, 2017 from the GP;
- 2) Letter dated June 14, 2017 from the appellant and her father; and,
- 3) Request for Reconsideration dated June 13, 2017.

Diagnoses

In the MR, the GP diagnosed the appellant with epilepsy and "anxiety states," both with an onset in February 2014. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities (DLA), the GP wrote: "anticipating anxiety, difficulty in social situations, some lack of motivation."

Physical Impairment

In the MR and the AR, the GP reported:

- The appellant does not require any prostheses or aids for her impairment.
- In terms of functional skills, the appellant can walk 4 or more blocks unaided on a flat surface, climb 5 or more steps unaided, with no limitations for remaining seated. The appellant can do no lifting. There were no comments added by the GP.
- The appellant is assessed as being independent with all aspects of mobility and physical ability, specifically: walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding.
- In the section of the AR relating to assistance provided, there are no assistive devices identified as being routinely used by the appellant to help compensate for her impairment and it is marked "N/A" or not applicable to the appellant.
- The appellant does not have an assistance animal.

Mental Impairment

In the MR and the AR, the GP reported:

- The appellant has no difficulties with communication.
- The appellant has significant deficits with cognitive and emotional function in the area of emotional disturbance, with anxiety emphasized, and motivation. The GP provided no other comments.
- For additional comments to the MR, the GP wrote that the appellant has "fearfulness/ anxiety due to anticipation of seizures. Some avoidant personality traits since teenage years."
- The appellant has a good ability to communicate in all areas, specifically with speaking, reading, writing, and hearing.
- With respect to daily impacts to the appellant's cognitive and emotional functioning, the GP reported that there are no major impacts, with moderate impacts in the areas of emotion and motivation. There are minimal impacts to attention/concentration and memory and the GP did not provide comments.

- Regarding the section of the AR assessing impacts to the appellant's social functioning, the appellant has independent functioning making appropriate social decisions, interacting appropriately with others, and dealing appropriately with unexpected demands. The appellant requires periodic support/ supervision with developing and maintaining relationships and securing assistance from others.
- Asked to describe the support/ supervision required to help maintain the appellant in the community, the GP wrote: "friends/ mother helps in these situations."
- The appellant has good functioning in both her immediate and her extended social networks.

In the letter dated June 9, 2017, the GP wrote:

- The appellant was seen for epilepsy and she has had a few recent seizures and ended up in hospital.
- She is being followed by a neurologist and has been prescribed a new medication to control her symptoms.
- She also has an associated anxiety disorder.
- She is currently stable and compliant with treatment plan.

In her self-report, the appellant wrote:

- She has epilepsy, which has caused major anxiety and has made it very hard to leave the house and do the everyday activities that normal people can do.
- She can barely get out of bed to do basic everyday things.
- She lives in fear of when the next seizure could come.

In the letter dated June 14, 2017, the appellant and her father wrote:

- The GP does not know the appellant well and the appellant tried to maintain a positive attitude, indicating she had the ability to do things and look after her day-to-day requirements when she cannot.
- There is no relief from her epileptic seizures and high anxiety disorder in the foreseeable future.
- She is seeing a neurologist who is trying new drugs to reduce the seizures, but it could be years before any stability is achieved, if ever.

Daily Living Activities (DLA)

In the MR and the AR, the GP reported:

- The appellant has not been prescribed medication and/or treatments that interfere with her ability to perform DLA.
- The appellant is independent with walking indoors and with walking outdoors, with no comments added.
- The appellant is independent with all of the tasks for the personal care DLA, the basic housekeeping DLA, the shopping DLA, and the meals DLA.
- For the pay rent and bills DLA, the appellant is independent with the task of banking and requires periodic assistance from another person with the tasks of budgeting and pay rent and bills, with no further explanation or description provided by the GP.
- Regarding the medications DLA, the appellant is independent with the tasks of taking as directed and safe handling and storage and requires periodic assistance with the task of filling/refilling prescriptions. The GP did not provide further comments.
- With respect to the transportation DLA, the appellant is independent with the tasks of getting in and out of a vehicle and using public transit and requires periodic assistance with the task of using transit schedules and arranging transportation. No explanation or description is provided by the GP.

- For additional comments the GP wrote: “mother always there to help especially in social and difficult situations.”

In her self-report, the appellant wrote that it is very hard to leave the house and do the everyday activities that normal people can do.

In the letter dated June 14, 2017, the appellant and her father wrote:

- The appellant’s epilepsy and high anxiety disorder have made it impossible for her to support herself.
- She has tried to get some sort of job, without any success. Her physical and mental challenges make this impossible.

Need for Help

The GP reported in the AR that help required for DLA is provided by family and friends. The GP did not identify any of the assistive devices as being used by the appellant, and she does not have an assistance animal.

Additional information

In her Notice of Appeal dated July 13, 2017, the appellant expressed her disagreement with the ministry’s reconsideration decision and wrote that the doctor’s report is incorrect in assumptions of the appellant’s abilities. The report does not take into consideration her birth parents’ history, which includes FAS [Fetal Alcohol Syndrome].

At the hearing, the appellant’s father provided an undated Report from the Ministry of Family & Social Services from another province relating to the appellant’s social and family history.

At the hearing, the appellant’s father stated:

- His concern is that the doctor’s reports are only focused on the appellant’s epilepsy and, since he was not involved before, does not know about her history.
- There is more to the appellant’s challenges than just her epilepsy.
- She is not able to get a job.
- The Report from the Ministry of Family & Social Services from another province relating to the appellant’s social and family history has many references to the drug and alcohol use by one of her parents and the low intelligence level of the other.
- He has a lot of experience with raising children with severe handicaps and has been very involved with their lives with the goal of getting them to a point of self-sufficiency.
- The appellant lived with him for a period of time and he began to realize that she has many underlying challenges.
- The appellant tried a post-secondary program and a counselor at the college suggested that the appellant consider the provincial program for those with severe handicaps.
- He is not sure how the appellant is going to support herself. They hope that she will become at least partially self-supporting at some point.
- The appellant can look after herself to a point but, ultimately, she has no way to support herself, pay the rent and buy food. As a result of her epilepsy and her mental abilities, she cannot look after herself. She can do the tasks of her own personal care, for example, but she cannot get a job. By “mental abilities” he means the appellant’s IQ. She is limited in her ability to sit down and read things and to follow through with a plan.
- More recently, the appellant has been having more epileptic seizures. It seems to go in cycles.
- The appellant is fearful to go out to try to get a job or to hold a job. She is afraid she will have another seizure.

- Unlike a physical impairment, the mental/cognitive impairment is not as apparent.
- The appellant maintains a positive attitude but likely down-played her inabilities with the doctor.
- They were told that the type of epilepsy the appellant has is “juvenile.” The medication seems to work some of the time. Stress can be a trigger for a seizure and makes it so the appellant does not want to go out of the house.
- His ex-wife was going to go back to the doctor for more information, but that did not work out.
- With respect to the doctor’s assessment of the appellant’s lifting abilities, he is not sure why the doctor said she can do “no lifting.” She did have sore feet and back due to being over-weight and this may have been an impact she mentioned to the doctor.

The ministry relied on the reconsideration decision as summarized at the hearing. The ministry clarified that the PWD application is not intended to assess employability or vocational abilities and this instruction is provided to the medical practitioner in completing the reports.

Admissibility of Additional Information

The ministry objected to the admissibility of the additional document as the information about the possible impacts of the appellant’s family history was not before the ministry to consider at reconsideration. The panel considered the information provided in the Notice of Appeal, the Report and portions of the oral testimony by the appellant’s father relating to the potential impact of the appellant’s family history on her current functioning as not being before the ministry at reconsideration and not being in support of, or tending to corroborate, the impact from medical conditions referred to in the PWD application and the Request for Reconsideration. Therefore, the panel did not admit this additional information in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for PWD designation, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the evidence does not establish that the appellant has a severe mental or physical impairment and that her DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, it could not be determined that, as a result of those restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a PWD are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

2 (1) In this section:

"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person is in a prescribed class of persons or that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

The EAPWDR provides as follows:

Definitions for Act

2 (1) For the purposes of the Act and this regulation, "**daily living activities**" ,

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

- (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self care;
 - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.

(2) For the purposes of the Act, "**prescribed professional**" means a person who is

(a) authorized under an enactment to practise the profession of

- (i) medical practitioner,
- (ii) registered psychologist,
- (iii) registered nurse or registered psychiatric nurse,
- (iv) occupational therapist,
- (v) physical therapist,
- (vi) social worker,
- (vii) chiropractor, or
- (viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

- (i) an authority, as that term is defined in section 1 (1) of the Independent School Act, or
- (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the School Act,

if qualifications in psychology are a condition of such employment.

Part 1.1 — Persons with Disabilities

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2 (2) [persons with disabilities] of the Act:

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the Community Living Authority Act;
- (d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the Community Living Authority Act to assist that family in caring for the person;
- (e) a person who is considered to be disabled under section 42 (2) of the Canada Pension Plan (Canada).

Severe Mental Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided was sufficient evidence of a severe mental impairment. The ministry acknowledged that the appellant was diagnosed by the GP with epilepsy and “anxiety states” and the GP wrote that the appellant has “...fearfulness/ anxiety due to anticipation of seizures. Some avoidant personality traits since teenage years.” In the letter dated June 9, 2017, the GP indicated that the appellant has had a few recent seizures and ended up in hospital, that she is being followed by a neurologist, and that she is currently stable and compliant with treatment plan. The GP also wrote that the appellant has an associated anxiety disorder.

A diagnosis of a serious medical condition or conditions does not in itself determine PWD eligibility or establish a severe impairment. An “impairment” is a loss or abnormality of psychological, anatomical, or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately, or for a reasonable duration. To assess the severity of an impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning.

The ministry reasonably considered that the GP reported in the MR that the appellant has significant deficits in cognitive and emotional functioning in emotional disturbance and motivation and indicated in the AR that there are moderate impacts to the appellant’s daily functioning in these areas. The ministry wrote that the GP does not report any major impacts to the appellant’s daily cognitive and emotional functioning. There are minimal impacts in the areas of attention/concentration and memory, and no impact in all other areas of functioning. The ministry reasonably considered that the GP reported that the appellant has no difficulties with communication and that her ability to communicate is good in all areas.

For the ministry to be “satisfied” that an impairment is severe, the panel considers it reasonable for the ministry to expect that the information provided by the medical practitioner and prescribed professional presents a comprehensive overview of the nature and extent of the impacts of the medical conditions on daily functioning, including by providing the explanations, descriptions or examples in the spaces provided in the PR and in the AR forms.

In her self-report, the appellant wrote that her epilepsy has caused major anxiety and has made it very hard for her to leave the house and do the everyday activities that normal people can do. In the letter dated June 14, 2017, the appellant and her father wrote that there is no relief from her epileptic seizures and high anxiety disorder in the foreseeable future and it could be years before any stability is achieved, if ever. The ministry considered that the GP reported that the appellant is independent with aspects of her social functioning and, for the two aspects for which she requires periodic support/supervision (developing and maintaining relationships and securing assistance from others), there is no information provided from the GP to indicate the duration or frequency of the appellant’s need for support/supervision. When asked to describe the support/ supervision required to help maintain the appellant in the community, the GP wrote: “friends/ mother helps in these situations,” without specifying how often the support/ supervision is required. At the hearing, the appellant’s father stated that his ex-wife was going to go back to the doctor for more information, but that “did not work out,” and there was no further information from the GP, as the prescribed professional, available on the appeal.

At the hearing, the appellant’s father stated that more recently, the appellant has been having more epileptic seizures, which seem to go in cycles. The appellant’s father emphasized that the appellant is fearful to go out to try to get a job or to hold a job because she is afraid she will have another

seizure, and he suspects that there are other underlying issues. As pointed out by the ministry at the hearing, the panel finds that 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.

Given the lack of evidence of significant impacts to the appellant's cognitive and emotional or social functioning, and the emphasis placed on the appellant's inability to work, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Severe Physical Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical impairment.

The ministry considered the impacts of the appellant's diagnosed medical conditions on her daily functioning, beginning with the assessments provided in the MR and the AR. The ministry considered that the GP reported that the appellant has only one noted limitation with her functional skills, being unable to lift. At the hearing, the appellant's father stated that he is not sure why the doctor said she can do "no lifting" but the appellant did have sore feet and back due to being overweight and this may have been an impact she mentioned to the doctor. However, the GP did not mention sore feet or back problems in either the MR or the AR or, given the opportunity, in the additional letter dated June 9, 2017. The ministry also reasonably considered that the GP reported that the appellant does not require any prostheses or aids to manage her physical functioning and she is independently able to manage in all areas of mobility and physical ability (walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding) with no assistance from another person or an assistive device.

Given the assessment by the GP of physical functional skills with no limitation, with the exception of lifting for which there is no explanation, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

In the reconsideration decision, the ministry was not satisfied that the appellant has a severe physical or mental impairment that, in the opinion of the prescribed professional, directly and significantly restricts DLA either continuously or periodically for extended periods of time.

According to the legislation, Section 2(2)(b) of the EAPWDA, the ministry must assess direct and significant restrictions to DLA in consideration of the opinion of a prescribed professional, in this case the appellant's GP. This does not mean that the other evidence is not factored in as required to provide clarification of the professional evidence, but the legislative language makes it clear that a prescribed professional's evidence is fundamental to the ministry's determination as to whether it is "satisfied." Therefore, the prescribed professional completing the assessments has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairments either continuously or periodically for extended periods.

In the reconsideration decision, the ministry reviewed the information provided in the AR and noted that the GP indicated that the appellant GP is independent with all of the tasks for most DLA, specifically the personal care DLA, the basic housekeeping DLA, the shopping DLA, and the meals DLA. The appellant is also independent with the move about indoors and outdoors DLA. The ministry wrote that the GP reported that the appellant requires periodic assistance with the tasks of budgeting, paying rent and bills, filling/refilling prescriptions, and using transit schedules and

arranging transportation, noting “mother always there to help especially in social and difficult situations.” The ministry reasonably considered that the comment by the GP does not provide information about how often the appellant requires assistance with these tasks, or for how long, in order to allow the ministry to determine that the periodic assistance is required for extended periods of time.

Section 2(2) of the EAPWDA requires that a severe impairment directly and significantly restricts the appellant’s ability to perform the prescribed DLA either continuously or periodically for extended periods. The direct and significant restriction may be either continuous or periodic. If the restriction is periodic, it must be for an extended time. 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 which 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.

In her self-report, the appellant wrote that it is very hard to leave the house and do the everyday activities that normal people can do. However, the GP indicated in the AR that the appellant is able to independently perform tasks of DLA in the community, such as going to and from stores when shopping, banking, and using public transit. In the letter dated June 14, 2017, the appellant and her father wrote that the appellant’s epilepsy and high anxiety disorder have made it impossible for her to get some sort of job. As previously discussed, inability to work is not a consideration for PWD designation.

Given the GP’s report of the appellant’s independence with most tasks of DLA and the lack of a description of the extent of periodic assistance required for some tasks of DLA, the panel finds that the ministry reasonably determined that the evidence is insufficient to show that the appellant’s overall ability to perform her DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

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

While the GP reported that the appellant receives help from family and friends, and that her mother helps “especially in social and difficult situations,” as the ministry reasonably determined that direct and significant restrictions in the appellant’s ability to perform DLA have not been established, the panel finds that the ministry also reasonably concluded that, under section 2(2)(b)(ii) of the EAPWDA, it cannot be determined that the appellant requires help to perform DLA.

Conclusion

The panel finds that the ministry’s reconsideration decision, which determined that the appellant was not eligible for PWD designation pursuant to Section 2(2) of the EAPWDA, was reasonably supported by the evidence. The panel therefore confirms the ministry’s decision. The appellant’s appeal, therefore, is not successful.