

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated July 26, 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.

The ministry also found that the appellant is not one of the prescribed classes of persons who may be eligible for PWD designation on the alternative grounds set out in Section 2.1 of the EAPWDR and the appellant did not appeal the decision on this basis.

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 evidence before the ministry at the time of the reconsideration decision included the appellant's Persons With Disabilities (PWD) Application comprised of the appellant's information and self-report dated March 21, 2017, a medical report (MR) dated March 28, 2017 and an undated assessor report (AR) both completed by a general practitioner (GP) who has known the appellant for one year and has seen him once in the last year.

The evidence also included the following documents:

- 1) Diagnostic Assessment Summary dated November 26, 2009;
- 2) Psycho-Educational Assessment dated February 2, 2012;
- 3) Request for Reconsideration dated June 24, 2017 with second appellant's information form dated July 6, 2017, a second MR (revised MR) and an AR (revised AR) both dated July 2, 2017 and completed by the GP who completed the original reports for the PWD application.

Diagnoses

In the MR, the GP diagnosed the appellant with Autism Spectrum Disorder (ASD) with no dated of onset specified. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities (DLA), the GP wrote: "ASD."

Physical Impairment

In the MR and AR, the GP reported:

- The appellant does not require any prostheses or aids for his impairment.
- In terms of functional skills, this section is marked "N/A," or not applicable to the appellant.
- The appellant is not restricted with his mobility inside or outside the home.
- The appellant is assessed as being independent with all aspects of his mobility and physical ability, specifically: walking indoors and walking outdoors, climbing stairs, standing, lifting, and carrying and holding.
- In the section of the AR relating to assistance provided, none of the listed assistive devices are indicated as applicable and the appellant does not have an assistance animal.

In the revised MR and the revised AR provided with the appellant's Request for Reconsideration, the GP added:

- In terms of functional skills, the appellant has no limitations, being able to walk 4 or more blocks unaided, climb 5 or more steps unaided, and with no limitations to lifting or remaining seated.

Mental Impairment

In the MR and AR, the GP reported:

- With respect to the health history, "pervasive developmental disorder; difficulty communicating; needs assistance constantly."
- There was no assessment of difficulties with communication.
- The appellant has significant deficits with cognitive and emotional function in the areas of executive, language, emotional disturbance, motivation, and attention or sustained concentration and the GP wrote "autism spectrum."
- The appellant is continuously restricted with his social functioning, described by the GP as "language problems." The GP did not comment regarding the degree of restriction.
- The GP indicated that the appellant has a good ability to communicate with speaking, reading and hearing. The GP noted that the appellant has satisfactory ability with writing and did not comment further.
- With respect to daily impacts to the appellant's cognitive and emotional functioning, the GP

assessed the appellant with no major impacts. There are moderate impacts to cognitive and emotional functioning in the areas of insight and judgment, executive, and motivation, and minimal impacts to emotion, impulse control, attention/concentration, and memory. There are no impacts in the areas of bodily functions, consciousness, motor activity, language, psychotic symptoms, other neuropsychological problems, and other emotional or mental problems.

- For social functioning, the appellant requires periodic support/ supervision with making appropriate social decisions, developing and maintaining relationships, and securing assistance from others. He requires continuous support/ supervision with interacting appropriately with others, and dealing appropriately with unexpected demands.
- The appellant has good functioning in both his immediate and extended social networks.
- Asked to describe the support/supervision required which would help maintain the appellant in the community, the GP wrote "N/A," or not applicable to the appellant.

In the revised MR and the revised AR provided with the appellant's Request for Reconsideration, the GP added:

- With respect to the health history, "patient needs constant daily supervision and reminders to meet his daily schedule requirements for school and community and home environments."
- The appellant has cognitive difficulties with communication described by the GP as "occasional difficulty expressing his needs properly."
- The appellant is restricted on a continuous basis with his social functioning, described by the GP as "difficulty expressing himself appropriately." Regarding the degree of restriction, the GP wrote: "moderate."

In the Diagnostic Assessment Summary dated November 26, 2009, the child and adolescent psychiatrist concluded that the appellant met the DSM-IV criteria for Pervasive Developmental Disorder not otherwise specified.

In the Psycho-Educational Assessment dated February 2, 2012, the certified school psychologist concluded:

- Standardized achievement and cognitive assessment results indicated the appellant was functioning within the average range for his age, with the majority of both achievement and cognitive results falling in the upper end of the Low Average to the lower end of the Average range.
- The appellant had relative weakness for some aspects of auditory working memory, and with executive functioning processes.
- The appellant may have mild to moderate levels of anxiety in new or unfamiliar environments, which is not unusual given his autism diagnosis.

In his self report, the appellant wrote that his disability contributes to his ability to concentrate in class work, socialize with friends, anxiety, and his inability to express his thoughts and feelings to those around him.

In his Request for Reconsideration, the appellant wrote that:

- His developmental problems persist in the near future and support for him is limited.
- His disability affects all aspects of his DLA, and he has difficulty making decisions.

Daily Living Activities (DLA)

In the MR and the AR, the GP reported:

- The appellant has not been prescribed any medication and/or treatment that interfere with his ability to perform DLA.

- The appellant is restricted on a continuous basis with the meal preparation DLA and with the management of finances DLA. The GP did not comment regarding the degree of restriction.
- The appellant is not restricted with the personal self care DLA, the management of medications DLA, the basic housework DLA, the daily shopping DLA, the mobility inside and outside the home DLA, and the use of transportation DLA.
- Asked to describe the assistance needed with DLA, the GP wrote: “needs constant prompting and help.”
- The appellant is independent with walking indoors and walking outdoors.
- The appellant is independent with all tasks of the listed DLA, specifically he is independent with the personal care DLA, the basic housekeeping DLA, the shopping DLA, the meals DLA (note: “N/A”), the pay rent and bills DLA, the medications DLA, and the transportation DLA.

In the revised MR and the revised AR provided with the appellant’s Request for Reconsideration, the GP added:

- Regarding the restrictions with the meal preparation DLA and the management of finances DLA as well as with social functioning, the degree of restriction is “moderate.”
- Asked to describe the assistance needed with DLA, the GP wrote: “needs constant prompting and help with all areas of DLA.”
- The appellant is independent with walking indoors and outdoors.
- For the personal care DLA, the appellant is independent with all tasks with the exception of the task of regulating diet, for which he requires periodic assistance from another person.
- Regarding the basic housekeeping DLA, the appellant requires periodic assistance with both laundry and housekeeping. There is no explanation or description added by the GP.
- For the shopping DLA, there is no assessment for the tasks of reading prices and labels or carrying purchases home. The appellant requires periodic assistance from another person with going to and from stores, making appropriate choices, and paying for purchases.
- The GP commented that the appellant “needs to be monitored on public transit. Behavior interventionist helps with (illegible) and other activities checked.”
- For the meals DLA, the appellant requires periodic assistance with the task of safe storage of food and he requires continuous assistance with the tasks of meal planning, food preparation, and cooking. There are no comments provided by the GP.
- Regarding the pay rent and bills DLA, the appellant requires continuous assistance with all tasks, specifically: banking, budgeting, and pay rent and bills.
- For the medications DLA, the appellant is independent with all tasks, specifically: filling/refilling prescriptions, taking as directed, and safe handling and storage. The GP noted “N/A,” or not applicable to the appellant.
- Regarding the transportation DLA, the appellant is independent with the task of getting in and out of a vehicle and requires periodic assistance with using public transit and using transit schedules and arranging transportation.
- The GP provided additional comments: “behavior interventionist helps with numerous areas of DLA.”

In his self report, the appellant wrote that his disability has lead him to be worried about his future, like the ability to get a job or pay for necessities of everyday life.

Need for Help

With respect to the assistance provided by other people, the GP reported in the original AR that the appellant receives help from his family and added in the revised AR that he also receives help from community service agencies identified as “behavioral interventionist.” In the section of the AR for identifying assistance provided through the use of assistive devices, the GP did not indicate any of the listed items as being required by the appellant.

Additional information

In his Notice of Appeal dated July 28, 2017, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that ASD is a severe cognitive disability that has affected every aspect of his life. Without government support, his future will be severely affected. Without this aid, he would not be able to make decisions and requires constant reminders for minor tasks.

Prior to the hearing, the appellant provided the following documents:

- 1) Written submission by an advocate on his behalf;
- 2) Questionnaire dated August 14, 2017 in which another physician in the same clinic as the GP responded to questions, including
 - The appellant's disabling condition is ASD and the affect on his health and wellbeing is "severe effects on patient's cognitive and emotional functioning. Difficulty expressing himself and needs constant daily supervision and reminders. Requires ongoing assistance from family and behavior interventionist";
 - Considering the impact of the appellant's disabilities on life and daily functioning, the appellant has a "severe mental impairment. Ongoing deficits with attention, executive functioning, insight and judgment."
 - The appellant's disabilities cause significant restrictions performing activities of daily living and he "needs constant prompting and help with all areas of his ADLs. Needs ongoing help with meeting his daily schedule requirements for school, community and his environment."
 - The appellant "requires ongoing assistance with his ADL. Needs to be monitored constantly including for public transit, managing finances, shopping, and daily routine activities. Communications and social functioning significantly restricted." and,
- 3) Excerpts from the court decision in *Hudson v. B.C. (EAAT)* 2009 BCSC 1461.

At the hearing, the appellant submitted a letter dated August 18, 2017 in which a behavior analyst wrote:

- The appellant has been receiving behavioral intervention services since 2011, targeting social skill development, emotional regulation, independent living skills and academic support.
- The appellant required further development in socialization skills (emotional regulation and understanding expected and unexpected behaviors in social setting), communication skills (asking for assistance, conversation skills, shifting topics, social commenting, seek clarification, asserting himself, following multiple step instructions), and daily living skills (grocery shopping, independent cooking, knife skills, stove safety, and resume and cover letter).

At the hearing, the appellant's advocate stated that:

- The appellant does not claim to have a physical impairment, but he does have a severe mental impairment.
- The appellant does not claim eligibility under the alternative grounds for PWD designation.
- The Questionnaire dated August 14, 2017 is admissible as being in support of information that was before the ministry at the time of the decision. The questions posed speak to the eligibility criteria for PWD designation only. Although completed by a different physician, the original GP was not available and the new physician is in the same clinic visited by the appellant "many times in the past."
- The discrepancies between the assessment in the AR and in the Questionnaire may relate to the periodic nature of DLA such as public transit, which is only taken from time to time and not every day necessarily.

At the hearing, the appellant stated that:

- He sees the behavioral interventionist two times per week in his home, for 1 or 2 hours each time. They work on his skills, his social situations and problems.
- He is learning how to cook, to take care of himself, and how to be organized.
- Without this help, he would be at a loss. He would be paranoid and lack reasoning.
- Without support, it would be impossible for him to do daily tasks. He gets help from his family and the behavioral interventionist.
- He is learning what he can and cannot do.
- It was a complete shock when he got his diagnosis and when he heard the comments in the Psycho-Educational Assessment dated February 2, 2012, but he has seen minor improvements since finishing school.
- He lives with his family, graduated from high school, and goes to work. He works part-time 2 or 3 days a week. He has been accepted into a post-secondary trade program. He is also exploring other options.
- He tried to have the PWD application completed on his own but he thinks there may have been some misunderstanding between him and the GP. The GP is his primary doctor but he thinks the first reports were rushed.
- He asked the GP to do the reports again and they took more time and the GP asked some questions.
- He has seen the physician who completed the Questionnaire occasionally in the same clinic as his GP. The physician asked him questions while filling out the form.

The ministry relied on the reconsideration decision, as summarized at the hearing.

Admissibility of Additional Information

The ministry did not object to the admissibility of the Questionnaire or the letter from the behavior analyst and did not raise an objection to the appellant's oral testimony. The advocate argued that the findings in the *Hudson* decision and the principles of statutory interpretation espoused in Section 8 of the *Interpretation Act* require that the evidence provided must be read in its entirety and in a broad way, consistent with the objectives of social benefits-conferring legislation, and that the EAPWDA must be given "such fair, large and liberal construction and interpretation as best ensures the attainment of its objects." Therefore, in considering whether the ministry's findings are reasonably supported by the evidence, as set out in Section 24(1)(a) of the *Employment and Assistance Act* (EAA), the advocate argued that a generous interpretation of the word "evidence" would allow for emphasis on the appellant's self report, the oral testimony provided at the hearing, and the supporting evidence submitted on appeal.

In determining the admissibility of evidence on the appeal, the panel is guided by Section 22(4) of the EAA to admit as evidence only the information and records that were before the ministry when the decision being appealed was made and oral or written testimony in support of the information and records that were before the ministry when the decision being appealed was made. The panel considered the information in the Questionnaire and the letter, as well as the appellant's oral testimony, as being in support of, and tending to corroborate, the impact from medical conditions referred to in the PWD application and the Request for Reconsideration, which were before the ministry at reconsideration. Therefore, the panel admitted this additional information in accordance with Section 22(4)(b) of the EAA and will further consider the weight applied to the evidence in Part F- Reasons for Panel Decision, below.

The panel considered the advocate's written and oral submissions as argument on the appellant's behalf, as discussed above and in Part F- Reasons for Panel Decision below.

PART F – Reasons for Panel Decision

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

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

Persons with disabilities

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

The EAPWDR provides as follows:

Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

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

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

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

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

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

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

Part 1.1 — Persons with Disabilities

Alternative grounds for designation under section 2 of Act

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

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

Severe Physical Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical impairment. The ministry reasonably considered the impacts of the appellant's diagnosed medical conditions on his daily functioning, beginning with the assessments provided in the MR and in the AR as well as the revised MR and AR. The ministry considered that the GP assessed the appellant's functional skills at the high end of physical functioning, with

independence in all aspects of his mobility and physical ability. The appellant's advocate confirmed that the appellant does not seek to establish eligibility on the basis of a physical impairment and, rather, argued that the appellant has a severe mental impairment.

Given the GP's evidence of independent physical functioning with no assessed limitations and the appellant's acknowledgement of no impairment to his physical functioning, 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.

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 noted that the GP diagnosed the appellant with ASD, specified as a developmental disability within the mental disorders category of the MR. The ministry also considered the Psycho-Educational Assessment dated February 2, 2012 and noted that the assessment related to the appellant's ability in an educational setting and, although some accommodations for learning were suggested, the assessment results indicated that the appellant was performing at his level of ability at that time and stated that considerable caution should be exercised in the use of the report outside the school setting. The ministry considered the Diagnostic Assessment Summary dated November 26, 2009 and noted that, although the Summary provided an assessment of autism over 7 years ago, the specific nature of impacts to speech and communication are not described in detail. The panel finds that the ministry reasonably placed little weight on the Psycho-Educational Assessment and the Diagnostic Assessment Summary, other than as confirmation of the long-standing nature of the appellant's diagnosis, as the results are dated, qualified, and may no longer be indicative of the appellant's current level of functioning.

A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. An "impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively or for a reasonable duration. To assess the severity of an impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning.

The ministry considered the assessment by the GP in both the MR and the AR as well as the revised MR and AR and, as both sets of reports were completed by the same GP and within a 4-month time period, relied on "the more severe indications only." At the hearing, the appellant stated that he had commenced the unfamiliar PWD application process on his own and he believes that the first set of reports was "rushed." Considering the evidence in its entirety, as instructed by the court in the *Hudson* decision, the panel notes that where the assessments by the GP completed within a short period of time differ, it is reasonable to expect the GP to provide an explanation for any discrepancies considered significant.

The ministry considered the comments by the GP in the original MR that the appellant has a "pervasive developmental disorder; difficulty communicating; needs assistance constantly" and, in the revised MR, that he "...needs constant daily supervision and reminders to meet his daily schedule requirements for school and community and home environments" and noted that the nature of the required assistance or supervision is not described by the GP.

In considering the impacts of the appellant's medical condition on his daily functioning, the ministry noted that, in both the original and the revised MR, the GP reported that the appellant has significant deficits to cognitive and emotional functioning in the areas of executive, language, emotional disturbance, motivation and attention or sustained concentration and the GP referenced the appellant's "autistic spectrum." In the reconsideration decision, the ministry considered that in both

the original and the revised AR, when considering the areas of significant deficit to cognitive and emotional functioning as identified by the GP, the GP assessed a moderate impact to executive functioning, no impact to language, minimal impact to emotion, moderate impact to motivation and minimal impact to attention/ concentration. The GP also assessed a moderate impact to daily functioning in the area of insight and judgment and a moderate impact to motivation, with minimal impacts to impulse control and memory.

The advocate argued that the ministry appeared to place more weight on the assessment of impacts section of the AR without indicating a reason for this choice. However, the panel finds that the ministry considered the MR and the revised MR and acknowledged the assessment of 'significant' deficits in some areas of functioning, and went on to review the assessment of impacts to daily functioning to evaluate the relative significance of the deficits. The ministry considered that the GP did not assess a major impact in any of the listed areas of cognitive and emotional functioning and, notably, assessed no impact in the area of language (e.g. expression or comprehension problems-inability to understand, extreme stuttering, mute, racing speech, disorganization of speech).

In the Questionnaire dated August 14, 2017, another physician in the same clinic as the GP wrote that ASD has "severe effects on patient's cognitive and emotional functioning. Difficulty expressing himself and needs constant daily supervision and reminders. Requires ongoing assistance from family and behavior interventionist." The physician also wrote that the appellant has a "severe mental impairment" due to "ongoing deficits with attention, executive functioning, insight and judgment." While the physician confirmed that the appellant experiences ongoing deficits in some areas of cognitive and emotional functioning, the panel finds that the ministry was reasonable to consider that the impacts to the appellant's daily functioning have been assessed twice by his regular GP, in the original AR and again in the revised AR, and reported to be moderate, minimal or no impact. The appellant's regular GP had an opportunity, on further evaluation and discussion with the appellant, to change his assessment of the degree of daily impacts to functioning, and the panel finds that the ministry was reasonable in placing weight on the fact that no change was made.

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 MR and in the AR forms.

Considering the two "social functioning" DLA that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (relate effectively), the panel finds that the ministry reasonably concluded that there is insufficient evidence to establish that the appellant is significantly restricted in either. Regarding the 'decision making' DLA, the GP reported in the AR that the appellant independently manages all of the decision-making components of DLA, specifically: personal care (regulating diet), shopping (making appropriate choices and paying for purchases) meals (meal planning and safe storage of food), pay rent and bills (including budgeting), medications (taking as directed and safe handling and storage), and transportation (using transit schedules and arranging transportation). The ministry noted that in the revised AR that GP reported a need for periodic assistance with the tasks of regulating diet, making appropriate choices and paying for purchases, safe storage of food, using transit schedules and arranging transportation, and making appropriate social decisions. In his Request for Reconsideration, the appellant wrote simply that he has difficulty making decisions. However, the GP does not describe the frequency or duration of the periodic assistance/supervision required to establish that assistance/supervision is required for extended periods of time.

The panel notes that in the original AR the GP marked either the task of safe storage of food, or the meals DLA, as “N/A,” or not applicable to the appellant, and there is no explanation by the GP for his change in assessment. Given an opportunity to revise his assessment, the GP reported in the revised MR that the appellant is not restricted in his personal self care, daily shopping, medications, and transportation. The ministry considered that the GP reported that the appellant is continuously restricted with his meal preparation and management of finances and that the GP added in the revised MR that the degree of restriction is moderate.

Regarding the DLA of ‘relating effectively’, the GP reported in both the original and the revised MR that the appellant requires periodic support/supervision with developing and maintaining relationships and continuous support/supervision interacting appropriately with others, with no further comments regarding the frequency of the periodic supervision. The GP indicated in both the original and the revised MR that the appellant is continuously restricted in his social functioning, with further comment in the MR that he has “language problems” and, in the revised MR, that he has “difficulty expressing himself appropriately.” In his self report, the appellant wrote that his disability contributes to his ability to concentrate in class work, socialize with friends, his anxiety, and his inability to express his thoughts and feelings to those around him. In the letter dated August 18, 2017, the behavior analyst wrote that the appellant ‘required’ further development in socialization and communication skills, but did not elaborate on his progress or his current level of skill. In the Questionnaire dated August 14, 2017, the physician wrote: “communications and social functioning significantly restricted,” without providing particulars of the restrictions.

At the hearing, the appellant stated that it was a complete shock to him when he got his diagnosis and when he heard about the comments in the 2012 Psycho-Educational Assessment, but he has seen minor improvements since finishing high school. The behavioral interventionist comes to his home two times each week to work with him for an hour or two and they work on his skills, his social situations and problems. The appellant stated that he currently lives with his family, graduated from high school, and goes to work. He works part-time 2 or 3 days a week and has been accepted into a post-secondary trade program. The appellant stated that he felt the first reports were rushed and he asked the GP to do the reports again and they took more time and the GP asked some questions before preparing the revised MR and AR.

However, given an opportunity to clarify and expand on his assessment, the GP clarified in the revised MR that the degree of restriction with the appellant’s social functioning is moderate. In both the MR and the revised MR, the GP reported that the appellant has good functioning in his immediate and his extended social networks and that there is no support/supervision required to help maintain him in the community. In both the AR and the revised AR, after further consultation, the GP reported that there is no impact to the appellant’s daily cognitive and emotional functioning in the area of language. In the revised MR, the GP reported that the appellant has cognitive difficulties with communication described as “occasional difficulty expressing his needs properly” and in both the AR and the revised AR, the GP indicated that the appellant has a good or satisfactory ability to communicate in all areas.

Given the evidence of moderate to no impacts to the areas of deficit with the appellant’s cognitive and emotional functioning, and the noted inconsistencies in the evidence of impacts to social functioning, which have not been sufficiently explained in the additional evidence provided on appeal, the panel finds that the ministry reasonably determined that a severe mental impairment was not established 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 and the other physician at the same clinic. 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 MR and the revised MR and noted that the GP assessed the appellant as not being restricted with his personal self care, management of medications, basic housework, daily shopping, mobility inside and outside the home, and use of transportation. The ministry wrote that although the GP reported that the appellant is continuously restricted with the meal preparation DLA and the management of finances DLA, the degree of restriction is specified by the GP to be moderate. Asked to describe the assistance needed with DLA, the GP wrote in the revised MR that the appellant "needs constant prompting and help with all areas of DLA," and the ministry reasonably considered that the comment by the GP is not consistent with the assessment of no restriction to all DLA with the exception of meal preparation, management of finances and social functioning.

At the hearing, the advocate stated that the GP also provided information in the revised AR that the appellant needs continuous assistance from another person or is unable to perform meal planning, food preparation, and cooking tasks, as well as needing periodic assistance with safe storage of food. The advocate stated that the GP also assessed the appellant as requiring continuous assistance or he is unable to do his banking, budgeting, and paying rent and bills. The GP commented that the 'behavioral interventionist' helps with numerous areas of DLA and the behavior analyst confirmed in the letter dated August 18, 2017 that the appellant required further development in the areas of "grocery shopping, independent cooking, knife skills, stove safety and resume and cover letter." The panel notes that there is no mention by the behavior analyst of a need for development in the DLA of management of finances, or an evaluation of the appellant's progress in the identified areas, or his current skill level.

In the Questionnaire dated August 14, 2017, the physician wrote that the appellant's disabilities cause significant restrictions performing DLA and he "needs constant prompting and help with all areas of his ADL; needs ongoing help with meeting his daily schedule requirements for school, community and his environment" and he "...needs to be monitored constantly including for public transit, managing finances, shopping, and daily routine activities." Although the GP assessed the appellant as requiring continuous assistance with the tasks of the management of finances DLA, he assessed the need for periodic, and not continuous, assistance with tasks of the using transportation DLA and the shopping DLA. The general comments by the physician in the Questionnaire are not consistent with the assessment by the GP in the revised AR, and there is no clarification by the physician to help explain this discrepancy. At the hearing, the advocate submitted that the transportation and the shopping DLA are periodic in nature and the assistance is required when the appellant periodically engages in these DLA; however, the instruction for completion of the AR defines "periodic assistance" as referring to the need for significant help for an activity some of the

time as would be the case where a person required help due to the episodic nature of the impairment. In the absence of clarification from the physician in the areas of inconsistency with the evidence of the GP, the panel placed more weight on the two assessments by the appellant's regular GP.

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 his self report, the appellant wrote that his disability has lead him to be worried about his future, like the ability to get a job or pay for necessities of everyday life. In his Notice of Appeal, the appellant wrote that ASD is a severe cognitive disability that has affected every aspect of his life and, without government support, his future will be severely affected. Without this aid, he would not be able to make decisions and he requires constant reminders for minor tasks. The panel notes that employability is not a consideration for eligibility for PWD designation as employability is not a criteria in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

As previously discussed with respect to the severity of the mental impairment, considering the two "social functioning" DLA that are specific to mental impairment – 'decision making' and 'relate effectively,' the panel found the ministry was reasonable to conclude that there was insufficient evidence that the appellant is significantly restricted with either.

Given the inconsistencies between the GP's report of no restrictions to most DLA, moderate restrictions to some, the addition in the revised AR of the need for periodic assistance with some tasks of DLA with a lack of a description of the frequency or duration, and the lack of evidence of significant restrictions to those DLA specific to a severe mental impairment, the panel finds that the ministry reasonably determined 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.

While the GP indicated that the appellant receives help from his family and community service agencies, namely the behavioral interventionist, 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.