

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated July 20, 2017 that 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 and that he has a severe physical impairment, though not a severe mental impairment, which, in the opinion of a medical practitioner, is likely to continue for at least two years.

However, the ministry was not satisfied that 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 evidence before the ministry at the time of the reconsideration decision included the Person With Disabilities (PWD) Application comprised of the applicant information and self-report dated June 12, 2017, completed by the appellant's sister with his consent, a medical report (MR) dated March 24, 2017 and an assessor report (AR) dated June 2, 2016, both completed by a general practitioner (GP) who has known the appellant for one month and has seen him once in the last year.

The evidence also included the following documents:

- 1) Select pages of the PWD application with notes added;
- 2) Medical Report- Employability dated May 29, 2017;
- 3) Letter dated July 5, 2017 from the GP who completed the PWD application reports; and,
- 4) Request for Reconsideration dated June 30, 2017, with attached handwritten statement by the appellant.

Diagnoses

In the MR, the appellant was diagnosed by the GP with colon cancer with an onset in January 2017 and Degenerative Disc Disease of the spine with an onset in 2007. There was no diagnosis of a condition within the mental disorders diagnostic category of the MR. In the AR, when asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the GP wrote: "difficulty with mobility of the spine. Neck and back stiffness restricting movement."

Mental Impairment

In the MR and the AR, the GP reported:

- The appellant has no difficulties with communication.
- The appellant has no significant deficits with cognitive and emotional function.
- The appellant has a good ability to communicate in all areas, specifically: speaking, reading, writing, and hearing.
- With respect to daily impacts to the appellant's cognitive and emotional functioning, the GP reported that the appellant has minimal impacts in two areas: bodily functions and memory. All other list areas of functioning are reported as no impact.
- Regarding the section of the AR assessing impacts to the appellant's social functioning, the GP indicated that the appellant is independent in all areas, specifically: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.
- The appellant has marginal functioning in both his immediate and extended social networks. When asked to describe the support/supervision required to help maintain the appellant in the community, the GP wrote: "supervision from sister."

In the letter dated July 5, 2017, the GP wrote that the appellant is a "loner" and does not have any friends and does not engage socially. By choice or not, this affects his social functioning as he has no support outside his family ties.

In his Request for Reconsideration statement, the appellant wrote:

- He finds himself not being very social or being around people.
- He does not have friends because he lives with his sister and has not met many people. He likes being alone.
- His ability to deal with unexpected events is or can be inappropriate. His sister calls this "not playing well with others."

Daily Living Activities (DLA)

In the MR and the AR, the GP reported:

- The appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform DLA.
- For functional skills, the appellant is able to walk 1 to 2 blocks unaided on a flat surface, climb 2 to 5 steps unaided, lift 2 to 7 kg. (5 to 15 lbs.), and has no limitation with remaining seated.
- The appellant requires periodic assistance from another person and uses an assistive device for walking indoors and requires continuous assistance from another person and uses an assistive device for walking outdoors. There is no explanation provided by the GP.
- The appellant is independently able to perform every assessed task of the basic housekeeping DLA (including laundry), the shopping DLA, the pay rent and bills DLA (including banking, budgeting), the medications DLA (including filling/refilling prescriptions, taking as directed, and safe handling and storage), and the transportation DLA.
- For the personal care DLA, the appellant is independent with the tasks of toileting, feeding self, transfers in/out of bed and transfers on/off chair, and he requires continuous assistance from another person with dressing and periodic assistance from another person with grooming, bathing, and regulating diet.
- The GP added a comment that the appellant lives with his sister who is caring for him and providing support.
- For the meals DLA, the appellant is independent with cooking and safe storage of food and requires periodic assistance from another person with meal planning and food preparation, with the explanation from the GP that he has “difficulty bending, reaching, and lifting.”
- For additional comments, the GP wrote that the appellant’s main concern is stiffness of the spine, shoulders and arms, with pain in his spinal column and shoulders on a daily basis and “this is challenging his ability to care for himself.”

In the select pages of the PWD application, the notes added indicate:

- The appellant is continuously restricted with his personal self care, meal preparation, management of medications, and basic housework.
- Regarding the assistance needed with DLA that the appellant has been “living for a while with sister. She cooks, cleans, and provides transportation. Her home is too small to have [the appellant] through winter.”

In the letter dated July 5, 2017, the GP wrote:

- The appellant has developed multi-level spinal degeneration and he has osteoarthritis of the spine. He has had previous spinal surgery.
- He uses a cane to assist in walking.
- The appellant has difficulty moving and has a decreased range of motion of his spine. This makes it impossible for him to do the regular maintenance of daily living, like vacuuming, housekeeping and laundry.
- His sister has been providing care for him.
- He needs constant reminding to take his medications appropriately.

In his Request for Reconsideration statement, the appellant wrote:

- He has trouble doing things without some help.
- His sister reminds him to take his medicine and takes him to appointments and helps him understand what was said.
- His sister helps him as much as she can, like with laundry and making a list of things he has to do because he cannot remember very well.

- Since his cancer surgery, he has a hard time trying to walk or sit for any length of time.
- He is unable to be far from a bathroom, especially after he has eaten anything.
- He cannot pick up his grandson when he is crying.
- He cannot sweep or mop the floor. He cannot bend over to pick up anything. He cannot make up the bed.
- He cannot go grocery shopping without having someone to help put things in and out of the grocery cart.
- He cannot take a shower every morning. It is too hard for him to step in and out.

Need for Help

The GP reported in the MR that the appellant requires an aid for his impairment, specifically a walking cane. In the AR, the GP indicated that the help required for DLA is provided by family and that he routinely uses a cane to help compensate for his impairment.

Additional Information

In her Notice of Appeal dated July 31, 2017, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that his doctor is being ignored. He is so "busted up" he cannot work for a living. He cannot do daily chores; his neck is totally fused. He has a very bad back and a bad heart. His left wrist is "useless" and his right knee and shoulder are messed up.

At the hearing, the appellant's sister stated:

- The appellant's original doctor refused to communicate with the GP. The GP tried to contact the appellant's original doctor because he had x-rays and other reports that might have been useful.
- They tried to find a social worker to prepare the AR but they ended up having to go back to the GP to have him complete it.
- When she asks the appellant to remember something, he usually remembers about 2/3 of the information. He does not have a good memory.
- She phones the appellant to tell him to take his medications and to pick them up.
- She is constantly reminding the appellant of things.
- She has done his laundry because he cannot bend over and pull his clothes out at the Laundromat.
- Her brother is dying of cancer. He has a specialist doctor he sees about the cancer.
- He was sleeping on her porch but that will be too cold in the winter. They could not find a place for him for less than \$700 in rent and the appellant has nothing left for food.
- The appellant has been given an "old shack" to live in for the winter.
- The appellant cannot get a job. She took him to the unemployment office but there is nothing the appellant can do. He cannot stand, sit or walk. They said there was no work appropriate for the appellant.
- The Medical Report- Employability dated May 29, 2017 was included with the materials because this was one of the forms that the GP filled out. The appellant has not applied to the ministry for the Persons with Persistent Multiple Barriers (PPMB) to employment status.
- He needs extra assistance to get some proper food and to get help from someone to clean his place.
- The appellant can cook but he has no fresh things and no refrigerator. They want to keep his body strong in case the cancer returns.
- The appellant's comprehension is not what it is supposed to be. He gets angry and frustrated. He has had to cope with a traumatic experience in his family.

- She added the notes to the select pages of the PWD application.
- The GP knew that the appellant was living with her and he may have assumed that he would continue living with her. They do not have the room or finances to take care of the appellant.
- The GP did not ask the appellant if he needed help.

At the hearing, the appellant's brother-in-law stated:

- He has to drive the appellant to lots of places because the appellant cannot turn his neck to drive.
- He helps the appellant get in and out of the shower. The appellant's leg is stiff and he is afraid that the appellant is going to fall.
- He drops the appellant off at the grocery store.
- It is very hard for the appellant to lift things. If he does lift something, he will suffer later on.
- When the appellant moves around, he groans because of the pain. He limps when he walks.

At the hearing, the appellant stated:

- His back has arthritis. He has trouble with his neck, heart, and wrist.
- His knee and shoulders have had surgeries and now there is arthritis too.
- He uses a cane but he could also use a wheelchair if he could afford one. He would like to have a walker so he could sit down after walking a bit.
- He had not been eating properly. He did not feel like eating and that is when he went to the hospital and discovered that he has cancer.
- Cooking is not his "favorite thing to do."
- He has problems with holding things because he cannot grip with his fingers. He cannot make his bed and sleeps in a sleeping bag.

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

Admissibility of Additional Information

The ministry did not raise an objection regarding the oral testimony on the appellant's behalf. The panel considered the oral testimony on behalf of the appellant as information that corroborates his information about the extent of his impairment and associated impact to his DLA, which was before the ministry at reconsideration. Therefore, the panel admitted this additional information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on the 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 appellant has a severe physical impairment, though not a severe mental impairment, but his DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that it could not be determined, as a result of those restrictions, 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).

At reconsideration, the ministry was satisfied that the information provided is sufficient evidence of a severe physical impairment. At the hearing, the appellant stated that he also has impacts to his mental functioning and there is impairment. The panel considers it relevant to consider the severity of the appellant's mental impairment to determine how this impairment needs to be factored in when addressing the "Direct and significant restrictions in the ability to perform DLA" criterion discussed below.

Severe Mental Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided was sufficient evidence to establish that the appellant has a severe mental impairment. The ministry considered that the GP did not diagnose a mental health condition in the PWD application and reported that the appellant has no significant deficits with cognitive and emotional functioning. At the hearing, the appellant's sister stated that the appellant's comprehension is not what it is supposed to be and he gets angry and frustrated. The ministry considered that the GP indicated in the PWD application that the appellant has minimal impacts to cognitive and emotional functioning in the areas of bodily functions and memory and has no impact in all other areas of functioning, including executive (e.g. planning, organizing, sequencing, abstract thinking, problem-solving, calculations).

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. Regarding the 'decision making' DLA, the GP reported in the AR that the appellant independently manages most decision-making components of DLA, specifically: shopping (making appropriate choices and paying for purchases), meals (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 appellant's sister stated at the hearing that she phones the appellant to tell him to take his medications and to pick them up, that she is constantly reminding the appellant of things. While the GP reported in the AR that the appellant is independent with all aspects of managing his medications, in the letter dated July 5, 2017, the GP confirmed that the appellant needs constant reminding to take his medications appropriately.

For the task of regulating his diet as part of his personal care DLA, the GP indicated that the appellant requires periodic assistance from another person and did not provide an explanation or description to allow the ministry to determine that the assistance is required for extended periods of time. Likewise, for the task of meal planning, the GP indicated that the appellant requires periodic assistance from another person, but the explanation "difficulty bending, reaching and lifting" does not specify how often or how long the appellant requires assistance. The GP reported in the AR that the appellant is independent with making appropriate social decisions.

Regarding the DLA of 'relating effectively' with others, the GP assessed the appellant as independent with developing and maintaining relationship and with interacting appropriately with others. The GP reported that the appellant has marginal functioning in both his immediate and extended social networks and that he requires "supervision from sister" to help maintain him in the community. In the letter dated July 5, 2017, the GP wrote that the appellant is a "loner" and does not have any friends and does not engage socially and this affects his social functioning as he has no support outside his family ties. The GP did not provide detail of the extent of support/supervision required by the appellant with the aspects of social functioning that were previously reported by the GP to be performed by the appellant independently.

In his Request for Reconsideration statement, the appellant wrote that he finds himself not being very social. The appellant wrote that he does not have friends because he lives with his sister, has not met many people, and likes being alone. The appellant also wrote that his ability to deal with unexpected events is or can be inappropriate and his sister calls this "not playing well with others." In the MR, the GP reported that the appellant has no difficulties with communication and assessed the appellant as having a good ability to communicate in all aspects, specifically speaking, reading, writing and hearing. At the hearing, the appellant's sister stated that they did not have much time with the GP who did not question the appellant about his need for help.

Given the absence of information from the GP of significant impacts to the appellant's cognitive and emotional functioning, and the insufficient evidence to establish that the appellant is significantly restricted with the two DLA specific to a severe mental impairment, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Direct and Significant Restrictions in the ability to perform DLA

In the reconsideration decision, the ministry was satisfied that the appellant has a severe physical impairment. However, the determination that a person has a severe impairment does not itself determine eligibility for the PWD designation as Section 2(2)(b) of the EAPWDA requires that a prescribed professional provide an opinion that an applicant's severe impairment directly and significantly restricts his ability to perform DLA, either continuously or periodically for extended periods. In this case, the GP is the prescribed professional.

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 considered that the GP indicated that the appellant requires continuous assistance with the task of dressing and periodic assistance from another person with the tasks of grooming, bathing, regulating diet, as well as with meal planning and food preparation. The ministry wrote that the descriptions provided by the GP: "lives with his sister who is caring for him and providing support" and "difficulty bending, reaching and lifting" does not explain the degree, type, or duration of the periodic assistance required to manage these tasks of DLA. The ministry reasonably determined that without this descriptive information from the GP, the evidence does not establish that the appellant's ability to manage these tasks of DLA is significantly restricted for extended periods.

The ministry considered that the GP reported that the appellant is independently able to manage the balance of the tasks of the personal care DLA, the basic housekeeping DLA, the shopping DLA, tasks of the meals DLA, the pay rent and bills DLA, the medications DLA, and the transportation DLA, and concluded that this degree of independence does not establish significant restrictions in the overall ability to perform DLA. At the hearing, the appellant's sister explained that they had wanted to have the AR completed by a social worker but had to go back to the GP to have the form completed when a social worker could not be found. The appellant's sister stated that the GP did not ask the appellant about the help that he needed and may have assumed that the appellant would continue to live with her.

The appellant's sister stated at the hearing that she had added the notes to the select pages of the PWD application to fill in the holes in the information left by the GP. The appellant's sister indicated that the appellant is continuously restricted with his personal self care, meal preparation, management of medications, and basic housework. The appellant's sister wrote that "she cooks, cleans, and provides transportation" for the appellant. At the hearing, the appellant's sister stated that she phones the appellant to tell him to take his medications and to pick them up. She has done his laundry because he cannot bend over and pull his clothes out at the Laundromat. The appellant's

brother-in-law stated at the hearing that he helps the appellant get in and out of the shower because the appellant's leg is stiff and he is afraid that the appellant is going to fall. He also drives the appellant places and drops him off at the grocery store. The appellant's sister stated that the appellant cannot get a job. She took him to the unemployment office but there is nothing the appellant can do. The appellant wrote in his Notice of Appeal that he is so "busted up" he cannot work for a living. The panel notes that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed DLA in section 2 of the EAPWDR.

The appellant wrote in his Notice of Appeal that cannot do daily chores; his neck is "totally fused." The appellant wrote that he has a very bad back and a bad heart. His left wrist is "useless" and his right knee and shoulder are messed up. In his Request for Reconsideration statement, the appellant wrote that his sister reminds him to take his medicine and takes him to appointments and helps him understand what was said. His sister helps him with laundry and making a list of things he has to do because he cannot remember very well. The appellant wrote that he cannot sweep or mop the floor and he cannot make up the bed. He cannot go grocery shopping without having someone to help put things in and out of the grocery cart, and he cannot take a shower every morning because it is too hard for him to step in and out of the shower. The appellant stated that he has problems with holding things because he cannot grip with his fingers. He cannot make his bed and sleeps in a sleeping bag. At the hearing, the appellant stated that he uses a cane but he could also use a wheelchair if he could afford one, or he would like to have a walker so he could sit down after walking a bit.

Although the appellant and his sister and brother-in-law described several limitations to the appellant's functioning, the GP, as the prescribed professional, reported that the appellant is able to walk 1 to 2 blocks unaided on a flat surface, climb 2 to 5 steps unaided, lift 5 to 15 lbs., and has no limitation with remaining seated. Provided with an opportunity to elaborate on his assessment of the appellant's ability to perform DLA, the GP wrote in the July 5, 2017 letter that the appellant uses a cane to assist in walking and the appellant has difficulty moving. The GP wrote that decreased range of motion of the appellant's spine makes it impossible for him to do the regular maintenance of daily living, like vacuuming, housekeeping and laundry. The GP wrote that the appellant's sister has been providing care for him and that he needs constant reminding to take his medications appropriately.

As previously discussed, the ministry reasonably determined that there is not sufficient evidence of significant restrictions in the two social functioning DLA specific to a severe mental impairment, and no further information regarding the appellant's ability to perform DLA was provided from a prescribed professional on the appeal.

Given the GP's report that the appellant is independent with most tasks of DLA and has functional skill limitations in the moderate range, with no descriptive information from the GP regarding the frequency and duration of periodic assistance required with some tasks of DLA, as well as the absence of evidence of significant restrictions to those DLA that relate to a person with a 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 reported that the appellant receives help from family and that he routinely uses a cane to help compensate for his impairment, 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.