

## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated October 2, 2017, which held that the appellant did not meet 3 of the 5 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 a medical practitioner has confirmed that the appellant's impairment is likely to continue for at least 2 years.

However, the ministry was not satisfied 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 those restrictions, in the opinion of a prescribed professional, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

The ministry also determined that the appellant is not in any of the classes of persons set out in section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation* who may be eligible for PWD designation on alternative grounds.

## 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 and section 2.1

## PART E – Summary of Facts

### Information before the ministry at reconsideration

- 1) The appellant's PWD application comprised of:
  - a September 30, 2016 Self-report from the appellant; and
  - a Medical Report (MR) and an Assessor Report (AR), both dated October 18, 2016 and completed by a nurse practitioner (NP). The NP indicates that she has known the appellant for two weeks and met with him once, and relied on information obtained from an office interview with the appellant, file/chart information, and information from the appellant's father.
- 2) May 23, 2003 Consult Report completed by a pediatrician who was assessing the appellant for ADHD, behavioural problems and short stature.
- 3) February 17, 2005 Child and Adolescent Mental Health Centre Assessment, completed by a child psychiatrist.
- 4) May 14, 2010 Physician Assessment Report completed by the same child psychiatrist.
- 5) June 2010 Psycho-Educational Assessment.
- 6) June 23, 2011 Clinic Letter from BC Children's Hospital completed by a pediatrician.
- 7) March 19, 2016 Student Aid BC – Permanent Disability Program Application completed by the appellant's family physician.
- 8) The appellant's Request for Reconsideration. Included is a September 15, 2017, 20-page typewritten submission from appellant's father detailing why he feels the decision denying PWD status was wrong, general information about Fetal Alcohol Syndrome (FAS), and a description of how the appellant's daily functioning is impacted by his medical conditions.
- 9) November 16, 2016 letter from Student Aid BC approving permanent disability status for post-secondary study.
- 10) September 17, 2017 Assessor Report section of the PWD application, completed by the appellant's father who is a registered social worker.

### Documents provided on appeal

- 11) The appellant's Notice of Appeal (NOA), received by the tribunal on October 11, 2017, in which the appellant writes that the medical information indicates severe mental impairments.
- 12) An 8-page submission provided at the hearing: information from the National Institute on Alcohol Abuse and Alcoholism respecting Fetal Alcohol Exposure (5 pages) respecting fetal alcohol exposure and excerpts accredited to DSMV respecting neurobehavioral disorders associated with prenatal alcohol exposure and ADHD. The appellant's father also showed photographs of the appellant at age 3, which the father stated showed the facial characteristics associated with FAS.

### Oral testimony at hearing

The appellant's father provided the following information:

- Following a move to a community, which is a 7 hour drive away from their previous community, they no longer have access to the family physician for completion of the PWD application.
- Given the cost of educational assessments, which are only done every 5 years, the appellant's school did not want to pay for another assessment as the appellant was finishing high school.
- Because all of the appellant's diagnoses are clinical, as opposed to getting a blood test or using other physical means of making a diagnosis, information from family is taken into account by those making a diagnosis.
- He has no access to the appellant's bank account, into which income assistance is deposited. He pays the rent and the appellant then gives him the shelter allowance provided by the ministry.

- He was with the NP when she completed both the MR and the AR. Initially both he and the appellant answered the NP's questions but the NP then requested that only the appellant respond.

Additional testimony provided by the appellant's father related to specific DLA criteria and is summarized below.

The appellant provided information respecting the educational supports he receives for his post-secondary studies and his future career plans.

The ministry reviewed its reconsideration decision but did not provide additional evidence.

#### Admissibility of information provided on appeal

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the minister when the decision being appealed was made and "oral and written testimony in support of the information and records" before the minister when the decision being appealed was made – i.e. information that substantiates or corroborates the information that was before the minister at reconsideration. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA – to determine whether the ministry's reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant. That is, panels are limited to determining if the ministry's decision is reasonable and are not to assume the role of decision-makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

The ministry did not object to the admission of the 8-pages of documentation into evidence, stating that it was additional but not new information. The panel determined that both the oral testimony and the new documentation substantiated information respecting FAS and ADHD that was available at reconsideration. Therefore, the oral and written information was determined to be admissible in accordance with section 22(4) of the *Employment and Assistance Act*, as it was in support of the information at reconsideration.

The arguments of both parties are set out in Part F of this decision.

#### Summary of relevant evidence

##### Diagnoses

In the MR, where asked to provide a specific diagnosis and provide health history, the NP writes:

- Fetal alcohol syndrome (FAS)
- Attention Deficit Hyperactivity disorder (ADHD)
- Oppositions defiant disorder (ODD)
- Anxiety

In the 2003 Consult Report, the pediatrician writes that his impression is ADHD and ODD, for which Ritalin was prescribed, and most likely constitutional growth delay.

In the June 23, 2011 Clinic Letter, the pediatrician indicates that the likely diagnosis relating to short stature was constitutional growth and pubertal delay.

In the March 19, 2016 Student Aid BC – Permanent Disability Program Application, the appellant's family physician notes the following:

- Diagnosis: ADHD.
- Symptoms: lack of focus, hyperactivity.
- Severity: at least moderate severity. Prognosis: potentially tolerable with medications and the above school modifications.

### Physical Impairment

The GP provides the following information in the PWD application:

- No prostheses or aids are required.
- The appellant is able to walk 4+ blocks unaided on a flat surface, climb 5+ steps unaided, and has no lifting limitations. Ability to remain seated is limited to 1 to 2 hours.
- All listed aspects of physical ability and mobility are managed independently.

### Mental Impairment

The NP provides the following information in the PWD application:

- ADHD – Moderate – severe. Lack of focus. Perceptual reasoning. Working memory extremely low range (1<sup>st</sup> percentile WISC-IV). Treatment and psychostimulants may improve focus and hyperactivity.
- FAS – Significant concerns in all areas of executive functioning (psychologist report). Learning disability. No treatment will improve working memory or executive functioning.
- Requires extended time to complete work, private setting for exams, frequent reminders.
- In the MR, significant deficits with cognitive and emotional function are identified in 6 of 11 specified areas – executive, language, memory, emotional disturbance, impulse control, and attention or sustained concentration. No significant deficits are reported for consciousness, perceptual psychomotor, psychotic symptoms, motivation, and motor activity (agitation).
- In the AR a major impact on daily functioning is reported for attention/concentration. A moderate impact on daily functioning is reported for impulse control, executive, and other neuropsychological problems. Minimal impact is reported for emotion, memory, and motivation. No impact is reported for the remaining 7 areas. "Becomes frustrated easily when can't remember how to do things."
- Short attention and impaired short term memory decreases capacity to remember lists and complete multi-step tasks without assistance.
- In the MR, the NP indicated that there are no cognitive, motor, sensory, or other difficulties with communication. In the AR, the appellant is reported to have good ability with speaking, and satisfactory ability with reading, writing, and hearing.
- The NP did not complete the section respecting social functioning in the AR.

In his Self-report, the appellant describes examples of the inattention, hyperactivity, impulsivity, problems with executive functioning, and difficulty regulating emotions due to his ADHD. He also describes problems associated with his anxiety, FAS, and ODD, as well as social and behavioural issues.

The appellant's father provides the following information in the Assessor Report he completed:

- Satisfactory ability to communicate via speaking. Poor ability for reading and writing. Good hearing.
- Major impacts on daily functioning for emotion, impulse control, insight and judgment, attention/concentration, executive, memory, motivation, motor activity, other neuropsychological problems, and other emotional or mental problems.

- Continuous support and supervision required for all 5 listed aspects of social functioning. Very disrupted functioning with both immediate and extended social networks. The father also identifies safety issues associated with social functioning, describing a situation in which the appellant could not recognize the serious nature of an accident.

The 2005 assessment by the child psychiatrist included the following information:

- Mom mentioned there were no complications, drug or alcohol use during the pregnancy.
- Impression/Recommendation: background history and observations satisfy criteria for ADHD (responding positively to Ritalin); however, seems to now be complicated by an Oppositional Defiant Disorder especially in the school situation.
- As well, having difficulties with peer interactions, showing poor executive functioning with a tendency to be rigid devising his own rules as well as not able to compromise easily.
- “A major issue seems to be different parenting styles...” “The mixed messages that he may be getting between mom and dad’s place may be perpetrating factors into the oppositional defiant disorder.”

The 2010 Physician Assessment Report completed by the child psychiatrist included the following information:

- Presently, mom mentioned that school is the biggest concern.
- “[The appellant] mentioned that he has not been getting his medication while in his father’s care.”
- “Of note is the fact that mom only discovered she was pregnant after three months of gestation and it was not a planned pregnancy. Her lifestyle at the time was to drink alcohol two to three times per week namely a few drinks of hard liquor. Mom believes that she probably had some drinks until she found out she was pregnant three months later.”
- Speech wasn’t very spontaneous, but was coherent and relevant. He showed a poor working memory. Mood wasn’t dysphoric and he showed a full range of affect. However, he was somewhat impatient with low frustration tolerance and a tendency towards reactivity. Insight into his difficulties and understanding of cause and effect appear limited.
- Impression and Recommendation: still satisfies the criteria for an ADHD and associated learning disability with a poor executive and adaptive functioning complicated by ODD. It is also queried by the school whether he is getting the medication consistently.
- Continuing conflict between the parents continues to be a perpetrating factor in his difficulties.
- Government tests of educational achievement done in April 2010 reported below average in reading comprehension, written expression, spelling, written language composite and in the lower extreme for oral expression.
- 2005 Psychoeducational Assessment showed a major discrepancy with his working memory at the 4<sup>th</sup> percentile with a 20 point discrepancy between working memory and processing speed and a 15 point discrepancy between verbal comprehension and working memory.

The June 2010 Psycho-Educational Assessment identified that skills are mostly in below average or low range and that the appellant should continue in the learning disability category at school. [The panel notes that a number of pages appear to be missing including, most notably, the conclusions of the assessor.]

In the 2016 Student Aid BC – Permanent Disability Program Application, the appellant’s family physician notes that due to lack of focus and hyperactivity resulting from ADHD, the appellant requires a tutor, audio books, and accommodation for exams (1.5 x exam time, private room). Severity: at least moderate severity. Prognosis: potentially tolerable with medications and the above school modifications.

At the hearing, the appellant's father stated:

- The appellant's medical conditions are life-long, as are the symptoms. The only real change is with hyperactivity which tends to minimize or dissipate with age. Working memory and other problems can't be treated.
- Defining characteristics that separate FAS from ADHD are apparent from the BRIEF scores which are associated with FAS not ADHD. [The ministry noted that some of the scores the father referenced were scores provided by the appellant's parent.]
- In accordance with DSMV, problems with higher order functioning, like those the appellant has, are associated with FAS.
- Respecting social functioning, the appellant attends school regularly but does not socialize there and goes straight home.

### DLA

In the PWD application, the NP reports the following:

- The appellant has not been prescribed medication and/or treatments that interfere with the ability to perform DLA.
- All listed tasks/aspects of the DLA move about outdoors/indoors, personal care, shopping, meals, and transportation, as well as two tasks of medications, are managed independently with no noted limitation.
- All listed aspects of basic housekeeping (laundry, basic housekeeping) and pay rent and bills (banking, budgeting, pay rent and bills) as well as 1 aspect of medications (filling/refilling prescriptions) require periodic assistance from another person which is described as reminders to complete tasks and father helps with banking and budgeting.

In the Assessor Report completed by the appellant's father, the appellant is reported as requiring continuous assistance from another person with all tasks of basic housekeeping, paying rent and bills and with the majority of the listed tasks within the DLA shopping, meals, medications, and transportation. Continuous support/supervision is required with all listed aspects of social functioning. Considerable narrative is also provided identifying problems with planning ahead for shopping, spending money, prescriptions, remembering to purchase ingredients necessary to make a meal, putting uncovered and open containers in the fridge, and needing constant reminders respecting housekeeping chores and medications. Due to social anxiety, the appellant most often walks to school rather than taking public transit and needs assistance identifying bus routes and times.

At the hearing, the appellant's father stated that the appellant cannot manage the planning required for DLA, including making lists for shopping and meals. The appellant is okay with meals as long as food is in the house.

### Need for Help

In the MR, the NP indicates that no prostheses or aids are required. In the AR, the NP reports that assistance is provided by family.

## PART F – Reasons for Panel Decision

### **Issue on Appeal**

The issue on appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. That is, was the ministry reasonable when determining that the appellant is not a person described in section 2.1 of the EAPWDR and that the requirements of section 2(2) of the EAPWDA were not met because:

- a severe physical or mental impairment was not established;
- the appellant's DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and
- as a result of those restrictions, in the opinion of a prescribed professional, the appellant does not require an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA?

### **Relevant Legislation**

#### **EAPWDA**

**2 (1)** In this section:

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

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

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

- (a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and
- (b) in the opinion of a prescribed professional
  - (i) directly and significantly restricts the person's ability to perform daily living activities either
    - (A) continuously, or
    - (B) periodically for extended periods, and
  - (ii) as a result of those restrictions, the person requires help to perform those activities.

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

- (a) a person who has a severe mental impairment includes a person with a mental disorder, and
- (b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires
  - (i) an assistive device,
  - (ii) the significant help or supervision of another person, or
  - (iii) the services of an assistance animal.

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

## EAPWDR

### Definitions for Act

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

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

- (i) prepare own meals;
- (ii) manage personal finances;
- (iii) shop for personal needs;
- (iv) use public or personal transportation facilities;
- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self-care;
- (viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

- (i) make decisions about personal activities, care or finances;
- (ii) relate to, communicate or interact with others effectively.

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

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

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

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

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

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

## **Alternative grounds for designation under section 2 of Act**

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

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

### **Panel Decision**

As the appellant has not provided any information or argument respecting eligibility for PWD designation under section 2.1 of the EAPWDR, the panel finds that the ministry reasonably determined that it has not been established that the appellant falls within the prescribed classes of persons under that section. The panel's discussion below is limited to eligibility for PWD designation under section 2 of the EAPWDA and section 2 of the EAPWDR.

### **Severe Physical or Mental Impairment**

The legislation provides that the determination of severity of impairment is at the discretion of the minister, taking into account all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed professional respecting the nature of the impairment and its impact on daily functioning. While the legislation does not define "impairment", the MR and AR define "impairment" as 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." While this is not a legislative definition, and is therefore not binding on the panel, in the panel's opinion, it reflects the legislative intent and provides an appropriate analytical framework for assessing the degree of impairment resulting from a medical condition.

When considering the evidence provided respecting the severity of impairment, the ministry must exercise its decision-making discretion reasonably by weighing and assessing all of the relevant evidence and cannot simply defer to the opinion of a prescribed professional as that would be an improper fettering of its decision-making authority.

### **Physical Impairment**

The appellant is not diagnosed with a physical medical condition by the NP who assesses the appellant as independently managing all aspects of physical ability and mobility. In view of this information, and noting that the appellant does not argue that he has a severe physical impairment, the panel concludes that the ministry reasonably determined that the information does not establish a severe physical impairment.

## Mental Impairment

The NP diagnoses the appellant with FAS, ADHD, ODD, and anxiety. Both a pediatrician and the appellant's family physician had previously diagnosed the appellant with ADHD.

The ministry argues that it is unclear upon what information the NP based the diagnosis of FAS, as the ministry does not consider the comment in the 2010 psychiatrist's assessment, that the appellant's mother believes she probably had some drinks until she found out she was pregnant, to be a diagnosis of FAS. Furthermore, the family physician, who appears to have been the appellant's medical practitioner for a number of years, does not include FAS as a diagnosis in the Student Aid BC - Permanent Disability Application dated March 19, 2016, which is "the only information concerning the appellant's medical condition since 2010." Therefore, when assessing the severity of impairment and ability to perform activities of daily living, the ministry will weigh more heavily the restrictions caused by the medical conditions of ADHD, ODD and anxiety.

Additionally, while the ministry recognizes that as a social worker, the appellant's father meets the legislative definition of a prescribed professional, the ministry considers the potential for conflict of interest to be significant, particularly since the father's information is "significantly different" from the NP's assessment, and is not supported by the other assessments. Therefore, the ministry concludes that the Assessor Report he completed lacks the objectivity required by a prescribed professional. The ministry also finds it challenging to determine which assessment more accurately reflects the level of impairment, but in consideration of the potential conflict of interest, more heavily weighs the assessments of the NP.

While the ministry shares the father's concern that the NP had not thoroughly completed the PWD application, and despite finding the limited contact the NP had with the appellant to be problematic, the ministry states that it has relied most heavily on that information because the information in the various other assessments is both outdated and, while being helpful to understand how the appellant's medical conditions impact him in an educational setting, does not include information relevant to the severity of the appellant's impairment or his ability to performing DLA.

The appellant's father argues as follows. The medical information establishes major impacts on cognitive, emotional and social functioning, and in particular, with memory, insight/judgement and executive functioning as demonstrated by the test scores. The ministry did not fully consider the additional information, and in particular, minimized the test score results and the alcohol consumption by the appellant's mother. It is unreasonable for the ministry to discount information on the basis that it is outdated given both the facts surrounding the infrequency with which educational assessments are conducted and given the life-long nature of the medical conditions and their impact on functioning. The ministry has unreasonably used blanket conflict of interest to discount his information, despite the fact that family information was considered by the physicians and psychologists when making their clinical diagnoses. The appellant's father also argues that, in his view, a conflict of interest relates to a direct financial interest. The ministry has unreasonably relied on the Student Aid BC application to rule out the FAS diagnosis, given that FAS or pre-natal exposure conditions are not included in the list from which the person completing the form can choose, and furthermore, the ministry accepted the NP's diagnoses of ODD and anxiety, despite neither of those being identified by family physician.

Acknowledging the arguments by both the ministry and the appellant's father respecting the diagnosis of FAS, the panel finds that although the ministry said it would give less weight to restrictions related to FAS, it does not appear that the ministry did so. Firstly, the NP does not identify a specific medical condition when assessing the impacts on daily cognitive and emotional functioning or the ability to

manage DLA and secondly, the reconsideration decision has given equal consideration to all of the information from the NP.

The panel considers the ministry reasonable to conclude that some of the information may not reflect the appellant's current functioning. While, as the father argues, the conditions are life-long and that with the exception of hyperactivity there is no treatment, the child psychiatrist and educational assessor identify many contributing factors to the appellant's behavior at the time of assessment which are subject to change, including parental conflict and home and school environments. Furthermore, the panel considers that the ministry has reasonably concluded that the functioning of a child is not the basis upon which to assess that person's functioning 7 to 10 years later when the person has reached adulthood. Additionally, as the ministry notes, many of the assessments, including the 2010 Physician Assessment Report, the June 2010 Psycho-Educational Assessment, and the 2016 Student Aid BC - Permanent Disability Program Application do not address the appellant's ability in terms of managing the prescribed DLA, instead largely focusing on educational settings and educational demands. The panel also finds that the ministry is reasonable to consider the nature of the relationship between the appellant and his father and to conclude that there is a likelihood of a lack of objectivity, particularly given the significant discrepancy between the information from the NP and the appellant's father. Furthermore, as the other assessments predominantly reflect testing and assessment for educational purposes not daily living tasks, the ministry was reasonable to conclude that those assessments do not confirm the impacts on daily functioning assessed by the father in the AR. Therefore, the panel concludes that the ministry was reasonable to place more weight on the information from the NP as being current information addressing the legislative criteria provided by an independent prescribed professional. In reaching this conclusion, the panel also notes that the NP specifically indicated that she considered information from the appellant's father and the additional medical information in making her assessment.

The panel finds, as was noted by the ministry, that the NP assesses the appellant's ability to communicate as satisfactory for the ability to read, write and hear, and good for the ability to speak. In terms of cognitive and emotional functioning, while the NP identifies significant deficits in a number of areas and acknowledges the extremely low range test results for working memory and the psychologist's assessment respecting executive functioning, the NP reports a major impact on daily functioning only for attention and concentration. Moderate impacts are assessed for impulse control, executive and other neuropsychological problems, and all other areas, including memory, are assessed as having minimal or no impact on daily functioning. The appellant's father argues that this reflects inconsistency on part of the NP, and that the assessment of many significant deficits is more reflective of the appellant's daily functioning. The panel finds, however, that the NP's comments that short attention and impaired short-term memory decrease the appellant's capacity to remember lists and complete multi-step tasks without assistance and that the appellant becomes frustrated easily when can't remember how to do things, is reflective of memory problems impairing more complex memory functioning than that required for basic daily activities. Respecting social functioning, no assessment was provided by the NP, and the information from the other assessments relates to parental conflict or school peer interaction when the appellant was much younger.

While the panel finds that the information establishes that the appellant's medical conditions are lifelong, the panel concludes that the information respecting the appellant's cognitive, emotional, and social functioning was reasonably viewed by the ministry as establishing a moderate degree of impairment and that a severe mental impairment has not been established.

### Restrictions in the ability to perform DLA

Section 2(2)(b)(i) of the EAPWDA requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether or not it is satisfied, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration – the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended periods. Inherently, any analysis of periodicity must also include consideration of the frequency. All other things being equal, a restriction that only arises once a year is less likely to be significant than one that occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

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

The appellant's position, as advanced by his father, is that he requires continuous assistance with most tasks of most DLA.

The ministry again argues that the information provided by the appellant's father differs from that of the NP, as it indicates a much higher level of assistance is required to complete DLA than is noted by the NP. The appellant's father's assessment is not supported by evidence from a medical or nurse practitioner and considering the potentially subjective nature of the appellant's relationship with his father, the ministry relies more heavily on the NP's assessments.

Again, for the reasons previously provided, the panel finds the ministry was reasonable in placing greater weight on the NP's assessment of the appellant's ability to manage DLA. The NP assesses the appellant as independently managing all listed tasks of the DLA of personal care, shopping, meals, and transportation as well as two tasks of the DLA medications. Additionally, no restrictions are identified for the 5 listed aspects of social functioning and the appellant independently manages all aspects of the DLA move about indoors and outdoors. Periodic assistance from another person is required for all aspects of the DLA basic housekeeping and pay rent and bills, as well as for tasks of medications, filling and refilling prescriptions. Repeated reminders are required to complete these tasks and the NP reports that short attention and impaired short term memory decrease the appellant's ability to remember lists and complete multi-step tasks without assistance. As no information is provided to indicate the frequency and duration of the assistance, the panel considers the ministry reasonable when concluding that it was unable to determine that significant assistance is required periodically for extended periods.

Accordingly, the panel considers that the ministry reasonably determined that it has not been established that in the opinion of a prescribed professional the appellant's impairment *significantly* restricts his ability to perform DLA either *continuously or periodically for extended periods*.

### Help to perform DLA

Section 2(2)(b)(ii) of the EAPWDA requires that, *as a result of direct and significant restrictions in the ability to perform DLA*, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform DLA.

The establishment of direct and significant restrictions with DLA is a precondition of the need for help criterion. As the panel found that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel also finds that the ministry reasonably concluded that it cannot be determined that the appellant requires help to perform DLA as required by section 2(2)(b)(ii) of the EAPWDA.

### Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was reasonably supported by the evidence and a reasonable application of the applicable enactment, and therefore confirms the decision. The appellant is not successful on appeal.