

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 January 30, 2018, 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 and duration requirements, but was not satisfied that:

- the appellant has a severe physical and/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, the appellant requires an assistive device, the significant help or supervision of another person, 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 information before the ministry at the time of reconsideration included the appellant's PWD application comprised of a Medical Report (MR) and an Assessor Report (AR) both completed by the appellant's general practitioner (the "GP"). The AR was not dated but signed and the MR was signed and dated September 14, 2017. The GP has known the appellant 15+ years and saw the appellant 2-10 times in the past 12 months prior to completing the PWD application. The PWD also included the appellant's Self-Report (SR) dated August 21, 2017.

The evidence also included the appellant's Request for Reconsideration (RFR) dated February 14, 2018. In RFR the appellant described the challenges she faces with all four of her children; 2 of whom suffer from substance use and the other 2 suffer from mental health issue. The appellant takes her 2 children to their counselling appointments. The appellant also stated the following:

- "I live with anxiety and depression, for many years I have battled severe upset stomachs and panic attacks".
- "My mental impairment...is socially intolerable and delivers me a number of uncomfortable situations, including leaving my house, taking transit, going to the store, doing school functions for my children and sometimes needing my mom or a trusted adult by my side".
- "I was sexually assaulted in March 2017 and since then I have had a rough time with it and finding help".
- "Emotionally I am compromised and mentally trying to get up each day and face a new day".
- "I have been put on Zoloft (antidepressant) to help with the depression and anxiety I feel each day".

Diagnoses

In the MR, the GP diagnosed the appellant with Anxiety (onset unspecified) and Mood Disorder (onset unspecified).

Physical Impairment

In the MR and the AR, the GP indicated the following:

- The appellant can walk unaided on a flat surface for 4+ blocks, climb 5+ stairs unaided, lift with no limitations and remain seated with no limitations.
- The appellant walks indoor, walks outdoor, climbs stairs, stands, lifts and carry/holds objects independently.

In the SR, the appellant indicated that she "suffers with rapid heart rate, upset stomach, closed in feeling, hard time breathing, headaches and dizziness almost daily".

Mental Impairment

In the MR and AR, the GP indicated the following:

- "severe chronic anxiety, PTSD [post-traumatic stress disorder], and adjustment disorder".
- Significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance, motivation, and attention or sustained concentration. "Patient has long standing severe depression/anxiety".
- "Limited functioning. Depression and anxiety mood disorder. History of PTSD, abused as child. Recent sexual assault with exasperation of symptoms. Patient functions and cares for her children with company of her mother to execute all activities outside the home. Chronic mood disorder."
- "Depression and anxiety. Limited to functioning independent – outside her home in social situations and public".
- The appellant is continuously restricted with social functioning.
- The appellant has good speaking, reading, writing and hearing.
- In terms of cognitive and emotional functioning there is a major impact to emotion; moderate impact to attention/concentration, executive, memory and motivation; and no impact to the all other listed functions listed.
- "Chronic history of depression and anxiety. Referred to treatment. She has a history of sexual assault with extensive psychotherapy. Very isolated regarding social interactions. She functions isolated with some social assistance of her mother. She is a single parent".
- The appellant independently performs the DLA of personal care, finances and paying rent/bills.
- The appellant is independent with 'appropriate social decisions' but requires continuous assistance with 'able to develop and maintain relationships' and 'interacts appropriately with others'. The appellant requires periodic assistance with 'able to deal appropriately with unexpected demands' and 'able to secure assistance from others'.
- The appellant has very disrupted functioning with her immediate social network and the GP commented "Patient avoids social contact".

- The appellant has very disrupted functioning with her extended social network and the GP commented “She is limited to contact with her family” and support/supervision is provided by “family/mother”.

In her SR, the appellant indicated, in part, the following:

- She is overwhelmed by her children’s mental health issues and appointments.
- She is overwhelmed by her older children’s substance use issues.
- “I am having a hard time keeping up with everything and then add in Work BC and job search”.
- She goes out of her home with a trusted adult; usually her mother.

Daily Living Activities

In the MR, the GP indicated the following:

- The appellant is prescribed medications/treatments that interfere with her ability to perform DLA, and that the anticipated duration of these medications/treatments is “chronic”.
- The appellant’s impairment directly restricts her ability to perform her DLA
- The appellant is continuously restricted with ‘mobility outside the home’, ‘use of transportation’ and ‘social functioning’.
- “Patient has social anxiety and does not leave her home without company of her mother or other company”.
- “Severe and long standing” in regards to degree of restriction.
- “She is assisted by her mother to accompany her outside the home to comply to basic family care”

In the AR, the GP indicated the following:

- That for ‘going to and from stores’, the appellant requires continuous assistance and ‘using public transit’, and ‘using transit schedules’, the appellant requires the uses of assistive devices (the GP did not indicate which assistive devices are used for these activities).
- “Patient has anxiety and avoids social contact as result” and “Patient has social anxiety and avoids public use of transit unassisted”.
- The GP also indicated that the appellant has very disrupted functioning with immediate and extended social networks. The GP stated that “patient avoids social contacts” and “she is limited to contact with her own family/mother”.
- Continuous support is required for ‘able to develop and maintain relationships’ and ‘interacts appropriately with others’, and periodic support is required for ‘able to deal appropriately with unexpected demands’ and ‘able to secure assistance from others’.
- “Patient can function but isolated. She has difficulty to maintain any social connection. Very limited to her family”.
- All other listed tasks for DLA are performed independently.

Help

In the AR, the GP indicated the following:

- The appellant does not require any prostheses or aids for her impairment.
- No equipment or devices are used by the appellant for assistance.
- Assistance is not provided by an assistance animal.
- Help with DLA is provided by family.

In the SR, that appellant stated that she needs help from a trusted adult, who is usually her mother, when in public or social situations.

Evidence on Appeal

Notice of Appeal (NOA), signed and dated March 21, 2018, which stated, in part, “I am not emotionally able to go to school or work. My anxiety is high and I have so many counsellors and appointments to help deal with the rape of last year and my kids’ emotional behaviours”.

Evidence at the Hearing

At the hearing the appellant stated, in part, the following:

- She has not physical impairment but has an emotional impairment which results in panic attacks in social situations and on the bus.
- She has sought help. She is in family counselling and on a waitlist for one-on-one counselling to deal with PTSD due to a recent rape. This rape also retriggered childhood panic attacks.

- Her children also have panic attacks and her older children have substance abuse issues.
- She tries to walk as much as possible to avoid taking the bus because when she goes on the bus she has anxiety attacks.

In response to the panel's questions, the appellant stated the following:

- Her mother plays a supportive role in public and provides rides to her.
- When in public she freezes and her mother helps.
- When with the children on the bus, the appellant is able to control her anxiety as she does not want to panic in front of her children.
- She is currently taking her third parenting course which is group based. She is able to leave the room if overwhelmed but has managed to complete 2 parenting courses.
- She walks to her parenting courses and takes the bus to family counselling.
- Every night her mother has to remind her to take her medicine.
- She cannot eat when she feels depressed which is approximately 2 times per month and last 4-5 days each time.
- She is able to manage her personal care, finances and rent/bills.
- She is currently dealing with her ex-husband in court which adds to the emotional upheaval and has caused her to be retrigged.
- Her mother and lawyer help the appellant with the court proceedings but she tries not to go to court if possible.
- In the past 6 months she has not been making her various appointments due to fatigue, memory issue and/or anxiety.
- The GP was referring to 'major withdrawn' when he indicated that she has very disrupted functioning with immediate social network.

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

Admissibility of Additional Information

The panel considered the information from the appellant and found that reference to the appellant's inability to eat when depressed is not in support of or corroborates the information referred to in the PWD application, the request for reconsideration and questionnaire. Therefore, the panel did not admitted any reference to the appellant's inability to eat when depressed in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

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. In particular, was the ministry reasonable when concluding it was not satisfied that

- the appellant has a severe physical and/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 help, as it is defined in the legislation, 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 practice 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

Severe Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical or mental impairment. Determining a severe physical or mental impairment requires weighing the evidence provided against the nature of the impairment and its reported functional skill limitations. 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 panel finds that employability is not a consideration for eligibility for PWD designation because 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.

Physical Impairment

The appellant's position is that she suffers with rapid heart rate, upset stomach, hard time breathing, headaches and dizziness on a daily basis.

The ministry's position is that the functional skill limitations described by the GP do not describe a severe degree of physical impairment.

In its reconsideration decision, the ministry noted that the GP indicated that the appellant is able to walk 4+ blocks unaided, climb 5+ stairs, has no limitations with lifting and no limitations with remaining seated. The ministry noted that in terms of mobility and physical ability, the GP indicated that the appellant independently managed all listed tasks; namely walking indoors and outdoors, climbing stairs, standing, lifting, and carrying/holding. The ministry also noted that the appellant does not require any prostheses or aids to manage her physical functioning.

The ministry found that it is not satisfied that the information provided is evidence of a severe impairment.

Given the assessments of the appellant's functional ability, and mobility and physical ability in the PWD application and SR, and the fact that a medical condition that would cause impairment to physical functioning has not been diagnosed, the panel finds that the ministry was reasonable in its determination that the evidence does not support a finding that the appellant suffers from a severe physical impairment and the legislative criteria outlined in Section 2(2) of the EAPWDA have not been met.

Mental Impairment

The appellant's position is that mental conditions of depression and anxiety constitute a severe impairment that has a major impact on her daily functioning.

The ministry's position is that the severity of the impacts to the appellant's daily functioning as a result of her cognitive and emotional functioning do not describe a severe degree of impairment.

In its reconsideration decision, the ministry noted that the GP's comments as previously mentioned and that the GP indicated the following:

- The appellant has deficits to cognitive and emotional functioning in the areas of memory, emotional disturbance, motivation, and attention or sustained concentration.
- In assessing the impact of cognitive and emotional function on daily living the GP indicated that the appellant has one major impact in the area of emotion, moderate impact in the areas of attention/concentration, executive, memory and motivation and all other areas of cognitive and emotional functioning are reported to have no impact on daily living.
- The appellant has no difficulties with communication and her ability to communicate is good in all areas.

The ministry found that the GP has reported a moderate degree of impairment and as a result the ministry is not satisfied that the information provided is evidence of a severe mental impairment.

While the GP has indicated that the appellant needs continuous and periodic assistance in areas of social functioning, which the appellant also testified to, the appellant also stated that when required (when with her children) she is able to control her anxiety attacks in public and the GP did not specify what type of assistance is required. The GP stated that "Patient can function but isolated". The appellant also indicated that she has successfully completed 2 parenting courses which are delivered in a group setting and is currently attending a third parenting course, and that she "sometimes" needs her mom or a trusted adult to accompany her in public. Though the GP indicated that there are significant deficits in the areas of memory, emotional disturbance, motivation and attention or sustained concentration, the GP did not indicate that these deficits have a major impact on daily functioning as she indicated only one area of major impact in the area of emotion. The GP indicated that speaking, reading, hearing and writing, are good, and the appellant has no difficulties with communication. Given the assessment of the appellant's mental functional ability provided by the GP, the panel finds that the ministry was reasonable in its determination that the evidence does not support a finding that the appellant suffers from a severe mental impairment and the legislative criteria outlined in Section 2(2) of the EAPWDA have not been met.

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 that the legislative criteria are met, 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 how frequently the activity is restricted. 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 argued that due to depression and anxiety she unable to use public transportation facilities, manage personal medication, make decisions about personal activities, and relate to, communicate and interact with others.

The ministry position is that there is not enough evidence to confirm that a severe impairment directly and significantly restricts DLA continuously or periodically for extended periods.

In its reconsideration decision, the ministry referred to the GP's comments as previously mentioned and noted that in the MR, the GP indicated that the appellant is continuously restricted in her mobility outside the home, use of transportation and social functioning. But with regards to all other DLA, the GP indicated that the appellant is unrestricted in her ability to perform personal self-care, meal preparation, management of medications, basic housework, daily shopping, mobility inside the home and management of finances.

The ministry noted that in the AR, the GP indicated that the appellant requires continuous assistance with going to and from stores using public transit, using transit schedules and arranging transportation. However the ministry noted that no information was provided by the GP to explain the type or the degree of the assistance required to manage these activities, and that all other DLA are indicated as independently managed including personal care, basic housekeeping, shopping, meals, paying rent and bills, medications, and getting in/out of a vehicle.

The ministry noted that, while the GP indicated that the appellant requires continuous and periodic support/supervision in the areas of social functioning (namely continuous support with 'able to develop and maintain relationships' and 'interacts appropriately with others', and periodic support is required for 'able to deal appropriately with unexpected demands' and 'able to secure assistance from others'), the GP provided no additional information to explain the type or the degree of the support/supervision required. The ministry found that it was unable to establish that the appellant requires significant assistance to manage social functioning.

The ministry noted that the GP indicated that the appellant has very disrupted functioning with both immediate and extended social networks. The ministry stated that it is not clear as to why the appellant has very disrupted functioning with her immediate social network when her family and mother are the source of her support. However, the panel notes that at the hearing the appellant clarified that her immediate social network is indicated as very disrupted functioning because of the 'major withdrawn' category.

The ministry noted that the GP's comments (namely, "Patient can function but isolated", "She has difficulty to maintain any social connections" and "Very limited to her family"), and concluded that the information provided establishes that the appellant prefers to exclusively maintain a relationship with her family and mother and is able to function with family support.

The ministry concluded that since the majority of DLA are performed independently or require little help from others the information from the GP does not establish that the impairment significantly restricts DLA either continuously or periodically for extended periods, and as a result the legislative criteria have not been met.

Section 2(2) of the *EAPWDA* requires that in the opinion of a prescribed professional a person's ability to perform DLA is directly and significantly restricted either continuously, or periodically for extended periods. While the panel finds that the appellant has some restrictions to DLA, the information provided makes it difficult to determine whether the appellant has significant restrictions to DLA. In particular, while the GP indicates continuous restrictions to aspects of social functioning, going to and from stores, mobility outside the home and use of transportation, the GP has not indicated the type or degree of assistance required. The panel notes while the ministry noted that continuous assistance is required with 'using public transit' and 'using transit schedules', the reality is that neither was indicated as such. Rather the GP only indicated that these tasks require an assistive device without indicating what assistive was required or how often it must be utilized. The panel also notes that the appellant requires periodic and continuous support/supervision with aspects of social functioning but the GP failed to indicate what the support/supervision is and how often it is required. Regarding social functioning, the panel redirects to its decision regarding severe mental impairment previously discussed.

Given this evidence as a whole, the panel finds that the ministry reasonably concluded that the evidence is insufficient to demonstrate that the appellant's overall ability to perform her DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the *EAPWDA*.

Help to perform DLA

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 appellant's position is that she requires the help of her mother to function.

The ministry argues that because it has not been established that DLA are significantly restricted, it cannot be determined that help is required.

Given that confirmation of direct and significant restrictions with DLA is a precondition of the need for help criterion and because 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 is a reasonable application of the applicable enactment, and therefore confirms the decision. The appellant is not successful on appeal.