

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated March 12, 2018 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that his impairment is likely to continue for at least two years. However, the ministry was not satisfied the evidence establishes that:

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

PART D – RELEVANT LEGISLATION

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

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

PART E – SUMMARY OF FACTS

The evidence before the ministry at the time of the reconsideration decision included the appellant's Persons With Disabilities (PWD) Application comprised of the appellant's information and self-report dated November 24, 2017, a medical report (MR) and an assessor report (AR) both dated November 30, 2017 and completed by a General Practitioner (GP) who has known the appellant for 5 years and has seen him 2 to 10 times in the past 12 months.

The evidence also included the following documents:

- 1) Two of a three page Hospital Discharge Summary Report dated September 17, 2015;
- 2) Second page of a two page Report dated September 24, 2015;
- 3) Medical Imaging Report dated February 13, 2018 for a CT enterography contrast;
- 4) Handwritten note by the GP dated February 18, 2018;
- 5) Letter dated February 26, 2018 from the GP; and,
- 6) Request for Reconsideration dated April 3, 2018.

Diagnoses

In the MR, the GP diagnosed the appellant with Crohn's Disease with an onset in 2004, anemia iron deficiency, and head trauma, with no dates of onset provided. Asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities (DLA), the GP left this section of the AR blank.

Physical Impairment

In the MR and the AR, the GP reported:

- With respect to the appellant's health history, his "Crohn's Disease is in poor condition. He follows the treatment as advised but despite this he continues to suffer pain, cramping, numerous BM [bowel movements] and bleeding."
- The appellant does not require an aid for his impairment.
- In terms of functional skills, the appellant can walk more than 4 blocks unaided on a flat surface, climb 5 or more steps unaided, lift 7 to 16 kg. (15 to 35 lbs), and he has no limitation with remaining seated.
- In the additional comments to the functional skills, the GP wrote "please help this young man. He is unable to work as a labourer due to his illness."
- In the AR, the appellant is assessed as independent with all aspects of his mobility and physical ability, specifically: walking indoors and walking outdoors, climbing stairs, standing, lifting, and carrying and holding.
- In the section of the AR relating to assistance provided, the GP did not identify an assistive device as routinely used by the appellant, and crossed out this part of the AR.

In the letter dated February 26, 2018, the GP indicated that:

- The appellant's Crohn's disease is not in good control and he sees a gastroenterologist regularly. The most recent CT scan still shows evidence of disease.
- The appellant has numerous BM a day often stained with blood and he gets chronic abdominal pain and cramping. He is unable to eat at times.
- The appellant feels lethargic and weak due to his disease. He is underweight and anemic with iron deficiency anemia due to chronic blood loss.
- He has tried going back to work numerous times but, due to his symptoms, he is unable to perform his duties at work.

In the Medical Imaging Report dated February 13, 2018 for a CT enterography contrast, the impression included:

- Evidence of suspected thickened mucosa of the distal ileum, proximal cecum, distal transverse colon, descending colon, and sigmoid. This may well represent evidence of diffuse Crohn disease.
- However, definitive evidence of abscess formation, perforation or acute to mesenteric fat inflammatory changes are not seen, suggesting this may be sequelae from Crohn disease, but without definite acute active inflammation at this time. Follow up can be performed.
- Hypoattenuating lesion in the left lobe of the liver is slightly larger, with ill-defined margins. This may represent a cyst. Suggest follow-up ultrasound.

In his self-report, the appellant wrote:

- He has ulcers, Crohn's disease and epilepsy.
- He has inflammation in his intestines and he is always in pain. The pain he suffers is sharp, severe, and intense- it feels like he is being pinched or stabbed repeatedly. He is impacted from his rectum to his duodenum.
- On a typical day, he feels unwell and deals with diarrhea, which has blood and mucous in it. He has tried numerous medications to no avail. He has been hospitalized several times for 10 to 11 day treatments. He takes injections weekly.
- He suffers from anemia and takes iron supplements. Sometimes he ends up in hospital getting blood transfusions and iron through IV.
- He has suffered weight loss and his body does not retain vitamins and nutrients.
- He is always feeling weak and lacking energy.
- His ulcers bleed and cause pain in his gut.
- His joints are inflamed.
- He is always forced to rely on pain medications.
- He suffered a seizure and fell 12 feet off a roof, breaking numerous ribs, his nose and his collar bone.
- He wears sunglasses any time he leaves home as lights that are bright, flashing or flickering can trigger a seizure. Other triggers are stress, lack of sleep, or missing meals.
- He has vision disturbances, frequent migraines and seizures. Sometimes his migraines are so intense he is forced to spend the day in bed.

In his Request for Reconsideration, the appellant wrote:

- He is in pain off and on every day for over 18 years.
- When he is in pain, he needs to lie on his stomach, which helps ease the pain.
- He gets pain from everything he eats, and he goes to the washroom several times a day.
- He cannot walk more than a block. He cannot do anything physical as it brings on pain.
- It is recommended that he not lift anything or bend too much as he has a hiatus hernia and bending and lifting brings on pain.

Mental Impairment

In the MR and the AR, the GP reported:

- There are no difficulties with communication and while no significant deficits with cognitive and emotional function are identified, the GP wrote: “anxiety at times depression.”
- The appellant has a good ability to communicate in all areas except writing, for which he has a satisfactory ability.
- With respect to daily impacts to the appellant’s cognitive and emotional functioning, the GP indicated that there are no major impacts to any of the listed areas of functioning, with moderate and minimal impact to bodily functions and moderate impact to emotion. There are minimal or no impacts to the remaining listed areas of functioning. The GP did not provide any additional comments.
- The appellant requires periodic support/supervision with many aspects of his social functioning, specifically with making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, and dealing appropriately with unexpected demands. The appellant is independent with securing assistance from others. There is no assessment of the appellant’s functioning in his immediate social network, and he has marginal functioning in his extended social networks.
- Asked to describe the support/supervision required to help maintain the appellant in the community, the GP wrote “family helps him.”

In the Hospital Discharge Summary Report dated September 17, 2015, an MRI of the appellant’s head and there was a query for a possible lesion to the temporal lobe.

In his self-report, the appellant wrote:

- He goes through a great deal of stress financially, physically and emotionally.
- He has panic attacks and anxiety almost daily.
- He cannot function in large groups or crowds.
- His moods will go up and down based on how he is feeling. It is hard to maintain relationships.
- His fear of diarrhea and pain in public keeps him isolated.

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.
- The appellant is independent with all tasks of all of the listed DLA, specifically: moving about indoors and outdoors, personal care, basic housekeeping, shopping, meals, pay rent and bills, medications, and transportation.

In the letter dated February 26, 2018, the GP indicated that the appellant is unfit for any gainful employment due to his uncontrolled disease.

In his self-report, the appellant wrote that:

- He is forced to take public transportation but constant diarrhea makes that impossible.
- He struggles to care for himself. At times, he goes 5 days or more without a shower.
- He is dependent on his mother for his basic needs. She does his cooking, his laundry, gives him injections, and drives him to his medical appointments.
- His mother picks up his prescriptions for him.

In his Request for Reconsideration, the appellant wrote:

- He is able to take care of most of his DLA in between all the pain he gets. He needs to take a lot of breaks.
- He is unable to work.

Need for Help

- In the AR, the GP reported that the appellant's family help with his DLA.
- In the section of the AR relating to assistance provided, the GP did not identify any of the listed assistive devices as being required by the appellant and crossed out this part of the AR.

Additional information

In his Notice of Appeal dated March 23, 2018, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that he cannot work, or he would. He knows his body best and he cannot work.

At the hearing, the appellant provided the following additional documents:

- 1) Letter dated March 1, 2018 to the GP in which the gastroenterologist wrote that:
 - He saw the appellant, who has Crohn's disease and is maintained on medication every week over the past year.
 - The appellant's blood work revealed anemia with a decreased MCV, ferritin of 21 and he has a persistent CRP of 12.8.
 - Clinically, his weight is stable, but he has intermittent abdominal pain without obstructive symptomatology.
 - He has at least 6 BM per day with 3 nocturnal BM and semi-formed stools. There is no persistent rectal bleeding.

- The appellant's CT scan did show some thickening of the small bowel and terminal ileum, but was equivocal with respect to active disease. There was no perforation or fistula formation.
 - The plan is to obtain further investigation such as medication level and antibody determination, as well as fecal calprotectin, and he will be seen in follow-up shortly thereafter; and,
- 2) Hospital appointment confirmation dated March 29, 2018 for the appellant to receive 4 treatments of MD IV Iron over the following month.

At the hearing, the appellant's mother stated:

- She is the appellant's mother but also his caregiver. She picks up his medications and injects the medications into his stomach once per week, which saves a nurse having to come to the house to do this for him.
- She does the appellant's laundry because he is unable to do this for himself.
- The appellant will start cooking a meal and then he will drop to the floor in pain. He also has frequent BM, which varies between diarrhea and constipation, and he can easily spend 20 minutes in the washroom. Sometimes he pays his room-mate to prepare meals.
- She has found that at every family occasion the appellant is in pain and he takes so long to eat a meal that the rest of the family has finished the meal and he has only taken a few bites. It takes him a long time to eat a meal. At times, he will even lie on the floor to eat.
- In September 2017 the appellant was helping a friend repair his roof and he had a seizure and fell off the roof. He broke 11 bones and had to get a plate on his collar bone. He was on life support and she thought she may lose him.
- She believes that the GP completed the forms focusing on the appellant's very best day.
- Although the appellant's weight is currently stable, he is down to 115 lbs. and he is 5'9" tall. Although he could lift 35 lbs. for a brief time, he is so thin he could not carry this weight.
- When the appellant was a teenager, he had his own business and was extremely motivated to work. When he was diagnosed with Crohn's disease, he lost so much weight and motivation and became suicidal. He spent 6 years in his apartment not able to do anything.
- She encourages the appellant to be as independent as possible.
- The appellant is also anaemic with iron deficiency anaemia due to chronic blood loss, which means that he faints or passes out at times. He cannot stand at a bus stop for too long. He will also need to use the washroom, which is another problem.
- He also has epilepsy and he suffers pain in his shoulder and his back as a result of the fall from the roof. When the weather is cold, it seems to "act up."
- She has prepared meals for the appellant to keep in the freezer but many of those have gone to waste because he is in too much pain to eat the meal after it is heated.
- In terms of the appellant's mental status, although the GP mentioned depression, the appellant's condition is much more serious than that. Last year, the appellant had to have 3 blood transfusions in one day and she cried with him and had to encourage him to find a reason to want to live. At that time, he was down to 99 lbs.
- On the assessment in the MR, the GP indicated a minimal to moderate impact to bodily functions, but this is a major impact. He has major sleep disturbance as he is up several times throughout the night to use the washroom.
- The GP is not aware of the extent of the appellant's depression. He cannot get a sense of his status in a 15 minute appointment. The appellant has contacted mental health without the help of his doctor.

- The appellant has met with mental health services and he is going to join a depression support group, with the first meeting later this month.
- The appellant just “exists.” He cannot go out into the community if he is spending his time in pain in the bathroom. He used to be a social and outgoing person.
- She cannot understand why the GP assessed the appellant as independent with doing all of his DLA. He could only do these things when he is not experiencing pain, and that is not very often. The specialist may be more aware of the impact of his conditions.
- The appellant can dress himself but he cannot groom himself when he wants to. He has to wait until he is feeling up to it. Toileting is a problem for the appellant because it takes him so much time.
- For shopping, either the appellant’s room-mate or she will take him to the store and they do the carrying for him. The appellant has been asked to leave a store because he appeared so unkempt.
- The appellant tried to do a job but he was too weak and did not have the physical stamina to get the job completed. He needed help. His body flushes out the iron, which he takes every day.
- The CT scan also showed an issue with the appellant’s liver and hiatus hernia, which is part of the appellant’s health that the ministry should also have taken into consideration.

At the hearing, the appellant stated:

- He has had his medical conditions for close to 20 years and the specialist office expressed shock that he was not already on disability since he has missed appointments because he is in so much pain.
- He could only lift 35 lbs. for a few seconds and he definitely could not carry it anywhere.
- He can walk 4 blocks but there would have to be a washroom for him to use along the way. Every morning, from about 4:00 to 7:00 am, he is in the washroom 3 to 4 times.
- When he eats a meal, he experiences pain with every bite and he cannot eat too much.
- 90% of the day he is in pain, although the intensity varies throughout the day.
- He has bleeding ulcers and he has blood in his stool.
- It is hard for him to cope. He desperately wants to work but he physically cannot.
- He cannot walk 4 blocks without his pain being “through the roof.” He cannot sit for any period of time. He can shower, but not whenever he wants to. He often only showers every 5 days, when he is able.
- He cannot do a sitting job and he cannot stand or walk too long. He has abdominal pain and cramping and he cannot conceive of a job that he could do.
- He finds that the GP does not listen very well as he often appears to be distracted. He believes that the GP’s assessment of his abilities is not accurate. The GP did not ask him any questions when completing the reports.

The ministry relied on the reconsideration decision, as summarized at the hearing. At the hearing, the ministry added that the wording in the conclusion of the Medical Imaging Report dated February 13, 2018 discounted definite acute active inflammation of Crohn disease at that time and the references, instead, are to a chronic condition.

Admissibility of Additional Information

The ministry objected to the admissibility of the additional letter from the specialist and the hospital appointment confirmation as these documents were not before the ministry at reconsideration. The panel reviewed the documents and determined that the information provided clarification of the status of the appellant's Crohn's disease and the treatment for his anemia, which corroborated information before the ministry at reconsideration as relating to medical conditions diagnosed in the PWD application. The panel also admitted the oral testimony on the appellant's behalf as being in support of, and tending to corroborate, the impact from medical conditions referred to in the PWD application, which was before the ministry at reconsideration. Therefore, the panel admitted this additional information in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

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

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

Persons with disabilities

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

The EAPWDR provides as follows:

Definitions for Act

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

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

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

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

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

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

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

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

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

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

if qualifications in psychology are a condition of such employment.

Part 1.1 — Persons with Disabilities

Alternative grounds for designation under section 2 of Act

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

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;

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

Severe Physical Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical impairment. The ministry acknowledged that the GP diagnosed the appellant with Crohn's Disease, with an onset in 2004, and anemia iron deficiency, and wrote that his Crohn's Disease "is in poor condition" and the appellant "follows the treatment as advised but despite this he continues to suffer pain, cramping, numerous BM and bleeding."

The ministry also considered the letter dated February 26, 2018, in which the GP reiterated that the appellant's Crohn's disease is not in good control, that he sees a gastroenterologist regularly, and the most recent CT scan still shows evidence of disease. The ministry considered the GP's comments that the appellant has numerous BM a day often stained with blood, he gets chronic abdominal pain and cramping, and he is unable to eat at times. The GP added that the appellant feels lethargic and weak due to his disease and he is underweight and anemic with iron deficiency anemia due to chronic blood loss. The GP concluded his letter by stating that due to his symptoms, the appellant is unable to perform his duties at work, is unfit for any gainful employment due to his uncontrolled disease and, therefore, the GP supports his application for disability. The panel finds the ministry reasonably determined that employability is not taken into consideration for determining eligibility for the PWD designation as it is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

The ministry also considered the appellant's information in his self-report, where he wrote that he has ulcers, Crohn's disease and epilepsy. The appellant wrote that he has inflammation in his intestines and he is always in pain. The pain he suffers is sharp, severe, and intense. At the hearing, the appellant clarified that 90% of the day he is in pain, although the intensity varies throughout the day. In his self-report, the appellant wrote that on a typical day, he feels unwell and deals with diarrhea. He has tried numerous medications to no avail and he takes injections weekly. The appellant also wrote that he suffers from anemia and takes iron supplements. At the hearing, the appellant provided a hospital appointment confirmation dated March 29, 2018 for him to receive 4 treatments of MD IV Iron over the following month. The appellant wrote that he is always feeling weak and lacking energy and his joints are inflamed. The appellant wrote that he wears sunglasses any time he leaves home as lights that are bright, flashing or flickering can trigger a seizure. He has vision disturbances, frequent migraines and seizures and, sometimes, his migraines are so intense he is forced to spend the day in bed.

At the hearing, the ministry added that the wording in the conclusion of the Medical Imaging Report dated February 13, 2018 discounted definite acute active inflammation of Crohn disease at that time and the references, instead, are to a chronic condition. The appellant and his mother highlighted that the appellant has several medical conditions that impact his daily functioning as well as the Crohn's disease, specifically: bleeding ulcers, anemia iron deficiency, epilepsy, an abnormality with his liver that is being investigated, a hiatus hernia, and joint pain, especially in his shoulder and back as a result of a fall from a roof in September 2017.

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. The panel finds that the ministry reasonably concluded that a diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. The panel finds that the ministry reasonably required sufficient evidence to determine the nature of the impairment and the extent of its impact on daily functioning in order to assess the severity of the impairment.

The ministry reasonably considered the impacts of the appellant's diagnosed medical condition on his daily functioning, beginning with the assessments provided in the MR and the AR. The ministry considered that the GP assessed the appellant's functional skills in the MR as having little limitation, being able to walk more than 4 blocks unaided on a flat surface, climb 5 or more steps unaided, lift 15 to 35 lbs., and no limitation with remaining seated. At the hearing, the appellant's mother stated that while the appellant could lift 35 lbs. for a brief time, he is so thin, he is down to 115 lbs. at a height of 5'9," that he could not carry this weight. The appellant stated at the hearing that he could only lift 35 lbs. for a few seconds and he definitely could not carry it anywhere. In his Request for Reconsideration, the appellant wrote that he cannot walk more than a block, that he cannot do anything physical as it brings on pain. At the hearing, the appellant stated that he can walk 4 blocks but there would have to be a washroom for him to use along the way and he could not walk this distance without his pain being "through the roof." He cannot sit for any period of time. The appellant stated that he disagrees with the GP's assessment of his abilities and the GP did not ask him any questions when completing the reports.

The ministry considered the GP's assessment in the AR was also for independence with all aspects of the appellant's mobility and physical ability, specifically: walking indoors and walking outdoors, climbing stairs, standing, lifting, and carrying and holding. The ministry considered that the GP reported that the appellant does not require an aid for his impairment and the GP did not identify an assistive device as routinely used by the appellant, crossing out this part of the AR. In the additional comments to the functional skill assessment, the GP focused on the appellant's inability to work as he wrote "please help this young man" and the appellant "is unable to work as a labourer due to his illness." Although the appellant and his mother stated at the hearing that the GP's assessment of the appellant's physical functioning is not accurate, when given an opportunity to amend his assessment in the letter of February 26, 2018, the GP did not do so. Rather, he again focused on the appellant's inability to work, which is not a consideration for the PWD designation, as previously discussed,

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

Given the GP’s assessment of independent functional skills in the high to moderate range, as well as the emphasis placed by the GP, in both the MR and his subsequent letter, on the appellant’s inability to work, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

Severe Mental Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided was sufficient evidence of a severe mental impairment. The panel notes that although the diagnosis of “head trauma” was not specified as a brain injury, in the Hospital Discharge Summary Report dated September 17, 2015, an MRI of the appellant’s head raised a query for a possible lesion to the temporal lobe; however, there was no further information provided on the appeal regarding further investigation of this issue. The ministry considered that the GP reported that the appellant experiences significant deficits with cognitive and emotional functioning, while none were identified by the GP, and the GP wrote that the appellant has “...anxiety at times depression.” In his self-report, the appellant wrote that he goes through a great deal of stress financially, physically and emotionally, and he has panic attacks and anxiety almost daily. The appellant wrote that his moods will go up and down based on how he is feeling (physically) and it is hard to maintain relationships.

At the hearing, the appellant’s mother stated that although the GP mentioned depression, the appellant’s condition is much more serious than that. The appellant’s mother stated that the appellant has been suicidal at times and she has had to encourage him to find a reason to want to live. She stated that the GP is not aware of the extent of the appellant’s depression, the appellant has contacted mental health services without the help of his doctor, and he is going to join a depression support group, with the first meeting later this month.

The ministry reasonably considered that the GP assessed no major impacts to daily cognitive and emotional functioning, with moderate impacts in the areas of bodily functions and emotion. At the hearing, the appellant’s mother stated that on the assessment in the MR, the GP indicated a minimal to moderate impact to bodily functions, but there is a major impact to this area. The appellant has major sleep disturbance as he is up several times throughout the night to use the washroom. The ministry wrote that all other areas of cognitive and emotional functioning are identified by the GP as having minimal or no impact on the appellant’s daily functioning. The ministry also considered that the GP reported that the appellant has no difficulties with communication.

While the GP indicated a need for periodic support/supervision with aspects of the appellant's social functioning (making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others and dealing appropriately with unexpected demands), the ministry reasonably considered that the GP's comment "family helps him" does not explain the type or the degree of the assistance that the appellant requires to manage. In his self-report, the appellant wrote that he cannot function in large groups or crowds. The appellant also wrote that his fear of diarrhea and pain in public keeps him isolated.

At the hearing, the appellant's mother stated that the appellant used to be a social and outgoing person and now he just "exists." She stated that the appellant cannot go out into the community if he is spending his time in pain in the bathroom. Although the appellant and his mother stated at the hearing that the GP's assessment of the appellant's mental functioning is not accurate, when given an opportunity to amend his assessment in the February 26, 2018 letter, the GP did not refer to the appellant's mental functioning. There was no further information provided on the appeal regarding the impacts to the appellant's mental health.

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

Restrictions in the ability to perform DLA

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

According to the legislation, Section 2(2)(b) of the EAPWDA, the ministry must assess direct and significant restrictions to DLA in consideration of the opinion of a prescribed professional, in this case the appellant's GP. 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." The panel notes that both the MR and the AR forms direct the person completing those forms to explain in more detail the nature of any continuous restrictions and/or the nature, frequency and duration of any periodic restrictions to an applicant's ability to perform DLA. 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.

When asked to describe the mental or physical impairments that impact the appellant's ability to manage DLA, the GP left this section of the AR blank. The GP reported that the appellant has not been prescribed any medications or treatments that interfere with his ability to perform DLA. The ministry also considered that, in the AR, the GP indicated that the appellant is independently able to manage all his DLA, specifically: the move about indoors and outdoors DLA, the personal care DLA, the basic housekeeping DLA, the shopping DLA, the meals DLA, the paying rent and bills DLA, the medications DLA, and the transportation DLA.

In his self-report, the appellant wrote that he is forced to take public transportation but constant diarrhea makes that impossible. The appellant wrote that he struggles to care for himself and, at times, he goes 5 days or more without a shower. The appellant wrote that he is dependent on his mother for his basic needs as she does his cooking, his laundry, picks up his prescriptions and gives him injections, and drives him to his medical appointments. In his Request for Reconsideration, the appellant wrote that he is able to take care of most of his DLA in between all the pain he gets and he needs to take a lot of breaks. The appellant wrote that he is unable to work. At the hearing, the appellant stated that it is hard for him to cope, that he desperately wants to work but he physically cannot. The appellant stated that he cannot do a sitting job and he cannot stand or walk too long. He has abdominal pain and cramping and he cannot conceive of a job that he could possibly do.

At the hearing, the appellant's mother stated that she cannot understand why the GP assessed the appellant as independent with doing all of his DLA. She stated that the appellant could only do these things when he is not experiencing pain, and that is not very often. The specialist may be more aware of the impact of his conditions, as she believes that the GP completed the forms focusing on the appellant's very best day. The appellant's mother stated that she is the appellant's caregiver. While the appellant can dress himself, he cannot groom himself when he wants to and has to wait until he is feeling up to it. Toileting is a problem for him because it takes so much time. For shopping, either the appellant's room-mate or she will take him to the store and they do the carrying for him. She picks up his prescriptions and injects the medications into his stomach once per week. She does the appellant's laundry because he is unable to do this for himself. The appellant will start cooking a meal and then he will drop to the floor in pain. He cannot stand at a bus stop for too long. The appellant tried to do a job but he was too weak and did not have the physical stamina to get the job completed.

In the letter dated February 26, 2018, the GP did not amend his previous assessment of the appellant's ability to perform his DLA and, instead, indicated that the appellant is unfit for any gainful employment due to his uncontrolled disease.

Given the GP's assessment of the appellant's independence in performing all tasks of all listed DLA, with no requirement of assistance by another person or by an assistive device, and a lack of a confirmation by the GP as the prescribed professional of the need for assistance in the particular areas identified by the appellant and his mother, the panel finds that the ministry reasonably determined that the evidence is insufficient to show that the appellant's overall ability to perform his DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

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

While the GP indicated that help for DLA is provided by the appellant's family, and the appellant stated that he receives help primarily from his mother, 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.