

### **PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated March 21, 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 December 8, 2017, an undated medical report (MR) and an assessor report (AR) dated December 8, 2017 and both completed by a General Practitioner (GP) who had seen the appellant once on November 17, 2017.

The evidence also included the following documents:

- 1) Consultation Report dated March 13, 2014;
- 2) Questionnaire dated March 21, 2018 completed by the GP; and,
- 3) Request for Reconsideration dated February 12, 2018 with letter dated March 21, 2018 from an advocate on behalf of the appellant.

### ***Diagnoses***

In the MR, the GP diagnosed the appellant with left hemiplegic cerebral palsy since birth. When asked in the AR to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities (DLA), the GP wrote that the appellant has left hemiplegic cerebral palsy.

### ***Physical Impairment***

In the MR and the AR, the GP reported:

- With respect to the appellant's health history, "his condition is severe, and his impairment is permanent. He cannot use his left hand and arm. He cannot lift objects which require the use of both hands....His left leg has muscle atrophy."
- 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, has no limitation with remaining seated, and can do no lifting, with a note by the GP "with left hand/arm." The GP did not provide additional comments to the functional skills.
- In the AR, the appellant is assessed as independent with most aspects of his mobility and physical ability, specifically: walking indoors and walking outdoors, climbing stairs, and standing. For lifting, and carrying and holding, the appellant requires continuous assistance from another person. The GP provided no explanation.
- In the section of the AR relating to assistance provided, the GP identified splints and braces as assistive devices routinely used by the appellant, and wrote that the appellant "has flat feet, needs feet orthoses, and left knee brace. He also would benefit from using left hand splint."

In the Questionnaire dated March 21, 2018, the GP indicated that:

- The appellant's disabling condition is left hemiplegic cerebral palsy and he had brain hemorrhage and two shunt surgeries shortly after birth. He had left lower leg surgery.
- He has diminished ROM [range of motion] in his left shoulder, elbow and wrist.
- He has left claw hand and deformities in his left fingers.

- He has muscular atrophy in the left leg.

In the Consultation Report dated March 13, 2014, the physician indicated that:

- Background information includes that the appellant “participates in bike riding, running, and playing ball games. He has unlimited endurance. He falls once a month. He receives physiotherapy services on a consultative basis and does exercises at school.”
- Based on the gait analysis, the recommendations include: “strengthening his heelcord complex as well as his dorsiflexors” and “a pair of foot orthoses to support the medial longitudinal arch and relieve the symptomatology.”

In his self-report, the appellant wrote:

- During the day, he relies on his right hand for most activities. He gets tired easily only using one side of his body.
- Sleeping at night can be uncomfortable.
- He was born with this disability and it has prevented him from achieving his best normal function on a daily basis.
- His left hand and left foot are not functioning normally.
- He has a shunt in his head and had several head operations since birth.
- He has trouble lifting heavy objects, whether it is lifting boxes or glass cups from higher places. He is unable to grip certain items. Any task that needs the use of both hands is difficult to impossible.

In his Request for Reconsideration, the appellant’s advocate wrote:

- The appellant walks with a marked limp and has limited functionality in one arm.
- Having lived with his disability all of his life, the appellant occasionally underestimates the degree of impairment caused by his disability, not having another functional norm against which to compare it, as is the case for people who acquire disabilities later in their lives.

### ***Mental Impairment***

In the MR and the AR, the GP reported:

- There are no difficulties with communication and no significant deficits with cognitive and emotional function.
- The appellant has a good ability to communicate in all areas, specifically speaking, reading, writing, and hearing.
- With respect to daily impacts to the appellant’s cognitive and emotional functioning, the GP indicated that there are no impacts to any of the listed areas of functioning, specifically: bodily functions, consciousness, emotion, impulse control, insight and judgment, attention/concentration, executive, memory, motivation, motor activity, language, psychotic symptoms, other neuropsychological problems and other emotional or mental problems. The GP did not provide any additional comments.
- The appellant is independent with all aspects of social functioning, requiring no support/supervision with any of the aspects of his social functioning. Specifically, he is independent with making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The appellant has good functioning in both his immediate and 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 Questionnaire dated March 21, 2018, the GP indicated that: the appellant "...has developmental delay. He feels frustrated when he cannot perform different things."

### ***Daily Living Activities (DLA)***

In the MR and the AR, the GP reported:

- Regarding the appellant's health history, the GP wrote: "doing the buttons, cutting his nails, washing, cooking are difficult for him. His mother is helping him."
- The appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform DLA.
- The appellant is independent with the move about indoors and outdoors DLA.
- The appellant is independent with all tasks of the medications DLA (filling/refilling prescriptions, taking as directed, and safe handling and storage), and the transportation DLA (getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation).
- For the personal care DLA, the appellant requires periodic assistance from another person with the task of bathing, and is otherwise independent with all other tasks (dressing, grooming, toileting, feeding self, regulating diet, transfers in/out of bed, and transfers on/off chair).
- Regarding the basic housekeeping DLA, the appellant requires periodic assistance from another person with both housekeeping and laundry.
- For the shopping DLA, the appellant requires periodic assistance from another person with the task of carrying purchases home, and is otherwise independent with all other tasks (going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases).
- For additional comments, the GP wrote that the appellant "cannot use his left hand and arm properly, needs help with bathing, cutting his nails, doing buttons, cooking, lifting objects, which require the use of both hands."
- For the meals DLA, the appellant is independent with the task of meal planning and otherwise requires periodic assistance from another person with all other tasks (food preparation, cooking, and safe storage of food).
- Regarding the pay rent and bills DLA, the appellant requires periodic assistance from another person with all tasks, specifically banking, budgeting and pay rent and bills.
- The GP added comments that "his mother is helping him. She is doing the shopping, cooking, banking, payments."

In the Questionnaire dated March 21, 2018, the GP indicated that:

- The appellant "...needs help with dressing, bathing, other ADL's and IADL's."
- Asked whether the appellant's disabilities cause significant restrictions performing DLA, the GP wrote: "he needs help with dressing (buttons, zippers), bathing, cutting his nails, cooking. He cannot lift boxes, groceries."
- Asked what assistance the appellant requires to manage his DLA, the GP wrote that the appellant needs help with "cutting nails, bathing, doing groceries, cooking."

In his self-report, the appellant wrote that:

- In the morning, he struggles to wash himself, to use his hand only.
- His disability makes it difficult to use buttons, zippers, or to tie his shoe laces.
- Any task that needs the use of both hands is difficult to impossible.
- Self care, like bathing, washing his back, cutting his nails, cooking for himself, are a challenge and that is why he ends up asking for help.

### ***Need for Help***

- In the AR, the GP reported that the appellant's family and friends help with his DLA.
- In the section of the AR relating to assistance provided, the GP identified splints and braces and wrote that the appellant "has flat feet, needs feet orthoses, and left knee brace. He would also benefit from using left hand splint."

### ***Additional information***

In his Notice of Appeal dated April 3, 2018, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that he has been denied PWD designation for the second time.

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

- 1) Letter dated June 22, 2003 to the appellant's elementary school in which a pediatric consultant wrote that:
  - The appellant's main medical difficulties are neurological.
  - The Occupational and Physical therapists observed that the appellant has a short attention span, his behavior may be impulsive and he tends to hit out at his siblings and does not respond well if reprimanded.
  - He shows gross motor difficulties in particular with the left. He has great difficulty with higher level balance skills.
  - The appellant showed delayed developmental milestones. He has not received a formal Psycho-Educational Assessment.
  - As regards to his self-care skills, he can feed himself and drink from a regular cup. He is developing dressing skills. He has difficulties with putting on his socks or doing up his zippers. He is not independent for managing all aspects of his clothing because of his poor balance.
  - He may require the help of an aide.
- 2) Physical Disability/Chronic Health Impairment audit checklist dated January 10, 2014, which indicated that:
  - There is documentation of a medical diagnosis in nervous system impairment that impacts movement or mobility and musculoskeletal condition. There is evidence of a medical diagnosis of CP [Cerebral Palsy] on May/June 22, 2003 made by the pediatric consultant.
  - Assessment documentation shows that the student with complex developmental behavior conditions exhibits an array of complex needs in two or more domains which significantly impacts the student's education and achievement. The following domains are significantly impacted: academic/intellectual functioning, social-emotional functioning, self determination/independence, physical functioning, communication.
  - There is documented evidence that a current IEP [Individualized Education Program] is in place, the IEP has individualized goals and measurable objectives, the goals correspond to the category in which the student is identified, the services outlined in the IEP relate to the identified needs of the student, the student is receiving special education services to address the needs identified in the assessment documentation that are beyond those offered to the general student population and are proportionate to the level of need, the student is being offered learning activities in accordance with the IEP, the IEP outlines methods for

measuring progress in relation to the IEP goals, and a parent was offered the opportunity to be consulted about preparation of the IEP.

- 3) Submission dated April 17, 2018 by an advocate on behalf of the appellant; and,
- 4) Witness statement dated April 23, 2018.

At the hearing, the appellant's teacher and representative for the purposes of the hearing stated that:

- She was shocked that the appellant did not receive the PWD designation as it had been assumed that the appellant would be "transitioned" to PWD when he became an adult. He has received the "D" designation by the school district and this designation went through a provincial audit in 2014. The "D" designation is also stringently reviewed at the district level. The student must have a severe disability or a chronic health impairment. This is not a matter of requiring a little extra help but, rather, a need for intensive programming. They have to look to see what the specific learning needs are.
- In the Questionnaire, the GP referred to the appellant's "frustrations," but that is putting it lightly. The appellant needed help to be prepared to attend the hearing.
- As stated in the advocate's letter, the appellant has lived with his disability all of his life and he does not have another functional norm against which to compare.
- It is fair to say that the appellant will never live independently. He walks with a limp and has an under-developed arm.
- When the appellant first came to the school, it was clear that there were issues.
- The pediatric consultation was done, but not a full-scale IQ test. At that time, they recommended Physical or Occupational therapy support and modified programming.
- There has never been a Psycho-Educational Assessment of the appellant done at school. They did not consider that this would be an issue as they assumed he would be getting the PWD designation.
- The appellant also required modified programming at the secondary school level. They do not do this lightly.
- They have had to look at EA [educational assistant] support since the appellant has challenging behaviors because of the things that he has to deal with.
- In 2011/ 2012, they looked into getting Occupational and Physical therapy support at home. The Occupational therapist recommended that the appellant get a splint for his hand and a leg brace. A community resource was to pay for the splint and the Occupational therapist (OT) followed up with hand exercises. The OT's objective was to maintain the ROM and not to improve what he had before. In February 2012, the OT recommended that the appellant continue in the special program.
- In March 2014, it was determined that the appellant's reading comprehension was at a low grade range.
- She has observed that the appellant can be a bit "stubborn," which can be a good thing when it has helped him to fulfill his potential. He has handled things well and is coping with his life. She has 30 years of experience in specialized special education and the appellant stands out for her because of his determination and his attempts to be independent.
- In comparison to the appellant's peers, however, he has a severe disability. Teaching life skills is always about increasing independence. Rather than considering only his DLA, consideration must also be given to what the student will be doing to support themselves after they graduate. It is clear that the appellant will not be independently supporting himself.
- The appellant has had minimal work experience and it was not a proper work placement as his work experience was highly modified. He has a need for help.

- The appellant is not someone who can manage his finances, such as banking, or shopping. He can do cleaning, but it is the bigger picture of earning an income and being able to manage an apartment.
- The assessments done by the GP do not accurately reflect the appellant's situation. It is obvious that the GP did not understand the appellant's background and his family situation.

At the hearing, a long-time friend of the appellant's family stated:

- She has known the appellant since his birth. Over the years, she has seen a young man who has struggled with his disability with grace, mostly due to his reliance on his mother's care and assistance.
- The appellant has a severe and permanent physical disability, which challenges him on a daily basis. She could not profess to understand his life unless she was to tie one hand and one leg for 24 hours and see if she could function "normally."
- A one-hour assessment by the GP cannot be compared to a lifetime of daily observation by family and friends.
- Regarding his mental health, the appellant has had to cope with seeing difference in growth and development between him, his siblings, school mates and peers. He has been behind in school. He sleeps late into the day and his disability is impeding his progress in life. He has no plans. She is not a doctor, but the appellant may be depressed. The assessment has to also consider the variable degrees of emotional pain and suffering he experiences day in and day out.
- The appellant's disability has affected the whole family as his mother has to give him a different level of attention and care.
- The appellant is going to need special consideration, not only at home but within the community and work force in his adult life.
- The appellant's siblings do more and the appellant always has to be assisted. His brothers and sisters also help him. He cannot live an independent life.
- The appellant needs a second person there with him all the time to help him do chores, on a daily basis.
- It does not seem right that, as a child, the appellant would receive so much support in the school system and then, when he became an adult, he is thrown out into the community and has to fend for himself. The school district has done a good job of supporting the appellant all along.
- The picture needs to shift to the appellant as he has been presented at the hearing instead of the different picture reflected in the doctor's forms. While the doctor does not state what the appellant can do with his right hand, she can say from observation that it is mostly used to support his left hand.

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

- The appellant has had a disability since birth and she has taken care of him.
- She has seen the appellant struggle and she can see no reason why he would be denied the PWD designation. She believes the medical evidence has already been provided.

At the hearing, the appellant stated that:

- He has gone through so much. He has tried to do his best in elementary school and then getting into high school and keeping up with the homework. Even changing clothes for PE has been a struggle. It has always been so hard to keep up with everyone else.

- He has coped with taking different courses and trying to meet the expectations to pass.
- He only met with the GP once because his previous family physician had retired.

The ministry relied on the reconsideration decision, as summarized at the hearing. At the hearing, the ministry stated that should the appellant not succeed in his appeal, he is entitled to bring another application based on updated assessments and new information.

***Admissibility of Additional Information***

The ministry did not object to the admissibility of the additional documents. The panel reviewed the documents and determined that the information in the documents and in the oral testimony on behalf of the appellant provided elaboration of the extent of the appellant's impairment, which corroborated information before the ministry at reconsideration as relating to medical conditions diagnosed in the PWD application. Therefore, the panel admitted this additional information in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

The arguments on the appellant's behalf, including the letter dated April 17, 2018 from an advocate, will be addressed in Part F- Reasons for Panel Decision, below.



## **PART F – REASONS FOR PANEL DECISION**

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

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

### **Persons with disabilities**

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

The EAPWDR provides as follows:

### **Definitions for Act**

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

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

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

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

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

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

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

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

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

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

if qualifications in psychology are a condition of such employment.

### **Part 1.1 — Persons with Disabilities**

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

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

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

- (d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the Community Living Authority Act to assist that family in caring for the person;
- (e) a person who is considered to be disabled under section 42 (2) of the Canada Pension Plan (Canada).

### **Severe Physical Impairment**

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical impairment. The ministry acknowledged that the GP diagnosed the appellant with left hemiplegic cerebral palsy since birth and that the GP wrote that “his condition is severe, and his impairment is permanent,” “he cannot use his left hand and arm” and “his left leg has muscle atrophy.”

The ministry also considered the information from the GP, in the Questionnaire dated March 21, 2018, that the appellant has “diminished ROM in his left shoulder, elbow and wrist” and he has “left claw hand and deformities in his left fingers,” as well as “muscular atrophy in the left leg.” In his self-report, the appellant wrote that he was born with this disability and it has prevented him from achieving his best normal function on a daily basis. At the hearing, the appellant’s teacher stated that the appellant will never live independently: he walks with a limp and has an under-developed arm. She stated that the appellant has had OT and Physical Therapy (PT) support at home. The OT recommended that the appellant get a splint for his hand and a leg brace. A friend of the appellant’s family stated at the hearing that the appellant has a severe and permanent physical disability, which challenges him on a daily basis. She suggested that we must consider what it would be like to have one arm and one leg tied and whether the body could then function “normally.”

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 no limitation with mobility, being able to walk more than 4 blocks unaided on a flat surface, climb 5 or more steps unaided, and no limitation with remaining seated. The ministry considered that while the GP reported that the appellant can do no lifting, the GP noted “with left hand/arm” and did not indicate how much weight the appellant can lift with his right hand/arm. The ministry considered that the GP thereby indicated that the appellant is capable of lifting some weight with his right hand and arm. In the health history of the MR, the GP wrote that the appellant cannot lift objects which require the use of both hands. In his self-report, the appellant wrote that he relies on his right hand for most activities and he gets tired easily since he is only using one side

of his body. At the hearing, a friend of the appellant's family stated that although the doctor does not state what the appellant can do with his right hand, she can say from observation that his right hand is mostly used to support his left hand.

The ministry considered the GP's assessment in the AR was also for independence with most aspects of the appellant's mobility and physical ability, specifically: walking indoors and walking outdoors, climbing stairs, and standing. While the GP indicated that the appellant requires continuous assistance with lifting and carrying and holding, there is an indication that the appellant can lift and carry and hold with his right hand and arm. The appellant's advocate wrote, in the letter dated March 21, 2018, that the appellant has limited functionality in one arm and, in the April 17, 2018 submission, that the appellant "has one markedly underdeveloped arm which has very limited functional ability." At the hearing, the appellant's teacher stated that the assessments done by the GP do not accurately reflect the appellant's situation. As well, the friend of the appellant's family stated that a one-hour assessment by the GP cannot be compared to a lifetime of daily observation by family and friends. However, in the Questionnaire dated March 21, 2018, the GP was given an opportunity to clarify the appellant's lifting abilities with his right arm and hand or to change the original assessment, and the GP did not amend her functional skills assessment.

In the letter dated June 22, 2003, a pediatric consultant wrote that the appellant showed gross motor difficulties in particular with the left, and that he had "great difficulty with higher level balance skills." However, the ministry also considered that a physician reported in the Consultation Report dated March 13, 2014 that the appellant "participates in bike riding, running, and playing ball games," he has "unlimited endurance," also "falls once a month," but he can walk independently, with a recommendation for foot orthoses.

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, with the exception of lifting with his left hand and arm and with an absence of information about restrictions to the use of his right hand and arm, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

### **Severe Mental Impairment**

In the reconsideration decision, the ministry was not satisfied that the information provided was sufficient evidence of a severe mental impairment. The ministry considered that the GP reported in the Questionnaire that the appellant "...has developmental delay" and "he feels frustrated when he cannot perform different things." At the hearing, the appellant's teacher stated that referring to the appellant's "frustrations," is putting it lightly. She stated that the appellant needed help to be prepared to attend the hearing.

The appellant's teacher stated that it had been assumed that the appellant would be "transitioned" to PWD when he became an adult since he has received the "D" designation by the school district and this designation went through a provincial audit in 2014. For the "D" designation, the student must have a severe disability or a chronic health impairment and this is not a matter of the student requiring a little extra help but, rather, a need for intensive programming. The appellant's teacher highlighted the Physical Disability/Chronic Health Impairment audit checklist dated January 10, 2014, which indicated that the following domains were significantly impacted with the appellant: his academic/intellectual functioning, social-emotional functioning, self determination/independence, physical functioning, and communication. The panel notes that this audit information does not provide detail about the degree of the significant impacts, nor the level of assistance required, for each of the aspects.

In the letter dated June 22, 2003, a pediatric consultant wrote that the appellant's main medical difficulties are neurological. At that time, the appellant showed delayed developmental milestones but he had not received a formal Psycho-Educational Assessment, and the appellant's teacher stated at the hearing that a formal Assessment has not been conducted to date. The pediatrician wrote that the OT and PT observed that the appellant had a short attention span and his behavior "may be impulsive." At the hearing, the appellant stated that: he has gone through so much and he has tried to do his best and to keep up with the homework. The appellant stated that it has always been so hard for him to keep up with everyone else.

At the hearing, the friend of the appellant's family stated that the appellant has had to cope with seeing difference in growth and development between him, his siblings, school mates and peers, and he has been behind in school. She stated that the appellant currently sleeps late into the day, he has no plans, and his disability is impeding his progress in life. She stated that she believes the appellant may be depressed. She stated that an assessment of the appellant has to consider the variable degrees of emotional pain and suffering he experiences every day.

The panel finds that the ministry reasonably considered that the GP reported in the MR that the appellant has no difficulties with communication and no significant deficits with cognitive and emotional functioning. The ministry considered that in the AR the GP also indicated that the appellant has a good ability with all listed areas of communication and there are no impacts to any of the listed areas of cognitive and emotional functioning. The ministry reasonably considered that GP reported that the appellant is independent with all aspects of his social functioning and that he does not require support/supervision in any of the areas, having good functioning in both his immediate and his extended social networks.

The appellant's teacher and the family friend stated at the hearing that the assessments done by the GP do not accurately reflect the appellant's situation. However, given the GP's assessment of complete independence in all aspects of mental functioning, and the lack of elaboration regarding the impacts from the appellant's developmental delay in the Questionnaire dated March 21, 2018, the panel finds that there is insufficient evidence of specific impacts to the appellant's mental functioning, outside the school context, and the associated degree of assistance required.

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 wrote that the appellant has left hemiplegic cerebral palsy. The GP reported that the appellant has not been prescribed any medications or treatments that interfere with his ability to perform DLA. The ministry considered that, in the AR, the GP indicated that the appellant is independently able to manage many tasks of his DLA and that he requires periodic assistance from another person with some of the tasks of DLA, specifically: bathing, laundry, basic housekeeping, carrying purchase home when shopping, food preparation, cooking, safe storage of food, banking, budgeting, and pay rent and bills. The GP commented in the MR that: "doing the buttons, cutting his nails, washing, cooking are difficult for him," "his mother is helping him," and in the AR: "cannot use his left hand and arm properly," "needs help with bathing, cutting his nails, doing buttons, cooking, lifting objects which require the use of both hand" and "his mother is helping him: she is doing the shopping, cooking, banking, payments." The ministry reasonably considered that the comments included by the GP do not describe the degree or frequency of the periodic assistance required with the listed tasks, in order for the ministry to determine that the assistance is required for these tasks for extended periods of time, as required in Section 2(2)(b)(i)(B) of the EAPWDA. The ministry wrote that some of the tasks, for which the GP indicated the appellant requires assistance, relate to mental functioning (such as safe storage of food, budgeting, and pay rent and bills); however, the GP did not report any impacts to the appellant's cognitive and emotional functioning.

In his self-report, the appellant wrote that he struggles to wash himself in the morning and his disability makes it difficult to use buttons, zippers, or to tie his shoe laces. The appellant wrote that any task that needs the use of both hands is "difficult to impossible." The appellant wrote that self care, like bathing, washing his back, cutting his nails, cooking for himself, are a

challenge and that is why he ends up asking for help. While the pediatric consultant wrote about the appellant's self-care skills in the letter dated June 22, 2003, the panel finds that little weight can be placed on information that is dated by 15 years as the ministry must determine the appellant's current ability to perform his DLA.

At the hearing, the appellant's teacher stated that she has 30 years of experience in specialized special education and the appellant stands out for her because of his determination and his attempt to be independent. She stated that, in comparison to the appellant's peers, however, the appellant has a severe disability. She stated that the appellant is not someone who can manage his finances, such as banking, or to be able to do his shopping. She stated that the appellant can do house cleaning, but it is the bigger picture of earning an income and being able to manage an apartment that is the concern.

The appellant's teacher stated that rather than considering only the appellant's ability to perform his DLA, consideration must also be given to what the student will be doing to support themselves after they graduate, and the fact that the appellant will not be independently supporting himself. She stated that the appellant has had minimal work experience and his was not a proper work placement as his work experience was highly modified due to his need for help. As for finding work and/or working, the panel notes that employability is not a consideration for 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 reasonably considered that, when provided an opportunity to supplement the previous assessment, the GP indicated in the Questionnaire dated March 21, 2018, that: the appellant "...needs help with dressing, bathing, other ADL's and IADL's." The GP also wrote that the appellant "needs help with dressing (buttons, zippers), bathing, cutting his nails, cooking. He cannot lift boxes, groceries." Asked what assistance the appellant requires to manage his DLA, the GP wrote that the appellant needs help with "cutting nails, bathing, doing groceries, cooking," without elaborating on the frequency or duration of the assistance required with these tasks, or specifying the "other ADL's and IADL's" that may be impacted.

Given the GP's assessment of the appellant's independence in performing many of the tasks of DLA, with a lack of detail regarding the extent of the periodic assistance required with some tasks or an explanation of the connection to an impairment of mental functioning, 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 friends, and the appellant would benefit from feet orthoses, left knee brace, and a left hand splint, 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.