

## **PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated April 19, 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 7, 2017, a medical report (MR) and an assessor report (AR) both dated December 14, 2017 and both completed by a General Practitioner (GP) who has known the appellant for 8 years and has seen the appellant 2 to 10 times in the past 12 months.

The evidence also included the appellant's Request for Reconsideration dated March 6, 2018.

### ***Diagnoses***

In the MR, the GP diagnosed the appellant with cerebral palsy (CP), diabetes with an onset in 2000, and bilateral pulmonary emboli, with an onset in 2016. 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: "limited gait secondary to CP."

### ***Physical Impairment***

In the MR and the AR, the GP reported:

- With respect to the appellant's health history, "gait limitations, impairment of some fine motor skills, secondary to CP. Bilateral pulmonary emboli has resulted in permanent and chronic respiratory compromise."
- The appellant requires an aid for his impairment. The GP wrote: "requires a cane for walking, at times."
- In terms of functional skills, the appellant can walk 2 to 4 blocks unaided on a flat surface, climb 5 or more steps unaided, can lift 2 to 7 kg. (5 to 15 lbs.) and has no limitation with remaining seated.
- The appellant is continuously restricted with the move about indoors and outdoors DLA. Asked to describe the degree of restriction, the GP left this section incomplete.
- When asked to describe the assistance that the appellant needs with DLA, the GP wrote "independent, but requires extra time due to impaired/restricted mobility."
- In the AR, the appellant is assessed as taking significantly longer than typical with all aspects of his mobility and physical ability, specifically: walking indoors and walking outdoors, climbing stairs, standing, lifting, and carrying and holding. The GP provided no explanation.
- In the section of the AR relating to assistance provided, the GP identified a cane as an assistive device routinely used by the appellant, and yet wrote with respect to details on any equipment or devices used by the appellant "N/A", or not applicable.

In his self-report, the appellant wrote:

- He was diagnosed with CP as a teenager and when he became an adult, he elected not to go on a permanent disability pension as he felt that he could support himself through working.
- In January 2016 he lost his administrative job due to downsizing of the office he was working in. He has since been unable to find full-time work.
- In August 2016, he had pulmonary embolisms and this further reduced his ability to work. He can no longer support himself through employment.

- He has difficulty walking or standing for long periods, with difficulty breathing and general pain throughout his body.

In his Request for Reconsideration, the appellant' wrote:

- He has recently noticed that he has difficulty standing up from a seated position or even getting out of bed.
- When he climbs stairs, he has to do it slowly and deliberately or he either trips or gets exhausted.
- Walking more than 2 blocks, even slowly, leaves him very tired and winded.

### ***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 or satisfactory 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 major impacts to any of the listed areas of functioning, with moderate impacts to emotion, impulse control, insight and judgment, motor activity, 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 "N/A," or not applicable.

### ***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 not restricted with most DLA, specifically the personal self care DLA, the meal preparation DLA, the management of medications DLA, the basic housework DLA, the daily shopping DLA, the use of transportation DLA, and the management of finances DLA. The appellant is continuously restricted with the move about indoors and outdoors DLA. Asked to describe the degree of restriction, the GP left this section incomplete.
- When asked to describe the assistance that the appellant needs with DLA, the GP wrote "independent, but requires extra time due to impaired/restricted mobility."
- For additional comments to the MR, the GP wrote that the appellant "is highly motivated, hard-working, and minimizes/downplays impact of the disability."
- The appellant takes significantly longer than typical with the move about indoors and outdoors DLA. The GP did not elaborate.
- In the AR, the GP indicated that the appellant is independent with all tasks of all of the listed DLA, specifically: the personal care DLA (dressing, grooming, toileting, feeding self,

regulating diet, transfers in/out of bed, and transfers on/off chair), the basic housekeeping DLA (including laundry), the shopping DLA (going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home), the meals DLA (meal planning, food preparation, cooking, safe storage of food), the pay rent and bills DLA (including banking and budgeting), 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 additional comments to his DLA assessment, the GP wrote that the appellant “self-describes as independent with ADL’s. Requires more than average time with motor-related activities.”
- For additional information, the GP wrote that the appellant is “motivated, hard-working, and minimizes impact disability has on his overall function.”

### ***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 a cane.

### ***Additional information***

In his Notice of Appeal dated May 7, 2018, the appellant expressed his disagreement with the ministry’s reconsideration decision.

At the hearing, the appellant stated that:

- When the original paperwork was completed for his application, there were many things that he did not consider about how it takes him longer to do things. It takes him much longer to get out of bed in the morning. It takes him longer to shower and to cook meals.
- For walking, the blood clots in his lungs cause him to get short of breath and, after 2 blocks, he needs to stop and rest before continuing.
- Climbing the stairs into the hearing venue, he made it up but he had to stop and catch his breath at the top.
- He has lived with CP all his life, which causes an ongoing general impairment of his abilities. There are some things he tries to do, but he cannot do them as well as other people.
- In the last 2 to 3 years, he has noticed much more impact on his abilities.
- He does not currently need much assistance with his DLA. He does not want someone coming in to help as he has been independent all his life.
- He needs help with getting himself a cane to use when walking. He does not currently have a cane. He has issues with his balance and also pain in his legs when he walks.
- When he is walking distances, he needs to be careful not to trip and fall. If he ends up breaking his right hand, he would not be able to feed himself and that would be a big concern.
- He could walk the 5 to 6 blocks to the mall but when he gets there he is completely exhausted. His legs get swollen and sore from his diabetes.
- He is currently not working, although he would love to find work. He has been told that he is over-qualified for the jobs he has applied for and they want younger employees that they can train. He has been looking for any sort of work.
- The bus stop is a block away from his apartment, but he must go up a hill to get to it. With hills, he needs to stop several times to catch his breath. He has trouble going the one block because it is uphill.
- The embolisms caused severe shortness of breath and he also has trouble breathing at night. It can take 2 to 3 minutes of breathing deeply until the oxygen is back in his

system.

- He went back to his doctor after his application was denied and he added some more comments to the form. He took the amended form into the ministry office but he does not know what happened to it, and he did not keep a copy.
- The GP has been his family doctor for about 15 years. The GP has seen the deterioration in his condition over the years.
- He has living with a physical handicap and has survived by working through and around it, and he feels that he is being discriminated against by the ministry.

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.

The panel considered that there was no additional information for which a determination of admissibility was required under 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 CP, diabetes, and bilateral pulmonary emboli and that the GP wrote that the appellant has “gait limitations, impairment of some fine motor skills, secondary to CP” and “bilateral pulmonary emboli has resulted in permanent and chronic respiratory compromise.”

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 being able to walk 2 to 4 blocks unaided on a flat surface, climb 5 or more steps unaided, lift 5 to 15 lbs. and with no limitation remaining seated. In his Request for Reconsideration, the appellant wrote that when he climbs stairs, he has to do it slowly and deliberately or he either trips or gets exhausted. The appellant stated at the hearing that climbing the stairs into the hearing venue, he made it up but he had to stop and catch his breath at the top. The appellant also wrote in his Request for Reconsideration that walking more than 2 blocks, even slowly, leaves him very tired and winded. At the hearing, the appellant clarified that the blood clots in his lungs cause him to get short of breath and, after 2 blocks, he needs to stop and rest before continuing. The appellant also stated that he could walk the 5 to 6 blocks to the mall but when he gets there he is completely exhausted. He explained that his legs also get swollen and sore from his diabetes.

The ministry considered that the GP reported in the MR that the appellant requires an aid for his impairment and the GP wrote that the appellant requires a cane for walking “at times.” At the hearing, the appellant clarified that he does not currently have a cane but he has issues with his balance and also pain in his legs when he walks. The appellant stated that when walking distances, he needs to be careful not to trip and fall.

The ministry reviewed the GP’s assessment in the MR that the appellant has continuous restrictions with his mobility inside and outside the home and reasonably considered that the GP

did not specify the degree of restriction and, when asked to describe the assistance needed, wrote that the appellant is “independent, but requires extra time due to impaired/restricted mobility.” The ministry also reviewed the GP’s assessment in the AR that the appellant takes significantly longer with all aspects of his mobility and physical ability, specifically: walking indoors and walking outdoors, climbing stairs, standing, lifting, and carrying and holding, and reasonably considered that the GP provided no explanation regarding how much longer it takes the appellant.

The ministry also reviewed the GP’s comment in the MR that the appellant “is highly motivated, hard-working, and minimizes/downplays impact of the disability” and the ministry wrote that the assessments of physical functioning as provided by the medical practitioner and other prescribed professionals must be relied upon in order to make an evidence-based decision, and the ministry cannot be left to draw inferences regarding the impact of the appellant’s medical conditions.

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 moderate range, and with an absence of information from the GP about the degree of restriction with the appellant’s mobility or how much longer it takes him with aspects of his mobility and physical ability, 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 wrote that CP is a neurological disorder and 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 review the GP’s assessment that there are no major impacts to any of the listed areas of daily impacts to the appellant’s cognitive and emotional functioning, with moderate impacts to emotion, impulse control, insight and judgment, motor activity, other neuropsychological problems and other emotional or mental problems. The ministry reasonably considered that the GP did not provide any additional comments to elaborate on these impacts that are moderate in nature. 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.

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 in the AR to describe the mental or physical impairments that impact the appellant's ability to manage DLA, the GP wrote "limited gait secondary to CP." The ministry wrote in the reconsideration decision that the GP reported in the MR that the appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform DLA. The ministry also reviewed the GP's assessment in the AR that the appellant is independent with all tasks of all of the listed DLA, specifically: the personal care DLA (dressing, grooming, toileting, feeding self, regulating diet, transfers in/out of bed, and transfers on/off chair), the basic housekeeping DLA (including laundry), the shopping DLA (going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home), the meals DLA (meal planning, food preparation, cooking, safe storage of food), the pay rent and bills DLA (including banking and budgeting), 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) and reasonably considered that the GP wrote that the appellant "self-describes as independent with ADL's" and that he "requires more than average time with motor-related activities." While the GP indicated that the appellant takes significantly longer than typical with the move about indoors and outdoors DLA, the GP did not elaborate regarding how much longer it takes the appellant.

At the hearing, the appellant explained that when the original paperwork was completed for his application, he did not consider how much longer it takes him to do things. The appellant stated, for example, that it takes him much longer to get out of bed in the morning, and it also takes him longer to shower and to cook meals. In his Request for Reconsideration, the appellant' wrote that he has recently noticed that he has difficulty standing up from a seated position or even getting out of bed. At the hearing, the appellant stated that he could walk the 5 to 6 blocks to the mall for shopping, but when he gets there he would be completely exhausted. The appellant stated that the bus stop is a block away from his apartment, but he must go up a hill to get to it and he needs to stop several times to catch his breath.

In his self-report, the appellant wrote that in January 2016 he lost his job due to downsizing and

he has been unable to find full-time work since then. 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 appellant stated that he has lived with CP all his life, which causes an ongoing general impairment of his abilities, and there are some things he tries to do, but he cannot do them as well as other people. The appellant stated that in the last 2 to 3 years, he has noticed much more impact on his abilities. The appellant described restrictions to tasks of DLA for which the GP had assessed independence, with no need for the assistance of another person or the use of an assistive device, and there was no further information from a prescribed professional submitted on the appeal. The appellant stated at the hearing that he went back to his doctor after his application was denied and the GP added some more comments to the form. The appellant stated that he took the amended form into the ministry office but he does not know what happened to it, and he did not keep a copy.

Given the GP's assessment of the appellant's independence in performing all DLA, with the exception of the move about indoors and outdoors DLA, and a lack of detail regarding the degree of restriction or how much longer it takes the appellant with mobility, 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.

The GP indicated that help for DLA is provided by the appellant's family and friends, and the appellant requires a cane for walking "at times." 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.

<b>PART G – ORDER</b>	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> RESCINDS THE MINISTRY DECISION	
If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>LEGISLATIVE AUTHORITY FOR THE DECISION:</b>	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

<b>PART H – SIGNATURES</b>	
PRINT NAME S. Walters	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018-05-29

PRINT NAME Bill Haire	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018-05-29
PRINT NAME Bill Reid	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018-05-29