

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated July 9, 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 appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

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 March 26, 2018, a medical report (MR) and an assessor report (AR) both dated April 1, 2018 and both completed by a General Practitioner (GP) who had met the appellant once to complete the reports.

The evidence also included the following documents:

- 1) Letter dated September 24, 1999 from neurosurgeon;
- 2) Letter dated October 13, 1999 from a physician who is a specialist in physical medicine and rehabilitation;
- 3) Letter dated June 19, 2000 from a physician who is a specialist in physical medicine and rehabilitation;
- 4) Letter dated November 29, 2002 from a brain injury services coordinator;
- 5) Letter dated December 12, 2002 from a physician who is a specialist in physical medicine and rehabilitation;
- 6) Letter dated September 22, 2004 from a neurosurgeon; and,
- 7) Request for Reconsideration dated March 6, 2018.

Diagnoses

In the MR, the GP diagnosed the appellant with traumatic brain injury, described as "complications post head injury: headaches, decreased memory, decreased concentration, weakness of left side of body" with a date of onset of June 1999. 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: "decreased concentration and memory, headache, weakness on left side of body."

Physical Impairment

In the MR and the AR, the GP reported:

- With respect to the appellant's health history, he has "moderate to severe symptoms. Headache, decreased memory, not able to concentrate properly, not able to carry heavy objects with left hand."
- The appellant does not require an aid for his impairment.
- In terms of functional skills, the appellant can walk 2 to 4 blocks unaided on a flat surface, climb 2 to 5 steps unaided, lift 2 to 7 kg. (5 to 15 lbs.) and has no limitation with remaining seated.
- In the AR, the appellant is assessed as independent and also using an assistive device for walking indoors and walking outdoors, climbing stairs, and standing. He requires periodic assistance from another person with lifting, and carrying and holding, described by the GP as "needs help for heavy objects."
- 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 wrote with respect to details on any equipment or devices used by the appellant “needs a cane for walking.”

In the letter dated September 24, 1999, a neurosurgeon wrote:

- The appellant was in hospital with a small temporal lobe contusion and epidural hemorrhage, and “things have resolved on the last scan” and “you can only see the residual area of brain damage.”
- The appellant said he is still having problems with headaches and memory and his speech is still not right.
- He recommended that the appellant see the head injury rehabilitation services to be assessed as to his intellectual capabilities.

In the letter dated October 13, 1999, a physician who is a specialist in physical medicine and rehabilitation wrote:

- A CT scan of the appellant’s revealed a left temporal lobe epidural hematoma, a skull fracture in the left temporal parietal region.
- There is diffuse atrophy out of keeping with his age, consistent with diffuse axonal injury at the time of the original accident.
- The appellant has some occasional left temporal headaches and endorses complaints of difficulty with memory, concentration, and slurring his words.
- Neurocognitive screening exam shows mild impairments in levels of alertness, attention, memory, and reasoning.

In the letter dated June 19, 2000, a physician who is a specialist in physical medicine and rehabilitation wrote that:

- The appellant was seen for symptoms related to his traumatic brain injury and he has continued to improve some.
- His headaches persist and he complained of some visual changes.

In the letter dated November 29, 2002, a brain injury services coordinator wrote that because of the evidence of skull fracture and brain contusions, the appellant’s brain injury is considered at least moderate.

In the letter dated December 12, 2002, a physician who is a specialist in physical medicine and rehabilitation wrote:

- The appellant’s most significant injury occurred 3 years prior.
- His cervical spine X-Ray reported no specific bony abnormalities.
- He suspects that the appellant injured his peripheral nerve at the nerve root or proximal brachial plexus region at some point in the past.
- A number of his symptoms may be permanent in nature.

In the letter dated September 22, 2004, a neurosurgeon wrote that:

- The appellant had continued to do well with his “Halo” and his X-Ray is satisfactory with no change in the very slight anterolistheses of C6 on 7;
- The appellant has developed no neurological symptoms or signs and has been quite active.

In his self-report, the appellant wrote:

- He has paresthesia on the left side of his body and his vision is weakened.
- He has experienced visual changes and headaches.

In his Request for Reconsideration, the appellant wrote:

- He has a brain trauma injury and his brain injury is irreversible.
- Two doctors' orders, their professional opinions, have been given to the ministry.

Mental Impairment

In the MR and the AR, the GP reported:

- There are cognitive difficulties with communication, described by the GP as “decreased concentration and memory; headache.”
- There are significant deficits with cognitive and emotional function in the areas of executive, memory, and attention or sustained concentration. The GP added no comments.
- The appellant has a good or satisfactory ability to communicate in all areas, specifically speaking, reading, and hearing, with the exception of writing, which is poor.
- With respect to daily impacts to the appellant’s cognitive and emotional functioning, the GP indicated that there are major impacts to the areas of executive, memory and attention/concentration, with no impacts in the other 11 listed areas of functioning. The GP did not provide any additional comments.
- The appellant requires periodic support/supervision with areas of social functioning, specifically with making appropriate social decisions, interacting appropriately with others, and securing assistance from others. The GP did not provide an explanation or description of the periodic support/supervision required. The appellant requires continuous support/supervision with the areas of developing and maintaining relationships and dealing appropriately with unexpected demands.
- The appellant has marginal functioning in his immediate social network and very disrupted functioning in his extended social networks.
- Asked to describe the support/supervision required to help maintain the appellant in the community, the GP wrote “support with regard to memory and concentration.”

In his self-report, the appellant wrote:

- He has weak cognitive abilities and difficulty staying focused.
- He is forgetful and has memory loss.

Daily Living Activities (DLA)

In the AR, the GP reported:

- The appellant has not been prescribed any medications and/or treatments that interfere with his ability to perform DLA.
- The appellant is independent and also uses an assistive device when performing the DLA of “move about indoors and outdoors.” The GP did not elaborate.
- The appellant is independent with all tasks of several 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 meals DLA (meal planning, food preparation, cooking, safe storage of food), 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 shopping DLA, the appellant is independent with the tasks of going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases. Regarding the task of carrying purchases home, the appellant requires periodic

assistance from another person and uses an assistive device. The GP explained that the appellant “needs help for heavy objects” and “uses a cane.”

- The appellant requires periodic assistance with all listed tasks of the pay rent and bills DLA (including banking and budgeting), with no further explanation or description provided by the GP.

Need for Help

- In the MR, the GP indicated that the appellant does not require an aid for his impairment.
- In the AR, the GP reported that the appellant’s friends, volunteers, and community service agencies help with his DLA.
- In the section of the AR relating to assistance provided, the GP identified a cane as an assistive device routinely used by the appellant to help compensate for his impairment. The GP added that the appellant “needs a cane for walking.”

Additional information

In his Notice of Appeal dated July 19, 2018, the appellant expressed his disagreement with the ministry’s reconsideration decision and wrote that he has a brain injury and brain trauma.

The ministry relied on the reconsideration decision, as summarized at the hearing.

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 also does not establish 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 complications post head injury, with headaches, decreased memory, decreased concentration, and weakness of the left side of his body, all with an onset of June 1999. In his self-report, the appellant wrote that he has paresthesia on the left side of his body and his vision is weakened. The appellant also wrote that he has experienced visual changes and headaches.

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 the GP's comments that the appellant experiences "moderate to severe symptoms," including headaches and not being able to carry heavy objects with his left hand. The ministry reasonably considered that there was no information provided by the GP regarding the appellant's lifting ability with his right hand. The ministry also considered the GP's assessment in the MR of the appellant's functional skills and pointed out that the appellant is able to walk 2 to 4 blocks unaided on a flat surface, climb 2 to 5 steps unaided, lift 5 to 15 lbs. and has no limitation remaining seated. The GP's assessment in the AR that the appellant requires periodic assistance from another person with lifting and carrying and holding, described by the GP as needing help "for heavy objects," most likely relates to the appellant's lifting ability with his left hand and for weights in excess of the range of 15 lbs, although this is not made

clear by the GP. As well, the GP reported that the appellant is both independent and that he uses an assistive device for walking indoors and outdoors and climbing stairs; however, the appellant has also been assessed as capable of walking 2 to 4 blocks “unaided,” or without the assistance of another person or an assistive device, and to climb 2 to 5 stairs, also unaided.

In his Request for Reconsideration, the appellant wrote that he has a brain trauma injury and his brain injury is irreversible. He also wrote that the professional opinions of two doctors have been given to the ministry. The ministry reviewed the letters and medical documents that spanned the period 1999 to 2004 and reasonably considered that while the information provides confirmation of the appellant’s medical history and diagnosis, the most recent information is from 14 years ago and does not necessarily reflect the appellant’s current physical functioning that is relevant to the PWD application.

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 to clarify the appellant’s lifting with his right and left sides, 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 the GP reported in the MR that the appellant experiences “moderate to severe symptoms” and these include headaches, decreased memory and decreased concentration. The ministry considered that the GP indicated the appellant has cognitive difficulties with communication, described by the GP as “decreased concentration and memory” and “headache.” The ministry also considered that the GP reported significant deficits with cognitive and emotional functioning in the areas of executive, memory and attention/sustained concentration. The ministry emphasized that there are many areas of cognitive and emotional functioning with no impact, while the panel notes that there is an absence of commentary by the GP to elaborate on the nature of the impacts to daily functioning in the three areas identified, making it difficult for the ministry to determine that, overall, these impacts are significant.

In his self-report, the appellant wrote that he has weak cognitive abilities and difficulty staying focused. The appellant wrote that he is forgetful and has memory loss. There was no additional information provided on the appeal from the GP or a mental health specialist to elaborate on the impacts of these symptoms to the appellant’s daily functioning.

Considering the two “social functioning” DLA, as set out in Section 2(1)(b) of the EAPWDR, that

are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (relate effectively), the panel finds that the ministry reasonably concluded that there is insufficient evidence to establish that the appellant is significantly restricted in either. Regarding the ‘decision making’ DLA, the GP reported in the AR that the appellant independently manages most of the decision-making components of DLA, specifically: personal care (regulating diet), shopping (making appropriate choices and paying for purchases), meals (meal planning and safe storage of food), medications (taking as directed and safe handling and storage), and transportation (using transit schedules and arranging transportation). For the pay rent and bills DLA, the GP indicated that the appellant requires periodic assistance from another person with the tasks of budgeting and paying rent and bills but provided no explanation or description to allow the ministry to determine that the assistance is required for extended periods of time.

Regarding the DLA of ‘relating effectively’, the GP reported in the AR that the appellant requires continuous support/supervision with developing and maintaining relationships and periodic support/supervision with interacting appropriately with others. The GP assessed marginal functioning in the appellant’s immediate social network and very disrupted functioning in his extended social network. However, when asked to describe the support/supervision that would help maintain the appellant in the community, the GP responded “support with regards to memory and concentration,” which the ministry reasonably considered does not elaborate regarding the degree and frequency of the assistance needed with social functioning.

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 “decreased concentration and memory,

headache, weakness on left side of body.” 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. With respect to the ‘move about indoors and outdoors’ DLA, as previously discussed, the GP reported that the appellant is both independent and that he uses an assistive device for walking indoors and outdoors and that he is capable of walking 2 to 4 blocks unaided, or without the use of an assistive device.

The ministry also reviewed the GP’s assessment in the AR that the appellant is independent with all of the tasks of most of the listed DLA, specifically: the personal care DLA, the basic housekeeping DLA, the meals DLA, the medications DLA, and the transportation DLA. While the GP indicated that the appellant requires periodic assistance from another person with the task of carrying purchases home when shopping and with the tasks of banking, budgeting and paying rent and bills, the ministry reasonably considered that, in the absence of any description by the GP, there was insufficient information to determine that the assistance with these tasks is required for extended periods of time, as required by Section 2(2)(b)(i)(B) of the EAPWDA.

As previously discussed, the panel finds that the ministry reasonably concluded that there was insufficient evidence to establish that the appellant is significantly restricted in either of the two “social functioning” DLA specific to a mental impairment, as set out in Section 2(1)(b) of the EAPWDR.

Given the GP’s assessment of the appellant’s independence in performing most tasks of DLA, and a lack of detail regarding the frequency of duration of periodic assistance required with some tasks, 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 in the AR that help for DLA is provided by the appellant’s friends, volunteers, and community service agencies and the appellant requires a cane for walking. 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.

PART G – ORDER	
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	
LEGISLATIVE AUTHORITY FOR THE DECISION:	
<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"/>	

PART H – SIGNATURES	
PRINT NAME S. Walters	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018-08-16

PRINT NAME Susan Mackey	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018-08-16

PRINT NAME Diane O'Conner	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018-08-16