

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the “ministry”) dated October 18, 2018, which held that the appellant did not meet all of the statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) for designation as a person with disabilities (PWD).

The ministry found that the appellant met the following requirements:

- she has reached 18 years of age;
- she has a severe physical impairment that, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform daily living activities (DLA), either continuously or periodically for extended periods; and
- as a result of those restrictions, in the opinion of a prescribed professional, the appellant requires the significant help or supervision of another person to perform DLA.

However, the ministry was not satisfied that:

- a medical practitioner or nurse practitioner has confirmed that the appellant’s impairment is likely to continue for at least 2 years.

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

Information before the ministry at reconsideration

In support of her request for PWD designation, the appellant submitted a PWD application comprised of:

- A Medical Report (MR) dated June 1, 2018, signed by a general practitioner (GP) who has known the appellant for 6 months and has seen the appellant 11 or more times in the past 12 months;
- An Assessor Report (AR) dated June 12, 2018, completed by a registered nurse (RN) who describes the appellant as a “new” patient and has seen her once in the past 12 months [described by the RN as when the appellant’s child was a patient of the RN]; and
- The appellant’s self-report (SR) section of the PWD application, dated May 30, 2018.

In support of her Request for Reconsideration, the appellant submitted a revised PWD application. The AR and SR are unchanged, but the MR (the “revised MR”) has been amended by the GP who provided additional information on September 27, 2018.

Information provided on appeal

Documentary Evidence

- 1) The appellant’s Notice of Appeal (NOA) dated October 23, 2018, in which the appellant writes that her doctor will not sign off for her to return to work and she is unable to attend school, due to her ongoing medical condition which she has had for over a year and a half.
- 2) A 4-page Consultation Note respecting a November 2, 2018, consultation with a rheumatologist for assessment of arthralgias.
- 3) November 27, 2018, email from the appellant to the Tribunal stating that she has just received the lab results respecting the organs removed during her surgery. The results appear to be abnormal, so she will be following up with the surgeon. Attached are pages 2 and 3 of a 5-page Lab Report dated November 27, 2018, regarding macroscopic examination of the appellant’s fallopian tubes, uterus and cervix.
- 4) November 28, 2018, email from the appellant to the Tribunal, with attached 9-page submission comprised of:
 - (i) September 26, 2018, Discharge Summary;
 - (ii) September 25, 2018, Operative Report;
 - (iii) Results of Magnetic Resonance Imaging (MRI) of the sacroiliac spine;
 - (iv) Results of MRI of the lumbar spine;
 - (v) Portions of the rheumatologist’s Consultation Note that was previously submitted in its entirety; and,
 - (vi) Results of blood analysis.

Oral Testimony at Hearing

At the hearing, the appellant stated that communication with her GP has been a major barrier, as English is not the GP’s first language. The appellant stated that the GP has told her that her impairment will last for 2 years.. Referencing a recent letter by the GP (not included in the appeal submissions), the appellant states that because the letter mentions medical conditions she does not have, she has great concerns as to whether or not the GP has read her test results. The appellant stated that while the specialists are all taking their parts, no one is putting “it all together” or looking at the whole picture. Her big concern is finding out what is wrong with her. She still takes daily pain medication and is severely limited as to what she can do.

The ministry representative stated that based on the new documentation and the appellant's testimony, he would hate to see the panel agree with the reconsideration panel simply because the doctor is not communicating properly. He does not think the ministry would object to accepting the appellant's application for PWD.

Admissibility of Information on Appeal

In accordance with section 22(4) of the *Employment and Assistance Act* (EAA), the panel may admit oral and written testimony that is in support of the information and records available at the time of reconsideration. The ministry did not object to the admission of the appellant's appeal submissions. The panel admitted the additional medical documentation and oral testimony of the appellant as information relating to and in support of the diagnoses of multiple muscle and joint pain and pelvis/abdominal pain.

Summary of relevant evidence

As the only legislated criterion at issue requires "the opinion of a medical practitioner or nurse practitioner," the summary below is limited to information provided by the GP and the rheumatologist, who are both medical practitioners. While the AR was completed by an RN, the legislation requires the opinion of a "nurse practitioner" which is defined in the *Interpretation Act* as "a person who is authorized under the bylaws of the College of Registered Nurses of British Columbia to practise nursing as a nurse practitioner and to use the title "nurse practitioner." The remaining medical documentation, which is largely comprised of test results, does not address impairment of functioning or duration of impairment and is therefore not summarized.

Diagnoses and Health History

The GP diagnoses (date of onset):

- Multiple muscles and joints pain (May 2018);
- Pelvis /abdominal pain (January 2017);
- Mood disorder (September 2018); and
- Anxiety disorder (September 2018).

The GP reports that the appellant has chronic pain and new muscular/joint pain. Chronic bronchitis, with difficulty breathing, is identified by the GP as another health factor.

Additional commentary by the GP provided on September 27, 2018, includes the following.

- "Pain is worsen (sic) every day. Now not able to drive ask mother to help her, specially (sic) she had hysterectomy an oophorectomy. She is in bed all the time and can't attend even medical appointments. Very hard to self care with all the joints and muscles pain and now pain post operation. This is since 2 years and became chronic and part of everyday struggle."
- "Pelvic pain still severe even after surgery recently done on 25/9/18. She is still in severe pain all the time and needs strong pain killers like Tramadol and Ibuprofen 600 to control the pain."

The rheumatologist notes a history of pain in both knees, thumbs feeling weak, tightness in elbows, pain in shoulders, and constant dull lower back pain. Summary impression is "diffuse arthralgias and lower back pain." Specific commentary includes the following.

- (i) Bilateral thumb pain: Presentation consistent with de Quervain tenosynovitis.
- (ii) Arthralgias and myalgias No signs or symptoms of inflammatory arthritis. No swollen joints on examination— "Overall, her symptoms are most in keeping with central sensitization syndrome or fibromyalgia." "She has symptoms of fatigue, waking up feeling on (sic) refreshed, cognitive and somatic symptoms all of which suggest this diagnosis." The mainstay of treatment is light exercise,

improving sleep quality and reducing stress. Medications may be somewhat helpful but usually do not have significant benefit. “I also explained to her that fibromyalgia is a diagnosis of exclusion. She has had a thorough workup which so far has not revealed anything. However, given her longstanding history of back pain and her young age, I would like to do an MRI of her lumbar spine and sacroiliac joints to make sure she has no signs of inflammatory spondylitis.”

Degree and Course of Impairment

In the original MR, where asked “Is the impairment likely to continue for two years or more from today?” and to tick either a “Yes” or “No” box, the GP ticked the “No” box. Where asked to explain, the GP writes “patient under investigation. She is seeing gynecologist and having a follow up with her.”

In the revised MR, the GP adds “She is also booked to see rheumatologist for multiple joint pain.”

The arguments of both parties are set out in Part F of this decision.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. That is, was the ministry reasonable when determining that the requirements of section 2(2) of the EAPWDA were not met because a medical practitioner or nurse practitioner has not confirmed that the appellant's impairment is likely to continue for at least two years?

Relevant Legislation

EAPWDA

2 (1) In this section:

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

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

EAPWDR

Definitions for Act

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

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

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

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

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

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

(a) authorized under an enactment to 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.

(3) The definition of "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

Panel Decision

Expected Duration of Impairment

The appellant's position is that there are difficulties with the GP's oral and written communication but that the GP has told her that her impairment will last for two years.

At the hearing, the ministry representative took the position that the ministry would not object to the appellant being approved for PWD designation.

However, the ministry's position in the reconsideration decision, which is the subject of this appeal, is that a medical practitioner has not confirmed that the appellant's impairment is likely to continue for at least two years. The ministry notes that when initially completing the MR, the GP indicated that the appellant's impairment is not likely to continue for two years or more. The ministry also argues that the information in the revised MR, that the appellant is booked to see a rheumatologist, does not confirm that impairment is likely to continue for at least two years. The ministry also comments that the amended information was provided two days post-surgery and therefore "it is not clear that the level of impairment reported in the application will be ongoing once you have recovered from surgery."

Section 2(2) of the Act requires that the minister is satisfied that a person has a severe mental or physical impairment that "in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years." The panel finds that in both the original and amended MRs, the GP, a medical practitioner, describes the appellant's medical conditions as chronic. However, at issue is the information respecting the resulting impairment from these chronic medical conditions, specifically, the expected duration of the impairment. Whether it is a result of miscommunication, as the appellant argues, or due to the fact that active investigations were ongoing at the time the MR was originally completed and at the time of amendment, the GP does not respond "Yes" when asked if the impairment is likely to continue for two years or more from the time of completing the MR. To the contrary, the GP ticked "No" in response when first completing the MR and made no changes to this response when amending the MR. When explaining the duration of impairment when first completing the MR, and again when amending it, the GP commented on upcoming investigative appointments with medical specialists rather than confirming an expected duration of impairment. Furthermore, additional information from the GP in the revised MR reflects functioning only two days after abdominal surgery, which the panel finds was reasonably viewed by the ministry as not reflecting ongoing functioning. The information from the rheumatologist, also a medical practitioner, is also indicative of the need for additional investigative testing and does not provide confirmation of a severe physical impairment that is likely to continue for at least two years.

On the whole, the panel finds that the information from the medical practitioners reflects a degree of uncertainty as to both diagnoses and prognosis. The panel concludes that the ministry was reasonable in determining that a medical practitioner or nurse practitioner has not confirmed that a severe impairment is likely to continue for at least two years as required by section 2(2) of the EAPWDA.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was reasonably supported by the evidence, and therefore confirms the decision. The appellant is not successful on appeal.

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PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION 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? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME Jane Nielsen	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018/11/29

PRINT NAME Ronald Terlesky	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/11/29

PRINT NAME Wayne Reeves	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/11/29