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## **PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the ministry) reconsideration decision dated November 8, 2018 which held that the appellant did not meet 3 of the 5 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 had a severe physical impairment, but was not satisfied that:

- in the opinion of a medical practitioner or nurse practitioner, the impairment is likely to continue for at least 2 years;
- 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 those restrictions, the appellant requires an assistive device, the significant help or supervision of another person, 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

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## PART E – SUMMARY OF FACTS

### Information before the ministry at reconsideration:

A PWD application comprised of a Medical Report (MR) dated May 9, 2018, completed by the appellant's general practitioner (GP) who has known the appellant since February 23, 2018 and seen the appellant 2-10 times in the past 12 months; and an Assessor Report (AR#1) dated May 16, 2018, completed by a Registered Nurse (RN), who has had no prior contact with the appellant.

The appellant's Request for Reconsideration (RFR) dated October 11, 2018 which included the following:

- A revised Assessor Report (AR#2) undated, completed by the same Registered Nurse, who has indicated that she has seen the appellant 2-10 times in the past 12 months in office interviews.
- A support letter from the RN dated October 18, 2018 which explains that the appellant has worked all his life and would still be working if it were not for a very severe workplace injury that has ruined his life. "He was provided with work gloves by his employer and given a substance to apply. The substance ate through his gloves and totally damaged the nerves in his hands."
- A support letter from the appellant's spouse dated November 3, 2018 which speaks to her husband's work injury and the impact on the family's quality of life. She indicates that her husband is no longer able to do simple tasks like yard work or play sports with his children due to the limited use of his hands. She indicates that she is working one minimum wage job and that they have been behind in their rent and bills so often that she fears they could lose their home. She states that her husband has never before claimed any injury because he likes to work and wants to return, but until then they need help.
- A letter written by the appellant dated November 5, 2018 in which he explains that after his hands were burnt in a chemical accident at work his wife has had to help him with all of his everyday tasks from cleaning himself to brushing his teeth. To this day he suffers from ongoing pain especially in his left hand, his right hand is not as bad. The sensation has come back but the aching keeps him up unless he takes medication and even then they hurt, writing this letter hurts and cramps his hand. The appellant states that he is falling further into debt, feels helpless and useless for an injury that was no fault of his own. He asks for help and states that he is to see a Neurologist before the New Year and his doctor has not cleared him for work.

### Summary of the PWD Application:

The panel will first summarize the evidence from the PWD Application as it relates to the PWD criteria at issue in this appeal.

### Diagnoses:

In the MR, the appellant's GP identified the following specific diagnoses giving rise to the appellant's impairment; Mood Disorder and Injury to hands, with onsets indicated as January 16 and March 22, 2018.

In both AR's, where asked to describe the appellant's mental or physical impairments that impact his ability to manage daily living activities, the RN wrote, "Severe chemical burns to his hands. Severe Depression".

### Duration:

In the MR, when asked is the impairment likely to continue for two years or more from today, the GP does not respond. When further asked: What is the estimated duration of the impairment and are there remedial treatments that may resolve or minimize the impairment and to explain; the GP wrote, " Difficult to say as we have no clear diagnosis [the appellant] is awaiting Rheumatology and Nerve Conduction studies to better understand his condition".

### **Ability to perform DLA:**

In the MR, the GP indicates that the appellant has not been prescribed medication and/or treatments that interfere with his ability to perform DLA and provides the following comments under Health History; the appellant suffers from pain in both hands described as sharp and throbbing, he has reduced sensation in the dorsum in both hands, he has reduced power in his grip rendering him incapable of holding tools and even lifting or carrying, he lets objects fall out of his hands, pain extends to his wrists and his fingers are stiff and this causes pain even on squeezing a soft ball.

Under DLA, the GP reports that the appellant is independent with his ability to perform personal self care, management of medications, basic housework, daily shopping, mobility inside the home, mobility outside the home and management of finances. The appellant is indicated as periodically restricted with meal preparation and use of transportation with additional comments; he cannot hold a knife or chop vegetables but he can do other meal time preparations, e.g., washing vegetables. Also in response to a question about assistance the patient needs with DLA, the GP indicates someone to chop food and when shopping, assistance to carry shopping bags as his grasp is weak.

In the AR#2, the RN indicates that the appellant's impairment directly restricts his ability to manage DLA in the following areas:

Under Personal Care; the appellant is independently able to manage activities of dressing, bathing, toileting, feeding self and transfers in/out bed and on/off chair while grooming is noted as difficult - wife helps and regulating diet is noted as "2x per day". Note: In AR#1, the appellant was indicated as independent with grooming and the following comments were added under dressing - painful, under toileting – difficulty cleaning self, under feeding self – drops things constantly and under transfers (in/out of bed) – in bed for days at a time.

Under Basic Housekeeping; the appellant requires continuous assistance with laundry and basic housekeeping noting - wife does this.

Under Shopping; the appellant requires continuous assistance with going to and from stores, reading prices and labels, making appropriate choices, paying for purchases and carrying purchases home with a notation that he is unable to hold things. Note: In AR#1, the appellant was indicated as independent with all areas except carrying purchases home.

Under Meals; the appellant requires continuous assistance with meal planning, food preparation and cooking with the notation that his wife does it for him. No comment was given for the area of safe storage of food.

Under Pay Rent and Bills; the appellant requires continuous assistance with banking, budgeting and pay rent and bills.

Under Medications; the appellant requires continuous assistance with filling/refilling prescriptions, while being noted as independent with taking as directed and safe handling and storage. Note: In AR#1, the appellant was indicated as requiring continuous assistance with all areas.

Under Transportation; the appellant requires continuous assistance with using public transit and using transit schedules and arranging transportation while he is independent with getting in and out of a vehicle.

In AR#1, the RN adds comments to include safety issues that reported the appellant had no feelings in his fingers, things drop all the time, he is unable to fold or carry clothes or chop vegetables.

In his SR dated September 29, 2018 and RFR, the appellant writes that he can't hold on to objects for any length of time, can't hold hand tools or carry things, has no strength when grabbing, can't play with his kids like before (he has become a sports activities spectator instead of being involved physically), can't do any of his hobbies and can barely hold a pen to write.

In a support letter from the RN dated October 18, 2018, she writes, "He can walk and talk but is unable to use his hands not only for work but also to do household and personal tasks."

**Help required:**

In the MR, the GP indicates that the appellant does not require any aids or prostheses for his impairment.

In the AR, the GP indicates that the appellant receives assistance from family - wife helps him. It is noted by the RN in the AR#1 that the appellant uses a brace for his hands while no assistive device is indicated in AR#2. The AR also indicates that the appellant does not receive assistance provided by Assistance Animals.

In the appellant's RFR, he reports that his wife has had to do everything for him.

**Notice of Appeal:**

In his Notice of Appeal dated November 22, 2018, the appellant writes that his wife has been providing daily personal care for him.

**Hearing:**

**Additional Information**

The appellant provided a copy of an updated Physician's Report to Work Safe BC dated November 18, 2018 which included the following details from a review since the last appointment.

- Issues; pain continues in hands particularly with grasping, still having stiffness, still letting things fall from hands.
- New issues; itch which is continuous and deep in both hands causing sores and scratching, left hand more than right.
- Continues to use gabapentin for pain relief.
- Awaiting appointment with neurology for second opinion regarding pain.
- Patient very stressed and frustrated with process.
- Will be referred to psychiatry.

The appellant testified about his work background, his injury at work, the repercussions of being in pain both physically and mentally while not knowing what is happening with his hands, not being able to support his family and the frustrations of not being provided any financial help while going through this hardship. The appellant stated that he had been the sole provider for his family and now his wife had to take a minimum wage job. Without financial support he will be homeless in 2 months. After always being active and working with his hands, he is now unable to play with his children, pursue his hobbies and perform many activities of daily living. If he holds the phone too long he has to change hands. The appellant further testified that he was taking medication – Gabapentin, and Advil which take away the pain but leave him drowsy. He states that his emotional health is getting worse and he is scheduled to see a Psychiatrist tomorrow. In response to a question by the panel, the appellant indicated that he had been on Gabapentin since his injury. He added that he didn't have a family doctor and after going to the hospital treated himself for about 10 days.

The appellant's assessor testified that in her professional opinion as an RN, nerves can regenerate within 5 to 6 years.

The ministry relied on the reconsideration decision and added that the appellant currently receives hardship assistance pending commencement of WCB benefits.

**Admissibility:**

The panel finds that the information provided at the hearing in particular, the medical update from the appellant's GP dated November 18, 2018 as well as the testimony of the appellant's assessor are admissible in accordance with Section 22 (4)(b) of the Employment and Assistance Act because the information provided is in support of information and records that were before the ministry at reconsideration. The panel notes that the ministry did not object to the admission of the appeal submissions.



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

The issue in this appeal is whether the ministry reconsideration decision that determined the appellant did not meet three of the five statutory requirements of Section 2 of the EAPWDA for PWD designation is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. The ministry found that the appellant met the age requirement and had a severe physical impairment, but was not satisfied that:

- in the opinion of a medical practitioner or nurse practitioner, the impairment is likely to continue for at least 2 years;
- 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 those restrictions, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

### **The following Sections of the EAPWDA apply to this appeal:**

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 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.

### **The following Section of the EAPWDR applies to this appeal:**

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.

### **Duration of Impairment:**

Section 2(2)(a) of the EAPWDA requires that in the opinion of a medical or nurse practitioner, a severe mental or physical impairment is likely to continue for at least 2 years.

### **Appellant's Position**

The appellant's position is that his assessor testified that in her professional opinion nerves can regenerate within 5 to 6 years. The appellant argues that he regularly suffers from pain, has not been diagnosed and is waiting to see a Neurologist.

### **Ministry's Position**

The ministry's position is that the GP does not indicate Yes or No to this question and writes, "Difficult to say as we have no clear diagnosis [the appellant] is awaiting Rheumatology and Nerve Conduction studies to better understand his condition". The ministry argues that the appellant's condition resulting from his hand injury is still under investigation and a diagnosis has not been made. The ministry concludes that due to absent confirmation from the appellant's GP that his impairment is likely to continue for at least 2 years, the ministry cannot determine that this requirement is met.

### **Panel's Decision**

While considering both the GP's and the RN's comments along with their assessments, the panel finds that the information provided doesn't specify that the appellant's impairments are based solely on nerve damage, in fact a diagnosis has not yet been made. The panel finds that more often the prescribed professionals refer to the associated physical pain as well as the appellant's mood disorder which are also attributed to an impairment of his physical and mental functioning.

Without further clarification which may come through the Psychiatric, Rheumatology and Neurology investigations, the panel finds that the evidence is not clear as to the duration of the impairment. Therefore the panel finds that the ministry reasonably determined that his legislative criterion pursuant to Section 2(2)(a) of the EAPWDA was not met.

### **Direct and significant restrictions in the ability to perform DLA:**

Section 2(2)(b)(i) of the EAPWDA requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether or not it is satisfied that the legislative criteria are

met, is dependent upon the evidence from prescribed professionals. The term "directly" has consistently had the meaning that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration – the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended periods. Inherently, any analysis of periodicity must also include consideration of how frequently the activity is restricted. In circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

DLA are defined in Section 2(1) of the EAPWDR and are listed in both the MR and the AR sections of the PWD application with the opportunity for the prescribed professionals to checkmark boxes and provide additional narrative. This does not include the ability to work.

### **Appellant's Position**

The appellant's position is that he can't hold on to objects for any length of time, can't hold hand tools or carry things, has no strength when grabbing, can't play with his kids, can't do any of his hobbies and can barely hold a pen to write. The assessor writes, "He can walk and talk but is unable to use his hands not only for work but also to do household and personal tasks." The appellant's wife states that her husband is no longer able to do simple tasks like yard work or play sports with his children due to the limited use of his hands. The appellant argues that his wife has been providing daily personal care for him.

### **Ministry's Position**

The ministry's position is that due to the degree of discrepancy between the assessments provided by the GP and RN, the ministry finds that a determination cannot be made that the appellant's ability to manage DLA is significantly restricted for extended periods of time and as a result, he requires significant assistance from others to manage them. Difficulties with the assessment include the following:

*Laundry and Basic Housekeeping*; the GP does not confirm any restrictions while the RN indicates the appellant requires continuous assistance. Although the appellant's grasp is weak, the ministry determined that laundry and basic housekeeping involve a large spectrum of activities and that it is unlikely that he is unable to manage any.

*Shopping for personal needs*; the GP does not confirm that the appellant has any restrictions with shopping while he requires assistance with carrying shopping bags as his grasp is weak while the RN notes the appellant requires continuous assistance with all aspects of shopping, going to and from stores, reading prices and labels, making appropriate choices, paying for purchases and carrying purchases home. The ministry determined the appellant has no limitations with mobility and there is no evidence that he would require assistance with the other aspects of shopping other than carrying purchases home, due to a physical or mental impairment.

*Meal Preparation*; the GP indicates that the appellant has periodic restrictions with meal preparation and requires assistance to chop food; however, she reports that he can do other mealtime preparations, such as washing. The RN indicates that the appellant requires continuous assistance with meal planning, food preparation and cooking "wife does it for him". The ministry determined that the appellant's need for continuous assistance with meal planning is not attributed to an impairment of his physical or mental functioning and is satisfied that he requires periodic assistance due to restrictions with his ability to lift, carry and hold.

*Pay Rent and Bills*; the GP confirms that the appellant does not have any restrictions with management of finances while the RN indicates he requires continuous assistance with all aspects to an impairment of his physical or mental functioning. The ministry determined that the appellant's need for continuous assistance with this activity is not attributed to an impairment of his physical or mental functioning.

*Management of Medications*; the GP confirms that the appellant does not have any restrictions with management of medications while the RN indicates the appellant requires continuous assistance with filling/refilling prescriptions. The ministry determined that the appellant's need for continuous assistance with this activity is not attributed to an impairment of his physical or mental functioning.



[Redacted]

*Transportation*; the GP notes that the appellant requires periodic assistance with transportation; however, she does not provide a description of the nature or duration of this assistance. The RN indicates the appellant requires continuous assistance with using public transit and using transit schedules and arranging transportation. The ministry determined that the appellant's need for continuous assistance with these activities is not attributed to an impairment of his physical or mental functioning.

Based on the information provided by the appellant's medical practitioner and assessor, the ministry determines there is not enough evidence to confirm that the appellant's impairment significantly restricts his ability to perform the daily living activities either continuously or periodically for extended periods. Therefore, the legislative criteria have not been met.

### **Panel Decision**

The panel notes that the GP indicates that the appellant has not been prescribed medication and/or treatments that interfere with his ability to perform DLA. The panel finds the GP does not report that the appellant has any areas of DLA that require continuous assistance from another person, although it is noted that help is required to carry shopping bags. The panel is also troubled by the discrepancies as noted above between the medical report and the assessors' reports. Where some need for continuous assistance is assessed by the RN, she has not provided sufficient information in relation to the nature, degree and duration of the assistance required by the appellant to establish that there are significant restrictions for extended periods in the appellant's ability to perform DLA.

While the panel acknowledges that the appellant has pain and stiffness in his hands, and that his grasp is weak, without more information from a prescribed professional that could clarify the frequency, duration, and nature of help required, the panel finds that 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 reasonably determined that there is insufficient evidence from the prescribed professionals to show that the appellant's overall ability to perform his DLA is significantly restricted either continuously or periodically for extended periods. Therefore, the panel finds that the requirement pursuant to Section 2(2)(b)(i) of the EAPWDA was not established by the evidence.

### **Help to perform DLA:**

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. 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 DLA.

### **Appellant's Position**

The appellant's position is that his wife has been providing daily personal care for him.

### **Ministry's Position**

The ministry's position is that it has not been established that daily living activities are significantly restricted; therefore, it cannot be determined that significant help is required from other persons.

### **Panel Decision**

The panel notes that the information provided indicates that the appellant routinely gets help from his wife for personal grooming and for some other aspects of DLA. However, as confirmation of direct and significant restrictions with DLA is a precondition of the need for help criterion and as the panel found that 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 reasonably concluded that it cannot be determined that the appellant requires help to perform DLA as required by Section 2(2) (b) (ii) 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 is a reasonable application of the applicable enactment, and therefore confirms the decision. The appellant is not successful on appeal.

<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 Lynn Twardosky	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018/12/13

PRINT NAME Angie Blake	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/12/13
PRINT NAME Inge Morrissey	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/12/13