

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated December 3, 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 her 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), Sections 2 and 2.1

PART E – SUMMARY OF FACTS

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the appellant's information and self-report dated July 16, 2018, a medical report (MR) and an assessor report (AR) both dated June 24, 2018 and completed by a general practitioner (GP) who has known the appellant since 2010 and has met with her 11 or more times in the past 12 months.

The evidence also included the following documents:

- 1) Two undated photographs;
- 2) Copy of _____ regarding the motor vehicle accident (MVA) in which the appellant was injured;
- 3) Operative Report dated _____ 2018;
- 4) Collision Report from another province dated _____ 2018;
- 5) Kinesiology assessment report for August 27, 2018;
- 6) Portions of a report by an Occupational Therapist (OT) prepared on August 28, 2018; and,
- 7) Request for Reconsideration dated December 19, 2018.

Diagnoses

In the MR, the GP diagnosed the appellant with major depression, chronic knee pain, and MVA poly trauma, with no dates of onset provided. Asked to describe the appellant's mental or physical impairments that impact her ability to manage her daily living activities (DLA), the GP wrote in the AR: "patient has severe depression and limited physical capacity due to MVA poly trauma."

Physical Impairment

In the MR and the AR, the GP reported:

- In terms of the appellant's health history, the appellant "has chronic post septic arthritis" and "poly trauma- vertebral fractures, rib fractures, etc."
- The appellant requires an aid for her impairment and the GP wrote that the appellant "needs to use crutches to ambulate due to the numerous MVA-related injuries and chronic pain."
- In terms of functional skills, the GP reported that the appellant can walk 1 to 2 blocks unaided on a flat surface, climb 5 or more steps unaided, lift 2 to 7 kg. (5 to 15 lbs.) and remain seated less than 1 hour. For remaining seated, the GP noted that the appellant "needs to take micro-breaks to cope."
- In the additional comments to the MR, the GP wrote that the appellant was involved in a MVA and she sustained severe injuries.
- The appellant is assessed as using an assistive device for walking indoors (GP note: "uses cane during exacerbations"). The appellant requires continuous assistance with walking outdoors and the GP commented that she "cannot walk for more than 2 blocks." For climbing stairs, the appellant requires periodic assistance from another person and uses an assistive device. The GP wrote that the appellant "uses handrails, needs to take breaks." The appellant is independent with standing and requires continuous assistance

from another person for lifting (GP note: "unable to lift more than 15 lbs.") and for carrying and holding (GP note: "unable to carry heavy objects").

- In the section of the AR relating to assistance provided, the GP indicated that a cane and bathing aids (GP note: "uses stool occasionally") are assistive devices routinely used by the appellant to help compensate for her impairment. The GP wrote: "patient needs to use a cane to help ambulate due to increased pain in knee. She needs the cane quite frequently but not at all times."

In the Kinesiology assessment report for August 27, 2018, the physical therapist indicated:

- The appellant reported that she cannot walk a full city block all at once due to pain in her left foot and right ankle, she needs to hold on to railings for climbing stairs and takes breaks to walk up a full set due to pain in her left foot, right ankle and left knee.
- The appellant reported that she can sit in a chair for 5 minutes and then has to shift her weight due to discomfort in her lower back.
- The appellant reported that she can stand for less than 5 minutes and then needs to shift her weight or sit down due to pain in her left foot and right ankle.
- The appellant reported fear of pain, re-injury or dropping items upon lifting. She reported that carrying smaller bags of groceries are okay but "no more than 5 lbs."

In the portions of report prepared on August 28, 2018, the OT indicated:

- The appellant is walking very slowly with low stamina. She requires a rest after about 5 minutes of walking. She is walking without a walking aid at this time and may use a cane as needed when pain levels are high. She requires medication.
- She climbs stairs very slowly as this increases her pain and she requires medication.

In her self-report, the appellant indicated:

- She has sustained many injuries throughout her life that now affect her activities.
- In the spring of 2018 she was in a major MVA in which she sustained major and multiple injuries: 3 vertebrae in her neck, right wrist required surgery, left hand required two surgeries, her chest bone was broken and six ribs, her right lung collapsed, her right ankle was broken and required surgery, and her left foot was crushed and required surgery. She was hospitalized for seven weeks.
- She cannot walk more than a block and she uses a walker at home the majority of the time.
- She cannot sit, lie down, or stand for a significant amount of time.
- She is taking pain killers which make the pain "tolerable to just live."

In her Request for Reconsideration, the appellant wrote:

- Her primary concern and barrier to function is foot, ankle and knee pain. Without medication daily, she is not able to walk more than 50 steps without debilitating pain, and would likely require a walking aid or wheelchair. Most often, she is able to walk unassisted, but occasionally, when she is in "high levels of pain or fatigue," she uses a cane. She uses a cane in the mornings when her feet are more painful and until the medication begins to work.

- To manage the acute injuries sustained in the MVA, she spent seven weeks in hospital and is actively involved in a rehabilitation program in the community.
- The GP mentioned arthritis in her left knee and the chronic arthritis bothers her daily but is not her primary concern.

Mental Impairment

In the MR and the AR, the GP reported:

- In terms of the appellant's health history, the appellant "has major depression that was exacerbated by a major MVA."
- The appellant has no difficulties with communication.
- The appellant has significant deficits with her cognitive and emotional functioning in the areas of emotional disturbance and motivation. The GP did not provide any comments.
- The appellant has a good ability to communicate in all areas, specifically: speaking, reading, writing and hearing.
- With respect to the section of the AR relating to daily impacts to the appellant's cognitive and emotional functioning, the GP assessed major impacts in the areas of bodily functions (the GP commented that her sleep is "interrupted") and motivation. There are moderate impacts in the areas of motivation, impulse control and memory, with minimal impact in the area of attention/concentration. There are no impacts to the remaining 8 listed areas of functioning. The GP did not provide any comments.
- For social functioning, the appellant is independent with making appropriate social decisions, and requires periodic support/supervision from another person with interacting appropriately with others and securing assistance from others (GP note: "often needs help from family"). The appellant requires continuous support/supervision from another person with developing and maintaining relationships (GP note: "needs family help") and with dealing appropriately with unexpected demands (GP note: "needs family help").
- The appellant has good functioning in her immediate social network and marginal functioning in her extended social networks.
- Asked to describe the support/supervision required to maintain the appellant in the community, the GP left this section incomplete.
- In the additional comments to the AR, the GP wrote that the appellant was in a MVA in which the appellant suffered severe poly trauma injuries and an exacerbation of her depression.

In the portions of the report prepared on August 28, 2018, the OT indicated:

- On the patient health questionnaire, the appellant scored 15 out of 27 and reported that her ability to work, take care of things at home and get along with others is "somewhat difficult" as a result of the identified issues. The main areas the appellant identified as issues were having trouble falling asleep, feeling tired and having little energy, and feeling bad about herself.
- The OT wrote that this score indicated "major depression, moderately severe- support required."

In her self-report, the appellant wrote:

- She has taken anti-depressant medications “on and off” since she was a teen and that she suffered abandonment and abuse issues while growing up.
- She has major insomnia due to nightmares of the accident and debilitating pain.
- She has memory loss at times due to stress and anxiety.

In her Request for Reconsideration, the appellant wrote that:

- She was diagnosed with depression as a teen and she has been managing with medication most of her life.
- She has a history of abuse in her family and led a very independent childhood/adolescent life that came with many challenges regarding her mental health.
- There are days that she does not leave her home or her bed because of sadness and depressive symptoms.

Daily Living Activities (DLA)

In the MR and the AR, the GP reported:

- The appellant has not been prescribed medication and/or treatment that interfere with her ability to perform DLA.
- For the personal care DLA, the appellant is independent with performing all of the tasks, specifically dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed, and transfers on/off chair.
- Regarding the DLA of basic housekeeping, the appellant requires periodic assistance with doing laundry and basic housekeeping, with a note by the GP that she “takes help from friend/kids.”
- For the shopping DLA, the appellant is independent with all tasks with the exception of carrying purchases home, for which she requires continuous assistance from another person and the GP wrote that she “takes help from son.” Specifically, she is independent with the tasks of going to and from stores, reading prices and labels, making appropriate choices and paying for purchases. The appellant uses an assistive device for going to and from stores, which the GP described as “needs to use car for mobility.”
- Regarding the meals DLA, the appellant is independent with all of the listed tasks, specifically, meal planning, food preparation, cooking and safe storage of food.
- For the pay rent and bills DLA, the appellant is independent with all tasks, including banking and budgeting.
- Regarding the medications DLA, the appellant is independent with all of the tasks, specifically: filling/refilling prescriptions, taking as directed, with safe handling and storage.
- For the transportation DLA, the appellant is independent with performing all of the tasks, specifically getting in and out of a vehicle, using public transit and using transit schedules and arranging transportation.

In the Kinesiology assessment report for August 27, 2018, the physical therapist indicated:

- The appellant expressed that she has learned how to adapt a lot of her movements during manual tasks but is still unable to complete many of her ADLs (activities of daily

living) without difficulty and often needs assistance for even simple tasks.

In the portions of the report prepared on August 28, 2018, the OT indicated:

- In terms of functional status, the appellant is able to perform eating/feeding, bladder and bowel management, medication management, transfers to a vehicle, and money management.
- The appellant requires equipment or additional time to complete some tasks, specifically, swallowing, grooming, bathing/showering, dressing her lower body, bed mobility, transfers to the toilet, transfers to the bathtub/shower, transportation, and meal preparation.
- The appellant requires supervision or set-up with dressing her upper body, and sleep.
- The appellant requires assistance with some tasks, specifically: shopping (note: "trying to do as much as she can, but will ask children to complete shopping if needed."), laundry (note: "Tries to do the folding, but cannot complete the heavy laundry tasks"), cleaning (note: "Not able to do many duties because of physical injury and pain. Tries to complete light duties. Reports it is just not getting done, or she asks her kids to complete when able.")
- The appellant requires assistance with child/parent care with her two younger children staying with their father due to their higher care needs that she cannot complete due to injury from the MVA.

In her self-report, the appellant indicated:

- She needs help to cook, to clean, sometimes to shower.
- Since her last MVA, she has not been able to care for her children on her own.

In her Request for Reconsideration, the appellant wrote that the injuries she sustained in the past number of years will be permanent disabilities and impact her function in caring for herself and her children.

Need for Help

The GP reported in the AR that the appellant receives help from family and wrote that the appellant "is in need of assistance with mobility and with extended daily activities- i.e. carrying groceries, etc. and daily activities- i.e. cleaning house, etc." The GP indicated that the appellant routinely uses a cane and bathing aids (note: "uses stools occasionally") to help compensate for her impairment. The GP added comments that the appellant "needs to use a cane to help ambulate due to increased pain in knee. She needs the cane quite frequently but not at all times."

Additional information

In her Notice of Appeal dated December 10, 2018, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that she believes that she meets the criteria of having a severe impairment which directly and significantly restricts her activities of daily living and requires assistance as a result.

At the hearing, the appellant stated:

- She has a severe mental impairment. As detailed in her notes, she has suffered abuse

most of her life. It started when she was a child and is a significant part of the reason for her depression.

- In the spring of last year, her depression got much worse. She can go for weeks without getting out of bed.
- Her depression is taking her away from her children. Her children have missed school or are late.
- Sometimes she does not shower. Sometimes she does not bathe for days.
- She has lost a lot of weight in the last couple of months.
- She does not cook for her children.
- ICBC had to get a housekeeper for her because she does not clean her own house.
- She has not seen her doctor in 3 months. He continues to refill her prescriptions but she has not physically seen him.
- Her ankle swells up periodically. She is losing the feeling in her thumb and she cannot feel her pinky finger. Her left knee swells up as well.
- She is getting physical rehabilitation therapy and she tries to get to as many sessions as possible but it hurts to go. She has started chiropractic treatments and massage therapy.
- She does not wear a bra most of the time because it hurts. Her ribs were broken in the MVA and sometimes it is hard to breathe and she does not sleep well.
- Her biggest concern is that she cannot get in to see her doctor. From the time he completed the application, a lot of the information has changed. She did not want to take the application back to the doctor and that is why she submitted the other reports.
- She has lumps in her breasts that need to have biopsies. She is always dealing with something, it is never-ending.
- She used to be able to jog 6 miles and now she can barely walk a block.
- She cannot take her children to the park anymore, or take them swimming.
- She has a hard time putting on her own socks. She has no feeling in her pinky and her thumb so it is difficult to pick things up.
- For grooming, she does not comb her hair. Grab bars were put in her bathroom and were funded by ICBC.
- She is okay with toileting and feeding herself. Regulating her diet is a problem since she lost so much weight.
- Her children have to help her get out of bed some mornings. Both of her feet hurt so badly when she first gets up.
- She uses the arms of a chair to get up out of the chair and she has a high stool that she uses as well.
- She does not do her laundry.
- She can drive to and from the store and use a scooter in the store but she does not carry her own groceries.
- For meals, she does not do a lot of cooking as she cannot stand for very long.
- The bottles for her medications are hard to open if she cannot get blister packs. Her roommate helps her.
- Getting in and out of her vehicle is difficult.
- She was addicted to drugs for over a decade so the ability to make appropriate social decisions was obviously impacted.
- She does not go anywhere to interact with other people. She needs help all around. She

- does not have a “social network” as she has no friends. She does not do anything.
- She is supposed to be using a cane but she has not received approval from ICBC yet. She had a cane before that was misplaced. Her ankle is swollen today and she could have really used the cane. She used a walker indoors for a period of time after the MVA in the spring of 2018 but no longer uses the walker.
 - She agrees that the ministry did not have much in front of them when the doctor’s reports were considered. That is why she submitted the other reports by the kinesiologist and the OT. She does not know why the GP would report her functioning prior to the MVA when he signed the MR and the AR in June 2018, after the date of the MVA.
 - She and her lawyer have tried to reach the GP with no response and she cannot get a new family doctor. She has seen the GP for about 14 years and now he is only available for 3 days every 6 weeks.
 - It took the GP 6 months to complete the application. She was with the GP when he completed the AR.
 - Although she used the word “sometimes” in her self-report, she said that, in fact, it is difficult for her to get out of bed every morning. She has to take her pain medications before she gets out of bed and she waits for them to start to work before she can move.
 - The kinesiology report was completed at a clinic by a kinesiologist.

The ministry relied on the reconsideration decision as summarized at the hearing. At the hearing, the ministry clarified that the appellant is able to apply again for PWD designation, particularly since she stated that her condition has gotten worse, if her appeal is not successful.

Admissibility of Additional Information

The ministry did not raise an objection to the appellant’s oral testimony. The panel considered her testimony, with one exception, as being in support of, and tending to corroborate, the impact from medical conditions referred to in the PWD application which was before the ministry at reconsideration. Therefore, the panel admitted this additional information in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

However, the panel did not admit the reference by the appellant to the necessity for biopsies as a result of lumps found in her breasts, as the information was not before the ministry at reconsideration and was not in support of information before the ministry at reconsideration and, therefore, does not meet the requirements of Section 22(4)(b) of the *Employment and Assistance Act*.

The arguments made by the appellant in her Request for Reconsideration will be addressed in Part F- Reasons for Panel Decision, below.



PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for PWD designation, 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 her DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, it could not be determined that, as a result of those 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.

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 appellant was diagnosed by the GP with chronic knee pain and MVA poly trauma. The GP wrote in the MR that the appellant "has chronic pain and post septic arthritis" and she "sustained poly trauma; vertebral fractures, rib fractures, etc." In the additional comments to the MR, the GP wrote that the appellant was involved in a MVA and she sustained severe injuries. In her Request for Reconsideration, the appellant wrote that the GP mentioned arthritis in her left knee and, although the chronic arthritis bothers her daily, this is not her primary concern. The appellant wrote that her primary concern and barrier to function is foot, ankle and knee pain.

In her self-report, the appellant wrote that she sustained many injuries throughout her life that affect her activities. In the spring of 2018, she was in a major MVA in which she sustained major and multiple injuries, including to 3 vertebrae in her neck, her right wrist which required surgery, her left hand that required two surgeries, her chest bone was broken and six ribs, her right lung collapsed, her right ankle was broken and required surgery, and her left foot was crushed and required surgery. The appellant also wrote that she is taking pain killers to make the pain "tolerable to just live." The appellant stated at the hearing that her condition has deteriorated since the time the MR and the AR were completed and she continues to require pain medication.

A diagnosis of a serious medical condition or conditions does not in itself determine PWD eligibility or establish a severe impairment. An "impairment" involves a loss or abnormality of psychological, anatomical, or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately, or for a reasonable duration. Section 2(2) of the EAPWDA requires that the ministry be satisfied that the impairment is severe before

the ministry may designate an applicant as a PWD. To assess the severity of the impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning.

The ministry considered the impacts of the appellant's diagnosed medical conditions on her daily functioning, reviewing the assessments provided in the MR and the AR as well as in the report by the OT. The ministry wrote that the GP reported in the MR that the appellant is able to walk 1 to 2 blocks unaided on a flat surface, climb 5 or more steps unaided, lift 5 to 15 lbs. and remain seated less than 1 hour. In her Request for Reconsideration, the appellant argued that the functional skills described by the GP were objectives from before the MVA in the spring of 2018 and are not relevant as her physical function has decreased significantly. At the hearing, the appellant stated that she does not know why the GP would report her functioning prior to the MVA when he signed the MR and the AR in June 2018, after the date of the MVA.

The ministry also considered that the GP assessed the appellant in the AR as using an assistive device for walking indoors and the GP noted that she "uses cane during exacerbations." In the section of the AR relating to assistance provided, the GP indicated that a cane and bathing aids are assistive devices routinely used by the appellant to help compensate for her impairment and the GP wrote: "patient needs to use a cane to help ambulate due to increased pain in knee" and "she needs the cane quite frequently but not at all times." For walking outdoors, the GP indicated that the appellant requires continuous assistance and commented that she "cannot walk for more than 2 blocks."

The ministry also considered the report prepared on August 28, 2018 in which the OT indicated that the appellant is walking very slowly with low stamina and she requires a rest after about 5 minutes of walking. The ministry considered that the OT wrote that the appellant is walking without a walking aid and she may use a cane as needed when pain levels are high. In the Kinesiology assessment report for August 27, 2018, the kinesiologist indicated that the appellant reported that she cannot walk a full city block all at once due to pain in her left foot and right ankle. The appellant wrote in her self-report that she cannot walk more than a block and she uses a walker at home the majority of the time. At the hearing, the appellant clarified that she used the walker for a period of time after the accident and she no longer uses a walker but requires a cane at times.

In her Request for Reconsideration, the appellant wrote that without medication daily, she is not able to walk more than 50 steps without debilitating pain. The appellant wrote that most often she is able to walk unassisted but occasionally, when she is in "high levels of pain or fatigue," she uses a cane. At the hearing, the appellant clarified that she had a cane which was misplaced but she is currently waiting the approval for funding of a cane through ICBC. The panel finds that the ministry reasonably considered that the consistent evidence regarding the appellant's mobility is that, with use of pain medication, she can walk outdoors up to one block unaided and she requires a cane "during exacerbations" or "when pain levels are high."

The ministry considered that the GP reported that the appellant requires periodic assistance from another person and uses an assistive device for climbing stairs. While the GP wrote that the appellant "uses handrails" and the appellant "needs to take breaks," the panel finds that the ministry reasonably considered that handrails do not fall within the definition of an assistive device as "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." The OT wrote that the appellant climbs stairs very slowly as this increases her pain and she requires medication. The panel finds that the ministry reasonably considered that the consistent evidence is that, with the use of pain medication, the appellant can climb 5 or more stairs unaided.

The GP reported that the appellant is independent with standing and requires continuous assistance from another person for lifting (GP note: "unable to lift more than 15 lbs.") and for carrying and holding (GP note: "unable to carry heavy objects"). In the assessment report for August 27, 2018, the kinesiologist indicated that the appellant reported fear of pain, re-injury or dropping items upon lifting and she can carry smaller bags of groceries but "no more than 5 lbs." The panel finds that the ministry reasonably considered the consistent evidence is that the appellant can lift up to 15 lbs. and can carry lighter objects, up to 5 lbs. in weight.

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 explanations, descriptions or examples in the spaces provided in the MR and in the AR forms.

Given the GP's assessment of physical functioning in the moderate range of functional skills limitations, with the exception of walking outdoors, and with insufficient evidence of how often the appellant experiences exacerbations in her pain and requires assistance, the panel finds that the ministry reasonably determined that the evidence is not sufficient 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 has been diagnosed with major depression and the GP commented that the appellant "has major depression that was exacerbated by a major MVA." The ministry reasonably considered that the GP reported in the MR that the appellant has significant deficits with her cognitive and emotional functioning in the areas of emotional disturbance and motivation. In assessing daily impacts to the appellant's cognitive and emotional functioning, the GP assessed major impacts in the area of motivation as well as the area of bodily functions and noted that the appellant has "interrupted" sleep. The GP indicated a moderate impact in the area of emotion, as well as in the areas of impulse control and memory. The GP did not provide

further comments regarding the appellant's cognitive and emotional functioning.

In her self-report, the appellant clarified that she has major insomnia due to nightmares of the accident and due to debilitating pain, and she has memory loss at times due to stress and anxiety. In the report prepared on August 28, 2018, the OT indicated that the main areas the appellant identified as issues were having trouble falling asleep, feeling tired and having little energy, and feeling bad about herself. In her Request for Reconsideration, the appellant wrote that she was diagnosed with depression as a teen and she has been managing with medication most of her life. She wrote that she has a history of abuse in her family and there are days that she does not leave her home or her bed because of sadness and depressive symptoms. At the hearing, the appellant also emphasized the severity of her mental impairment and stated that since the MVA in the spring of last year, her depression has gotten much worse and she can "go for weeks" without getting out of bed. While the appellant's evidence suggested marked impacts to her functioning due to her mental impairment, this was not reflected in the evidence from the GP or from the OT, or from a mental health specialist.

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 all 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), pay rent and bills (including budgeting), medications (taking as directed and safe handling and storage), and transportation (using transit schedules and arranging transportation). While the appellant stated at the hearing that she struggles with regulating her diet and with making appropriate social decisions as she has lost a lot of weight in the last couple of months and was addicted to drugs for many years, this information was not confirmed in the opinion of a prescribed professional such as the GP, the OT, or a mental health specialist.

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 commented with respect to both areas that the appellant "needs family help" and, when asked to describe the support/supervision required to maintain the appellant in the community, the GP left this section incomplete. The GP assessed the appellant with good functioning in her immediate social network and marginal functioning in her extended social networks. In the portions of the report prepared on August 28, 2018, the OT indicated that the appellant scored 15 out of 27 on the patient health questionnaire and reported that her ability to work, take care of things at home and get along with others is "somewhat difficult" as a result of the identified issues. The OT wrote that this score indicated "major depression, moderately severe- support required."

At the hearing, the appellant stated that she does not go anywhere to interact with other people and she needs help "all around." The appellant stated that she does not have a "social network" as she has no friends and she does not do anything. In the absence of further narrative by the GP describing the degree and duration of the support/supervision required or further information provided by a mental health specialist, and with the OT's description of "moderate" severity, the panel finds that the ministry reasonably considered that there was insufficient information to establish a significant restriction in the ability to relate effectively. The GP also assessed the appellant in the MR as having no difficulties with communication and, in the AR, as having a good ability to communicate in all areas, specifically: speaking, reading, writing and hearing.

Given the absence of evidence of significant impacts to the appellant's cognitive and emotional functioning, as well as the insufficient evidence of significant impacts to the two social functioning DLA that are specific to a mental impairment, 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

Section 2(2) of the EAPWDA requires that a severe impairment directly and significantly restricts the appellant's ability to perform the DLA either continuously or periodically for extended periods. The direct and significant restriction may be either continuous or periodic. If the restriction is periodic, it must be for an extended time. Inherently, any analysis of periodicity must also include consideration of the frequency. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence from the prescribed professional 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 also listed in the MR and, with additional details, in the AR. Therefore, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairment continuously or periodically for extended periods. In this case, the GP and the OT are the prescribed professionals and a kinesiologist is not included in the list of prescribed professionals as set out in Section 2(2) of the EAPWDR.

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. In her Request for Reconsideration, the appellant wrote that the injuries she sustained in the past number of years will be permanent disabilities and impact her function in caring for herself and her children. The ministry reviewed the information in the AR and wrote that the GP's assessment indicated that the appellant is independent in almost all of her [tasks of] DLA. The ministry considered that, for the personal care DLA, the GP reported that the appellant is

independent with performing all of the tasks. At the hearing, the appellant stated that she has a hard time putting on her own socks as she has no feeling in her pinky finger and her thumb. The appellant stated that sometimes she does not shower or bathe for days or comb her hair. The appellant stated that while she is okay with toileting and feeding herself, regulating her diet is a problem since she lost so much weight. The appellant stated that her children have to help her get out of bed some mornings since both of her feet hurt so badly when she first gets up. The appellant stated that she uses the arms of a chair to get up out of the chair. In the August 28, 2018 report, the OT indicated that the appellant requires equipment or additional time to complete the tasks of grooming, bathing/showering, dressing her lower body, bed mobility, transfers to the toilet, and transfers to the bathtub/shower. The OT did not indicate specifically whether equipment or additional time was needed and how much additional time is required with each task in order to allow the ministry to determine that there is a significant restriction.

The ministry considered the GP's assessment regarding the basic housekeeping DLA that the appellant requires periodic assistance from another person with both doing laundry and housekeeping and the GP noted that the appellant "takes help from friend/kids." At the hearing, the appellant stated that she does not clean her own house, ICBC funded a housekeeper for her, and she does not do her laundry. In the August 28, 2018 report, the OT indicated that the appellant requires assistance with the tasks of laundry and cleaning; however, the OT's comments that the appellant "tries to do the folding, but cannot complete the heavy laundry tasks," and she is "not able to do many duties because of physical injury and pain; tries to complete light duties; reports it is just not getting done, or she asks her kids to complete when able" does not clarify whether the assistance required is continuous or periodic and how often the appellant requires assistance.

The ministry also considered that, for the shopping DLA, the GP assessed the appellant as being independent with the tasks of going to and from the stores, reading prices and labels, making appropriate choices and paying for purchases. While the GP indicated that the appellant uses a car as an assistive device "for mobility" going to and from stores, the panel finds that a car does not fall within the definition of an "assistive device" as set out in Section 2(1) of the EAPWDA. The GP indicated that the appellant requires continuous assistance from another person with carrying her purchases home and the GP wrote that she "takes help from son." At the hearing, the appellant stated that she can drive to and from the store and uses a scooter in the store but she does not carry her own groceries. In the August 28, 2018 report, the OT indicated that the appellant requires assistance with shopping and noted that the appellant is "trying to do as much as she can, but will ask children to complete shopping if needed." The kinesiologist wrote that the appellant reported that carrying smaller bags of groceries are okay but "no more than 5 lbs."

The GP assessed the appellant as being independent with all of the tasks for the meals DLA (meal planning, food preparation, cooking, and safe storage of food), the pay rent and bills DLA (including banking and budgeting), the medications DLA (filling/refilling prescriptions, taking as

directed, with 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). At the hearing, the appellant stated that she does not do a lot of cooking as she cannot stand for very long. She stated that the bottles for her medications are hard to open if she cannot get blister packs and her roommate will help her. The appellant stated that getting in and out of her vehicle is difficult. The OT reported on August 28, 2018 that the appellant is able to independently perform medication and money management as well as transfers to a vehicle.

Given the GP's assessment of independence with all but three of the tasks of DLA and the functional skills assessment in the moderate range, an absence of sufficient information to determine that periodic assistance is required for extended periods, and insufficient evidence of significant impacts to the two social functioning DLA that are specific to a mental impairment, the panel finds that the ministry reasonably concluded that the evidence is insufficient to show that the appellant's overall ability to perform her 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 reported in the AR that the appellant receives help from family and uses a cane "quite frequently" as well as a bathing aid "occasionally." 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 confirms the ministry's decision. The appellant's appeal, therefore, is not successful.

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

S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019-01-03

PRINT NAME

Vivienne Chin

DATE (YEAR/MONTH/DAY)

2019-01-03

PRINT NAME

Sanjay Gulati

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-01-03