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 December 12, 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* (EAPWDA) for designation as a person with disabilities (PWD). The ministry found that the appellant met the requirements of having reached 18 years of age and that a medical practitioner confirmed that the appellant's impairment is likely to continue for at least 2 years.

However, the ministry was not satisfied 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 those restrictions, in the opinion of a prescribed professional, 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), sections 2 and 2.1

PART E – SUMMARY OF FACTS

Information before the ministry at reconsideration

1) The appellant's PWD application comprised of:
   - A Medical Report (MR) dated July 27, 2018, completed by a specialist in Neurology and Epilepsy ("the specialist") who has known the appellant since 2010, and has seen the appellant 2 - 10 times in the past 12 months;
   - An Assessor Report (AR) dated August 13, 2018, completed by the appellant's general practitioner ("the GP") of more than 10 years, who has seen the appellant 2 – 10 times in the past 12 months; and
   - The appellant's self-report (SR) section of the PWD application, dated June 14, 2018.

2) Letter from the specialist to the GP, dated December 18, 2017.

3) CT angiography final report (CTA Report), dated March 22, 2018.

4) Neurology Consult Final Report, dated June 6, 2018, respecting the appellant's attendance and discharge from a hospital emergency room. The appellant had presented with a "pressure-like headache" which the report concludes was not considered to be consistent with a subarachnoid hemorrhage. It also stated that consultation regarding the appellant's aneurysm will occur.

5) The appellant's Request for Reconsideration, dated November 30, 2018, in which the appellant addresses the expected duration of her disorder.

Information provided on appeal and admissibility

1) The appellant's Notice of Appeal (NOA), dated December 27, 2018, which did not include any additional information.

2) At the hearing, the appellant described her medical conditions and the impact they have on her functioning. She also submitted the following documents:
   - December 2018 report respecting the upcoming analysis of the appellant's blood specimen;
   - The results of the analysis of blood specimens of the appellant's children; and,
   - Pages 1 and 2 of a 5-page Geriatric Consult conducted in 2016.

3) At the hearing, the ministry explained the bases for its decision and responded to questions but did not provide additional evidence.

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.

Respecting the documentation provided at hearing, the ministry objected to the admission of the blood specimen

results respecting the appellant's children on the basis that they do not provide any information about the appellant's medical condition. The ministry did not object to the admission of the other documents, noting that the information about forthcoming blood analysis is not helpful and that the Geriatric Consult does not add much.

The panel did not admit the blood specimen results for the appellant's children as they do not provide information directly related to the appellant's physical and mental functioning. The balance of the appellant's appeal submissions, including her oral testimony, was admitted as it either reiterated or augmented the information available at reconsideration. In reaching this conclusion, the panel finds that while assistance from Community Living B.C. was not specifically identified in the information at reconsideration, this information is consistent with the information in the appellant's SR identifying her children as severely autistic and the appellant's need for respite.

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

With the consent of the appellant, a ministry staff member attended the hearing as an observer.

Summary of relevant evidence

Diagnoses and Health History

In the MR, the specialist reports:

- Specific diagnoses:
  - Cerebral Aneurysm (confirmed by the CT report)
  - Tremors
  - PNES (psychogenic, non-epileptic seizures)
  - Fibromyalgia
- "Fatigue, 'seizures', pain, emotional issues (anxiety) are all ongoing issues." Headaches, cerebral aneurysm are recent features.

Previously, in his December 18, 2017 letter, the specialist reported that the appellant has non-epileptic episodes, tremor, myalgias, headaches, and stiffness and that the appellant reported having episodes two or three times per month lasting for up to 10 minutes without loss of consciousness - she has shakiness of the left arm, then both legs, and then the right arm. The appellant is also noted to feel that on a chronic basis she has a milder tremor and shakiness of upper and lower limbs and that the use of lorazepam is often able to control these episodes. The specialist describes previous investigations; recommends further investigations.

Physical Impairment

- The specialist indicates that no prostheses or aids are required and assesses the appellant's physical functional skills as:
  - able to walk 4+ blocks unaided on a flat surface;
  - able to climb 5+ steps unaided;
  - limitations in lifting are unknown; and,
  - length of time the appellant can remain seated is unknown.

- The GP reports:

- All listed aspects of mobility and physical ability are managed independently (walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding). None of these activities take significantly longer than typical or require the use of an assistive device.
- Brain aneurysm is potentially dangerous (has seen a neurosurgeon).
- "Her tremors are quite disabling for her."

In the SR, the appellant reports that her seizures and symptoms are occurring more frequently, that her symptoms are not just limited to when she is having seizures and that an increase in daily activities increases her symptoms. She describes loss of limb function, including tripping when walking, and requiring a walking stick or the help of another person to walk some days. She is unable to go up full staircases. She is unable to lift things properly and is prone to dropping things. She has tightness in her body and is shaky. She has no energy, is unable to sleep and suffers from headaches, dizziness, numbness in her face and head, bowel problems, loss of speech, loss of memory, and blurry vision. The appellant also notes that she needs respite for her severely autistic children.

The 2016 Geriatric Consult states that the appellant appears to have symptoms of restless leg syndrome, for which medication is recommended. It is also noted that the appellant receives some support from Community Living B.C. and that her children are in special education.

The 2018 CTA Report identifies the reason for the exam as "Query CVA, expressive aphasia, right arm and leg weakness." Impression: 6.6 mm aneurysm could be acting as a source of emboli. MRI of the brain and neurology consultation is recommended.

At the hearing, the appellant stated that her doctors missed identifying the use of a cane, problems sitting, speech problems, difficulty with writing at times, and the need for periodic assistance for all aspects of mobility and physical ability. She stated that she cannot move during a seizure but she can still hear. Recovery from a seizure can take hours or days. Previously she was unable to speak for a 3-day period and needs a cane to walk some days. She has been to the ER so many times and has documentation to support this fact. The appellant also stated that she is the one going through these problems, not her doctors who have missed things and can't take the time to describe the problems. The appellant also stated that she has received financial help from Community Living B.C.

Mental Impairment

In the MR, the specialist reports:

- A significant deficit with 1 of 11 listed areas of cognitive and emotional function – emotional disturbance.
- No difficulties with communication.
- Information is not provided respecting social functioning.

In the AR, the GP reports:

- "Her unexplained seizures are fearful for her." Recently diagnosed brain aneurysm has added to her anxiety.
- Good ability with all listed forms of communication (speaking, reading, writing, and hearing).
- Where asked to assess the impact on daily functioning for 14 listed aspects of cognitive and emotional functioning, the GP reports a moderate impact for attention/concentration and memory. A minimal impact is reported for consciousness, emotion, impulse control, insight and judgement, executive, motivation, motor activity, language, psychotic symptoms. No impact is reported for bodily functions and

other emotional or mental problems.

- Respecting social functioning, 3 of 5 listed areas are managed independently (appropriate social decisions, ability to develop and maintain relationships and interacting appropriately with others). Periodic support/supervision is required for the remaining 2 areas (deal appropriately with unexpected demands and ability to secure assistance from others). Help is described as "As she is not able to work, she needs financial support."
- The appellant has marginal functioning with immediate social networks and good functioning with extended social networks.

The 2016 Geriatric Consult notes as follows:

- Mental state examination: presented with an objectively euthymic mood, reactive affect, no evidence of any psychotic symptoms, no signs of cognitive impairment.
- Opinion and recommendations: presents with an inexplicable pattern of symptoms that is clearly non-epileptic. There is a high psychogenic element to her symptoms, but further investigation is warranted. Medication is recommended in relation to her psychological symptoms of depression.

The 2017 consult letter includes the following information:

- Impression: over the last 7 ½ years the appellant has had a tremor of upper and lower extremities with a supervening coarse tremor which is not reflective of a seizure disorder. To date there is no specific neurological diagnosis to account for the clinical presentation. The appellant is aware that stress and anxiety can aggravate these symptoms.

DLA

The specialist reports:

- It is unknown if the appellant's impairment directly restricts the appellant's ability to perform the DLA.
- The appellant has not been prescribed medication and/or treatments that interfere with the ability to perform DLA.
- Fibromyalgia, emotional stress, pseudoseizures (PNES), tremors, all impair patient from coping with complex ADLs (Activities of Daily Living) & working.

The GP reports:

- All listed areas of mobility and physical ability are managed independently (relates to the DLA move about indoors and outdoors) as are all listed tasks for the DLA personal care, meals, and medication.
- Both listed tasks of the DLA basic housekeeping (basic housekeeping and laundry) require periodic assistance from another person.
- All listed tasks of the DLA shopping require periodic assistance from another person.
- All listed tasks of the DLA pay rent and bills require periodic assistance from another person.
- All listed tasks of the DLA transportation require periodic assistance from another person. The GP comments "Cannot drive long distances" and "Not able to drive."
- Social functioning is as described above under the heading *Mental Impairment*.

Where asked to provide additional comments, the GP writes:

- "Her seizures are unpredictable and she is constantly aware and afraid of having a seizure. She is able to do most things independently but is reluctant due to her seizures."
- "Feels dizzy and has headaches."

- "Fear of being in public in case a seizure occurs."

In the SR, the appellant reports that she is unable to keep up with housework, is not always able to shower and is only able to drive short distances when her health permits. She believes that a seizure dog could help with her family life.

At the hearing, the appellant stated that she requires periodic assistance with personal care, meals and medications (she can't always get to the pharmacy). Also, she can only drive "so far" to shop and get where she needs to with her kids. The appellant confirmed that she does not have cognitive difficulties managing her finances.

Need for Help

The GP indicates that help required for DLA is provided by volunteers and community service agencies ("Single mother. No immediate family around."). When asked if help is required but there is none available, the GP responds "not sure." The appellant does not use or require equipment or devices and does not have an assistance animal.

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 appellant was not eligible for PWD designation because she did not meet the requirements of section 2(2) of the EAPWDA?

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 is in a prescribed class of persons of 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.

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).

PANEL DECISION

Section 2(2) of the EAPWDA allows the minister to designate a person as a PWD under two circumstances: the person is in a prescribed class of persons **or** the person has a severe mental or physical impairment that meets the requirements set out in paragraphs (a) and (b).

****

Eligibility under section 2(2)(a) and (b) of the EAPWDA

Physical Impairment

The appellant's position is that she is severely physically impaired by her medical conditions. She argues that, while her doctors have covered what they could in the time allotted, the ministry should rely on her own information respecting the impact her medical conditions have on her functioning. The appellant also argues that not being able to work establishes a severe impairment.

The ministry's position is that based on the information provided, a severe physical impairment cannot be established. The ministry acknowledges the diagnoses and notes that the appellant has not been prescribed medications or treatments that interfere with the ability to perform DLA and that the functional skills assessment by the specialist indicates the ability to walk 5+ blocks and climb 5+ steps unaided. The abilities for lifting and remaining seated are unknown to the specialist and therefore cannot establish a severe impairment in the ability to lift or remain seated. Furthermore, the GP assesses the appellant as being independent in all of her mobility and physical ability activities. The ministry notes the appellant's self-reported inability to walk some days without assistance and other limitations but finds that the appellant's physicians have not confirmed the same degree of impairment. The ministry also notes that the PWD application states that it is not intended to assess employability or vocational ability.

The panel notes that the ability to work is not a criterion or a DLA set out in the legislative requirements for PWD designation. The panel finds that both the specialist and the GP assess the appellant as independently managing walking and climbing stairs. The appellant is not reported to require assistance from another person or an assistive device and there is no indication that these activities are limited in terms of how far the appellant can walk or the time it takes to walk or climb stairs. As the ministry notes, lifting ability and the ability to remain seated are not assessed by the specialist and as such, neither good nor impaired functioning can be determined from this information. The GP assesses the appellant as independently managing lifting/carrying/holding without the need for any assistance and without describing any limitations. The panel notes that the GP has assessed this level of independent functioning even though he reports "her tremors are quite disabling for her." As the ministry notes, the appellant describes a much greater degree of restricted physical functioning in terms of walking as well as limitations in the ability to climb stairs and lift and hold items. Neither the specialist nor the GP confirms these limitations and the panel considers it reasonable for the ministry to require information from a medical professional respecting functional abilities. The additional medical information describes reported symptoms but offers little insight into the appellant's current physical functioning. Furthermore, the December 2017 letter reports that the appellant was having "episodes" lasting up to 10 minutes, two to three times a month and that the more chronic tremors were less severe and often managed by medication. The panel finds this does not reflect a severe impairment of functioning and the 2016 Geriatric Consult provides the opinion "an inexplicable pattern of symptoms" with no description of the impact on functioning.

In conclusion, while it is clear that the appellant's physical functioning is impaired when having seizures, neither the specialist nor the GP identifies the frequency of the seizures nor a substantial period of recovery during which functioning is impaired. Rather, the specialist indicates good or unknown levels of physical functioning and the GP reports that the appellant "is able to do most things independently." On this basis, the panel concludes that the ministry was reasonable in determining that a severe impairment of physical functioning is not established.

Mental Impairment

The appellant does not expressly argue that she has a severe mental impairment, primarily describing impacts on her physical functioning.

The ministry's position is that while the appellant's life is impacted as a result of her multiple medical conditions, the information provided does not establish a severe mental impairment. The ministry notes that the only information respecting mental impairment provided by the specialist is that there is a significant deficit to cognitive and emotional functioning in the area of emotion, and that for this area, the GP assesses a minimal impact. Furthermore, a minimal impact is assessed by the GP in the majority of areas of cognitive and emotional functioning, and that while a moderate impact is indicated for two areas -attention/concentration and memory - no major impacts on daily cognitive and emotional functioning were noted. The ministry also notes that while the appellant reports loss of speech as a symptom, neither the specialist nor the GP has identified problems with communication.

The panel concludes that the ministry's determination is reasonable. While the appellant is diagnosed with PNES, which is classified as a mental disorder, and she experiences ongoing anxiety as a result of her medical conditions, the ministry has reasonably viewed the information respecting cognitive, emotional and social functioning as not establishing a severe impairment of mental functioning.

In particular, it is reasonable for the ministry to conclude that there is insufficient information to establish that

the identified significant deficit with emotion results in severe impairment given the absence of any description by the specialist of how this impacts the appellant's daily functioning and as the GP assesses a minor impact on daily functioning for emotion.

Additionally, no significant deficits in any of the other 11 areas of cognitive and emotional function are identified by the specialist and the GP does not assess a major impact on daily cognitive and emotional for any area. The GP does assess 2 moderate impacts (attention/concentration and memory) but neither appears to translate into restrictions of functioning that would likely be associated with a severe impairment of mental functioning. In particular, although the 2018 CTA Report related, in part, to a query respecting "expressive aphasia" neither the specialist nor the GP identifies problems with communication. Additionally, most decision-making tasks are reported to be independently managed. For those decision-making tasks assessed as requiring periodic assistance from another person, there is either no explanation (reading prices and labels, making appropriate shopping choices) or the GP's narrative and the appellant's evidence suggest a financial limitation rather than cognitive (pay rent and bills). Additionally, social functioning is, for the most part, managed independently and the GP's narrative identifies that where support is required, it relates to financial need. For these reasons, the panel considers that the ministry was reasonable in determining that a severe mental impairment has not been established.

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 it is satisfied, is dependent upon the evidence from prescribed professionals. The term "directly" means 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 must be either continuous or periodic. If periodic, it must be for extended periods. Inherently, any analysis of periodicity must also include consideration of the frequency. All other things being equal, a restriction that only arises once a year is less likely to be significant than one that occurs several times a week. Accordingly, 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 professional to check marked boxes and provide additional narrative. DLA, as defined in the legislation, do not include the ability to work.

The appellant's position is that her daily functioning is significantly restricted and that the GP has not accurately reflected the need for assistance with some DLA.

The ministry's position is that based on the information from the prescribed professionals, on whose opinions it relies, the ministry is not satisfied that the appellant has a severe impairment that significantly restricts the ability to perform the DLA set out in the legislation. The ministry notes that the specialist reports that the appellant's medical conditions impair her from coping with complex ADLs (DLAs) and working, but that there is no information describing the complex ADLs (Activities of Daily Living) and that the specialist reports "unknown" when asked whether the appellant's impairment directly restricts the DLA listed in the application and the legislation. Furthermore, the GP reports that the appellant can do most things independently but that she is

reluctant due to seizures and fear of having a seizure. The ministry notes specific restrictions identified by the GP, including being unable to drive long distances and requiring periodic assistance with basic housekeeping, shopping, paying rent and bills, and transportation but argues that as frequency, duration and nature of the assistance is not described, the ministry is not able to confirm that assistance is required periodically for extended periods. Respecting social functioning, the ministry argues that the support/supervision required for the 2 of 5 areas not managed independently cannot be established as being for extended periods and furthermore, there are no safety issues identified and marginal functioning with immediate social networks is maintained and the appellant has good functioning with extended social networks.

The panel notes that section 2(b)(i) of the EAPWDA requires that a person's severe physical or mental impairment directly and significantly restricts the person's ability to perform the DLA defined in the legislation. While there is potentially some crossover between restrictions impacting the ability to work and those impacting the ability to perform DLA, only the restriction on the ability to perform the DLA set out in the legislation is considered under section 2(b)(i) of the EAPWDA. And, as noted above, the restriction is to be in the opinion of a prescribed professional, which in this case, includes the specialist and the GP. While the other medical information is provided by prescribed professionals, it does not describe the appellant's ability to manage DLA.

In this case, the specialist has noted impairment with "complex ADLs" but has assessed the appellant's ability to manage the DLA set out in the legislation as "unknown." The GP reports that the appellant independently manages all listed tasks within the DLA move about indoors and outdoors, personal care, meals, and medications, and does not indicate that any of these tasks take significantly longer than typical to perform.

As suggested by the GP's comments, and confirmed by the appellant at the hearing, the reported need for periodic assistance from another person with all listed tasks of the DLA pay rent and bills relates to financial need, not impairment of physical or mental functioning. While periodic assistance from another person is required with all listed tasks of basic housekeeping, shopping, and transportation, the panel finds that the ministry has reasonably concluded that these restrictions are not identified as being for extended periods. Furthermore, respecting transportation, both the GP and the appellant have indicated that the appellant is able to drive to attend to the basic needs of her and her children. Respecting the DLA social functioning, the appellant is assessed as having good functioning with extended social networks and as independently making appropriate social decisions, developing and maintaining relationships, and as interacting appropriately with others. While periodic support with dealing with unexpected demands and securing assistance from others is required, the GP describes the required support as financial rather than support relating to mental impairment.

Based on the above analysis, and also noting that the GP comments that the appellant is "able to do most things independently but is reluctant due to her seizures," the panel concludes that the ministry was reasonable to determine that it is not satisfied that the appellant has a severe impairment that, in the opinion of a prescribed professional, significantly restricts the ability to perform DLA either continuously or periodically for extended periods.

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.

The establishment of direct and significant restrictions with daily living "activities" is a precondition of requiring "help to perform those activities." In this case, having found that the ministry was reasonable to conclude that this precondition was not met, the panel also finds that the ministry reasonably concluded that it cannot be determined that the appellant requires help to perform "those activities" as a result of direct and significant restrictions with daily living "activities" as required by section 2(2)(b)(ii) of the EAPWDA.

Conclusion respecting section 2(2)(a) and (b) of the EAPWDA

The panel finds that the ministry's reconsideration decision, which determined that the appellant had not met all requirements set out under paragraphs (a) and (b) of section 2(2) of the EAPWDA was reasonably supported by the evidence.

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Eligibility under section 2(2) as a prescribed person

As previously noted, section 2(2) of the EAPWDA states that a person may be designated as a PWD if the "minister is satisfied that the person is in a prescribed class of persons." Section 2.1 of the EAPWDR describes the classes of person who are prescribed for the purposes of section 2(2). Inclusion in any of the classes of persons that are prescribed requires confirmation of enrollment or eligibility under legislation or programs outside the ministry, and includes 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*." In the appellant's case, the appellant states that she has received support from Community Living B.C. and it appears that she relayed this information during the Geriatric Consult; however, this does not establish that the appellant has "been determined by Community Living British Columbia to be eligible."

Conclusion respecting section 2(2) of the EAPWDA – prescribed persons

Although the panel cannot draw any conclusion as to whether the appellant is or is not a prescribed person based on the available information, the panel concludes that it is not a reasonable application of section 2(2) of the EAPWDA in the appellant's circumstances for the ministry to determine that she is not entitled to be designated as a PWD without investigating that possibility.

Conclusion

While the panel concludes that the ministry's decision to deny the appellant PWD eligibility on the basis that all of the eligibility criteria set out under section 2(2)(a) and (b) of the EAPWDA were not met was reasonably supported by the evidence, the panel also concludes that the ministry's failure to consider eligibility under the alternative criteria under section 2(2) of the EAPWDA was not a reasonable application of the applicable enactment in the circumstances of the appellant. Accordingly, the panel rescinds the ministry's reconsideration decision.

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) 2019/01/18

PRINT NAME Trevor Morley	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/01/18
PRINT NAME Don Storch	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/01/18