

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 31 January 2019 that denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in section 2 of the *Employment and Assistance for Persons with Disabilities Act*. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

(i) directly and significantly restricts his ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

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

The ministry determined that the appellant satisfied the other 2 criteria: he has reached 18 years of age and his impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

The ministry also found that it has not been demonstrated that the appellant is in one of the prescribed classes of persons who may be eligible for PWD designation on the alternative grounds set out in section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation*. As there was no information or argument provided by the appellant regarding alternative grounds for designation, the panel considers this matter not to be at issue in this appeal.

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 reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 01 November 2018. The Application contained:
 - A Self Report (SR).
 - A Medical Report (MR) dated 08 November 2018, completed by a general practitioner (GP) who has known the appellant since 2013 and seen him 11 or more times over the past year.
 - An Assessor Report (AR) dated 08 November 2018, completed by the same GP.
 - Additional information: Medical Imaging Reports of an MRI of the Lumbar Spine taken 06 August 2016 and a CT scan of CTA Abd Aorta and Femoral Runoff taken 07 November 2018.
2. The appellant's Request for Reconsideration submission, undated, providing a letter from the GP dated 25 January 2019, with additions to the MR (MR rev) and AR (AR rev) reflecting changes resulting from the appellant having a MI [myocardial infarction or heart attack] and CVA [Cerebrovascular accident or stroke] since the submission of the original application.

In the MR, the physician provides the following diagnoses related to the appellant's impairment: spinal stenosis (onset 2016), DM [diabetes mellitus] (onset 2010) and extensive peripheral vascular disease (onset 2016). In the AR, the GP describes the appellant's impairments as "Severe spinal stenosis with peripheral vascular disease."

The panel will first summarize the evidence from the MR, the AR and additions in MR rev and AR rev as it relates to the PWD criteria at issue in this appeal.

The panel will not summarize the several medical reports submitted, as they do not provide additional information on the degree of restriction of the appellant's ability to perform DLA.

Severity of impairment

Duration

MR:

The GP indicates that the appellant's impairment will continue for 2 years or more.

Physical impairment

MR:

Under Health History, the GP writes:

“Chronic lower back ache
decreased ROM
severe leg pain
Limited ability to ambulate
Pain constant, don't allow him to work, limits his ADL.”

Regarding Functional Skills, the GP reports that the appellant can walk less than 1 block unaided on a flat surface, can climb 2 to 5 steps unaided, is limited to no lifting, and can remain seated for less than 1 hour.

The GP indicates that the appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform DLA. He also indicates that the appellant does not require any prostheses or aids to compensate for his impairment.

MR rev

Under Additional comments, the GP adds:

"Recent CVA [stroke] & MI [heart attack] left him with poor concentration and stamina. His PVD cause him ongoing pain."

AR:

Respecting Mobility and Physical Ability, the GP provides no assessment for walking indoors and standing, and assesses the appellant as taking significantly longer than typical for walking outdoors and climbing stairs, and requiring the continuous assistance from another person or unable and taking significantly longer than typical for lifting and carrying and holding.

Under Additional Information, the GP writes:

"Will need to see vascular surgeon. Has diabetes, which increases the risk of peripheral [illegible], [illegible] and infection.

AR rev:

Under additional comments, the GP adds:

Cannot walk >100 m. In need of a [illegible] post CVA. Lack of concentration, poor sleep. Peripheral arterial stenosis. Unable to ambulate."

Mental impairment

MR:

The physician indicates that the appellant has no difficulties with communication.

The GP indicates that the appellant has no significant deficits with cognitive and emotional function.

MR rev:

The GP indicates that the appellant has significant deficits with cognitive and emotional function in the areas of motivation, motor activity and attention and sustained concentration

AR:

The GP assesses the appellant's ability to communicate as good in all listed areas: speaking, reading, writing, and hearing.

In the section relating to Cognitive and Emotional Functioning as a result of a mental impairment

or brain injury, the GP indicates no impact on daily functioning in any of the listed cognitive or emotional areas.

Ability to perform DLA

MR:

The GP reports that the appellant is restricted on a continuous basis for basic housework, daily shopping, mobility outside the home, and use of transportation

The GP reports that the appellant is not restricted to the following activities: personal self-care, meal preparation, management of medications, mobility inside the home management of finances and social functioning.

The GP comments: "Will see vascular surgeon to discuss surgery." In commenting on assistance the appellant needs, the GP writes, "shopping, carrying, friend."

AR:

The GP provides the following assessments of the assistance the appellant requires in performing DLA:

- Personal care – independent for all listed tasks: dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed, and transfers on/off chair.
- Basic housekeeping – periodic assistance another person required for laundry and basic housekeeping;
- Shopping – independent for reading prices of labels, making appropriate choices and paying for purchases; takes significantly longer than typical for going to and from stores and carrying purchases home.
- Meals – independent for all listed activities: meal planning, food preparation, cooking and safe storage of food.
- Pay rent and bills – Independent for all listed activities: banking, budgeting, and paying rent and bills;
- Medications – independent for all listed activities: filling/refilling prescriptions, taking as directed, and safe handling and storage;
- Transportation – independent for all listed activities: getting in and out of the vehicle and using public transit and using transit schedules and arranging transportation.

The GP comments: "Manage own affairs, but because of PVD takes longer to ambulate. Also restricted in amount he can carry."

Social functioning

AR:

The GP assesses the appellant as independent for all listed areas where support/supervision may be required to compensate for a mental impairment: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.

The GP assesses the appellant's relationship with both his immediate and extended social

networks as good functioning.

Help provided/required

AR:

The GP indicates that assistance is provided by friends.

Self Report

In describing his disability, the appellant writes that about five months ago he awoke to find his right leg to be very numb, from his hip to his toes. He went to the hospital, where an MRI was done. In the meantime he was told to be very careful walking, driving etc. The numbness has slowly receded from his hip down to his ankle and foot where it remains to this day. This condition causes him to walk with trepidation as it affects his balance and his inner desire to walk much faster.

He explains that ancillary to this condition are the following problems:

- His lower back gives him much pain when he unconsciously reaches out for something, regardless of direction. He finds he must turn his entire body. Bending is an issue because his hip objects in a most painful way. The result is that any movement is restricted and time-consuming – the simplest things like changing positions in bed are carefully planned.
- He has not had a good sleep since the onset of this condition. The process can take 12 to 14 hours, with patches of intervening wakefulness lasting 2 to 4 hours. He feels he is the poster boy for insomnia.
- Because he favours his lower back, he walks funny, and this has affected his upper back and neck.
- He has pain 24/7. It comes in bunches, with striking pains to the bottom of his right foot, calf muscle, hip and lower back and ancillary pain to his upper back and neck. He walks like he has a broken foot and a broken back.
- In terms of exercise, he must walk upstairs by leading with his left foot, then bringing his right foot up to that step. When he forgets, he pays for it. He cannot run or stop quickly.
- Regarding exercise, he is limited to the following movements: cat cow, side plank, forward plank, and pelvis tilt. He must do these carefully, or else...
- In general, he is now a slow person, both physically and mentally. He is forgetful and bored due to his limitations.

Request for Reconsideration

With his Request for Reconsideration, the appellant provided a "To whom it may concern" letter from his GP dated 18 January 2019. The letter reads:

"We appealing his DG as since the decision made to refuse him he suffered from a MI [heart attack] and CVA [stroke] leaving him now with weakness, chest pains and decreased mobility as well as some neurological deficits.

His life quality has suffered.

His PVD requires surgery to avoid loss of limbs.

His DM needed to be better treatments and his medication regime has drastically changed.

I am confident he qualifies for DG.

This letter was accompanied by copies of MR rev and AR rev, with the additions noted above.

Notice of Appeal

The appellant's notice of appeal is dated 07 February 2019. Under Reasons for Appeal, he writes:

"After reviewing the Ministry's response, both the GP and I have a clearer understanding of our failure to provide clarity. We are now prepared to offer greater and compelling information to this end... More info to follow."

Information submitted before the hearing

In a submission received by the Tribunal on 25 February 2019, the appellant provided a lengthy typewritten memorandum entitled "A Note To the Appeal Tribunal." For brevity, the panel will reproduce the highlights:

"Every day, I am awoken by pain in my spine and my right leg and foot, which prevents me from gaining a full and restful sleep... I have not had a healthy sleep since I awoke in the middle of one night, in July of 2018 [...] with numbness throughout my right leg and has continued to this day, in my right foot."

"Because of the numbness in my right foot I am no longer able to balance myself and need to use a cane. I also find myself unconsciously grabbing hold of things around me to aid in my balance..."

"After walking short distances and especially stairs, the artery blockages in my legs cause the muscles in my thighs and calves to cramp up and I have to stop what I am doing. Stairs are a real concern- and I have to use the railing to push or lower myself up or down the treads."

"I do not trust myself to drive to [city] for medical procedures, so I have a friend who has agreed to assist me in those instances... I have difficulty in swallowing and suffer from choking and regurgitation issues. I no longer cook because my memory is such that I forget that I have something on the stove or in the oven. Even with a timer, I've burned too many dishes and I'm concerned about fire."

"I now sit on a stool to bathe. The condition of my back makes it impossible for me to get out of the tub and I cannot balance myself to stand and shower safely."

"I use a stool to cook and do dishes because I cannot remain standing for more than a few minutes at a time."

"I have had to swallow my pride and ask for assistance from others with ordinary tasks like

reaching and lifting. I have to rely on a friend to cut my toenails. My doctor is now arranging for an organization to come and clean my apartment.”

“I must plan carefully for shopping and limit it to businesses that supply a scooter.”

“My ability to think straight has become affected.”... “I have a friend who helps me plan my week.”

“I used to get reasonable exercise. Now, I am exhausted most of the time.”

Attached to the submission is a letter from the GP dated 07 February 2019, which states:

“[The appellant] has severe documented spinal stenosis and peripheral vascular disease - pending surgery. This impairs his daily living activities to such an extent that he cannot walk more than one block and has constant backache limiting his ability to walk, bend, sit prolonged and lift, anything more than 10 pounds.

The pain from his spinal stenosis requires him to frequently change position in order to find relief. This is present all the times.

His condition will last for more than the next 2 years as no appointments for surgery or rehab after has been set up so far.

Complicating is his DM and CAD which requires medication and his ability to finance these. He is dependent on the disability benefits to- maintain his present medications. Since his stroke in Dec 2018 he has dizzy spells on and off and affecting his gait. Overall he feels depressed and overwhelmed in view of his overall situation.

In all he is unable to work and severely affected in his daily activities. He relies on others to help him shopping and getting around to doctor appointments.

Supporting documents are attached.

Medical History: He has

- Coronary artery disease with PCI performed to distal right coronary artery
- CVA 2018
- NSTEMI 2018
- benign neoplasm prostate
- diabetes mellitus
- dis of lipoid metabolism
- essential hypertension
- GERD
- peripheral vascular disease
- spinal stenosis confirmed on MR

Surgical History

- PCI to PDA (2.5 x 12 Promus Premier DES).
- TURP”

Also included in the appellant's submission were:

- Internal Medicine Consult reports dated 26 December 2018 and 02 January 2019
- Cardiology Procedure Summary (PCI to PDA 2.5 x 12 Promus Premier) dated 2 January 2019-02

The hearing

At the hearing, the appellant covered much the same ground as in his memorandum above. He added or emphasized following:

- He continues to work, albeit on a limited basis, because he finds that the income assistance he receives is inadequate to pay his bills and buy groceries.
- He is self-employed and earned a decent livelihood until the onset of his PVD last summer. Now he has only 2 clients, and is being paid for 4 hours per week, though it takes him 7 to 8 hours to do the work. The work requires him to make several 60-foot trips from his car to the workplace carrying his equipment and supplies. While working, he must sit and rest frequently.
- When he goes shopping, he drives and parks in a Handicap space. He shops only at stores that make electric scooters available to their customers.
- This past week, he began to use a cane for moving about, including at work.
- He also recently found that he was incontinent. Because he cannot afford store-bought diapers, is forced to make them himself using old towels.
- He anticipates having vascular surgery on his legs in the coming months and back surgery after that. These will both entail long periods of recovery and the need for costly rehabilitation treatment and assistance with daily living.

The balance of the appellant's presentation went to argument. This is summarized in Part F, Reasons for panel decision below, under Severity of impairment, General considerations.

The ministry stood by its position at reconsideration.

Admissibility of additional information

The ministry did not object to the information provided by the appellant in his submission or his testimony at the hearing.

With the exceptions noted below, the panel finds that the information provided by the appellant in his submission received before the hearing and his testimony at the hearing is in support of the information and records before the ministry at reconsideration. This information tends to substantiate the information provided by the GP and the information provided by the appellant in his SR. The panel therefore admits this information as evidence under section 22(4) of the *Employment Assistance Act*.

The panel does not admit as evidence the information provided by the appellant that he recently began to use a cane. There was no information regarding the appellant's need for an assistive device, specifically a cane, when the ministry made its reconsideration decision, and therefore this information cannot be said to be in support of the information and records before the

ministry at reconsideration.

For the same reasons, the panel does not admit as evidence the diagnoses listed by the GP in his letter (benign neoplasm prostate, dis of lipid metabolism, essential hypertension, GERD) that are in addition to those before the ministry at reconsideration.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry decision that determined that the appellant did not meet three of the five statutory requirements of Section 2 of the EAPWDA for designation as a person with disabilities (PWD) is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe physical or mental impairment that, in the opinion of a prescribed professional,

- (i) directly and significantly restricts his ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,
- (ii) as a result of those restrictions, he requires help to perform those activities.

The ministry determined that the appellant satisfied the other 2 criteria: he has reached 18 years of age; and his impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

The following section of the EAPWDA applies 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 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 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.

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) 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).

Analysis

General considerations

From his statements at the hearing, the panel understands the appellant's position to be that he considers the PWD designation process to be degrading and "a system failure." From his perspective, if anyone has a disability, it is him – he is "a textbook example of a person with disabilities." His GP, who he has known since 2013, is convinced that he has a disability, and has stated as such. He feels that his GP, who is not a lawyer, cannot be expected to take time out from his busy practice to understand the complexities of the legislation governing PWD designation. Despite contacting several individuals and organizations, he was not able to find an

advocate available to help him with the process.

With his current medical conditions, the appellant submits that it should be clear to the ministry that he meets the PWD criteria. He also points out that his situation will soon be even worse. In the next few months he is facing vascular surgery on his legs and back surgery after that, both entailing long periods of recovery and the need for costly rehabilitation treatment and assistance with daily living. He argues that the ministry should grant him an exception, so that even if he doesn't qualify for PWD designation on the basis of information already provided, he be granted this designation anyway, and the assistance that goes with it, so that he can survive the coming months.

Panel comment

The designation of a person as a person with disabilities arises from the application of legislation – section 2 of the EAPWDA reproduced above. It is clear from this legislation that PWD designation is at the discretion of the minister. However, it is also clear that this discretion is limited, by requiring the minister to be “satisfied” that the applicant meets the criteria set out in section 2. This means that, even though a medical practitioner (in this case the GP) may provide an opinion that the applicant is disabled, or should be provided disability assistance, the minister's decision must be based on firm evidence that the criteria have been met.

As the ministry noted in its decision, the diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. An impairment is a medical condition diagnosed by a medical practitioner (the GP) who, pursuant to section 2(a) of the EAPWDA, has confirmed that the condition will continue for at least 2 years, and in the opinion of a prescribed professional results in restrictions to a person's ability to function independently or effectively for a reasonable duration. To assess the severity of impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning. Considering the emphasis in the legislation on restrictions in the ability to perform DLA and help required, the panel finds the ministry's approach to be reasonable.

For the minister to be “satisfied” that the person's impairment is severe, the panel considers it reasonable for the ministry to expect that the information submitted by the independent and professional medical practitioner and prescribed professional (in this case the GP) completing the application provides the minister with a comprehensive overview of the nature and extent of the impacts of the person's medical conditions on daily functioning. As the legislation requires the minister to make determinations regarding the degree of impairment, the degree of restrictions in the ability to perform DLA and the resulting degree of help required, it is therefore important that the MR and the AR include explanations, descriptions or examples in the spaces provided so that the minister has the information needed to make these determinations. Significant weight must also be placed on the evidence of the applicant, unless there is a legitimate reason not to do so. Such information provided by the applicant, while not necessary under the legislation, may be helpful in fleshing out the general picture provided by the medical practitioner/prescribed professional. The reconsideration process provides the opportunity for the prescribed professionals and applicant to clarify or add to the information provided on application, and the panel hearing an appeal must consider any information provided on appeal, as long as the panel finds it admissible.

The panel will review the reconsideration decision on the basis of these considerations.

Severity of impairment

2 year duration

In the reconsideration decision, the ministry acknowledged that the MI and CVA the appellant experienced have affected his physical functioning and mobility. However, the GP has not indicated what the expected level of recovery might be or how long he expects it will take for the appellant to recover from these medical events. The ministry took the position that it was therefore unable to determine that it is his medical practitioner's opinion that the deficits to the appellant's physical functioning caused by the MI and CVA will last two years or more. As such, when assessing his level of physical impairment, the ministry relied on the assessments of physical functioning related to the deficits caused by his diabetes, spinal stenosis and PVD.

Panel finding

The legislation is clear that PWD designation is based on the severity an ongoing impairment – that is, one that will continue for at least 2 years. In the MR, the GP indicated that the appellant's impairment, arising from the spinal stenosis, diabetes and PVD diagnoses he had listed, will continue for two years or more. If the GP had anticipated that, as a result of the appellant's subsequent MI and CVA, his ongoing impairment would involve a different or greater degree of ongoing restriction in daily functioning, then it would be reasonable for the ministry to expect that the GP would report this when making his additions to the MR (MR rev) or in his accompanying letter at reconsideration. Without such information, the panel finds that the ministry was reasonable in relying on the assessments of physical and mental functioning arising from the diagnoses provided in the MR.

Physical impairment

In its decision, the ministry was not satisfied that the information provided establishes a severe physical impairment. In reaching this conclusion, the ministry noted that in the MR the GP indicates that the appellant does not require any prostheses or aids for his impairment. In assessing his basic physical functional skills in the MR, the GP indicates the appellant is able to walk less than 1 block unaided on a flat surface; climb 2- 5 steps unaided; is unable to lift; and can remain seated for less than an hour.

In reviewing the AR, the ministry noted that the GP provides an assessment of the appellant's ability to complete activities that require mobility and physical ability: he requires continuous assistance from another person or is unable to lift, carry and hold; and takes significantly longer to walk outdoors, climb stairs, lift, carry and hold. The GP does not provide an assessment of the appellant's ability to walk indoors or stand.

The ministry noted that neither the appellant nor his GP have provided any information to indicate how much longer than typical he takes to walk outdoors, climb stairs, lift, carry and hold. Therefore, the ministry was unable to determine whether the extra time required

represents a significant restriction to his ability to perform these activities.

The ministry also found that, because of contradictory evidence, some assessments provided by the GP are problematic. For example, in the MR the GP indicates the appellant needs assistance to walk more than 1 block; however, in the AR the GP does not indicate the need for assistance to walk outdoors, only that it takes longer to do it. Similarly, although the GP indicates in the AR that the appellant is unable to lift, carry and hold, he later comments, "also restricted in amount he can carry," implying that he can perform these activities to some degree. The ministry held that these discrepancies make it difficult to determine the overall level of functioning in these areas.

In the amended AR provided at reconsideration, the GP notes, "Cannot walk > 100 m, in need of a [illegible]. Post CVA lack of concentration, poor sleep. Peripheral arterial stenosis - unable to ambulate." The minister found it difficult to assess the appellant's ability to walk because although the GP states the appellant is unable to ambulate, he also states that the appellant cannot walk more than 100 m., implying that he can walk less than 100 m. and therefore can ambulate at some level.

The ministry acknowledged that the appellant has limitations to his physical functioning and mobility due to his medical conditions. However, the ministry found that the information provided by the GP in his assessments of basic physical functioning and ability to manage activities requiring mobility and physical ability does not establish the presence of a severe physical impairment.

Panel finding

The inconsistencies noted by the ministry in the MR regarding the appellant's mobility have to some extent been clarified by the GP in his letter included in the appeal submission: "... he cannot walk more than one block and has constant backache limiting his ability to walk, bend, sit prolonged and lift, anything more than 10 pounds." However, while this clarification goes some way in describing restrictions with the appellant's ability with the DLA of moving about indoors and outdoors, the determination of severity of impairment goes beyond this one DLA.

It is clear from the sentence structure of section 2(2) of the EAPWDA that the clause beginning "*that (b) in the opinion of a prescribed professional*

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

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

essentially serves to define "severe impairment." In other words, the ministry must rely on the opinion of a prescribed professional (in this case, the GP) regarding the overall ability of the applicant to perform to DLA.

The GP's assessments of the appellant's ability in this respect are reviewed more fully below under Direct and significant restrictions in the ability to perform DLA. For the purposes of this severity of impairment criterion, it is sufficient to note that the GP assessed the appellant as independent (i.e. requiring no help) for most of the other DLA requiring physical effort. The only DLA for which help is required is basic housekeeping, assessed as requiring periodic assistance from another person, without any information on the frequency or duration of such assistance.

The other exception is the assessment that the appellant takes significantly longer than typical for the going to and from stores and carrying purchases home aspects of shopping, without any information provided on how much longer than typical these take. As the ministry noted in its analysis below regarding ability to perform DLA, for both the basic housekeeping and shopping DLA, without more information, it would be difficult for the ministry to assess the significance of restrictions for these DLA.

Given the lack of information that would provide a clear picture of the limitations in the appellant's ability in moving about indoors and outdoors, and considering the level of independence in the appellant's ability to perform the other DLA requiring physical effort, the panel finds the ministry was reasonable in determining that a severe physical impairment has not been established.

Mental impairment

In its decision, the ministry noted that in the Request for Reconsideration, the GP provides the diagnosis of CVA (cerebrovascular accident or stroke). He amended the MR indicating that the appellant now has significant deficits with cognitive and emotional functioning in the areas of motivation, motor activity and attention or sustained concentration, commenting "post CVA."

The ministry then reviewed whether there were any further changes to the MR or AR reflecting the CVA diagnoses. In the original application, the GP completed an assessment of impacts to cognitive and emotional functioning and noted that there are no impacts to daily functioning. The ministry noted that the GP post CVA did not update this information.

Further, the GP indicates the appellant does not require support or supervision for any aspect of social functioning, and describes the appellant as having good functioning within his social networks and does not indicate any safety concerns. In addition, the GP does not indicate that the appellant requires assistance with (i) making decisions about personal activities, care or finances; or (ii) relating to, communicating or interacting with others effectively, the 2 DLA applicable to a person with a mental impairment.

The ministry acknowledged that the appellant may experience deficits to his cognitive and emotional functioning since his CVA. However, the ministry found that the information provided does not establish a severe impairment of mental functioning.

Panel finding

In the original application, the GP did not diagnose the appellant with any mental health condition. As the ministry noted, at reconsideration the GP reported under Health History in the MR the appellant having a CVA and a MI in December 2018, adding that as a result of the CVA the appellant now has significant deficits with cognitive and emotional functioning in the areas of motivation, motor activity and attention or sustained concentration. However, as discussed above under *Severity of Impairment*, the GP provided no information that would confirm that these aspects of the appellant's impairment would continue for at least two years.

Also as the ministry noted, when revising the AR the GP indicated no change to his

assessments of no impact for all listed areas in assessing the degree of how mental impairment restricts or impacts functioning. Further, the GP did not report any changes to the appellant's ability to communicate, originally assessed as "good," or any changes with respect to social functioning, for which the appellant was originally assessed as independent.

The panel notes that in his submission on appeal and at the hearing, the appellant stated that he is reluctant to cook for fear of burning his food or leaving the stove on because forgetfulness has become an issue since his stroke. While the GP has identified attention or sustained concentration as one of the appellant's current cognitive or emotional deficits, in the panel's view, this difficulty with cooking in itself is not a restriction that would demonstrate a severe mental impairment.

Based on the forgoing considerations, the panel finds that the ministry was reasonable in concluding that a severe mental impairment has not been established.

Direct and significant restrictions in the ability to perform DLA

In the reconsideration decision, the ministry noted that the appellant's medication regime has changed recently; however the GP has not provided information to indicate that these new medications affect his ability to manage daily living activities.

The ministry noted that in the MR the GP indicates that the appellant's ability to complete basic housework, shop, mobilize outside the home and use transportation is continuously restricted, and that his ability to perform activities related to personal self-care, meal preparation, management of medications, mobility inside the home and management of finances is not restricted, adding the comment: "Will see vascular surgeon to discuss surgery." When asked what assistance is required with DLA, the GP writes, "friend, shopping, carrying."

The ministry also reviewed the information provided in the AR:

- periodic assistance from another person required to do laundry and basic housekeeping.
- takes significantly longer than typical to go to and from stores and carry purchases home.
- independent while doing all other activities.

The ministry noted that, although the appellant requires periodic assistance from another person to do laundry and basic housekeeping, neither the appellant nor his GP explains the frequency or duration of the help he needs. Therefore, the ministry is unable to establish that his ability to perform these activities is significantly restricted periodically for extended periods, as required by legislation.

The ministry further stated that although the application asks the assessor to describe how much longer it takes to go to and from stores and to carry purchases home, the GP does not provide this information. This makes it difficult to determine that the extra time required to complete these activities represents a significant restriction in the ability to perform these tasks.

The ministry also noted discrepancies between the information provided in the MR and that

provided in the AR. For example, in the MR the GP indicates the appellant's ability to use transportation is continuously restricted, but in the AR he describes him as independent in this area. As a result, the ministry was unable to determine the appellant's ability to use transportation.

The ministry therefore found that the evidence provided is not sufficient to establish that the appellant's ability to manage daily living activities is significantly restricted continuously or periodically for extended periods.

Panel finding

Assessing the degree of restriction in the applicant's ability to perform DLA is central to the ministry's determination of PWD designation. The legislation requires the ministry to assess direct and significant restrictions to DLA in consideration of the opinion of a prescribed professional, in this case the GP. This does not mean that other evidence, such as from the applicant, should not be factored in as required to provide clarification of the professional evidence, but the legislative language is clear that a prescribed professional's evidence is fundamental to the ministry's determination whether it is "satisfied." And for the minister to be "satisfied," it is reasonable for the ministry to expect that the evidence provides a clear picture of the extent to which the ability to perform DLA is restricted, as assessed in terms of the nature and duration of help required or extra time needed, in order for the ministry to determine whether the restrictions are "significant."

In reviewing the evidence provided by the GP in light of the legislative requirements, the panel finds it difficult to develop a clear picture of the degree to which the appellant's impairments restrict his ability to perform DLA. For instance:

- For the DLA of moving about indoors and outdoors, the GP assessed the appellant as able to walk more less than 1 block (cannot walk > 100m.) and taking significantly longer than typical, with "constant backache limiting his ability to walk..." However, as the ministry noted, there is no information that would explain how much longer. Equally relevant would be a description as to whether walking such a distance could be done more than once a day or the after-effects of walking such a distance.
- As also noted by the ministry, the GP assessed the appellant as requiring periodic assistance from another person, without providing any information on the frequency and duration of such assistance. In his submission on appeal the appellant wrote, "My doctor is now arranging for an organization to come and clean my apartment," but neither he nor the GP provided any information on how often (daily? weekly? monthly?) such help was required and on what kind of cleaning needed to be done and why.
- When asked in the MR what assistance the appellant needs with DLA, the GP wrote, "Shopping, carrying, friend." This cannot be said to be responsive to the ministry's request: "Please be specific regarding the nature and extent of assistance required."

Based on the above considerations, taking into account the degree of independence reported by the GP, and the analysis by the ministry of how the few assessments of taking longer than typical or requiring periodic assistance from another person do not suggest significant restrictions in overall ability, the panel finds the ministry was reasonable in determining that this

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criterion has not been met.

Help required

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.

Panel finding

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.

Though the appellant benefits from the assistance from a friend, given that the GP did not report any detailed information on the assistance required from another person, the use of an assistive device or the services of an assistance animal, and since 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 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 that determined that the appellant was not eligible for PWD designation was reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant is thus not successful on appeal.

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

Richard Roberts

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019 March 08

PRINT NAME

Carl Gorham

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 March 08

PRINT NAME

Glenn Prior

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 March 08