



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 February 11, 2019, which held that the appellant did not meet 1 of the 5 statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the following requirements were met:

- the appellant has reached 18 years of age;
- the appellant has a severe physical 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.

However, the ministry was not satisfied that a medical or nurse practitioner has confirmed that the appellant has an impairment that is likely to continue for at least 2 years.

Additionally, the ministry determined that it has not been demonstrated that the appellant is one of the prescribed classes of persons who may be eligible for PWD designation on alternative grounds set out in section 2.1 of the EAPWDR.

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

- The appellant's PWD application comprised of:
 - A Medical Report (MR) undated, completed by a general practitioner (GP) who has been the appellant's doctor for 7 years and has seen the appellant once in the past 12 months;
 - An Assessor Report (AR) dated October 8, 2018, also completed by the GP; and
 - The appellant's self-report (SR) section of the PWD application, dated October 15, 2018.
- The appellant's Request for Reconsideration submission, which comprised:
 - a letter from the appellant dated January 29, 2018;
 - a letter from the GP dated January 22, 2019; and
 - the PWD application, which has been amended by the appellant with additions to his SR and the placement of an asterisk beside the diagnosis "Diabetes" in the MR.

Information and documentation provided on appeal and admissibility

- The appellant's Notice of Appeal (NOA), dated February 26, 2019, which reiterated information provided by the appellant in his reconsideration letter, and included argument.
- At the hearing, the appellant and his representative confirmed information provided in the appellant's reconsideration letter. The ministry reviewed the reconsideration decision but did not provide additional evidence.

In accordance with section 22(4) of the *Employment and Assistance Act* (EAA), the panel may admit as evidence only (a) information and records that were before the minister when the decision being appealed was made, and (b) oral or written testimony that is in support of the information and records available at the time of reconsideration. As there was no new information provided on appeal, there issue of admissibility did not arise.

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

Summary of relevant evidence

Diagnoses and Health History

Where asked to specify diagnoses related to the applicant's impairment, the GP responds:

- Tibial plateau fracture complicated by septic arthritis and joint destruction. Onset date: August 2017.
- Diabetes.
- Cocaine dependence.

When asked to indicate the severity of the medical conditions relevant to the applicant's impairment, the GP responds: "Left knee septic arthritis. Severe & disabling. Affects his mobility specifically, needs mobility device to help him walk."

When asked to provide any additional information the GP considers relevant to an understanding of the significance of the person's medical condition, the nature and extent of the person's impairment and the impact these have on daily functioning, the GP responds: "Has had multiple surgeries."

In his subsequent letter, the GP writes: "[Appellant's name] has type 1 Diabetes, this is a permanent condition. He also suffers from peripheral neuropathy, due to his diabetes."

In his SR, the appellant describes his disability as "Left knee/leg and Diabetes poor circulation feet, hands." The appellant reports having had surgery on his knee and requiring further surgery.

In his reconsideration and appeal submissions, the appellant reports that diabetes causes numbing in his hands and feet which is a permanent condition called peripheral neuropathy. Even though his leg has been getting better over time after surgery, he still needs assistance due to his diabetes. At the hearing, the appellant's representative also described the impact of diabetes on the appellant's hands and feet.

Degree and Course of Impairment

In the MR, when asked to indicate "Yes" or "No" in response to "Is the impairment likely to continue for two years or more from today?" the GP ticked the "No" box, commenting "Should improve after he gets a knee replacement."

Physical Impairment

The GP reports:

- Cannot walk at all unaided.
- Cannot climb steps unaided.
- Is limited to lifting under 5 lbs.
- No limitation for remaining seated.
- Walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding all require the use of a walker. Climbing stairs, lifting, and carrying and holding take significantly longer than typical to perform. "Left knee joint destroyed."

DLA

The GP reports:

- When asked if the applicant has been prescribed any medication and/or treatments that interfere with his ability to perform DLA, the GP ticks the "Yes" box and comments "Multiple surgeries."
- In the MR, meal preparation, basic housework, daily shopping, mobility inside and outside the home, use of transportation are reported as being continuously restricted. Assistance required is "Equipment to help him mobilize." Personal self-care, management of medications, and management of finances are reported as not being restricted.
- In the AR, the GP reports that "Left knee septic arthritis – poor mobility" are the impairments that impact the appellant's ability to manage DLA. Specific tasks within the DLA basic housekeeping, shopping, meals,

pay rent and bills, medications, and transportation are identified as requiring periodic or continuous assistance from another person and/or the use of a walker. "Gets assistance with mobility issues." "Needs assistance with walking & standing specifically."

Need for Help

The GP indicates that help required with DLA is provided by family. Crutches and a walker ("walker mostly") are used to help compensate for the appellant's impairment.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

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

Additionally, was the ministry reasonable when determining that the appellant did not meet the alternative eligibility criteria of section 2.1 of the EAPWDR?

Relevant Legislation

EAPWDA

2 (1) In this section:

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

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

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

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

EAPWDR

Definitions for Act

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

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

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

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

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

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

(a) authorized under an enactment to practise the profession of

- (i) medical practitioner,
- (ii) registered psychologist,
- (iii) registered nurse or registered psychiatric nurse,
- (iv) occupational therapist,
- (v) physical therapist,
- (vi) social worker,
- (vii) chiropractor, or
- (viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

- (i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or
- (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*,

if qualifications in psychology are a condition of such employment.

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

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

Alternative Grounds for PWD Designation – section 2.1 of the EAPWDR

Finding that no evidence or argument has been provided to suggest or establish that the appellant falls within one of the classes of persons described in paragraphs (a) through (e) of section 2.1 of the EAPWDR, the panel concludes that the ministry reasonably determined that the appellant is not eligible for PWD designation under this section.

Eligibility for PWD Designation – section 2 of the EAPWDA

Duration of Impairment

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

The appellant argues that when assessing the duration of his impairment, the ministry failed to consider his type 1 diabetes, a condition included in the GP's original diagnoses and subsequently confirmed by the GP as being permanent. The ministry argues that the question is not whether a medical condition, such as type 1 diabetes with neuropathy, is likely to continue for at least 2 years, but whether the *impairment* related to the medical conditions is likely to continue for at least 2 years. The ministry references the definition of "impairment" in the MR - a loss or abnormality of psychological, anatomical or physiological structure or function causing a restriction in the ability to function independently effectively, appropriately or for a reasonable duration – and concludes that the GP has not confirmed that the appellant's impairment is likely to continue for at least 2 years. In particular, the ministry notes that in the MR the GP's indicated "No" when asked "Is the impairment likely to continue for two years or more from today?" and commented "Should improve after he gets a knee replacement." Respecting the information provided in the GP's subsequent letter, the ministry concludes that the

statement that the appellant's type 1 diabetes is permanent and that he also suffers from peripheral neuropathy does not confirm that these conditions cause impairment to the appellant's functioning or that the resulting level of impairment is likely to continue for at least 2 years.

For the following reasons, the panel finds the ministry's decision to be reasonable. As the legislation requires that a medical or nurse practitioner be of the opinion that severe physical or mental "impairment" is likely to continue for at least 2 years, the panel considers the ministry reasonable when interpreting impairment as relating to impacts on a person's functioning resulting from a diagnosed medical condition. The ministry's definition of "impairment" in the MR is in keeping with other definitions of "impairment." For example, "impairment" is defined in the Miller-Keane Encyclopedia and Dictionary of Medicine, Nursing, and Allied Health (Seventh Edition, 2003) as "any abnormality of, partial or complete loss of, or loss of the function of, a body part, organ, or system."

In this case, the only information from a medical or nurse practitioner respecting the appellant's impairment is that from the GP. The GP responds "No" when asked if the appellant's "impairment is likely to continue for two or more years from today?" and states that the appellant should improve following knee surgery. In his subsequent letter, the GP confirms the diagnosis of type 1 diabetes, adding that it is a permanent condition and that the appellant suffers from peripheral neuropathy, but the GP does not describe impairment to functioning resulting from these conditions or the duration of any resulting impairment. Additional information and narrative from the GP in the PWD application directly relates the appellant's physical impairment, including poor mobility and the need for assistance and assistive devices, to the appellant's knee condition, not diabetes. The GP also states that poor mobility due to the left knee problem is the impairment that impacts the appellant's ability to manage DLA. Therefore, as the GP indicates that the appellant's impairment related to his left knee is not likely to continue for at least 2 years and given the absence of information from the GP respecting impairment of functioning due to diabetes and peripheral neuropathy, the ministry was reasonable in determining that a medical practitioner has not confirmed that the appellant's impairment is likely to continue for at least 2 years.

Other requirements of section 2 EAPWDA

As the other requirements of section 2 of the EAPWDA were not in dispute, the panel is making no findings with respect to the reasonableness of the ministry's decision on these requirements.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant had not met all requirements set out under section 2(2) of the EAPWDA for designation as a PWD, was reasonably supported by the evidence. The ministry's decision is confirmed and the appellant is not successful on appeal.

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PART G – ORDER

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

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

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

and

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

PART H – SIGNATURES

PRINT NAME Jane Nielsen	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/03/26

PRINT NAME Kent Ashby	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/03/26

PRINT NAME Marcus Hadley	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/03/26