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PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry's reconsideration decision dated March 18, 2019 which held that the appellant was not eligible for Persons With Disabilities (PWD) benefits, as per the Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2 as well as the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 2 and 2.1. Specifically, the ministry found that the appellant did not meet the following criteria:

- She does not have a severe mental or physical impairment
- Her impairment does not significantly restrict her ability to perform daily living activities
- She does not require the significant help or supervision of another person to perform daily living activities restricted by her impairment

It was also noted that the appellant did not demonstrate that she was one of the prescribed classes of persons who may be eligible for the PWD designation on alternative grounds set out in EAPWR section 2.1.

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 following key dates and information were noted:

- February 2018: the appellant was injured in an accident in her home
- November 20, 2018: application for designation as a PWD was received by the Ministry
- January 17, 2019: the ministry denied the request
- February 15, 2019: the ministry received the Request for Reconsideration
- March 18, 2019: the ministry reviewed the Request for Reconsideration

The ministry has determined that the appellant is not eligible for PWD designation because she did not meet all five criteria set out in section 2 (2) and (3) of the EAPWDA because although she met the age and duration criteria, it could not be established that she had a severe impairment that directly and significantly restricted her daily living activities and that she required assistance with daily living activities because of significant restrictions. Additionally, In her submitted information the appellant did not demonstrate that she was one of the prescribed classes of persons who may be eligible for the PWD designation on alternative grounds set out in EAPWR section 2.1 as she is not enrolled in Plan P (Palliative Care), she is not eligible for At Home Program payments, is not eligible for community living support and is not considered disabled under the Canada Pension Plan Act.

At the hearing the appellant stated that her injuries to her shoulder occurred during a fall she had at home in February of 2018 when she sustained possible labrum tear and an un-displaced fracture of the greater tuberosity of the humerus. She also suffers from COPD stemming from having a collapsed lung as a child, sciatic nerve damage and arthritis since age 17, thinning of the meniscus in both knees (right is worse and she sometimes uses a brace), a spot in her vision which limits her sight and ringing in her ears because of pain. She states she is not on any pain medication and that she struggles with depression. She states that she cannot work (as per her doctor's orders) in her previous self employment situation as a housekeeper. She states that her doctor told her that the only way she would get disability benefits was to focus her reports on her shoulder injury.

The appellant depends upon significant help from her children for her personal care, dressing, shopping, meal preparation, basic housework, transportation, lifting and carrying. She gave the example of not being able to brush her hair when she gets up in the morning or not being able to grocery shop because of the pain associated with her knees and shoulder. Her children are now young adults and do not want to have to put their lives on hold to care for her. She is worried about managing in the future.

At the hearing the ministry relied upon the Reconsideration Decision. They stated that the information provided from the appellant's doctor and social worker was incomplete and somewhat confusing, noting that in her report the physician states: "the applicant requires continuous assistance with all aspects of her mobility and physical ability and she requires an assistive device with walking indoors, walking outdoors, climbing stairs and standing; conversely, the physician has already established the applicant is able to walk more than 4 blocks unaided, climb more than five steps unaided and lift up to 15 lbs which is not indicative of a severe physical impairment. The ministry's practice of weighting information received based upon the length of time the doctor and social worker had known the appellant was reviewed. It was suggested that the appellant entertain the idea of re-applying for a PWD or even a PWMB with more complete information.

[Redacted]

PART F – REASONS FOR PANEL DECISION

The decision under appeal is the Ministry's reconsideration decision dated March 18, 2019 which held that the appellant was not eligible for Persons With Disabilities (PWD) benefits, as per the Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2 as well as the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 2 and 2.1.

Applicable Legislation:

EAPWDA: Persons with disabilities

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

EAPWR: 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.

[am. B.C. Regs. 196/2007; 197/2012, Sch. 2, s. 2; 70/2013.]

Part 1.1 — Persons with Disabilities

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2 (2) [*persons with disabilities*] of the Act:

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;

- (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act*;
- (d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act* to assist that family in caring for the person;
- (e) a person who is considered to be disabled under section 42 (2) of the *Canada Pension Plan (Canada)*.

Conclusion:

In her submissions and during the hearing, the appellant provided testimony that she is significantly impacted by her injuries and health conditions that cause her so much pain that she is unable to take care of herself. She stated that she requires a lot of assistance from her family to be able to undertake her personal care, go shopping, plan and cook meals, and use any form of transportation. The appellant is having issues with depression because of her situation.

The ministry relied upon the reconsideration decision during the hearing, explaining the current legislation pertaining to this appeal and answering the appellant's questions.

All information submitted to the appeal panel was carefully reviewed and all of the appellant's testimony was considered. Although the appellant may have disabling injuries and conditions, the extent of these injuries and conditions were not reflected in the information that her physician and social worker provided to the ministry. She met two of the five criteria: (1) age and (2) duration, however it could not be established that she met the other three: (3) a severe impairment that directly and significantly (4) restricted her daily living activities and that she (5) required assistance with daily living activities because of significant restrictions. Nor does she demonstrate that she was one of the prescribed classes of persons who may be eligible for the PWD designation on alternative grounds set out in EAPWR section 2.1 as she is not enrolled in Plan P (Palliative Care), she is not eligible for At Home Program payments, is not eligible for community living support and is not considered disabled under the Canada Pension Plan Act.

The panel finds that the ministry's reconsideration decision of March 18, 2019 which held that the appellant's application for PWD designation was denied because she did not demonstrate that she met all five criteria under the current legislation (Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2 and the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 2 and 2.1 was a reasonable application of the legislation in the circumstances of the appellant.

The panel confirms the ministry's decision. The appellant is unsuccessful in her appeal.

PART G – ORDER	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> RESCINDS THE MINISTRY DECISION	
If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? <input type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION:	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input type="checkbox"/> or Section 24(1)(b) <input checked="" type="checkbox"/>	
and	
Section 24(2)(a) <input type="checkbox"/> or Section 24(2)(b) <input checked="" type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME Jan Lingford	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/04/24

PRINT NAME Mel Donhauser	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/04/24
PRINT NAME Patrick Cooper	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/04/24