

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry’s reconsideration decision dated April 9, 2019 which held that the appellant was not eligible for a Persons With Disabilities designation 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 all five of the five criteria set out in Section 2 (2) and (3) of the EAPWDA. He met two of the criteria, age and duration, however he did not meet the other three which are severity of impairment, restrictions on daily living activities (DLA) and assistance required with DLA. It was also noted that he was not 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 EAPWD.

**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 was noted:

- April 9, 2019: the ministry completed its review of the Request for Reconsideration
- April 4, 2019: the ministry received the Request for Reconsideration
- March 26, 2019: the ministry denied the Request for Reconsideration
- March 7, 2019: the application for designation as a PWD was received by the ministry

At the hearing the appellant and his representative stated that:

- He is significantly restricted and affected by both his mental and physical disabilities, which are worsening over time
- He struggles with Generalized Anxiety Disorder (GAD), Obsessive Compulsive Disorder (OCD), chronic back pain, migraines, headaches, shortness of breath, insomnia, neck and shoulder pain, sore muscles, muscle spasms, speech impairment, memory difficulties, poor concentration, impulse control, intrusive and suicidal thoughts, apathy and difficulty communicating
- His girlfriend spends approximately half of each day visiting and caring for him, performing cooking and food preparation, laundry, housekeeping, banking, bill payments and shopping. She urges him to get out of bed, shower and get dressed when she arrives. He leaves the house only a few times per month as he has great difficulty dealing with people and the stress of being in public
- He estimates that 90-95% of the time he is having an acute episode of mental and physical symptoms
- The psychiatrist who filled out his application recently dropped the appellant as a patient, following the appellant making a formal complaint against the doctor regarding incidents that have occurred in the past. They are of the opinion that the doctor did not adequately represent the totality and degree of the appellant's conditions and the restrictions they cause in the PWD Medical Report he filled out due to prejudice against the appellant for making a complaint against him
- They noted that as a result, they feel the ministry did not have adequate medical information in front of them at the time of reconsideration to make an informed decision in the appellant's favour
- They have since consulted with the appellant's long-time family physician who has agreed to help them reapply for PWD designation should this appeal confirm the ministry's decision

At the hearing, the appellant and his representative submitted undated letters from his girlfriend, family doctor and three other persons who have all known the appellant for many years. These letters document the appellant's conditions and the negative effects they have on his life. After consideration and hearing no objection from the ministry, the panel decided to accept these letters as supporting documents, with limited weight/affect on their deliberations.

The ministry relied upon the Reconsideration Decision at the hearing. The ministry has determined that the appellant is not eligible for benefits because there was insufficient information at the time of reconsideration to establish that the appellant met all five of the criteria in Section 2 (2) and (3) of the EAPWDA. While he met two of the criteria, age and duration, he did not meet the other three which are severity of impairment, restrictions on daily living activities (DLA) and assistance required with DLA. It was also noted that he was not 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 EAPWD. The ministry explained in detail the reasons for their decision and answered the questions of the appellant and his representative. The appellant's declarations at the hearing of how his medical conditions affected him on a daily basis were not fully corroborated by the psychiatrist's medical report. A new application to the ministry for PWD designation with complete medical information attached was discussed as a possible option for the appellant.

## **PART F – REASONS FOR PANEL DECISION**

The decision under appeal is the Ministry's reconsideration decision dated April 9, 2019 which held that the appellant was not eligible for a Persons With Disabilities designation 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 all five of the five criteria set out in Section 2 (2) and (3) of the EAPWDA. He met two of the criteria, age and duration, however he did not meet the other three which are severity of impairment, restrictions on daily living activities (DLA) and assistance required with DLA. It was also noted that he was not 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 EAPWD.

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).

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.

### **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 Reasons**

#### Submissions of the appellant:

- In the written submissions and during the hearing, the appellant and his representative provided testimony that he is significantly impacted on a daily basis by the conditions he suffers from. They stated that without extensive assistance he would become more reclusive and unwell. He suffers from Generalized Anxiety Disorder (GAD), Obsessive Compulsive Disorder (OCD), chronic back pain, migraines, headaches, shortness of breath, insomnia, neck and shoulder pain, sore muscles, muscle spasms, speech impairment, memory difficulties, poor concentration, impulse control, intrusive and suicidal thoughts, apathy and difficulty communicating
- His girlfriend visits him 7 days/week, spending approximately half a day each time cooking and preparing food, doing laundry, housekeeping, banking, bill payments and shopping. She assists him with transportation, his personal care and supports him emotionally and socially. He does not have anyone else looking after him as he finds it very difficult to develop relationships
- They maintain that the combination of his physical and mental health issues prevent him from adequately caring for himself and that he requires extensive daily care

#### Submissions of the Ministry:

The ministry relied upon the reconsideration decision during the hearing, explaining the current legislation pertaining to this appeal and answering the appellant's questions. It was noted that the lack of corroborating medical information provided in the medical report submitted to the ministry was a factor in the ministry's decision.

#### Findings of the Panel:

All information submitted to the appeal panel was carefully reviewed and the appellant's and his representative's testimony was considered. Although the appellant may have disabling conditions, the ministry was unable to determine eligibility for a PWD designation with the information provided at the time of the reconsideration.

The panel finds that the ministry's reconsideration decision of April 9, 2019 which held that the appellant's application for PWD designation was denied because he did not meet the five criteria was a reasonable application of 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, considering the information submitted at the time of reconsideration and the circumstances of the appellant.

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

Jan Lingford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/05/03

PRINT NAME

Linda Smerychynski

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/05/03

PRINT NAME

Laurie Kent

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/05/03