

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated May 22, 2019 which found that the appellant did not meet three of the five 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 appellant met the age requirement and that his impairment is likely to continue for at least two years. However, the ministry was not satisfied the evidence establishes 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 these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The ministry also determined that the appellant is not in any of the classes of persons set out in section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation* who may be eligible for PWD designation on alternative grounds.

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 the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the appellant's information and self-report dated February 7, 2019, a medical report (MR) dated February 6, 2019 completed by a general practitioner (GP) who has known the appellant for one year and has met with the appellant 2 to 10 times in the past 12 months, and an assessor report (AR) dated January 25, 2019 and completed by a social worker (SW) who has known the appellant for 2 weeks and has met with him 2 to 10 times.

The evidence also included the appellant's Request for Reconsideration dated May 2, 2019 and a Neuropsychology Consultation Report dated January 21, 2019.

Diagnoses

In the MR, the GP diagnosed the appellant with Hepatitis C, COPD [chronic obstructive pulmonary disease] and alcohol/ substance misuse within the mental disorders diagnostic category, with no dates of onset provided by the GP. Asked to describe the appellant's mental or physical impairments that impact his ability to manage his daily living activities (DLA), the SW wrote in the AR: "asthma, substance use and depression; COPD, neutropenia."

Physical Impairment

In the MR, the GP reported:

- In terms of his health history, the appellant has severe breathlessness from COPD. He has recurrent admissions with Sepsis and prolonged hospital admissions over the past six months. Due to recurrent admissions, he has general malaise and fatigue on a consistent basis with recurrent chest infection/ COPD exacerbations. He has marked SOB [shortness of breath] which limits all ADL [activities of daily living].
- The appellant does not require any prostheses or an aid for his impairment.
- In terms of functional skills, the GP reported that the appellant can walk 1 to 2 blocks unaided on a flat surface, climb 2 to 5 steps unaided, lift 2 to 7 kg. (5 to 15 lbs.) and has no limitation with remaining seated.
- The appellant is not restricted with his mobility inside or outside the home.

In the AR, the SW indicated:

- The appellant is assessed as being independent with walking indoors and walking outdoors, climbing stairs and standing. The appellant requires periodic assistance with lifting and carrying and holding, with no further comments by the SW.
- In the section of the AR relating to assistance provided, the SW indicated that none of the listed assistive devices are used by the appellant.

In his self-report, the appellant wrote:

- He has asthma and difficulty breathing that impacts his ability to work. He gets tired and out of breath easily.

In his Request for Reconsideration, the appellant wrote:

- His asthma and COPD regularly restrict his ability to breathe and, therefore, his ability to walk up to two blocks, climb stairs and walk indoors or outdoors. These conditions are exacerbated regularly by things beyond his control, including extreme temperature changes in his community in Winter and Summer, smoke in the air in his region in the Summer, and pollen/allergens in the air in the Fall and Spring.
- He relies on an assistive device (inhalers) periodically for extended periods of time.
- As mentioned by the GP, he is susceptible to recurrent chest infections, which combined with his COPD and asthma, leaves him bedridden for several days or weeks at a time, unable to perform many of his DLA.

Mental Impairment

In the MR, the GP reported:

- In terms of the appellant's health history, there is substance use/ mental health issues. Due to recurrent admissions, he has general malaise and fatigue on a constant basis.
- The appellant has no difficulties with communication.
- The appellant has significant deficits with his cognitive and emotional functioning in the areas of executive, memory, emotional disturbance, impulse control, and attention or sustained concentration. The GP wrote that there is "substance use/ depression" and "recent illness has caused short term memory loss. Poor motivation and concentration."
- The appellant is continuously restricted with his social functioning, described by the GP as "depression so interactions with others affected."

In the AR, the SW reported:

- The appellant has a good ability to communicate with speaking and hearing and poor ability with reading and writing.
- With respect to the section of the AR relating to daily impacts to the appellant's cognitive and emotional functioning, the SW assessed no major impacts. There are moderate impacts in the areas of consciousness, emotion, insight and judgment, and executive. There are minimal or no impacts to the 10 remaining areas of functioning. The SW did not provide any comments.
- For social functioning, the appellant is independent in all areas, specifically with making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.
- The appellant has good functioning in both his immediate and extended social networks.

In the Neuropsychology Consultation Report dated January 21, 2019, the registered psychologist wrote:

- The appellant presented with a very long history of alcohol abuse. The results of the neuropsychological evaluation revealed significant deficits across a number of assessed cognitive domains.
- The appellant demonstrated poor complex reasoning, cognitive rigidity, and variable memory deficits. Considering these difficulties, the appellant likely requires some level of support and monitoring in his day-to-day function (for reminders around

medical/medication management, diet, alcohol intake).

- Given the nature of the neuropsychological dysfunction, from a functional point of view, there are concerns that the appellant may inadvertently place himself in unsafe and/or compromising situations (e.g. poor medical management, diet, and self-care; continued alcohol abuse, etc.) if left solely to his own faculties for extended periods of time.
- The appellant exhibited adequate basic attention, conversational language, comprehension as well as some ability for basic reasoning and delayed recall and, as such, with some additional clearing, the appellant can return home with supports from family and/or community put in place prior to discharge.
- While the appellant, from a purely cognitive perspective, evidenced adequate basic cognitive function to likely manage his basic day-to-day familiar routines, ongoing alcohol abuse will impact negatively on his ability to consistently apply such adequate abilities.

In his self-report, the appellant wrote that he has depression, alcohol use and difficulty concentrating, and this has an effect on his ability to hold a job.

In his Request for Reconsideration, the appellant wrote:

- Living with his physical restrictions impacts his mental health and, on his worst days, his mood is so low that he struggles to get out of bed and to perform basic self care.
- His sleep schedule becomes dysregulated and he has to take prescriptions to help.
- During a hospital admission in January 2019, a physician performed cognitive testing, which reported significant deficits in the areas of executive, memory, impulse control, and sustained concentration. These deficits were so severe that it resulted in the loss of his driver's license, which directly impacts his ability to function independently, to drive to medical appointments and potential worksites. The disruption to his life and routine has significantly impacted his mental health and has increased his issues with substance misuse.
- His substance use clinician meets with him multiple times weekly and is able to connect him to other public health services as his needs exceed those of his informal supports.

Daily Living Activities (DLA)

In the MR, the GP reported:

- In terms of his health history, the appellant has marked SOB that limits all ADL.
- The appellant has not been prescribed medication and/or treatment that interfere with his ability to perform DLA.
- The appellant is not restricted with most of the DLA, specifically he is not restricted with performing the DLA of personal self care, the meal preparation DLA, the management of medications DLA, the basic housework DLA, the daily shopping DLA, the move about indoors and outdoors DLA, the use of transportation DLA, and the management of finances DLA.
- The appellant is continuously restricted with the DLA of social functioning. The GP wrote: "depression so interactions with others affected." The GP did not comment regarding the degree of restriction with social functioning.

In the AR, the SW reported:

- The appellant is independent with performing all tasks of all DLA, specifically: walking indoors and outdoors, personal care (dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed, and transfers on/off chair), basic housekeeping (including laundry), shopping (going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home). The SW commented that the appellant is “independent with mobility. He has trouble with endurance from the COPD/ asthma. Some cognitive impairments noted in neuropsych reports. Poor complex reasoning and requires support in day to day functioning such as reminders, cues, and some level of monitoring.”
- The appellant is also independent with performing all of the tasks of the meals DLA (meal planning, food preparation, cooking, and safe storage of food), the pay rent and bills DLA (including banking and budgeting), the medications DLA (filling/refilling prescriptions, taking as directed, and safe handling and storage), and the transportation DLA (getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation). The SW commented that the appellant “could use reminders and monitoring due to cognitive deficits.”

In his Request for Reconsideration, the appellant wrote:

- His reduction in independence and his ongoing struggles with addiction have damaged his relationship with his long-time partner, which is impacting his mood/mental health and his ability to perform his ADL’s as he relies on her for assistance.
- His partner provides assistance with preparing meals, medication reminders, and basic cleaning in his home.
- He does not have any other close social connections or assistance available to him locally.
- His substance use clinician meets with him multiple times weekly and is able to connect him to other public health services as his needs exceed those of his informal supports.

Need for Help

The GP reported in the MR that the assistance the appellant needs with DLA is “no help.” In the AR, the SW indicated that the appellant receives help from friends and the SW noted that his “friend lives next door and helps as needed.” None of the listed assistive devices were identified by the SW as routinely used by the appellant to compensate for his impairment.

Additional information

In his Notice of Appeal dated May 28, 2019, the appellant expressed his disagreement with the ministry’s reconsideration decision and wrote that his letter of May 2, 2019 clearly indicates the severity of his impairments, how they directly restrict his ADL’s, and the assistance he requires. His original application was completed during an acute hospital admission by a social worker who does not know him well. His current counsellor knows him better and can advocate at the hearing as needed.

At the hearing, the appellant’s advocate, who is his current substance use clinician, stated:

- The initial PWD application was completed by a social worker who met with the appellant in hospital and did not know the appellant well. The AR was not very thorough.

- As a result of the Neuropsychology Consultation Report that was completed in January 2019 and the cognitive impairments that were identified, the appellant lost his driver's license. The psychologist concluded that the appellant's visual, spatial and memory faculties were not intact so he cannot drive. They are hoping to redo the test to see if there is a possibility that he can get his license back.
- The appellant has worked in an occupation that requires him to travel and the loss of his license is affecting his ability to work. The appellant's occupation also involves physical labour that he can no longer perform.
- The appellant has COPD and asthma and, consequently, has no endurance. He currently uses 2 inhalers, as needed, as an assistive device. He will undergo further testing by a respirologist in July.
- The appellant's work is performed outdoors and he has had to reduce the amount that he is working.
- The appellant has had chest infections because of exacerbations with his COPD. He has been hospitalized due to these infections.
- She meets with the appellant as his substance use clinician at least once per week and she also has discussions with him on the phone several times between appointments.
- The nature of the appellant's cognitive impairments is such that he might not realize that he needs reminders with performing some of his DLA.
- The GP knows the appellant better than the SW and, therefore, more weight should have been placed on the evidence of the GP.

At the hearing, the appellant stated:

- He has to use his inhalers every 4 hours.
- He has had problems with his neck and it has been very painful. His doctor said that a specialist needs to look at it.
- He can only work an hour or two and then he gets tired and dizzy, especially if he is working physically.
- When he sleeps, his arm gets numb all the time as he has problems with his circulation.
- There are only a couple of hours in the morning that he can get things done.
- He can get his DLA done, he is "pretty self sufficient," but he just has no endurance.
- He used to work 10 hours a day and now he is burnt out after one hour.
- He cannot go on long walks because he gets short of breath. There is also lots of smoke in the air, which makes his breathing worse.
- He has had pneumonia 3 times and influenza as well.
- His liver needs to be cured eventually.
- He will have the spirometry test when he meets with the respirologist in July.
- He does not read English and needs his advocate's help.
- No one wants to give him a job because he cannot work 8 hours per day.
- He can do his DLA but he has no endurance at all.

The ministry relied on the reconsideration decision, as summarized at the hearing. The ministry also clarified at the hearing that:

- Employability is not relevant to the designation as a PWD; however, the barriers to employment are relevant to the status as a Person with Persistent Multiple Barriers

(PPMB) to employment, which also provides additional benefits.

- The ministry considers inhalers to be a prescription and not an assistive device.
- The reference in the reconsideration to the ministry being satisfied that the information provided establishes a severe impairment appears to be an error. The ministry acknowledged that the GP referred to the appellant's breathlessness as "severe" but the ministry was not satisfied that the appellant's overall impairment is severe.

The panel considered that there was no additional information for which a determination of admissibility was required under Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for PWD designation, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the evidence does not establish that the appellant has a severe mental or physical impairment and that his DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, it could not be determined that, as a result of those restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a PWD are set out in Section 2 of the EAPWDA as follows:

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).

The EAPWDR provides as follows:

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.

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).

Eligibility under section 2.1 of the EAPWDR

In the absence of any evidence or argument respecting eligibility for PWD designation under section 2.1 of the EAPWDR, the panel finds that the ministry reasonably determined that it has not been established that the appellant falls within the prescribed classes of persons under that section. The panel's discussion below is limited to eligibility for PWD designation under section 2 of the EAPWDA and section 2 of the EAPWDR.

Eligibility under section 2 of the EAPWDA**Severe Physical Impairment**

In the reconsideration decision, while the ministry acknowledged that the appellant was diagnosed by the GP with Hepatitis C and COPD and that the GP described the appellant's resulting breathlessness in the MR as "severe" and "marked," the ministry was not satisfied that the information provided establishes a severe physical impairment. The ministry wrote that the GP did not provide any results (i.e. spirometry) to allow the ministry to determine the severity and, at the hearing, the ministry emphasized the importance of these test results. The appellant stated at the hearing that he has an appointment with a respirologist scheduled for July and he will be performing the spirometry tests. The GP also wrote in the MR that the appellant has recurrent and prolonged hospital admissions over the past six months and, due to these admissions, the appellant has recurrent chest infection/ COPD exacerbations.

The appellant wrote in his self-report that he has asthma and he tires and gets out of breath easily, which impacts his ability to work. At the hearing, the appellant stated that he used to work 10 hours a day and now he can only work an hour or two and then he gets tired and dizzy, especially if he is working physically. The appellant stated that no one wants to give him a job

because he cannot work 8 hours per day. At the hearing, the ministry stated that a person's ability to work is not a consideration for designation as a PWD and, as employability is not a criterion in Section 2(2) of the EAPWDA nor is it listed among the prescribed DLA in Section 2 of the EAPWDR, the panel finds that the ministry reasonably determined that an assessment of employability is not part of the PWD application.

The appellant also stated that his neck has been very painful and his doctor said that a specialist needs to look at it and, when he sleeps, his arm gets numb all the time as he has problems with his circulation. While the GP wrote in the MR that the appellant has general malaise and fatigue on a consistent basis, the GP did not refer to specific issues regarding the appellant's neck or his circulation. In his Request for Reconsideration, the appellant wrote that his asthma and COPD regularly restrict his ability to breathe and, therefore, his ability to walk up to two blocks, climb stairs and walk indoors or outdoors. The appellant wrote that these conditions are exacerbated regularly by things beyond his control, including extreme temperature changes in his community in Winter and Summer, smoke in the air in his region in the Summer, and pollen/allergens in the air in the Fall and Spring and he relies on an assistive device (inhalers) periodically for extended periods of time. At the hearing, the appellant clarified that he has to use his inhalers every 4 hours. The appellant's advocate stated at the hearing that the appellant uses inhalers as an assistive device.

In the reconsideration decision, the ministry wrote that no assistive devices are required by the appellant as the GP reported in the MR that the appellant does not require an aid for his impairment and the SW identified none of the assistive devices listed in the AR, including breathing devices, as being regularly used by the appellant. At the hearing, the ministry stated that inhalers are considered prescription medications and not assistive devices. Given the definition of "assistive device" in Section 2 of the EAPWDA to mean "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," and that inhalers function to administer prescribed medication, the panel finds that the ministry's conclusion that inhalers do not fall within the definition in Section 2 is reasonable.

A diagnosis of a serious medical condition or conditions does not in itself determine PWD eligibility or establish a severe impairment. An "impairment" involves a loss or abnormality of psychological, anatomical, or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately, or for a reasonable duration. Section 2(2) of the EAPWDA requires that the ministry be satisfied that the impairment is severe before the ministry may designate an applicant as a PWD. To assess the severity of the impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning.

The ministry considered the impacts of the appellant's diagnosed medical conditions on his daily functioning, reviewing the assessments provided in the MR and the AR. The ministry wrote that

the GP reported in the MR that the appellant is able to walk 1 to 2 blocks unaided on a flat surface, climb 2 to 5 steps unaided, lift 5 to 15 lbs. and has no limitation with remaining seated. The GP also reported that the appellant is not restricted with his mobility inside or outside the home. The ministry wrote that the SW assessed the appellant in the AR as being independent with walking indoors and walking outdoors, climbing stairs and standing. The ministry wrote that while the SW commented that the appellant “has trouble” with endurance from the COPD/ asthma, the SW also noted that the appellant is “independent with mobility.” The SW indicated that the appellant requires periodic assistance with lifting and carrying and holding and provided no further comments regarding the extent or duration of his need for assistance.

For the ministry to be “satisfied” that an impairment is severe, the panel considers it reasonable for the ministry to expect that the information provided by the medical practitioner and prescribed professional presents a comprehensive overview of the nature and extent of the impacts of the medical conditions on daily functioning, including explanations, descriptions or examples in the spaces provided in the MR and in the AR forms.

Given the GP’s assessment of independent physical functioning in the moderate range of functional skills limitations and a lack of information regarding the degree and frequency of exacerbations to his condition, the panel finds that the ministry reasonably determined that the evidence is not sufficient to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

Severe Mental Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided was sufficient evidence of a severe mental impairment. The ministry acknowledged that the appellant was diagnosed by the GP with alcohol/ substance misuse and the GP wrote in the MR that there are substance use/ mental health issues in the appellant’s health history. The GP wrote that, due to recurrent hospital admissions, the appellant has general malaise and fatigue on a constant basis. The ministry considered that the GP indicated the appellant has significant deficits with his cognitive and emotional functioning in the areas of executive, memory, emotional disturbance, impulse control, and attention or sustained concentration. The GP wrote that there is “substance use/ depression” and “recent illness has caused short term memory loss” as well as “poor motivation and concentration.” The ministry also considered that, when assessing daily impacts to the appellant’s cognitive and emotional functioning, the SW indicated in the AR that there are no major impacts to functioning. The SW reported that there are moderate impacts in the areas of consciousness, emotion, insight and judgment, and executive, and the SW did not provide any comments.

At the hearing, the appellant’s advocate stated that the Neuropsychology Consultation Report conducted in January 2019 resulted in the appellant losing his driver’s license as the psychologist concluded that the appellant’s visual, spatial and memory faculties were not intact.

The ministry considered that the psychologist wrote in the report that the appellant demonstrated poor complex reasoning, cognitive rigidity, and variable memory deficits, with a long history of alcohol abuse. In his self-report, the appellant wrote that he has depression, alcohol use and difficulty concentrating, and this has an effect on his ability to hold a job. In his Request for Reconsideration, the appellant wrote that on his worst days, his mood is so low that he struggles to get out of bed and to perform basic self care.

Considering the two “social functioning” DLA, as set out in Section 2(1)(b) of the EAPWDR, that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (relate effectively), the panel finds that the ministry reasonably concluded that there is insufficient evidence to establish that the appellant is significantly restricted in either. Regarding the ‘decision making’ DLA, the SW reported in the AR that the appellant independently manages all of the decision-making components of DLA, specifically: personal care (regulating diet), shopping (making appropriate choices and paying for purchases), meals (meal planning and safe storage of food), pay rent and bills (including budgeting), medications (taking as directed and safe handling and storage) and transportation (using public transit schedules and arranging transportation). The SW reported in the AR that the appellant is independent with making appropriate social decisions.

Regarding the DLA of ‘relating effectively’, the GP reported in the MR that the appellant has continuous restrictions with social functioning described by the GP as “depression so interactions with others affected.” The SW indicated in the AR that the appellant is independent with developing and maintaining relationships and interacting appropriately with others, with good functioning in both his immediate and extended social networks. At the hearing, the appellant’s advocate stated that the GP knows the appellant better than the SW and, therefore, more weight should have been placed on the evidence of the GP. The panel finds that the ministry reasonably considered that while the GP reported continuous restrictions with social functioning, there were no further details provided by the GP regarding the degree of restriction, and there was also no further clarification from the GP provided on the appeal. In the MR, the GP assessed the appellant as having no difficulties with communication. In the AR, the SW assessed the appellant as having a good ability to communicate with speaking and hearing, and a poor ability with reading and writing. There were no comments provided by the SW, and the appellant stated at the hearing that he relies on his advocate because he cannot read English.

Given the absence of evidence of significant impacts to the appellant’s cognitive and emotional functioning and the lack of detail regarding the frequency of exacerbations to the appellant’s low mood, as well as the insufficient evidence of significant impacts to the two social functioning DLA that are specific to a mental impairment, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

Section 2(2) of the EAPWDA requires that a severe impairment directly and significantly restricts the appellant's ability to perform the DLA either continuously or periodically for extended periods, as confirmed by the opinion of a prescribed professional. The direct and significant restriction may be either continuous or periodic. If the restriction is periodic, it must be for an extended time. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the MR and, with additional details, in the AR. Therefore, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairment continuously or periodically for extended periods. In this case, the GP, the SW, and the registered psychologist are the prescribed professionals.

In the reconsideration decision, the ministry was not satisfied that the appellant has a severe physical and/or mental impairment that, in the opinion of the prescribed professional, directly and significantly restricts DLA either continuously or periodically for extended periods of time. The ministry reviewed the information in the MR and wrote that the GP's assessment indicated that the appellant is not restricted with any of the listed DLA, with the exception of continuous restrictions to social functioning, as previously discussed. In the MR, the GP wrote that the appellant has marked SOB that "limits all ADL"; however, the ministry also reasonably considered that the GP reported in the MR that the appellant needs "no help" with DLA.

In the Neuropsychology Consultation Report dated January 21, 2019, the psychologist wrote that the appellant likely requires some level of support and monitoring in his day-to-day function (for reminders around medical/medication management, diet, alcohol intake). However, the psychologist provided no detail of the extent of assistance required, whether periodic or continuous, and also wrote that the appellant evidenced adequate basic cognitive function to likely manage his basic day-to-day familiar routines while ongoing alcohol abuse will impact negatively on his ability to consistently apply such adequate abilities. At the hearing, the appellant stated that he can get his DLA done, he is "pretty self sufficient," but he just has no endurance. The advocate stated that the nature of the appellant's cognitive impairments is such that he might not realize that he needs reminders with performing some of his DLA.

The ministry reasonably considered that while the SW referred to "some cognitive impairments noted in neuropsych reports" and that he has "poor complex reasoning and requires support in day to day functioning such as reminders, cues, and some level of monitoring," and the appellant "could use reminders and monitoring due to cognitive deficits," the SW assessed the appellant as independent with performing all of the tasks of all DLA. In his Request for Reconsideration, the appellant wrote that his partner provides assistance with preparing meals, medication reminders, and basic cleaning in his home. At the hearing, the advocate stated that the initial PWD application was completed by a SW who met with the appellant in hospital and did not know the appellant well and the AR was not very thorough; however, there was no further assessment by a prescribed professional provided on the appeal to detail the level of

assistance required with tasks of DLA.

Given the GP's assessment of no restrictions to DLA and no need for assistance and the SW's assessment of independence with all of the tasks of DLA, the panel finds that the ministry reasonably concluded that the evidence is insufficient to show that the appellant's overall ability to perform his DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

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. 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.

The GP reported in the MR that the appellant needs "no help" with DLA. In the AR, the SW indicated that the appellant receives help from friends and the SW noted that his "friend lives next door and helps as needed." None of the listed assistive devices were identified by the SW as routinely used by the appellant and the ministry reasonably determined that no assistive devices are required by the appellant, as previously discussed.

As 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 also 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, which determined that the appellant was not eligible for PWD designation pursuant to Section 2(2) of the EAPWDA, was reasonably supported by the evidence. The panel confirms the ministry's decision. The appellant's appeal, therefore, is not successful.

APPEAL NUMBER

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

S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019-06-18

PRINT NAME

Tajdin Mitha

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-06-18

PRINT NAME

Sandra Chan

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-06-18