

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry's reconsideration decision dated June 3, 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) Section 2. Specifically, the ministry found that the appellant did not meet the following criteria:

- He does not have a severe mental or physical impairment
- His impairments do not significantly restrict his ability to perform daily living activities
- He does not require the significant help or supervision of another person to perform daily living activities restricted by his impairments

It was also noted that the appellant did not demonstrate that he 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) Section 2

PART E – SUMMARY OF FACTS

The following key dates and information were noted:

- 1998: the appellant injured his knee and later injured his ankle. Following ankle surgery, he developed compartment syndrome and chronic pain
- April 8, 2109: application for designation as a PWD was received by the Ministry
- April 30, 2019: the ministry denied the request
- May 24, 2019: the ministry received the Request for Reconsideration
- June 3, 2019: the ministry reviewed the Request for Reconsideration

The ministry has determined that the appellant is not eligible for PWD designation because he did not meet all five criteria set out in section 2 (2) and (3) of the EAPWDA. Although he met the age and duration criteria, it could not be established that he had a severe impairment that directly and significantly restricted his daily living activities and that he required assistance with daily living activities because of significant restrictions. Additionally, in his submitted information the appellant did not demonstrate that he 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 he is not enrolled in Plan P (Palliative Care), he 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 provided testimony that he injured his knee in 1998. He later injured his ankle, requiring surgery. Following the surgery, he developed compartment syndrome and chronic pain. The patient stated that the pain from his conditions significantly restricts his mobility and lifestyle. He can slowly walk a couple of blocks before having to rest for 2-3 minutes before resuming walking. He can climb a few steps before resting, is able to lift 15-35 pounds and remain seated for less than one hour before needing to switch positions. He stated that he uses a crutch now and then when he is really sore.

The appellant depends upon help from his brother for his personal self care, shopping (he needs to rest frequently) mobility inside the home, basic housework and transportation. His pain levels fluctuate; some days he is more restricted than others. He is able to pay his bills and make financial decisions as well as administer his own medications.

The appellant's physician has not diagnosed or described a mental impairment/brain injury. In Section 2-D of the Physician's Report the doctor indicates it is unknown whether the appellant has any significant deficits with cognitive and/or emotional functioning. In Section 2-E of the Physician's Report, the doctor indicates continuous restrictions with his social functioning. In Section 3-B and C of the appellant's application, the assessor states that the appellant "*struggles with social interactions, isolates himself and mainly interacts with his brother*". The appellant stated that he has family members who have bi-polar disorder, and questions whether or not he may have this condition. This has not been formally diagnosed.

At the hearing the ministry relied upon the Reconsideration Decision. They stated that the information provided from the appellant's doctors and social worker was incomplete and somewhat conflicting. Based upon the assessments provided by the appellant's doctors, social worker, and self report, the ministry could not establish that there is a severe impairment of his mental functioning. Based upon the information submitted, the ministry was also unable to establish a severe impairment that significantly restricts his ability to perform his daily living activities continuously or for extended periods.

PART F – REASONS FOR PANEL DECISION

The decision under appeal is the Ministry's reconsideration decision dated June 3, 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 his submissions and during the hearing, the appellant provided testimony that he is significantly impacted by his injuries and health conditions that cause him so much pain that he is unable to take care of himself. He stated that he requires a lot of assistance from his brother to be able to undertake his personal care, go shopping, plan and cook meals, and use any form of transportation. The appellant is having issues with stress because of his 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 clearly and definitively reflected in the information that his physicians and social worker provided to the ministry. He met two of the five criteria: (1) age and (2) duration, however it could not be established that he met the other three: (3) a severe impairment (4) that directly and significantly restricted his daily living activities and that he (5) required assistance with daily living activities because of significant restrictions. Nor does he demonstrate that he 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 he is not enrolled in Plan P (Palliative Care), he 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 June 3, 2019 which held that the appellant's application for PWD designation was denied because he did not demonstrate that he 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 his appeal.

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

Jan Lingford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/04/24

PRINT NAME

Bill Haire

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/07/02

PRINT NAME

David Kendrick

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/07/02