

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated June 5, 2019 which found that the appellant did not meet two 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 she has a severe mental impairment that is likely to continue for at least two years. However, the ministry was not satisfied the evidence establishes that:

- 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 appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

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 21, 2019, a medical report (MR) and an assessor report (AR) both dated March 6, 2019 and completed by a general practitioner (GP) who has known the appellant since August 2018 and has met with her 11 or more times in the past 12 months.

The evidence also included the following documents:

- 1) Medical Report- Employability dated January 7, 2019;
- 2) Medical Imaging Report dated January 7, 2019;
- 3) Medical Form/ Disability dated February 5, 2019;
- 4) Referral to Mental Health & Substance Use stamped February 5, 2019;
- 5) Appellant's medical visit history from April 29, 2018 to March 4, 2019;
- 6) Memo dated May 31, 2019 from the appellant;
- 7) Letter dated June 1, 2019 from an advocate/counsellor; and,
- 8) Request for Reconsideration dated May 8, 2019.

Diagnoses

In the MR, the GP diagnosed the appellant with substance related disorders and anxiety disorder with onsets in June 1989 and skin disorders with an onset in May 2017. Asked to describe the appellant's mental or physical impairments that impact her ability to manage her daily living activities (DLA), the GP wrote in the AR: "low concentration, anxiety, depression, alcoholism (actively attending treatment)."

Daily Living Activities (DLA)

In the MR and the AR, the GP reported:

- In terms of her health history, the appellant "has alcohol dependence syndrome, which impaired her functionality most times. She has lots of social issues that worsen her mental state." The appellant has anxiety and panic attacks and takes medication to manage the symptoms.
- The appellant has not been prescribed medication and/or treatment that interfere with her ability to perform DLA.
- The appellant's impairment does not restrict her ability to perform DLA.
- The appellant has significant deficits with cognitive and emotional functioning in the areas of executive, emotional disturbance, motivation, impulse control and attention or sustained concentration. There are major impacts to her daily functioning in the areas of emotion and impulse control, and moderate impacts to executive, motivation, attention/concentration, as well as insight and judgment.
- For the move about indoors and outdoors DLA, the appellant is independent with both walking indoors and walking outdoors.
- The appellant is independent with performing all of the tasks of all of the listed DLA, specifically the personal care DLA (dressing, grooming, bathing, feeding self and regulating diet, transfers in/out of bed and transfers on/off chair), the basic housekeeping

DLA (including laundry), the shopping DLA (going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home), 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, with safe handling and storage), and the transportation DLA (getting in and out of a vehicle, using public transit, using transit schedules and arranging transportation).

- The appellant is independent with all aspects of her social functioning, specifically: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The GP did not provide further comment. The appellant has very disrupted functioning with her immediate and extended social networks.

In her self-report, the appellant indicated:

- She suffered with alcoholism, mental health and addiction/bipolar for over 20 years.
- She is very scattered and unstable.
- She cannot budget, manage finances.
- She has isolation and depression.
- Her disability has disallowed her to be able to work properly. Low concentration, panic attacks, anxiety, depression. Grieving several losses of friends/ family members. She is recently estranged from her son.
- She is not able to make/keep commitments or appointments/schedules; needs counselling and support.

In the Medical Report- Employability dated January 7, 2019 the GP who prepared the MR and the AR reported that the restrictions specific to the appellant's medical conditions of severe alcohol dependence syndrome and heavy alcohol use are "anxiety/panic attacks; unable to work."

In the Medical Form/ Disability dated February 5, 2019, the GP indicated that the appellant is "unable to work" due to alcohol dependence.

In the Memo dated May 31, 2019, the appellant wrote:

- Her initial application documents several issues of not being able to perform DLA, not being able to communicate effectively with others or to have proper decision making with regards to finances or money or budgeting (she needs help).
- She is unable to communicate with other people at this time. Her anxiety disorder does not allow her to communicate, sit for any period of time, understand how to budget her finances or pay her bills. She has significant deficits with executive tasks, emotional disturbance, motivation, impulse control, and motivation.
- She also suffers from Lichen Sclerosis, a debilitating flare-up where she cannot get out of bed. It is extremely painful and she cannot wear clothing below the waist when this happens. She is unable to perform any DLA at home and she has a friend help her with meals and laundry.

In the letter dated June 1, 2019, an advocate/counsellor wrote:

- He thinks the appellant is severely impaired in her overall functioning due to her physical and mental limitations. For example, substance abuse disorder, medications, self harm (see emergency room visit report), chronic fatigue, severe back pain, poor balance, anxiety, depression, mood swings, panic attacks and low energy limit her ability to do activities such as personal care routines, cooking, cleaning, laundry, shopping, and other tasks outside the home. Recurring depression further limits the appellant's ability to do these things, as well as social functioning.
- When the appellant does things on her own, she continuously takes considerably longer than normal to complete routine tasks, if she can do them at all. She tells him that it takes her 3 or 4 times longer than normal to get dressed and sitting for short periods of time creates panic attacks.
- The appellant gets some help from friends and family but would probably benefit from more help than she is currently getting. She now needs help with transportation outside the home.

Need for Help

The GP reported in the AR that the appellant receives help from friends. In the additional comments to the MR, the GP noted that the appellant "is going to AA and mental health counselling sessions" and she is "working hard to overcome her current situations."

In her self-report, the appellant wrote:

- She is attending AA 5 times per week, mental health for one-on-one counselling and relapse prevention. She had been sober for 6 weeks.
- She needs counselling to deal with trauma and to be able to get back into the work force.
- She drops in to a women's center for skill building workshops, support, clothing/food, and art therapy.

In the Memo dated May 31, 2019, the appellant wrote that she has had several urgent care visits at which time she needed assistance from another person and supervision and was unable to perform DLA.

Additional information

In her Notice of Appeal dated June 14, 2019, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that her DLA are severely restricted and she needs help/support from another person/advocate/home care worker.

The ministry relied on the reconsideration decision as summarized at the hearing. At the hearing, the ministry clarified that the ministry had no information regarding the credentials of the advocate/counsellor and, therefore, could not rely on the information he provided as being in the opinion of a prescribed professional, as required by the legislation. The ministry stated that if the appellant is not successful on the appeal, she is entitled to apply again.

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's 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

In the reconsideration decision, the ministry was satisfied that the appellant has a severe mental impairment that is likely to continue for at least two years. However, the ministry was not satisfied the evidence establishes that the appellant's 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.

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 is the prescribed professional.

In her Notice of Appeal, the appellant argued that her DLA are severely restricted and she needs help/support from another person/advocate/home care worker. At reconsideration, the appellant provided a letter dated June 1, 2019, in which an advocate/counsellor wrote that the appellant's substance abuse disorder, medications, self harm, chronic fatigue, severe back pain, poor balance, anxiety, depression, mood swings, panic attacks and low energy limit her ability to do activities such as personal care routines, cooking, cleaning, laundry, shopping, and other tasks outside the home. The advocate wrote that recurring depression further limits the appellant's ability to do these things, as well as her social functioning. The advocate wrote that when the appellant does things on her own, she continuously takes considerably longer than normal to complete routine tasks, if she can do them at all. The advocate wrote that the appellant told him that it takes her 3 or 4 times longer than normal to get dressed and sitting for short periods of time creates panic attacks. The advocate wrote that the appellant gets some help from friends and family but would probably benefit from more help than she is currently getting. The advocate wrote that the appellant now needs help with transportation outside the home.

In the reconsideration decision, the ministry thoroughly reviewed the information from the advocate/counsellor and reasonably considered that, pursuant to Section 2(2) of the EAPWDA, all restrictions to DLA must be confirmed in the opinion of a prescribed professional. The ministry wrote that the credentials of the advocate/counsellor have not been identified and, therefore, the ministry was unable to consider the evidence provided as being in the opinion of a prescribed professional. In Section 2(2) of the EAPWDR, a "prescribed professional" includes a medical practitioner as well as a registered psychologist, a registered nurse or registered psychiatric nurse, an occupational therapist, a physical therapist, a social worker, a chiropractor, or nurse practitioner, and, in some cases, a school psychologist.

The ministry reviewed the information in the MR and considered that while the GP wrote that the appellant "has alcohol dependence syndrome, which impaired her functionality most times," the GP, as the prescribed professional, also reported that the appellant's impairment does not restrict the appellant's ability to perform her DLA. The panel finds that the ministry also reasonably considered that the GP assessed the appellant in the AR as being independent with performing all of the listed DLA, with no need for assistance with any tasks from another person or through the use of an assistive device. In the Memo dated May 31, 2019, the appellant wrote that she also suffers from Lichen Sclerosus, a debilitating flare-up where she cannot get out of bed. The appellant wrote that, during these flare-ups, she is unable to perform any DLA at home and she has a friend help her with meals and laundry. Although the GP diagnosed the appellant with skin disorders with an onset in May 2017, the GP did not indicate in the MR or the AR that the appellant experiences debilitating exacerbations of her skin condition and the degree of these flare-ups.

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 GP 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 (budgeting), medications (taking as directed and safe handling and storage) and transportation (using public transit schedules and arranging transportation). The panel finds that the ministry reasonably considered the GP’s report that the appellant is independent with making appropriate social decisions.

The ministry considered the appellant’s self-report, in which the appellant wrote that she suffered with alcoholism, mental health and addiction/bipolar for over 20 years and she is very scattered and unstable. The appellant wrote that she cannot budget or manage finances as she has low concentration, panic attacks, anxiety and depression. The ministry also considered the Memo dated May 31, 2019, in which the appellant wrote that her social functioning is restricted as she is not able to communicate effectively with others or to have proper decision making with regards to finances or budgeting and she needs help. The appellant wrote that her anxiety disorder does not allow her to communicate, sit for any period of time, understand how to budget her finances or pay her bills. She wrote that she has significant deficits with executive tasks, emotional disturbance, motivation, and impulse control.

The ministry considered that the information provided by the appellant and by the advocate as being part of the appellant’s self report as it did not correlate with the assessment provided by the GP and was not subsequently endorsed by the GP. While the GP indicated in the AR that there are major impacts to the appellant’s daily functioning in the areas of emotion and impulse control, and moderate impacts in the areas of executive, motivation, attention/concentration, and insight and judgment, the ministry reasonably considered the GP’s report that these cognitive and emotional deficits do not impact the appellant’s ability to perform her DLA.

Regarding the DLA of ‘relating effectively’, while the GP wrote in the MR that the appellant “has lots of social issues that worsen her mental state,” the ministry reasonably considered the GP’s report that the appellant is independent with developing and maintaining relationships and interacting appropriately with others. The GP assessed the appellant with ‘very disrupted’ functioning in both her immediate and extended social networks and the ministry wrote that, in the absence of further comment by the GP, it is difficult to understand this assessment as it is not consistent with the GP’s report of the appellant’s independence in performing all aspects of social functioning, with no need for support or supervision. The ministry considered that, when asked to describe the support/supervision required to maintain the appellant in the community,

the GP wrote “mental health counseling” and acknowledged the appellant’s reliance on mental health resources. The ministry also considered that the GP assessed the appellant as having no difficulties with communication and as having a good ability to communicate in all areas.

In her self-report, the appellant wrote that she needs counselling to deal with trauma and to be able to get back into the work force. The appellant wrote that she has not been able to work. In two additional documents, the Medical Report- Employability dated January 7, 2019 and the Medical Form/ Disability dated February 5, 2019 the GP who prepared the MR and the AR reported that the restrictions specific to the appellant’s medical conditions of severe alcohol dependence syndrome and heavy alcohol use are “anxiety/panic attacks; unable to work” and the appellant is “unable to work” due to alcohol dependence, respectively. The ministry reasonably considered that this information does not speak to the appellant’s ability to manage her DLA, and the panel notes that 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.

Given the GP’s assessment of independence with performing all DLA and 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 concluded that the evidence is insufficient to show that the appellant’s overall ability to perform her 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 AR that the appellant receives help from friends. In the additional comments to the MR, the GP noted that the appellant “is going to AA and mental health counselling sessions.” In her self-report, the appellant wrote that she is attending AA 5 times per week, mental health for one-on-one counselling and relapse prevention. She wrote that she drops in to a women’s center for skill building workshops, support, clothing/food, and art therapy. 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)

2019-07-08

PRINT NAME

Bill Haire

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-07-08

PRINT NAME

Bill Reid

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-07-08