

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry's reconsideration decision dated May 27, 2019 which held that the appellant was not eligible for Persons With Disabilities (PWD) benefits, as per the Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2 as well as the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 2 and 2.1. Specifically, the ministry found that the appellant did not meet the following criteria:

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

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

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 2 and 2.1

PART E – SUMMARY OF FACTS

The following key dates and information were noted:

- April 2, 2019: application for designation as a PWD was received by the Ministry
- April 16, 2019: the ministry denied the request
- May 16, 2019: the ministry received the Request for Reconsideration
- May 27, 2019: the ministry reviewed the Request for Reconsideration

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

At the hearing the appellant provided the following information, stating that for the past year:

- She does not sleep well
- She suffers from PTSD, anxiety and panic attacks
- She finds it hard to be around people, including family members
- She has been diagnosed with rheumatoid arthritis
- She must travel to see her family physician, which she finds difficult
- She has OCD and a lack of concentration

She is trained as [REDACTED]
[REDACTED]
[REDACTED]

The appellant depends upon help from her family for shopping and transportation. She gave the example of not being able to attend appointments or go out in the community because she is overcome by panic attacks and must stay or return home. She is worried about managing in the future. She would like to become well again and is seeking out counselling.

At the hearing the ministry relied upon the Reconsideration Decision, stating that the information provided from the appellant's doctor was incomplete and unclear as to the extent of restrictions her conditions impose. Based upon the appellant's testimony at the hearing, it was suggested that the appellant entertain the idea of re-applying for a PWD designation with more complete medical and daily living information. It was also suggested that the appellant seek out the help of an advocate to help her with attending appointments and filing applications.

PART F – REASONS FOR PANEL DECISION

The decision under appeal is the Ministry's reconsideration decision dated May 27, 2019 which held that the appellant was not eligible for Persons With Disabilities (PWD) benefits, as per the Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2 as well as the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 2 and 2.1.

Applicable Legislation:**EAPWDA: Persons with disabilities**

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

EAPWR: Definitions for Act

2 (1) For the purposes of the Act and this regulation, "daily living activities",

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

- (ii) manage personal finances;
- (iii) shop for personal needs;
- (iv) use public or personal transportation facilities;
- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self care;
- (viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

- (i) make decisions about personal activities, care or finances;
- (ii) relate to, communicate or interact with others effectively.

(2) For the purposes of the Act, "**prescribed professional**" means a person who is

(a) authorized under an enactment to practise the profession of

- (i) medical practitioner,
- (ii) registered psychologist,
- (iii) registered nurse or registered psychiatric nurse,
- (iv) occupational therapist,
- (v) physical therapist,
- (vi) social worker,
- (vii) chiropractor, or
- (viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

- (i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or
- (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*,

if qualifications in psychology are a condition of such employment.

(3) The definition of "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

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

Part 1.1 — Persons with Disabilities

Alternative grounds for designation under section 2 of Act

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

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

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

Conclusion:

In her submissions and during the hearing, the appellant provided testimony that she is significantly impacted by her health conditions. She stated that she suffers from PTSD, OCD, anxiety, rheumatoid arthritis and panic attacks. These conditions prevent her from being able to work and take care of herself adequately. She would like to have an advocate to talk to and to encourage her to attend upcoming appointments as well as assist her with filling out paperwork.

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 has disabling conditions, the extent and severity of the conditions was not reflected in the information that her physician provided to the ministry. For example, the physician notes that she has trouble leaving her home but does not explain the extent of the difficulty. Other parts of the physician's Medical Report are left blank. Gaps in information such as these led to the ministry being unable to establish the extent and severity of the appellant's disabilities. She met two of the five criteria: (1) age and (2) duration, however it could not be established that she met the other three: (3) a severe impairment that directly and significantly (4) restricted her daily living activities and that she (5) required assistance with daily living activities because of significant restrictions. Nor does the appellant demonstrate that she was one of the prescribed classes of persons who may be eligible for the PWD designation on alternative grounds set out in EAPWR section 2.1 as she is not enrolled in Plan P (Palliative Care), she is not eligible for At Home Program payments, is not eligible for community living support and is not considered disabled under the Canada Pension Plan Act.

The panel finds that the ministry's reconsideration decision of May 27, 2019 which held that the appellant's application for PWD designation was denied because it did not demonstrate that she met all five criteria under the current legislation (Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2 and the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 2 and 2.1 was a reasonable application of the legislation in the circumstances of the appellant.

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

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)

2019/07/15

PRINT NAME

Jeanne Byron

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/07/15

PRINT NAME

Lauren Forsyth

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/07/15