

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated March 27, 2019, which held that the appellant did not meet 2 of the 5 statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) for designation as a person with disabilities (PWD). The ministry found that the appellant met the requirements of having reached 18 years of age and of having a severe mental impairment that, in the opinion of a medical practitioner, is likely to continue for at least 2 years.

However, the ministry was not satisfied 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 those restrictions, in the opinion of a prescribed professional, the appellant requires an assistive device, the significant help or supervision of another person, 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 FACTSInformation before the ministry at reconsideration

- The appellant's PWD application comprised of:
 - A Medical Report (MR) dated November 27, 2018, completed by the appellant's general practitioner (GP) of 4 years, who has seen the appellant 2 to 10 times in the past 12 months;
 - An Assessor Report (AR) dated November 28, 2018, also completed by the appellant's GP; and
 - The appellant's self-report (SR) section of the PWD application, dated September 25, 2018.
- Request for Reconsideration, dated March 13, 2019.

Documentation provided on appeal and admissibility

- The Notice of Appeal (NOA), dated April 24, 2019.

The appellant did not attend the hearing. Having confirmed delivery of the Notice of Hearing within the legislated timeframe, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

In accordance with section 22(4) of the *Employment and Assistance Act* (EAA), the panel may admit oral and written testimony that is in support of the information and records available at the time of reconsideration.

At the hearing, the ministry reviewed the reconsideration decision but did not provide additional evidence. No new evidence was introduced in the appellant's NOA.

The arguments of both parties are set out in Part F of this decision.

Summary of relevant evidenceDiagnoses and Health History

The GP diagnoses generalized anxiety disorder (GAD) and depression.

"This man has fairly severe anxiety disorder and depression. Symptoms only partially improved with medication. He needs additional supports to hopefully be able to live somewhat independently. Currently his functioning has been poor with significant stress on family/friends."

"Severe social anxiety causing significant disruption in his life."

"Severe social anxiety disorder limits his ability to interact with other people."

Physical Impairment

The GP does not identify limitations or the need for assistance with physical ability or mobility (walking, climbing stairs, standing, sitting, lifting, and carrying and holding).

The appellant does not describe limitations to his physical ability.

DLA

The GP reports:

- The appellant has not been prescribed medication and/or treatments that interfere with the ability to perform DLA.
- The ability to communicate is good for reading, writing and hearing. Speaking ability is poor (“Social anxiety prevents him from speaking to others.”)
- Has significant functional impairment in various ADLs [activities of daily living], secondary to his severe mental health problems.
- All listed aspects of mobility and physical ability (relates to DLA move about indoors and outdoors) are managed independently as are all listed tasks of the DLA personal care, basic housekeeping, shopping, meals, medications, and transportation.
- For the DLA pay rent and bills, the appellant requires periodic assistance from another person with banking (“Can use ATM but not able to speak to teller”) and budgeting (“Requires help from family”). Paying rent and bills requires continuous assistance from another person/or unable (“Help from family – anxiety re dealing with landlord”). Limited ability to work due to anxiety symptoms causes him further anxiety about dealing with finances. Has not been able to financially support himself without help from family/friends that caused strain in those relationships.
- Respecting social functioning, two of five listed areas are managed independently - appropriate social decisions. Periodic support/supervision is required for both ability to develop and maintain relationships (“Tends to be socially isolated without help from close friends/family”) and interact appropriately with others (“Limited eye contact and speaks very little around people new to him. Mainly yes/no responses to questions”). Dealing appropriately with unexpected demands and ability to secure assistance from others both require continuous support/supervision (“Limited by severe anxiety and again requiring help from family”).
- The appellant has marginal functioning with immediate (“Socially withdrawn. Will not respond to phone/text messages”) and extended social networks (“Minimal interaction with others in the community”).
- Support/supervision required to help maintain the appellant in the community is described as “Social worker/psychologist treatments may help.”

In the SR, the appellant describes his history of anxiety and depression which he states has affected every area of his life, affecting him more in particularly bad phases. Life events such as break-ups can be particularly worrisome. But for the constant help of his close friend and his father, he would probably be in a much worse situation. He has difficulty making decisions and planning ahead, including stopping work without having another source of income, which then impacts his ability to pay for rent and food and find appropriate housing. He has “huge difficulty” making rational choices that are time sensitive such as preparing food, getting an ROE from a past employer, contacting the CRA regarding past tax assessments, and finding employment. He has often avoided talking to people he doesn’t know; making appointments has been very difficult as a result. He has such a small

income that it has been difficult to budget. He has difficulty maintaining relationships with people, except a small group. He also isolates from this small group. He has not lived on his own until recently. The PWD application was done with the help of his dad, his dad's partner and the appellant's doctor. Anything admin and paperwork is very difficult or usually put off for long periods of time. When he is really low, anxiety and depression affect his personal hygiene and his surrounding living space in a neglectful way.

In the Request for Reconsideration submission, which is written in third-person by an unidentified author, the appellant's depression and debilitating anxiety are reported to have led to suicidal ideation, shutting down and using alcohol as a coping mechanism. The appellant struggles with normal daily activities and relies heavily on assistance from his father, including contacting doctors or services for appointments. GAD [generalized anxiety disorder] and social anxiety prevent him from a healthy social life, engaging in activities, schooling, or finding a career path. Until his symptoms are managed, he is unable to handle the responsibility of having a job and providing for himself.

In his NOA, the appellant writes that severe social anxiety has affected his friendships/relationships and work ethic, and he feels like he is slipping through the cracks of society.

Need for Help

The GP indicates that help required for DLA is provided by family and friends. Help required but not available is described as a social worker and psychologist for therapy.

PART F – REASONS FOR PANEL DECISION**Issue on Appeal**

The issue on appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. That is, was the ministry reasonable when determining that the appellant is not a person described in section 2.1 of the EAPWDR and that the requirements of section 2(2) of the EAPWDA were not met because:

- the appellant's DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and
- as a result of those restrictions, in the opinion of a prescribed professional, the appellant does not require an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA?

Relevant Legislation**EAPWDA**

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 has a severe mental or physical impairment that

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

EAPWDR

Definitions for Act

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

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

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

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

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

(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.

Alternative grounds for designation under section 2 of Act

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

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the Community Living Authority Act;
- (d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the Community Living Authority Act to assist that family in caring for the person;
- (e) a person who is considered to be disabled under section 42 (2) of the Canada Pension Plan (Canada).

Panel Decision

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

PANEL DECISION

Severe Impairment

Section 2(2) of the EAPWDA requires that the ministry is satisfied that an applicant has a severe mental or physical impairment; an applicant need not have both a severe physical and severe mental impairment, though the ministry will consider whether the evidence establishes both a severe physical and mental impairment.

Physical Impairment

The ministry's position is that the information respecting the appellant's physical functioning did not establish a severe physical impairment. The panel considers this conclusion to be reasonable given that a physical medical condition is not diagnosed by the GP and neither the appellant nor his GP report any limitations to physical mobility or ability.

Mental Impairment

As the ministry was satisfied that the appellant has a severe mental impairment, this legislative requirement has been met.

Restrictions in the ability to perform DLA

Positions of the Parties

In his written submissions, the appellant's position is that his longstanding anxiety and depression affect every area of his life, including making decisions, planning, and finishing tasks. It also impacts his ability to find and maintain employment, resulting in such a small income that it is difficult to budget and needing financial help from others. The appellant argues that the GP was not made aware of the extent to which the appellant's anxiety affects his daily life due to difficulties with communication arising from his mental health challenges. More recently, working with a case manager has resulted in clarification in the actual extent of the appellant's illness and connection with the appropriate resources.

The ministry indicates that it relies on the medical opinion and expertise of medical practitioners and other prescribed professionals to determine if a person's impairment significantly restricts the ability to perform DLA, noting that there must be a causal link between the medical condition diagnosed and the restriction. The ministry's position is that the GP's assessment of the appellant's ability to perform DLA does not establish that impairment significantly restricts DLA, either continuously or periodically for extended periods. The ministry notes that the PWD application is not intended to assess employability or vocational abilities and concludes that difficulty managing finances may be indirectly related to the appellant's mental disorder, as it interferes with his ability to earn a living, but that the restriction must be directly related to an impairment of physical or mental functioning. The ministry notes that while the GP indicates that social functioning is impaired, his assessment does not demonstrate that the ability to relate to, communicate or interact with other effectively is severely restricted. Although the appellant has difficulty interacting with those outside his immediate social network, the GP does not indicate that the appellant is unable to go out in public to shop for personal needs, fill prescriptions or use public transit. Finally, the GP reports that the appellant independently manages all other aspects of DLA, including all activities related to personal care, basic housekeeping, shopping for personal needs, meal preparation, managing medication and using public and private transportation.

Panel Analysis

Section 2(2)(b)(i) of the EAPWDA requires the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether it is satisfied, is dependent upon the

evidence from prescribed professionals. The term “directly” means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration – the direct and significant restriction must be either continuous or periodic. If periodic, it must be for extended periods. Inherently, any analysis of periodicity must also include consideration of the frequency. All other things being equal, a restriction that only arises once a year is less likely to be significant than one that occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be “satisfied” that this legislative criterion is met.

DLA are defined in section 2(1) of the EAPWDR and are listed in both the MR and the AR sections of the PWD application with the opportunity for the prescribed professional to check marked boxes and provide additional narrative. DLA, as defined in the legislation, do not include the ability to work. As noted above, the restriction is to be in the opinion of a prescribed professional, which in this case is the GP. No additional information from a prescribed professional was submitted.

The GP reports that the appellant has significant functional impairment in various ADLs [activities of daily living], secondary to his severe mental health problems, with the GP’s commentary identifying impairment in the ability to work and interact with strangers. When assessing the DLA defined in the legislation, which as noted above, do not include the ability to work, the GP assesses the appellant as independently managing all listed tasks relating to the DLA move about indoors and outdoors, personal care, basic housekeeping, meals, medications, and transportation. In addition to managing the physical aspects of these DLA, which is understandable as there is no diagnosis or information respecting physical limitations, the appellant is also reported as independently managing the tasks within these DLA that relate to cognitive, emotional and social functioning including making appropriate shopping choices, paying for purchases, meal planning, filling/refilling prescriptions, and using public transit.

The GP does report restrictions with the DLA manage personal finances: the appellant requires periodic assistance from another person to manage banking due to his inability to speak to the teller, though he can use an ATM, and continuous assistance paying his rent due to anxiety dealing with his landlord. Periodic assistance is also required for budgeting but, as the ministry notes, narrative from the GP and the appellant indicates that this relates to financial assistance due to lack of income, rather than being a direct result of mental impairment.

The remaining DLA are the two specific to mental impairment – make decisions about personal activities, care or finances and relate to, communicate or interact with others effectively. The above noted restrictions respecting managing finances are identified as relating to interacting with other people, not decision-making abilities. The GP does not identify significant restrictions in the ability to manage decision-making tasks for DLA: all decision-making tasks related to personal care, shopping, meals, medications, and transportation are managed independently. Additionally, the GP reports that making appropriate social decisions is managed independently. Most restrictions reported by the GP respect the DLA “relate to, communicate or interact with others effectively.” For social functioning, the GP reports that continuous support/supervision is required to deal appropriately with unexpected demands and for securing assistance from others. However, the areas which the appellant describes as being most impacted - the ability to develop and maintain relationships and the ability to interact appropriately with others – are reported as requiring periodic support/supervision. It is unclear how often or for what duration this periodic support is required. The need for periodic rather than continuous support in these areas is consistent with the GP’s assessment of marginal rather than very disrupted functioning with all social networks and, as noted by the ministry, no indication from the GP that the appellant is unable to go out in public to shop for personal needs, fill prescriptions or use public transit. Given this information, it is not unreasonable for the ministry to conclude that a “severe” restriction in the ability to relate to, communicate or interact with others effectively has not been established.

Based on the above analysis, the panel concludes that the ministry reasonably determined that the information does not establish direct and significant restrictions in the ability to perform DLA, either continuously or periodically for extended periods. In reaching this conclusion, the panel again notes that the legislation requires that the ministry be satisfied based on the opinion of a prescribed professional and that the ability to work is not a legislated DLA.

Help to perform DLA

Section 2(2)(b)(ii) of the EAPWDA requires that, *as a result of direct and significant restrictions in the ability to perform DLA*, a person requires help to perform “those activities.” 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 DLA.

The establishment of direct and significant restrictions with daily living “activities” is a precondition of requiring “help to perform those activities.” Having found that the ministry was reasonable to conclude that this precondition was not met, the panel also finds that the ministry reasonably concluded that it cannot be determined that the appellant requires help to perform “those activities” as a result of direct and significant restrictions with daily living “activities” as required by section 2(2)(b)(ii) of the EAPWDA.

Conclusion

The panel finds that the ministry’s reconsideration decision, which determined that the appellant had not met all requirements set out under section 2(2) of the EAPWDA for designation as a PWD, was reasonably supported by the evidence. The ministry’s decision is confirmed and the appellant is not successful on 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

Jane Nielsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/05/17

PRINT NAME

Carl Gorham

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/05/17

PRINT NAME

Wesley Nelson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/05/17