

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated April 15, 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 her 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.

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

With the oral consent of the appellant, a ministry observer attended but did not participate in the hearing.

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 November 21, 2018, a medical report (MR) dated December 15, 2018 and an assessor report (AR) dated December 17, 2018 and both completed by a general practitioner (GP) who has known the appellant since October 2018 and has met with the appellant 2 to 10 times.

The evidence also included the appellant's Request for Reconsideration dated March 18, 2019, with no additional information provided.

Diagnoses

In the MR, the GP diagnosed the appellant with bilateral knee pain ("early moderate bilateral knee degeneration") with an onset in October 2018. There was no diagnosis of a medical condition within the mental disorders diagnostic category or a brain injury. 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: "knee pain (bilateral) chronic."

Physical Impairment

In the MR and the AR, the GP reported:

- In terms of the appellant's health history, the appellant has "chronic history of bilateral knee pain with her X-Ray showing early moderate bilateral knee degeneration. Takes [medication] for it."
- The appellant does not require any prostheses or aids for her impairment.
- In terms of functional skills, the GP reported that the appellant can walk 1 to 2 blocks unaided on a flat surface, she cannot climb any steps unaided, she cannot lift any weight and she has no limitation with remaining seated. The GP noted that the functional skills assessment was "based on her reported symptoms."
- In the AR, the appellant is assessed as being independent with all of her mobility and physical ability, specifically: walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding.
- In the section of the AR relating to assistance provided, the GP indicated that no assistance is provided through the use of an assisted device and no equipment is required that is not currently being used.
- In the additional information to the AR, the GP noted that the appellant is a new patient and there is limited information regarding her health. There is a language barrier and mostly her husband does translation for her. Most of the information in the report is based on the reported symptoms by the appellant and her husband.

In her self-report, the appellant indicated:

- She has severe back pain and both of her knees are in pain.
- She has stomach problems due to C-Section [surgery].

- She is not able to bend, walk, or stand for long.
- She cannot work at home due to her inability to bend or move a certain way.

Mental Impairment

In the MR and the AR, the GP reported:

- There are no reported difficulties with communication, other than a lack of fluency in English.
- It is unknown whether the appellant has significant deficits with her cognitive and emotional functioning. In the additional comments to the MR, the GP noted that the appellant “has a limited communication in English/ language barrier.”
- In the AR, the GP reported that the appellant has a good ability to communicate in all areas, specifically: speaking, reading, writing and hearing. The GP noted: “limitation with English language/ language barrier.”
- With respect to the section of the AR relating to daily impacts to the appellant’s cognitive and emotional functioning, there were no major impacts assessed to functioning, with a moderate impact to insight and judgment and minimal or no impacts to the remaining 13 areas of functioning. The GP noted: “self reported symptoms (not documented in her chart previously).”
- For social functioning, there was no assessment of the appellant’s functioning, and the GP noted: “no particular report of issues.”
- Asked to describe the support/supervision required to maintain the appellant in the community, the GP left this section incomplete.

In her self-report, the appellant wrote:

- Her daily life activities are hard to accomplish and she cries at home.
- She is stressed for not being able to perform her life [activities] or make things better.

Daily Living Activities (DLA)

In the MR and the AR, the GP reported:

- The appellant has not been prescribed medication and/or treatment that interfere with her ability to perform DLA.
- For the move about indoors and outdoors DLA, the appellant is independent with walking indoors and with walking outdoors.
- The appellant is independent with performing all of the tasks of the personal care DLA (dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed, and transfers on/off chair), the basic housekeeping DLA (including laundry), and the shopping DLA (going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home).
- There is no assessment for the tasks of the meals DLA, the pay rent and bills DLA, the medications DLA, or the transportation DLA. The GP noted: “in many domains, needs help of her husband due to language issues.”

In her self-report, the appellant indicated:

- She cannot work at home due to not being able to bend or move in a certain way.
- She cannot do vacuuming or wash dishes due to not being able to stand for long.

- Her daily life activity is hard to accomplish and she cries at home because she cannot cook sometimes due to not being able to walk to buy her groceries.
- She has difficulties showering, cleaning and doing laundry.

Need for Help

The GP reported in the AR that the appellant receives help from family and friends. The GP indicated that the appellant does not use any assistive devices to help compensate for her impairment and no equipment is needed.

Additional information

In her Notice of Appeal dated April 25, 2019, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that she is severely ill and has painful knees, which cause her to "most of the time" lie in bed. She cannot stand or walk on her own for a few steps.

At the hearing, the appellant's husband stated:

- They have many different problems and they are the ones who know their problems the best. They both need help, and they help each other.
- The appellant has problems in her legs and with her stomach due to a C-Section performed in their country of origin.
- He has back problems and had a heart attack so even going to the washroom, they both need help. He helps the appellant and she helps him.
- They need a solution so they can live together.
- There have been nights when they went to bed hungry because they do not have money. He has had to stretch out his hands and ask people to give them money.

At the hearing, the appellant stated:

- They have lots of problems. She has to hold on to the wall to get up.
- In her country of origin, she fell from the second floor of a building onto her back.
- She has undergone three surgeries for her stomach issues.
- She has dizziness and she has fallen. She does not know when the dizziness will happen. She once fell and broke her thumb.
- They do not have food and medications at home.
- They have been in Canada for a year and sometimes need to borrow money to pay their rent. They have no relatives or family members to ask for help. Sometimes their neighbour helps and sometimes they get food from a charitable organization.
- She has been recommended to have operations on her knees. She showed an appointment card for a consult in an orthopedic clinic.
- They have a son in Canada but he is barely surviving and does not live with them.
- She has known the GP who completed the reports about 5 to 8 months. She wonders why the ministry has relied on the GP's opinion when he did not go to her home to see her problems with functioning. She only saw the doctor once when he asked what her problems were. They dropped off the application forms and the GP let them know when they were done.
- The pain in her knees has increased and she has been referred to another doctor regarding the possibility of surgery. She does not want to pursue surgery, so they are

doing another treatment.

The ministry relied on the reconsideration decision as summarized at the hearing.

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 her 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).

Severe Physical Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical impairment. The ministry acknowledged that the appellant was diagnosed by the GP with bilateral knee pain ("early moderate bilateral knee degeneration") with an onset in October 2018. At the hearing, the appellant's husband stated that the appellant has problems in her legs and also with her stomach due to a C-Section performed in their country of origin. The appellant stated that she has undergone three surgeries for her stomach issues. She stated that in her country of origin, she fell from the second floor of a building onto her back, and she currently experiences dizziness. She does not know when the dizziness will happen and she once fell and broke her thumb.

In the MR and the AR, the GP did not refer to medical conditions involving the appellant's stomach or symptoms of dizziness and, although the appellant wrote in her self-report that she has severe back pain, this symptom was also not confirmed by the GP. The ministry considered that the GP wrote in the MR that the appellant has "chronic history of bilateral knee pain" and her X-Ray showed bilateral knee degeneration that was "early" and "moderate."

In her Notice of Appeal, the appellant wrote that she is severely ill and has painful knees, which cause her to "most of the time" lie in bed. The appellant wrote that she cannot stand or walk on her own for a few steps. At the hearing, the appellant stated that the pain in her knees has increased and she has been referred to another doctor regarding the possibility of surgery. She showed an appointment card for a consult in an orthopedic clinic. The appellant does not want to pursue surgery, so they are exploring another treatment. There was no further information from the GP or the orthopedic clinic with an update regarding the status of the appellant's bilateral knee pain.

A diagnosis of a serious medical condition or conditions does not in itself determine PWD eligibility or establish a severe impairment. Section 2(2) of the EAPWDA requires that the ministry must be satisfied that the impairment is severe before the ministry may designate an applicant as a PWD. 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. 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 her 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 can walk 1 to 2 blocks unaided on a flat surface, cannot climb any steps unaided, cannot lift any weight, and has no limitation with remaining seated. The ministry considered the GP's notation that the functional skills assessment was based on the appellant's reported symptoms. In the additional information to the AR, the GP wrote that the appellant was a new patient and there was limited information regarding her health. The GP also commented that most of the information in the report is based on the symptoms reported by the appellant and her husband. At the hearing, the appellant stated that the GP did not go to her home to see her difficulties with functioning, that she has to hold on to the wall to get up, and she believes she is more familiar with her issues. The ministry also considered the appellant's self-report, in which she wrote that she is not able to bend, walk, or stand "for long."

The ministry considered that the GP assessed the appellant in the AR as being independent with managing all aspects of her mobility and physical ability, specifically: walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding. The ministry also considered that the GP indicated that the appellant does not require the use of any prostheses or aids to manage her physical functioning. The panel finds that the ministry reasonably determined that this information was not consistent with the information in the functional skills assessment; for example, the GP had indicated in the MR that the appellant can do no lifting and can climb no stairs unaided, and the GP indicated in the AR that the appellant is able to lift and to climb stairs independently, without the assistance of another person or an assistive device. The panel finds that the ministry reasonably concluded that the assessment of functional skills limitations was that of the appellant and not the medical opinion of the GP.

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 inconsistency between the GP's assessment of the appellant's independent physical

functioning and the appellant's description of the limitations to her functional skills, and no clear indication of a need for assistance with the appellant's mobility and physical activities from another person or through the use of an assistive device, 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 considered that the GP reported in the MR that it is unknown whether the appellant has significant deficits with her cognitive and emotional functioning. The ministry wrote that, in assessing daily impacts to the appellant's cognitive and emotional functioning, the GP noted these were "self reported symptoms" and were "not documented in her chart previously." In her self-report, the appellant wrote that her daily life activities are hard to accomplish and she cries at home. The appellant wrote that she is stressed for not being able to perform her life activities or make things better. In the AR, the GP assessed a moderate impact in the area of insight and judgment, with no major impacts to functioning. With respect to the section of the report relating to social functioning, the GP did not assess the appellant's functioning, and the GP noted: "no particular report of issues."

Given the absence of a diagnosis of a brain injury or a medical condition within the mental disorders diagnostic category, and insufficient evidence of significant impacts to the appellant's cognitive and emotional or social functioning, 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 is the prescribed professional.

In the reconsideration decision, the ministry was not satisfied that the appellant has a severe physical 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. In her self-report, the appellant wrote that she cannot work at home due to not being able to bend or

move in a certain way. The appellant wrote that she cannot do vacuuming or wash dishes due to not being able to stand for long. She wrote that her daily life activity is hard to accomplish and she cries at home because she cannot cook sometimes due to not being able to walk to buy her groceries. The appellant also wrote that she has difficulties showering, cleaning and doing laundry. The appellant's husband stated at the hearing that they both have problems but they help each other as best as they are able. He stated, for example, that they both have difficulties with toileting and he helps her with this task. The appellant's husband stated that he and the appellant know their problems better than the GP who filled out the forms after they dropped them off; however, pursuant to Section 2(2)(b) of the EAPWDA, the restrictions to DLA must be confirmed in the opinion of a prescribed professional.

The ministry reviewed the information in the AR and considered that the GP, as the prescribed professional, reported that the appellant is independent with performing all of the tasks of the personal care DLA (including the toileting and bathing tasks), the basic housekeeping DLA (including the task of laundry), and the shopping DLA (including the tasks of going to and from stores and carrying purchases home). The GP also reported in the AR that the appellant is independent with performing the DLA of 'move about indoors and outdoors.' The ministry wrote that the GP did not provide any information regarding the appellant's ability to manage the tasks related to the meals DLA, the pay rent and bills DLA, the medications DLA, or the transportation DLA. The ministry considered the GP's comment that the appellant needs her husband's help "in many domains" and this is "due to language issues," and the panel finds that the ministry reasonably concluded that an inability to speak English as a second language is not an eligibility criterion for the PWD designation.

Given the GP's report of independence with all of the assessed tasks of DLA, and no further information provided on the appeal from a prescribed professional to confirm the restrictions described by the appellant and her husband, 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 family and friends, and the appellant does not require any assistive devices to help compensate for her impairment. 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

SANDRA WALTERS

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

PRINT NAME

FAZAL BHIMJI

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

CARLOS GARCIA

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)