

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated March 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 his 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**

The ministry did not attend the hearing. After confirming that the ministry 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 October 30, 2018, a medical report (MR) dated October 2018 completed by a general practitioner (GP) who has known the appellant for more than 5 years and has met with the appellant 11 or more times in the past 12 months, and an assessor report (AR) dated September 19, 2018 and completed by a social worker (SW) who met with the appellant the first time to complete the report.

The evidence also included the appellant's Request for Reconsideration dated February 13, 2019.

***Diagnoses***

In the MR, the GP diagnosed the appellant with COPD and lower back pain with onset in 2015 and diabetes with an onset in 2016. Asked to describe the appellant's mental or physical impairments that impact his ability to manage his daily living activities (DLA), the SW wrote in the AR: "bone decay upper neck, extreme lung damage and respiratory problems." The SW explained that the appellant had worked at a trade that involved exposure to tar burns and asbestos, causing COPD and pneumonia, and that he was also exposed to smoke from a fire. The SW also wrote that the appellant has had "back surgery, ankle fracture, knee damage from falls."

***Physical Impairment***

In the MR, the GP reported:

- The appellant does not require any prostheses or an aid for his impairment.
- In terms of functional skills, the GP reported that the appellant can walk less than 1 block unaided on a flat surface, climb 5 or more steps unaided, lift 7 to 16kg. (15 to 35 lbs.) and remain seated less than 1 hour.
- The appellant is restricted with his mobility outside the home, but there is no indication if these restrictions are continuous or periodic. Regarding the degree of restriction, the GP wrote "moderate restriction with activities."
- In the additional comments to the MR, the GP wrote "chronic medical issues ongoing. Chronic respiratory condition causing shortness of breath and exertional dyspnea."

In the AR, the SW indicated:

- The appellant is assessed as being independent with all mobility and physical ability. The SW also indicated that walking indoors takes the appellant 2 times longer and "only for short distances especially with inclines", walking outdoors takes the appellant 2 times longer, climbing stairs takes 3 times longer, lifting takes 3 times longer and carrying and holding takes 3 times longer. The SW commented that the appellant "tires easily from chronic respiratory problems. Weight bearing difficult with damage to back."
- In the section of the AR relating to assistance provided, the SW indicated none of the

listed assistive devices are used by the appellant. For equipment required but not currently used by the appellant, the SW wrote: "ensure prescription for puffers is maintained."

- In the additional comments to the AR, the SW wrote "respiratory problems so pronounced that physical labor no longer possible. No certificate or diploma for other kinds of work however."
- In an additional page to the AR, the SW added that the appellant experiences COPD, chronic fatigue, and even small exertions cause him respiratory distress" and he "has a degenerative disc condition in his upper back/neck area and had back surgery for same along with a fractured ankle."

In his self-report, the appellant wrote:

- He had a career in a trade that started when he was a teenager until his career ended from a back injury in approximately 1995.
- He had to have back surgery and could not do his trade anymore.
- Through the years, he has inhaled fumes, dust, and other chemicals and it gradually took its toll on his ability to breathe.
- He sought out easier work that would suit his injury and his physical limitations.
- He was diagnosed with COPD and started a regiment of assorted inhalers.
- In 2012, he went into a building to try to put out a fire. Since then, his breathing has been so bad that he could not work. If he tries to exert himself by trying to do the simplest tasks, he feels his heart pounding, his chest aching and he sweats profusely.
- He finds it difficult to do the simplest of tasks.

### ***Mental Impairment***

In the MR, the GP reported:

- The appellant has no difficulties with communication.
- It is unknown whether the appellant has significant deficits with his cognitive and emotional functioning.

In the AR, the SW reported:

- The appellant has a good ability to communicate with speaking, satisfactory ability with reading and writing, and poor ability with hearing as the appellant has "chronic ringing in ears; accident hit with shovel."
- With respect to the section of the AR relating to daily impacts to the appellant's cognitive and emotional functioning, the SW assessed major impacts in the areas of impulse control, insight and judgment, motivation, and other emotional or mental problems. There are moderate impacts in the areas of bodily functions, emotion, executive, and memory, with minimal or no impacts in the remaining 6 areas of functioning. The SW did not provide any comments.
- For social functioning, the appellant is independent with developing and maintaining relationships, interacting appropriately with others, and securing assistance from others. The appellant requires periodic support/supervision with making appropriate social decisions and with dealing appropriately with unexpected demands (SW note: "stress level elevates easily").

- The appellant has good functioning in both his immediate (note: “has positive and supportive relationship with partner”) and extended social networks (note: no friction or conflicts, but not a member of clubs”).
- Asked to describe the support/supervision required to maintain the appellant in the community, the SW wrote: “Work BC, secure housing, anti-poverty measures.”
- In the additional comments, the SW wrote: “respiratory health likely to deteriorate.”
- In the additional comments to the AR, the SW wrote that PWD funding “would provide some level of financial security and reduce stress levels overall.”

### ***Daily Living Activities (DLA)***

In the MR, the GP reported:

- The appellant has not been prescribed medication and/or treatment that interfere with his ability to perform DLA.
- The appellant is not restricted with the DLA of personal self care, meal preparation, management of medications and management of finances.
- The appellant is restricted with the DLA of basic housework, daily shopping, and use of transportation, as well as with mobility outside the home.
- Additional comments for periodic restrictions as: “severe COPD, breathlessness, shortness of breath with exertion.”
- There was no assessment with respect to mobility inside the home and it is unknown whether the appellant is restricted with social functioning.
- In terms of the degree of restriction, the GP wrote: “moderate restriction with activities.”

In the AR, the SW reported:

- For the personal care DLA, the appellant is independent with performing most of the tasks, specifically dressing, grooming, bathing, toileting, feeding self, transfers in/out of bed, and transfers on/off chair. The SW indicated that the appellant takes 3 times longer with dressing as well as with transfers and wrote: “slowed movements due to back pain and respiratory distress.” The appellant requires periodic assistance from another person with the task of regulating his diet, with an additional comment by the SW that the appellant “eats excessive amounts of meat and needs reminders to vary his diet.”
- Regarding the DLA of basic housekeeping, the appellant is independent with doing laundry and basic housekeeping, with a note by the SW that the appellant takes 3 times longer with both tasks.
- For the shopping DLA, the appellant is independent with all tasks with the exception of making appropriate choices, for which he requires periodic assistance from another person. Specifically, the appellant is independent with the tasks of going to and from stores, reading prices and labels, paying for purchases, and carrying purchases home. The appellant takes 3 times longer to carry purchases home. The SW added comments that “any awkward physical movements are difficult especially if they strain his back and respiratory capacity. He is slowed and fatigued easily by weight bearing activities such as carrying groceries.”
- Regarding the meals DLA, the appellant is independent with all of the listed tasks, specifically, meal planning, food preparation, cooking and safe storage of food.
- For the pay rent and bills DLA, the appellant is independent with all tasks, including

banking and budgeting.

- Regarding the medications DLA, the appellant is independent with all of the tasks, specifically: filling/refilling prescriptions, taking as directed, with safe handling and storage.
- For the transportation DLA, the appellant is independent with performing all of the tasks, specifically getting in and out of a vehicle, using public transit and using transit schedules and arranging transportation, although it takes him 3 times longer with each task.
- The SW wrote that the appellant "reports that he is a good cook but describes himself as 'carnivorous,' means meat eater. Along with his partner, they can manage banking and paying bills but nothing on the computer. Medications are taken as prescribed but public transit elevates stress and is avoided if possible."

In his self-report, the appellant wrote that his enjoyment and quality of life has been effected substantially.

### ***Need for Help***

The GP reported in the MR that the assistance the appellant needs with DLA is "help from others." In the AR, the SW indicated that the appellant receives help from community service agencies in the form of outreach services. For help required but not available, the SW wrote "Work BC, respiratory therapist, retraining." The SW did not identify any of the listed assistive devices as being used by the appellant; however, for equipment required but not currently being used, the SW wrote: "ensure prescription for puffers is maintained."

### ***Additional information***

In his Notice of Appeal dated March 27, 2019, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that they needed more time for the doctors to complete documents. They asked for an extension as the doctors needed time to fill out the appropriate paper work and the new documents were not accepted.

Prior to the hearing, the appellant provided the following additional documents:

- 1) An additional PWD Application comprised of the appellant's information dated February 28, 2019, with no additional self-report;
- 2) An additional MR dated March 4, 2019 completed by a physician who is a respiratory specialist, who has known the appellant since 2017, and has met with him 2 to 10 times in the past 12 months. The respiratory specialist indicated:
  - The appellant was diagnosed with COPD, with an onset in 2014.
  - The appellant remains symptomatic despite treatment and "significant shortness of breath no longer allows this patient to work or continue [his previous trade]."
  - The appellant has not been prescribed any medication or treatment that interferes with his DLA.
  - The appellant does not require any prostheses or aid for his impairment.
  - The appellant is not restricted with the DLA of personal self care, meal preparation, management of medications. The appellant is restricted with the DLA of basic housework, daily shopping, mobility inside and outside the home, and use

of transportation. There is no indication whether the restrictions are continuous or periodic. There is no assessment for the DLA of management of finances and for social functioning. There were no additional comments provided.

- 3) An additional AR dated February 28, 2019, in which the respiratory specialist indicated:
- The appellant has good communication in all areas, specifically, speaking, reading, writing, and hearing.
  - The appellant is independent with walking indoors and walking outdoors, with climbing stairs and standing. The appellant requires periodic assistance from another person with lifting and carrying and holding, with a note that these activities “can be limited by shortness of breath.”
  - The appellant is independent with all of the tasks of several DLA, specifically: personal care, meals, pay rent and bills, and medications.
  - The appellant is independent with the tasks of laundry, reading prices and labels, making appropriate choices, paying for purchases, getting in and out of a vehicle and using transit schedules and arranging transportation.
  - The appellant requires periodic assistance with the tasks of basic housekeeping (note: “shortness of breath limits amount patient can do”), going to and from stores (note: “shortness of breath with walking around stores”), carrying purchases home, and using public transit.
  - Help required for DLA is provided by family, friends and community service agencies, with an indication that family has “limited abilities to provide additional help.”
  - No assistive devices are identified as being used by the appellant.
- 4) An additional MR dated March 18, 2019 completed by a GP who has met with the appellant 2 to 10 times in the past 12 months. The GP reported:
- The appellant is diagnosed with COPD, major depression, PTSD, and arthritis-degenerative changes of lumbar spine with radiculopathy.
  - Regarding the appellant’s COPD, the GP wrote that he “continues to be symptomatic despite being on maximum doses of recommended therapy. Patient experiences shortness of breath with any exertion and therefore is unable to work in [his previous field].”
  - With respect to the major depression, the GP wrote that the appellant “continues to experience symptoms despite medication. These include decreased level of energy and ability to concentrate.”
  - Regarding the arthritis, the GP wrote that “severe back pain with radiation to both limbs and numbness to both hands.”
  - The appellant has not been prescribed medications or treatments that interfere with his ability to perform DLA;
  - The appellant does not require any prostheses or aid for his impairment.
  - The appellant can walk less than 1 block unaided on a flat surface, climb 5 or more steps unaided, lift 2 to 7 kg. (5 to 15 lbs.) and has no limitation with remaining seated.
  - The appellant has significant deficits in his cognitive and emotional functioning in the areas of emotional disturbance, motivation, and attention or sustained concentration (note: “secondary to depression”).
  - The appellant is not restricted with the DLA of personal self care, meal

preparation, management of medications, management of finances and social functioning. The appellant is continuously restricted with the DLA of basic housework, daily shopping, mobility inside and outside the home, and use of transportation.

- The assistance needed with DLA is “with housework- cleaning” and “equipment for mobility and shopping.”

5) A statement in which the appellant wrote:

- After decades of working, he was diagnosed with COPD and it was hard for him to accept and he hid a lot from everybody, even his doctors.
- After his back surgery, he had to adjust to working menial jobs.
- He did not say anything when his COPD got worse so no one would worry.
- His activity level got less and less and, since 2012, everything got much worse.
- When his pet passed away in 2016, he felt it was his fault because he could not afford to take the pet to the veterinarian.
- After this, his depression and anxiety “went through the roof” to the point of planning suicide.
- Sleeping on a good night is 4 to 6 hours and, on a bad night, 3 to 4 hours if he is lucky, and there are more bad nights than good. It is hard to sleep with coughing, gurgling lungs and having to get rid of the phlegm build up.

At the hearing, the appellant provided cards for his psychiatrist and an appointment reminder.

At the hearing, the appellant and his advocate stated:

- The appellant has been seeing the GP for a while but the appellant did not want to provide full information because he was embarrassed to admit his limitations.
- In his self-report, the appellant provided full information.
- The appellant has found a new doctor who is local and he felt he could open up with this GP for the PWD reports and there was a diagnosis made for major depression and Post Traumatic Stress Disorder (PTSD). The appellant has been referred to a psychiatrist.
- The physician who completed the additional MR and AR is a respiratory specialist that the appellant has been seeing for 4 years.
- The appellant has been seeing the GP who completed an additional MR in the last year.
- The appellant has been recently referred to a psychiatrist and has an appointment in a few days.
- The appellant did not discuss his mental impairment with the GP who completed the original MR.
- The SW had only visited with the appellant once and the appellant did not go into any detail. He has worked hard all his life and did not want to admit to having problems.
- The appellant cannot get to the food bank and carry groceries by himself and needs a lift.
- It is hard for the appellant to climb a flight of stairs. He takes the elevator in his building if he has to carry anything.
- He does not need homecare because his spouse helps him at home.
- He has symptoms if he does the least activity, such as eating dinner.
- He has not worked since the fire in 2012. His doctor says he cannot do even menial tasks for work. His inability to work has started to affect him mentally. He never thought

he would be in this position.

- When he walked 2 blocks to his doctor's office, he sweated and his legs ached.
- He needs respiratory therapy and the "equipment for mobility" is a scooter. He has a respiratory machine for oxygen at home, as he needs it. He may have sleep apnea and have a need for a CPAP machine.
- After his back surgery, the appellant was off work for a year. A disc in his back was pushing against the sciatic nerve. He tried to go back to his trade but he was afraid of re-injuring himself. He injured his back again and was off work for a few months. He had an open claim with Work Safe BC but he did not follow through regarding further benefits.
- He discovered that he was not getting good advice from his previous GP when the appellant injured his foot and the GP said, "if you're walking on it, it's not broken" and 4 years later an x-ray showed a fracture.
- He cannot read properly as he was diagnosed as a child with dyslexia. It would take him a half a day to read one page.

The ministry relied on the reconsideration decision.

#### ***Admissibility of Additional Information***

The ministry did not attend the hearing to consider the admissibility of the additional documents and the appellant's testimony. The panel considered the additional documents and testimony on behalf of the appellant and admitted the additional written statement and applicant information from the appellant, the cards for his psychiatrist and an appointment reminder, most of the appellant's testimony, as well as the MR completed by the respiratory specialist as being in support of, and tending to corroborate, the medical conditions and their impact referred to in the PWD application which was before the ministry at reconsideration. Therefore, the panel admitted this additional information in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

However, the panel did not admit the additional AR completed by the respiratory specialist, the additional MR completed by the GP, and the parts of the appellant's testimony relating to his need for assistive devices as this information was not before the ministry at reconsideration and was inconsistent with, and not in support of, information before the ministry at reconsideration. For example, in the additional AR, the respirator specialist assessed the appellant as requiring periodic assistance with several tasks for which the SW in the original AR indicated that the appellant was independent, including the tasks of lifting, carrying and holding, basic housekeeping, going to and from stores, carrying purchases home, and using public transit.

The new MR prepared by the GP referred to diagnoses of major depression and PTSD that were not diagnosed in the original MR and, while the original AR completed by the SW indicated the likelihood of an undiagnosed mental impairment as the report included major and moderate impacts to several areas of the appellant's cognitive and emotional functioning as well as the need for support/supervision with areas of his social functioning, the new MR also included information that the appellant requires "equipment for mobility and shopping," clarified by the appellant at the hearing to be a scooter. The original MR and AR before the ministry reported that the appellant does not require an aid for his impairment or an assistive device such as a scooter and the ministry has not had an opportunity to consider this markedly new information.



At the hearing, the appellant and his advocate stated that the appellant requires a scooter for his mobility, identified by the GP in the new MR as “equipment for mobility and shopping,” that he uses a respiratory machine for oxygen at home as needed, and he may have sleep apnea and require a CPAP machine. However, in the original MR and AR, the GP and the SW respectively, reported that the appellant does not require an aid for his impairment and that none of the listed assistive devices, including a scooter and a breathing device, are applicable to the appellant. Therefore, this additional MR and the additional AR and related parts of the appellant’s testimony, do not meet the requirements of 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 his 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 COPD and lower back pain with onset in 2015 and diabetes with an onset in 2016. The SW wrote in the AR that the appellant has "bone decay upper neck, extreme lung damage and respiratory problems." The SW explained that the appellant had worked at a trade that involved exposure to tar burns and asbestos, causing COPD and pneumonia, and that he was also exposed to smoke from a fire. In his self-report, the appellant clarified that in 2012 he went into a building to try to put out a fire and, since then, his breathing has been so bad that he could not work. The appellant wrote that if he tries to exert himself by trying to do the simplest tasks, he feels his heart pounding, his chest aching and he sweats profusely. The appellant wrote in his additional statement that on a good night he can get 4 to 6 hours of sleep and, on a bad night, 3 to 4 hours if he is lucky, and there are more bad nights than good. The appellant wrote that it is hard for him to sleep with coughing, gurgling lungs and having to get up to get rid of the phlegm build up. The GP commented in the MR that the appellant has "severe COPD, breathlessness, shortness of breath with exertion."

A diagnosis of a serious medical condition or conditions does not in itself determine PWD eligibility or establish a severe impairment. 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. Section 2(2) of the EAPWDA requires that the ministry be satisfied that the impairment is severe before the ministry may designate an applicant as a PWD. 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.

In the additional comments to the AR, the SW wrote "respiratory problems so pronounced that physical labor no longer possible." In the additional MR, the respiratory specialist reported that

the appellant remains symptomatic despite treatment and “significant shortness of breath no longer allows this patient to work or continue [his previous trade].” As 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, the panel finds that the ministry reasonably concluded that an assessment of employability or vocational abilities is not part of the PWD application.

The ministry considered the impacts of the appellant’s diagnosed medical conditions on his 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 is able to walk less than 1 block unaided on a flat surface, climb 5 or more steps unaided, lift 15 to 35 lbs. and remain seated less than 1 hour. At the hearing, the appellant stated that when he walked 2 blocks to his doctor’s office, he experienced sweating and his legs ached. The appellant stated that it is hard for him to climb a flight of stairs and he takes the elevator in his building if he has to carry anything. The appellant stated at the hearing that he did not provide full information when the original PWD application was completed.

In the original MR, the GP indicated that the appellant is restricted with his mobility outside the home and commented regarding the degree of restriction: “moderate restriction with activities.” In the additional MR, the respiratory therapist reported that the appellant is restricted his mobility inside and outside the home, but there is no indication whether the restrictions are continuous or periodic. The additional MR also does not include an amended assessment of the appellant’s functional skills and the respiratory specialist confirmed that the appellant does not require an aid for his impairment.

The ministry also considered that the SW assessed the appellant in the original AR as being independent with all his mobility and physical ability, specifically walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding. The ministry wrote that taking 2 to 3 times longer to complete some of these activities is not a significant reduction as the ministry reasonably considered that the appellant does not use any aids for his mobility and he can lift up to 35 lbs., which the ministry considered a significant amount of weight.

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 GP’s assessment of physical functioning in the moderate range of functional skills limitations, with the exception of walking outdoors, and with consistent information that the appellant does not require an aid for his mobility, 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 wrote that the GP did not diagnose a mental health condition and did not suggest in the narrative to the MR that the appellant has a mental impairment. The ministry considered that the GP indicated it is “unknown” whether the appellant has significant deficits to his cognitive and emotional functioning. Although the SW reported major and moderate impacts to the appellant’s cognitive and emotional functioning and the need for support/supervision with aspects of his social functioning, the ministry reasonably considered that these sections of the AR are only to be completed, and therefore considered, when there is an identified mental impairment or brain injury, and neither was identified as causing these impacts.

At the hearing, appellant stated that he did not discuss his mental impairment with the GP who completed the original MR. In the appellant’s additional statement, he wrote that his depression and anxiety “went through the roof” in 2016 to the point of his planning suicide when his pet passed away and he felt it was his fault because he could not afford to consult a veterinarian. At the hearing, the appellant stated that his inability to work since 2012 has also started to affect him mentally, and he never thought he would be in this position. The appellant’s advocate stated that the appellant found a new doctor who is local and the appellant felt more comfortable so he could open up with this GP. The advocate stated that the appellant was recently referred to a psychiatrist and provided the name of the psychiatrist and an appointment confirmation card. The advocate stated that the new GP diagnosed major depression and PTSD; however, there was no admissible documentary evidence to confirm this opinion of a diagnosis and to establish the required duration of the mental impairment.

Given an absence of an opinion of a medical practitioner that there is an identified mental impairment likely to continue for 2 or more years and resulting in impacts to functioning, the panel finds that the ministry reasonably determined that no weight could be placed on the assessment of impacts to cognitive, emotional and social functioning as reported by the SW in the AR, and 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, the SW, and the respiratory specialist are the prescribed professionals.

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. The ministry reviewed the information in the MR and wrote that the GP's assessment indicated that the appellant is restricted with the DLA of basic housework, daily shopping, and use of transportation, as well as with mobility outside the home, with no indication whether these restrictions are continuous or periodic. The ministry reasonably considered that the GP reported the degree of restriction as "moderate restriction with activities." The GP reported that the appellant is not restricted with the DLA of personal self care, meal preparation, management of medications and management of finances.

In the additional MR, the respiratory specialist reported that the appellant is restricted with the DLA of basic housework, daily shopping, mobility inside and outside the home, and use of transportation. There is no indication by the respiratory specialist whether the restrictions are continuous or periodic and there are no additional comments provided. The respiratory specialist also reported that the appellant is not restricted with the DLA of personal self care, meal preparation, and management of medications, with no assessment for the management of finances DLA.

The ministry considered that the SW assessed the appellant in the AR as being independent in performing most tasks of DLA with some tasks taking the appellant 2 to 3 times longer (i.e. dressing, transfers, laundry, basic housekeeping, carrying purchases home, getting in and out of a vehicle, and using public transit). The ministry reasonably considered that taking 2 to 3 times longer with some tasks is insufficient evidence of direct and significant restrictions when the appellant is assessed as being able to lift up to 35 lbs. and being able to complete all aspects of his mobility and physical ability independently with no need for an aid or mobility device.

The SW indicated that the appellant requires periodic assistance from another person with the task of regulating his diet; however, the additional comment by the SW that the appellant "eats excessive amounts of meat and needs reminders to vary his diet" does not specify the degree of assistance required. The SW also reported that the appellant requires period assistance from another person with making appropriate choices when shopping, with no additional comments provided. Without additional comments specifying how often or for how long the appellant requires assistance with these two tasks of DLA, it is difficult for the ministry to determine that the periodic assistance is required for extended periods of time. In his self-report, the appellant wrote that his enjoyment and quality of life has been effected substantially.

Given the GP's assessment of independence with all but two of the tasks of DLA and an

absence of sufficient information to determine that periodic assistance is required for extended periods, as well as the moderate range of the functional skills assessment, the panel finds that the ministry reasonably concluded that the evidence is insufficient to show that the appellant's overall ability to perform his 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 MR that the assistance the appellant needs with DLA is "help from others." In the AR, the SW indicated that the appellant receives help from community service agencies in the form of outreach services, and for help required but not available, the SW wrote "Work BC, respiratory therapist, retraining." The SW did not identify any of the listed assistive devices as being used by the appellant and wrote "ensure prescription for puffers is maintained."

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)

2019-04-16

PRINT NAME

Rosalie Turcotte

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-04-16

PRINT NAME

Tina Ahnert

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-04-16