

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 14 June 2019 that denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in section 2 of the *Employment and Assistance for Persons with Disabilities Act*, section 2. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years and that in the opinion of a prescribed professional

(i) directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

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

The ministry determined that the appellant satisfied the other criterion: she has reached 18 years of age.

The ministry also found that it has not been demonstrated that the appellant is in one of the prescribed classes of persons who may be eligible for PWD designation on the alternative grounds set out in section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation*. As there was no information or argument provided by the appellant regarding alternative grounds for designation, the panel considers this matter not to be at issue in this appeal.

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 evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 12 March 2019. The Application contained:
 - A Self Report (SR).
 - A Medical Report (MR) dated 11 March 2019, completed by a specialist in urology ("the specialist") who has known the appellant since July 2018 and has seen her 2-10 times in the past year.
 - An Assessor Report (AR) dated 11 March 2019, completed by the same specialist.
 - Other information:
 - a) legal documents regarding a violent incident, its background and aftermath;
 - b) medical imaging report dated 15 February 2019, noting gallbladder polyps, cyst on right kidney, fibroids on uterus, and cyst on right ovary;
 - c) consult report from a specialist in rheumatology and internal medicine dated 05 February 2019, with findings of chronic soft tissue pain syndrome, intermittent tingling in her hands, feet and face, worsening tinnitus in the left ear, dry mouth, and pain in throat, dry mouth, upper neck and mid-torso and lower-right abdomen (pain level is 5-6/10).
2. The appellant's Request for Reconsideration, dated 16 May 2019, requesting an extension, followed by a letter from the appellant dated 14 June 2019, attached to which is a letter from the specialist to the appellant's general practitioner (GP) dated 10 May 2019 and a Medical Report - Employability (MR-E) completed by the GP dated 10 June 2019.

In the MR, the specialist provides the following diagnoses related to the appellant's impairment: Renal cell carcinoma of left kidney (onset July 2018).

In the AR, the specialist describes the appellant's impairment as "musculoskeletal pain and fatigue, are likely unrelated to urological procedure or kidney cancer."

In the MR-E the GP describes the appellant's medical condition as "pulmonary nodules, under investigation; abdominal pain, origin not yet determined and anxiety."

In the MR-E, the GP describes the appellant's restrictions as: "no tolerance at maintaining the same position (sitting, standing), fatigue, reduced energy, reduced concentration."

The panel will first summarize the evidence from the MR, the AR and MR-E as it relates to the PWD criteria at issue in this appeal.

*Duration***MR**

The specialist indicates that the appellant's impairment is not likely to continue for two years or more, commenting, "Estimated duration of impairment from surgical procedure is six weeks."

MR-E

The GP indicates the expected duration of the medical condition is 9-12 months

Severity/health history*Physical impairment*

MR:

Under Health History, the specialist reports that the appellant was incidentally found to have a left renal mass when she sustained injuries and had CT imaging of the abdomen and pelvis. She had laparoscopic surgery to remove her left kidney on 05 October 2018. She required six weeks for recovery. The final pathology clearly showed renal cell carcinoma. Follow-up abdominal ultrasonic imaging incidentally found a gallbladder polyp and right ovarian cyst. As a result, she has been referred to General Surgery and Gynecology for an opinion.

Under Additional Comments, the specialist writes that the appellant was hospitalized for a total of four days for her operation.

Regarding functional skills, the specialist indicates that it is unknown how far the appellant can walk unaided on a flat surface or how many steps she can climb unaided; he indicates that there are no limitations regarding lifting or remaining seated.

The specialist indicates that the appellant has not been prescribed medication and/or treatments that interfere with her ability to perform DLA.

AR:

Respecting mobility and physical ability, the specialist assesses the appellant as Independent for all listed areas of mobility and physical ability: walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding.

Mental impairment

MR:

The specialist indicates that the appellant has no difficulties with communication.

The specialist indicates that the appellant has no significant deficits with cognitive and emotional function. He comments, "No cognitive deficits or emotional function from renal cell carcinoma or laparoscopic surgery."

AR:

The specialist assesses the appellant's ability to communicate as good for speaking, reading, writing, and hearing.

The specialist assesses the degree to which the appellant's mental impairment impacts her daily functioning as follows:

Major impact: none.

Moderate impact: none.

No impact: Bodily functions, consciousness, emotion, impulse control, insight and judgment, attention/concentration, executive, memory, motivation, motor activity, and language.

Unable to assess psychotic symptoms, other neuropsychological problems, and other emotional or mental problems.

The specialist comments, "This is from a urologic perspective as such from a laparoscopic operation should not anticipate effects to bodily function."

Ability to perform DLA

MR:

The specialist reports that appellant's ability to perform DLA is restricted as follows:

Not restricted: meal preparation, management of medications, daily shop, uses transportation, management of finances, and social functioning.

Restricted on a periodic basis: Personal self-care, basic housework, mobility inside the home and mobility outside the home.

The specialist explains "periodic" as "Only in the immediate post-operative period."

AR:

The specialist provides the following assessments of the assistance the appellant requires in performing DLA (the specialist provides no explanatory comment in the spaces provided).

- Personal care – independent for all tasks.
- Basic housekeeping – independent for all tasks.
- Shopping – independent for all tasks.
- Meals – independent for all tasks.
- Pay rent and bills – unable to assess
- Medications – independent for all tasks.
- Transportation – independent for all tasks.

Social functioning

The GP assesses the appellant as follows for the listed areas where support/supervision may be required to compensate for a mental impairment:

- Independent for making appropriate social decisions, interacting appropriately with others, and securing assistance from others.
- Unable to assess – the ability to develop and maintain relationships and the ability to deal appropriately with unexpected demands.

The specialist indicates "unable to assess" the appellant's relationship with both her immediate and extended social networks.

Help provided/required

MR:

The specialist indicates that the appellant does not require any prostheses or aids to compensate for her impairment.

AR:

The specialist does not indicate that the appellant requires the use of an assistive device.

The specialist indicates that the appellant does not have an assistance animal.

The specialist indicates that assistance is provided by family and friends (daughter). Regarding the help required when none is available, the specialist comments, "Unable to assess from a urology perspective." As to safety issues, he writes, "None that I am aware of."

Self Report

In her SR, the appellant describes her disability as follows:

- Kidney cancer, kidney disease.
- Rib/torso/throat damage due to being a victim of a violent assault, which led to CT scan which revealed kidney problems.
- Weak, tired, sore, unable to sit for long enough to work or for comfort.
- High blood pressure – erratic.
- New symptoms of polyps and cysts, surgery may be required to remove the gallbladder.

In describing her disability, she writes that she has gone from being healthy to unable to do much at all without getting very tired and sore. She is not the same person she was before she was attacked.

In an attached memo, the appellant explains how she was the victim of a violent incident in another country in July 2018, lasting over several days, its background and aftermath. She describes her difficulties securing treatment for her injuries, both abroad and on her return to BC, being seen in several hospitals and by different physicians, being diagnosed with gallbladder polyps and a cyst on her remaining kidney. She recounts several episodes of acute sickness. The only physician she has seen on a consistent basis recently has been the urologist who removed her left kidney, but whose report excluded her main symptoms of her torso being in constant discomfort and her inability to sit for more than 15 minutes without discomfort and failed to mention the new cyst on her remaining kidney or adverse blood readings of her kidney function.

She writes that bloodwork and ultrasounds show that she is still in bad shape, and a long list of doctors she is waiting to see will not tell her anything for a few months at least. Her main problems are her constant torso pain in ribs, sides, front right side. Her throat hurts and it is hard to swallow at times. She has dry mouth and dry eyes, lacks strength, and is generally being bedridden. She states that she is barely able to take care of herself, walking her dog and light housekeeping being her only activity. She remains foggy, weak, unable to sit for more than 15 minutes without great discomfort.

Request for Reconsideration

In requesting an extension, the appellant notes that the GP has accepted her as a patient. The GP knows of her problems sitting and lifting. The appellant states that there is a new problem with one of her ribs – an ultrasound shown either a crack or something worse. Her GP has ordered a CT scan for 24 May 2019 and a PET scan for 31 May 2019. The GP wishes to review

the scan results before she concludes that her recovery will take two years. The appellant also notes that asthma-type symptoms have developed, and she awaits an appointment for a test for this.

Letter from the specialist to the GP

The specialist writes that the appellant continues to have a right-sided abdominal pain as well as fatigue, weight loss. She is having symptoms all over her body including a tingling and swelling in her hands. She is having feelings of constriction around her neck. She feels she is having “sluggish” memory as of late. She attributes these symptoms to when she was attacked in another country. The specialist writes that the appellant cannot recall the events. (Next to this, the appellant adds in handwriting what she believes occurred.)

The specialist concludes by writing, “as for her disability, I expressed to her that as I do not feel that her symptoms are related to the surgery and as such if she wishes to re-apply for disability she should be assessed by her GP.”

Notice of Appeal

The appellant’s Notice of Appeal is dated 25 June 2019. Under Reasons, she writes that no doctor has properly diagnosed serious physical injuries that have left her practically bedridden since July 2018. Now she is being diagnosed for lung cancer. Her former general practitioner refused to treat her, allowing her to get this sick. The specialist refused to provide the ministry all information. Her new doctor will provide full information after final diagnosis of lung cancer comes in – a 04 July 2019 biopsy is pending. She adds that she is unable to work or do anything more than walk a few blocks and do light housework. She cannot lift and is in constant pain.

The hearing

With the consent of both parties, the hearing was conducted in writing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

Appellant submission

Under cover of a letter dated 01 August 2019, the appellant submitted what she termed an “Amended” application for PWD designation, consisting of Self Report (SR-A) signed, witnessed, and dated 04 May 2019, and a Medical Report (MR-A) completed by the appellant’s GP who indicates that she has known the appellant for six months and has seen her 11 more times. (The date of the MR-A is not shown due to photocopying only part of the page.) The Amended Application does not contain an Assessor Report.

In the SR-A, the appellant covers much the same ground in the original SR, adding that she cannot sit for more than a few minutes without being in pain from ribs and torso, and that she has developed asthma and has coughing fits when she sits or in the evenings. She also states that she cannot lift more than about 10 pounds. Other issues include gallbladder polyps and cysts on her ovaries.

In the MR-A, the GP diagnoses the appellant's impairments as "ongoing investigation for probably/suspicious chronic pain (no etiology yet determined); renal cell carcinoma & possible lung cancer." Under Health History, the GP writes that she has been following the appellant since January 2019 when she originally came to her with a multitude of symptoms including pain, fatigue, weight loss, fogginess, and reduced concentration. GP writes that the appellant cannot tolerate sitting, standing position for more than 15 minutes. With her fatigue, sustained focus/concentration is impossible. The recently found lung module that raises the possibility of a second cancer also is a major source of stress.

Under Duration and Course of Impairment, the GP indicates that the appellant's impairment is likely to continue for two years or more, commenting that the appellant's symptoms (mainly chronic pain) have worsened in the past 12 months and the pain is likely to persist. As to functional skills, the GP assesses the appellant as being able to walk 4+ blocks unaided on a flat surface, climb 5+ steps unaided, lift 5-15 lbs and remain seated for less than 1 hour. The GP assesses the appellant as having no difficulties with communications. The GP assesses the appellant as having significant deficits with cognitive and emotional functioning in the areas of executive, memory, emotional disturbance, and attention or sustained concentration.

With regard to DLA, the GP indicates that the appellant is not restricted for all DLA except for daily shopping on a continuous basis and for mobility outside the home on a periodic basis. The GP notes that the appellant gets her groceries delivered – she can't carry the bags herself due to pain.

Ministry submission

The ministry did not provide a submission for the hearing.

Admissibility of additional information

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence the information and records that were before the minister when the decision being appealed was made and "oral and written testimony in support of the information and records" before the minister when the decision being appealed was made. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA - to determine whether the ministry's reconsideration decision is reasonably supported by the evidence or is a reasonable application of the enactment in the circumstances of an appellant. That is, panels are limited to determining if the ministry's decision is reasonable and are not to assume the role of decision makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

In her Notice of Appeal, the appellant states that her injuries have left her practically bedridden, she is unable or do anything more than walk a few blocks and do light housework, that she cannot lift and is being diagnosed for lung cancer. The panel finds that this information was not before the ministry at reconsideration and therefore cannot be said to be in support of what the ministry had before it.

The appellant submitted SR-A and MR-A as an amended application for PWD designation. Accordingly, the panel will consider the admissibility of the information provided in the submission as a “package.” The panel notes that much of the information in SR-A is similar to that originally provided in the SR, but will consider the admissibility of the SR-A information in the context of the total package, including MR-A.

The panel notes the following major differences between the information provided in MR-A and that provided by the medical practitioners in the information before the ministry at reconsideration:

Subject	MR-A	MR, MR-E, Specialist-GP letter and Rheumatologist consult (RC)
Diagnosed impairment	Chronic pain, renal cell carcinoma and possible lung cancer	MR: Recovery from radical nephrectomy due to renal cell carcinoma MR-E: pulmonary nodules and abdominal pain under investigation, anxiety RC: chronic soft tissue pain syndrome, abdominal/torso pain
Duration	2 years or more	MR: 6 weeks recovery from surgery MR-E: 9-12 months recovery from injuries
Functional skills	4+ blocks walking 5+ steps climbing stairs 5 to 15 lbs lifting Remain seated less than 1 hour	MR: unknown or no limitations MR-E: no tolerance for remaining seated/standing
Significant deficits in cognitive and emotional function	Executive, memory, emotional disturbance, attention or sustained concentration	MR: none MR-E: notes anxiety as part of medical condition: notes fatigue and reduced energy/concentration Specialist/GP letter: “sluggish memory”
DLA	Daily shopping continuously restricted Mobility outside the home periodically restricted All others unrestricted	MR: Periodic restrictions in 4 areas - - only in the immediate post-operative period

On review, the panel finds that MR-A provides information that is in addition to, or significantly different from, the information from the medical practitioners before the ministry at reconsideration. This is particularly the case with regard to duration, functional skills, cognitive and emotional deficits, and ability to perform DLA.

To some extent, the information in the MR-A corroborates information provided by the appellant in her SR and in her statement in her Request for Reconsideration, such as regarding a

description of her diagnosed impairment, her inability to sit for any length of time, foggy thinking/memory, and the onset of asthma-like symptoms. However, there was insufficient information provided by the appellant in her SR and Request for Reconsideration before the ministry at reconsideration that could be considered as being corroborated by the MR-A regarding duration, all of the functional skills assessed by the GP, the full range of significant deficits in cognitive and emotional functioning identified by the GP or the assessments regarding ability to perform DLA.

Accordingly, the panel finds that the information provided in the MR-A, taken as a whole, does not corroborate or substantiate the information and records before the ministry at reconsideration and therefore cannot be said to be in support of this information.

The panel, pursuant to section 22(4) of the *Employment Assistance Act*, therefore does not admit as evidence the information referred to above in the Notice of Appeal and the SR-A and MR-A package submitted by the appellant on appeal.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry decision that determined that the appellant did not meet three of the five statutory requirements of Section 2 of the EAPWDA for designation as a person with disabilities (PWD) is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe physical or mental impairment that in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years and in the opinion of a prescribed professional,

(i) directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

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

The ministry determined that the appellant satisfied the other criterion: she has reached 18 years of age.

The following section of the EAPWDA applies to this appeal:

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.

The following sections of the EAPWDR applies to this appeal:

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.

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) 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).

Analysis

Duration

It appears to the panel, on reviewing the Record, that the appellant is convinced that the impairment resulting from her injuries sustained in the violent incident of July 2018, and from the medical conditions that have arisen since then, will continue for at least two years. However, it seems that she understands that she must await the results of ongoing medical investigations before her GP will be willing to confirm that this will be the case.

The position of the ministry, as set out in the reconsideration decision, is that, based on the information provided, it cannot be established that, in the opinion of a medical practitioner or

nurse practitioner, the appellant's impairment is likely to continue for at least two years.

Panel finding

As noted by the ministry, in the MR the specialist indicates that the appellant's impairment is not likely to continue for two years or more, writing, "Estimated duration of impairment from surgical procedure is six weeks." As also noted by the ministry, in the MR-E the GP indicates the expected duration of the appellant's medical condition is 9 to 12 months. None of the supplementary medical documents included with the PWD application speak to the expected duration of impairment. Considering this evidence, the panel finds that the ministry was reasonable in determining that the 2-year duration criterion has not been met.

Severity of impairment

Preliminary Considerations

As the ministry noted in its decision, the diagnosis of a serious medical condition or conditions does not in itself determine PWD eligibility or establish a severe impairment. An impairment, as defined by the ministry in the MR and AR, is a loss or abnormality of psychological, anatomical or physiological structure or function causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration. To assess the severity of impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning.

For the minister to be "satisfied" that the person's impairment is severe, the panel considers it reasonable for the ministry to expect that the information submitted by the independent and professional medical practitioner and prescribed professional (in this case the specialist) completing the application provides the minister with sufficient information on the nature and extent of the impacts of the person's medical conditions on daily functioning. As the legislation requires the minister to make determinations regarding the degree of impairment, the degree of restrictions in the ability to perform DLA and the resulting degree of help required, it is therefore important that the MR and the AR include explanations, descriptions or examples in the spaces provided so that the minister has the information needed to make these determinations. Significant weight must also be placed on the evidence of the applicant, unless there is a legitimate reason not to do so. Such information provided by the applicant, while optional in the Application form, may be helpful in fleshing out the general picture provided by the medical practitioner/prescribed professional. The reconsideration process provides the opportunity for the prescribed professionals and applicant to clarify or add to the information provided on application, and the panel hearing an appeal must consider any information provided on appeal, as long as the panel finds it admissible.

Physical impairment

From the Record, the panel understands the appellant's position to be that the information provided regarding the nature of her injuries sustained in the violent incident in July 2018, together with her subsequent medical conditions, and how these restrict her daily physical functioning, clearly demonstrate that she has a severe physical impairment.

The ministry's position, as explained in the reconsideration decision, is that the information provided by the specialist in the MR and AR and in his letter to the GP, by the GP in the MR-E, and by the appellant in her SR and in another documents submitted with her application, does not establish that the appellant has severe physical impairment.

Panel finding

EAPWDA section 2, subsection (2) begins with "The minister may designate a person ... as a person with disabilities ... 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 ..." This wording means that not only must a medical practitioner or nurse practitioner confirm that the person's impairment continue for at least two years (as discussed above), but that a medical practitioner or nurse practitioner must identify the impairment that results in the restrictions to be assessed under the provisions of paragraph (2)(b). In this case, the specialist in the MR has identified the impairment as the appellant's recovery from laparoscopic left radical nephrectomy for renal cell carcinoma. The MR then goes on to assess the restrictions that the GP expects will continue for a few weeks while the appellant recovers from surgery. The assessments he provides are not very helpful – in the MR, "unknown" or "no limitations" for functional skills, and in the AR, independent for all aspects of mobility and physical ability.

In the MR-E, the GP provides a more complete description of the appellant's medical condition, more along the lines described by the appellant in her SR: "pulmonary nodules, under investigation; abdominal pain, origin not yet determined and anxiety." The GP describes the appellant's restrictions as "no tolerance at maintaining the same position (sitting, standing), fatigue, reduced energy, reduced concentration." As noted by the ministry in its decision, the GP does not describe how long the appellant can remain seated or standing, while in the AR the specialist has indicated that the appellant has no limitations with remaining seated and is independent with standing. The ministry also noted that the GP does not describe the nature of further impacts resulting from fatigue and decreased energy.

Given how the specialist and the GP identified the appellant's impairment differently, and the lack of information regarding the degree to which the appellant's physical functioning is restricted, the panel finds that the ministry was reasonable in determining that a severe physical impairment has not been established.

Mental impairment

The appellant does not expressly argue that she has a severe mental impairment, primarily describing impacts on her physical functioning.

The position of the ministry is that, based on the assessments and information before the ministry at reconsideration, a severe impairment of the appellant's mental functioning has not been established. In reaching this decision, the ministry reviewed the following information:

- In the MR and AR, with the appellant assessed as having no difficulty with communication,
- In the MR, with the specialist indicating that the appellant has no significant deficits with

cognitive and emotional functioning,

- In the MR, with the appellant assessed as independent for social functioning,
- In the AR, where the specialist indicates that there are minimal impacts in 11 areas of cognitive and emotional functioning, and writes “unable to assess” in the remaining 3 areas,
- In the AR, where the specialist indicates that the appellant is independent in three areas of social functioning and “unable to assess” in the other two areas,
- In the AR, the specialist is unable to assess the appellant’s functioning with her immediate and extended social networks or supports/supervision required to help maintain in the community, and with no indication of safety issues with regard to social functioning.
- In the MR-E, with the GP noting anxiety is one aspect of the appellant’s medical condition and fatigue, decreased energy and decreased concentration as restriction factors

Panel finding

As noted by the ministry, the specialist in completing the MR did not diagnose the appellant with a mental health condition or brain injury. He also did not identify any significant deficits with cognitive and emotional function. While in the AR he indicated that her mental health condition during recovery from the laparoscopic surgery might result in minimal impacts in several areas, no moderate or major impacts were assessed. Further, the specialist did not assess the appellant with any difficulties with communication or as requiring any support/supervision with social functioning.

The GP in the MR-E noted anxiety as one aspect of the appellant’s medical conditions. However, it is unclear whether she was describing the appellant’s state of mind or diagnosing a mental health disorder. As the ministry pointed out, the GP did not describe the severity of the impact of the appellant’s decreased concentration on daily functioning.

In the SR, the appellant mentions that she remains “foggy,” but provides no further description of how or to what extent this mental condition restricts her daily functioning.

Considering the lack of information available to the ministry at reconsideration that would demonstrate a high degree of deficiency in the appellant’s mental functioning, the panel finds that the ministry reasonably determined that a severe mental impairment has not been established

Direct and significant restrictions in the ability to perform DLA

On reading her SR, the position of the appellant appears to be that the specialist was remiss in not fully reporting the extent of her restrictions in her ability to perform DLA resulting from her chronic pain and other medical conditions.

The ministry’s position, as explained in the reconsideration decision, is that based on the assessments provided, there is not enough evidence to confirm that the appellant has a severe impairment that significantly restricts her ability to perform her DLA continuously or periodically for extended periods.

Panel finding

The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be the result of a severe impairment, a criterion not established in this appeal. The legislation – section 2(2)(b)(i) of the EAPWDA – requires the minister to assess direct and significant restrictions to DLA in consideration of the opinion of a prescribed professional, in this case the specialist or the GP. This does not mean that other evidence should not be factored in as required to provide explanation of the professional evidence, but the legislative language is clear that a prescribed professional's evidence is fundamental to the ministry's determination whether it is "satisfied." And for the minister to be "satisfied," it is reasonable for the ministry to expect that a prescribed professional provides a clear picture of the extent to which the ability to perform DLA is restricted, as assessed in terms of the nature and duration of help required or the time it takes to perform a task, in order for the ministry to determine whether the restrictions are "significant." Any information submitted by the applicant or others could be useful in adding context and detail to the picture provided by the prescribed professional(s).

As noted by the ministry in the reconsideration decision, in assessing restrictions in the appellant's ability to perform DLA, the specialist states that the restrictions reported are limited to the appellant's six week post-operative period, a timeframe which the ministry noted had long since passed at the time of reconsideration. In the AR, the specialist assesses the appellant as independent in all aspects of mobility and physical ability (the DLA of moving about indoors and outdoors) and independent for all listed tasks of six of the seven DLA requiring physical effort, with that of paying rent and bills (the DLA of managing personal finances) indicated as "unable to assess."

The ministry also noted that in the MR and AR, the specialist does not indicate any restrictions to social functioning. The ministry further noted that in the MR-E provided at reconsideration, the GP does not speak to restrictions of DLA.

Given the lack of information provided by the prescribed professionals that would point to any difficulties with the appellant's ability to manage her DLA, the panel finds that the ministry was reasonable in determining this criterion has not been met.

Help required

In her SR or Notice of Appeal, the appellant provided no information regarding the help that she may require to manage her 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.

Panel finding

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.

Although the specialist has indicated that the appellant benefits from the assistance of family and friends (daughter), given that the specialist did not report any detailed information on the nature, type, frequency or duration of assistance required from another person, the use of an assistive device or the services of an assistance animal, and since 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 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 that determined that the appellant was not eligible for PWD designation was reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant is thus 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

Richard Roberts

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019 August 26

PRINT NAME

Joan Cotie

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 August 26

PRINT NAME

Linda Pierre

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 August 26