

**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 July 31, 2019, which held that the appellant did not meet 2 of the 5 statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) for designation as a person with disabilities (PWD). The ministry found that the appellant met the requirements of having reached 18 years of age and of having a severe mental impairment that, in the opinion of a medical practitioner, is likely to continue for at least 2 years.

However, the ministry was not satisfied that:

- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and
- as a result of those restrictions, in the opinion of a prescribed professional, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

The ministry also determined that the appellant is not in any of the classes of persons set out in section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation* who may be eligible for PWD designation on alternative grounds.

**PART D – RELEVANT LEGISLATION**

*Employment and Assistance for Persons with Disabilities Act* (EAPWDA), section 2

*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), sections 2 and 2.1

**PART E – SUMMARY OF FACTS**Information before the ministry at reconsideration

- The appellant’s PWD application comprised of:
  - A Medical Report (MR) and an Assessor report (AR), both dated June 7, 2019, and completed by a general practitioner (GP) who has seen the appellant 2 to 10 times in the past 12 months and has known the appellant for about 1 year; and
  - The appellant’s self-report (SR) section of the PWD application, dated May 17, 2019.
- Request for Reconsideration, dated July 17, 2019, to which the appellant attached a 1-page letter he wrote.

Information provided on appeal and admissibility

- The Notice of Appeal (NOA), dated August 7, 2019, to which the appellant attached his letter submitted at reconsideration.
- August 2, 2019, letter from the GP (“the GP’s letter”).

In accordance with section 22(4) of the *Employment and Assistance Act* (EAA), the panel may admit oral and written testimony that is in support of the information and records available at the time of reconsideration. Noting that there was no objection from the ministry, the appellant’s oral testimony and the information in the GP’s letter was admitted as being information in support of the information at reconsideration respecting the appellant’s mental impairment. The appellant’s NOA did not include evidence.

At the hearing, the ministry reviewed the reconsideration decision but did not provide additional evidence.

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

Summary of relevant evidenceDiagnoses and Health History

The GP diagnoses depression, anxiety with panic attacks and alcohol dependence.

“Debilitating condition due to anxiety and alcohol consumption. No work since summer of 2018.”

“Treatment may improve condition in future. TBD.”

“Severely debilitated by anxiety, panic attacks. Social isolation + assistance given. Alcohol addiction severe and long term.”

### Physical Impairment

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

The appellant does not describe limitations to his physical ability in his written submissions and at the hearing confirmed that he is not arguing that he has a physical impairment.

### DLA

In the MR, the GP reports:

- The appellant has not been prescribed medication and/or treatments that interfere with the ability to perform DLA.
- There are no cognitive, motor or sensory difficulties with communication.
- Mobility outside the home (relates to the DLA move about indoors and outdoors), use of transportation and social functioning are continuously restricted. The impact on social functioning is described as "Severe anxiety. Tendency to isolate and 'self medicate.'" and "Avoids social contact."
- Personal self-care, meal preparation, management of medications, basic housework, daily shopping, mobility inside the home, and management of finances are not restricted.
- All listed aspects of mobility and physical ability (relates to DLA move about indoors and outdoors) are managed independently.

In the AR, the GP reports:

- The ability to communicate is good for speaking, reading, writing and hearing.
- All listed tasks of the DLA personal care, basic housekeeping, shopping, meals, pay rent and bills, and medications are managed independently.
- For the DLA transportation, getting in and out of a vehicle and using transit schedules and arranging transportation are managed independently. Using public transit requires continuous assistance from another person or unable.
- Respecting social functioning, two of five listed areas are managed independently - appropriate social decisions and ability to deal appropriately with unexpected demands. Periodic support/supervision is required for both ability to develop and maintain relationships and interact appropriately with others. No information is provided respecting the ability to secure assistance from others. The appellant has marginal functioning with immediate and extended social networks. No response is provided where asked to describe the support/supervision required to help maintain the appellant in the community.

The GP's letter states that the appellant: is quite disabled; cannot use public transit; cannot tolerate crowds; avoids shopping because of anxiety; experiences flash backs and nightmares; has resorted to alcohol, at times, to cope; relies heavily on his father to drive him around and do errands; and, avoids social interactions and is socially isolated because of his illness.

In the SR, the appellant describes his disability as severe depression, anxiety and panic attacks, heightened when in public. He reports physical and emotional abuse from his last partner. He refrains from using public transit, having had to get off the bus in the past. Going to heavily populated areas causes him to have little to no energy and sleep. Lots of overthinking causes heavy stress and makes him not want to interact with anyone, including

people close to him.

In his letter submitted at reconsideration, the appellant further describes past abuse. He states that he rarely leaves his house and when he does it is due to transportation from his father. He no longer takes public transit, grocery shops, goes to restaurants or sees movies etc., and keeps social interactions to a bare minimum, even with neighbours. He still has conversations by phone, however visiting and social events have almost ceased. There have been many times when he has had panic attacks and felt overwhelmed by these activities. Concentration and energy levels have been very low due to depression, for which he takes medication, and sleep is either too much or not enough. He lives with his father who does the grocery shopping and picks up anything needed as he is not able to go to these areas. When he must go to places, like the bank, his father accompanies him.

At the hearing, the appellant reviewed the GP's letter, commenting that it supports the information the appellant previously provided. In response to questions, the appellant stated that he has not been referred to any other medical professionals, though he has been to a counsellor in the past. He is still having trouble with PTSD and is taking medication.

#### Need for Help

The GP indicates that help required for DLA is provided by family. "Transportation assistance by father."

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

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

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

**Relevant Legislation****EAPWDA**

2 (1) In this section:

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

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

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

- (a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and
- (b) in the opinion of a prescribed professional
  - (i) directly and significantly restricts the person's ability to perform daily living activities either
    - (A) continuously, or
    - (B) periodically for extended periods, and
  - (ii) as a result of those restrictions, the person requires help to perform those activities.

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

- (a) a person who has a severe mental impairment includes a person with a mental disorder, and
- (b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires
  - (i) an assistive device,
  - (ii) the significant help or supervision of another person, or
  - (iii) the services of an assistance animal.

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

## EAPWDR

### Definitions for Act

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

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

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

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

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

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

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

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

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

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

[Act](#),

if qualifications in psychology are a condition of such employment.

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

### **Alternative grounds for designation under section 2 of Act**

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

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

### **Panel Decision**

#### **Eligibility under section 2.1 of the EAPWDR**

In the absence of any evidence or argument respecting eligibility for PWD designation under section 2.1 of the EAPWDR, the panel finds that the ministry reasonably determined that it has not been established that the appellant falls within the prescribed classes of persons under that section. The panel's discussion below is limited to eligibility for PWD designation under section 2 of the EAPWDA and section 2 of the EAPWDR.

#### **Eligibility under section 2 of the EAPWDA**

### **PANEL DECISION**

#### **Severe Impairment**

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

### *Physical Impairment*

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

### *Mental Impairment*

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

### *Restrictions in the ability to perform DLA*

#### *Positions of the Parties*

The appellant's position is that while the information provided by the GP originally may have been lacking, the information in the GP's letter establishes that the eligibility criteria have been met.

In its reconsideration decision, the ministry states that it relies on the medical opinion and expertise of medical practitioners and other prescribed professionals to determine if a person's impairment significantly restricts the ability to perform DLA. In the appellant's case, as the majority of DLA activities are performed independently or require little help from others, the information from the prescribed professional does not establish that impairment *significantly* restricts DLA either continuously or periodically for extended periods. The ministry notes the activities identified in the MR as being continuously restricted - mobility outside the home, use of transportation and social functioning – and the GP's comments "avoids social contact" and "severe anxiety. Tendency to self isolate and self medicate," but finds that there is no additional information explaining that the appellant requires assistance to perform DLA. Respecting the assessment of the appellant's ability to manage DLA in the AR, the ministry notes that while the appellant is reported to require continuous assistance from another person or is unable to use public transit, no information is provided explaining the type or degree of assistance or specifying that the appellant is unable to use public transit. The appellant is reported as independently performing all activities of personal self-care, meal preparation, management of medications, basic housework, daily shopping, mobility inside the home, and management of finances. Social functioning requires periodic support/supervision for two areas but there is no explanation of the frequency, type or degree of assistance in order to determine in a significant degree of assistance is required. Additionally, other areas of social functioning are managed independently, marginal functioning with social networks is reported and the GP does not indicate the need for support/supervision to maintain the appellant in the community.

#### *Panel Analysis*

Section 2(2)(b)(i) of the EAPWDA requires the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether it is satisfied, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component



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

DLA are defined in section 2(1) of the EAPWDR and are listed in both the MR and the AR sections of the PWD application with the opportunity for the prescribed professional to check marked boxes and provide additional narrative. DLA, as defined in the legislation, do not include the ability to work.

In the appellant’s case, information from a prescribed professional about the appellant’s ability to perform the DLA is provided by the GP in the original PWD application (MR and AR) and in the GP’s letter. The GP identifies continuous restrictions in the appellant’s ability to move about outdoors and use public transportation, with the GP’s letter clarifying that the appellant is unable to use public transportation. While previously reporting that shopping was managed independently, with no noted restriction, the GP’s letter indicates that the appellant avoids shopping because of anxiety. Help required to perform DLA is “transportation assistance by father” with the GP commenting that the appellant “relies heavily on his father, to drive him around and do errands.” While this information may be interpreted as indicating that the appellant’s father does some errands for the appellant, most likely shopping given that the GP reports the avoidance of shopping, it also indicates that the appellant is able to attend to some matters if he is driven to the location by his father. Additionally, in the AR, the GP reports that the appellant independently manages all listed tasks of the DLA personal care, basic housekeeping, meals, pay rent and bills, and medications, as well as the remaining two listed aspects of transportation (getting in and out of a vehicle and using transit schedules and arranging transportation). The panel notes that the GP’s letter does not amend this information.

The remaining two DLA defined in the legislation are those that are specific to mental impairment – make decisions about personal activities, care or finances and relate to, communicate or interact with others effectively. In terms of decision-making, the GP does not identify any restrictions in the ability to manage all listed decision-making tasks for personal care, shopping, meals, medications, transportation and social functioning (making appropriate social decisions and dealing appropriately with unexpected demands). Respecting the appellant’s ability to relate to, communicate or interact with others, periodic support/supervision is required but there is no further explanation or description of the nature of this assistance or how often it is required, and as the ministry notes, the GP does not describe support/supervision required to help maintain the appellant in the community. The panel notes that the appellant reported having seen a counsellor in the past but confirmed that he is not currently under the care of a counsellor or psychiatrist.

Noting that “significant” is not defined in the legislation, the panel concludes that it was reasonable for the ministry to determine that the prescribed professional’s information, that the vast majority of listed DLA tasks are performed independently with assistance primarily limited to rides to attend to DLA tasks, does not establish direct and significant restrictions in the ability to perform DLA either continuously or periodically for extended periods.

#### Help to perform DLA

Section 2(2)(b)(ii) of the EAPWDA requires that, *as a result of direct and significant restrictions in the ability to perform DLA*, a person requires help to perform “those activities.” Help is defined in subsection (3) as the

requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform DLA.

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

Conclusion

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

APPEAL NUMBER

THE PANEL DECISION IS: (Check one)

UNANIMOUS

BY MAJORITY

THE PANEL

CONFIRMS THE MINISTRY DECISION

RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount?  Yes  No

**LEGISLATIVE AUTHORITY FOR THE DECISION:**

*Employment and Assistance Act*

Section 24(1)(a)  or Section 24(1)(b)

and

Section 24(2)(a)  or Section 24(2)(b)

**PART H – SIGNATURES**

PRINT NAME

Jane Nielsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/08/27

PRINT NAME

Kim Read

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/08/27

PRINT NAME

Diane O'Connor

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/08/27