APPEAL NUMBER

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated August 6, 2019 which found that the appellant did not meet four 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. However, the ministry was not satisfied the evidence establishes that:

- the appellant has a severe physical or mental impairment;
- in the opinion of a medical practitioner or nurse practitioner, his impairment is likely to continue for at least 2 years;
- 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.

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

APPEAL NUMBER

**PART E – SUMMARY OF FACTS**

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 April 25, 2019, a medical report (MR) dated April 25, 2019 completed by a general practitioner (GP) who met the appellant for the first time to complete the report, and an assessor report (AR) dated April 24, 2019 and completed by a social worker (SW) who has known the appellant for 2 weeks and has met with him 2 to 10 times.

The evidence also included an amended copy of the MR that was initialed by the GP, an amended copy of the AR initialed by the SW, and the appellant's Request for Reconsideration dated July 22, 2019.

***Diagnoses***

In the MR, the GP diagnosed the appellant with scoliosis, depressive disorder and anxiety disorder, all with unknown dates of onset. 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: "anxiety, depression, scoliosis, insomnia, cervical spinal damage from bike accident, 2 broken vertebrae, severe brain injury, migraines, nerve damage in both hands."

***Duration***

In the MR, when asked if the impairment is likely to continue for 2 years of more, the GP crossed off the "yes" or "no" responses and wrote "unknown."

In the amended MR, the GP indicated "yes" the impairment is likely to continue for 2 years or more, and wrote: "patient will have to access treatment with psychiatry at mental health, awaiting referral. Response to treatment might take more than 2 years."

***Physical Impairment***

In the MR, the GP reported:

- In terms of his health history, the assessment was difficult because the GP had never seen the appellant before and there were "no medical records available on this patient" and there were no results on a medical investigation of the health authority portal. The assessment was done "according to patient's history" and "patient claims to have been diagnosed with scoliosis at an early age. According to patient and social worker, the patient's scoliosis and degenerative spine disease have significantly impaired the patient's functional ability. Patient was able to walk unassisted in office with no gait impairment."
- 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 2 to 4 blocks unaided on a flat surface, climb 5 or more steps unaided, lift under 2 kg. (under 5 lbs.) and remain seated 1 to 2 hours.
- "As per patient's history," the appellant is continuously restricted with his mobility inside and outside the home.
- In the additional comments to the MR, the GP wrote: "difficult assessment as this is patient's first visit to clinic and there are no medical records available on patient."

In the AR, the SW indicated:

- The appellant is assessed as requiring periodic assistance from another person and taking significantly longer than typical with walking indoors (note: "3 to 5 times slower"), walking outdoors (note: "100 meters max"), climbing stairs (note: "takes 3 to 5 times longer"), standing (note: "back pain/ knees weak"), lifting (note: "5 lbs./ pain, numbness, difficulty grasping things," and carrying and holding (note: "2 lbs."). The SW also noted: "damage more significant in right hand but both hands."
- In the section of the AR relating to assistance provided, the SW indicated that none of the listed assistive devices are used by the appellant.

In the amended AR, the SW added that for walking outdoors, "some days" the appellant can walk "up to 2 blocks."

In his self-report, the appellant wrote:

- He was diagnosed with scoliosis in by back along with "two exploded vertebrae" in his neck,
- He is unable to lift anything heavy.
- Turning his head more than a few degrees left or right causes severe, debilitating migraines.
- He slipped and cut his knuckles on his right hand, severing nerves and tendons which have left his right hand almost completely useless. He is unable to hold more than a few pounds and he is constantly dropping even the lightest things like cutlery or other small, light objects.
- He has severe pain in his knees from sporting accidents and motor vehicle accidents.
- He has had nerve damage in his left hand since he broke both bones in his forearm near the elbow, his elbow was fused and he still has limited use of his left arm and hand.
- He recently rebroke his two lower floating ribs on his right side just from arching his back too far while trying to reach with his left hand, and also rebroke a rib on his left side.

***Mental Impairment***

In the MR, the GP reported:

- In terms of the appellant's health history, "the patient seemed anxious with depressed mood in office. The patient was asked to complete a PHQ9 and GAD7 questionnaire that were difficult to interpret in light of current situation. However, PHQ9 scored 23 and the GAD7 scored 20. According to patient he has been on treatment for depression and anxiety in the past but was unable to tolerate the medications due to increased suicidal ideation."
- The appellant has no difficulties with communication.
- The appellant has significant deficits with his cognitive and emotional functioning "as observed during office visit" in the areas of emotional disturbance, motivation, motor activity, and attention or sustained concentration.
- The appellant is not restricted in his social functioning.

In the amended MR, the GP added:

- The appellant needs to access treatment with psychiatry at mental health and he is

awaiting a referral.

- The appellant also has significant deficits with his cognitive and emotional functioning in the areas of executive and memory.
- The appellant is continuously restricted in his social functioning. The GP wrote: "depression and anxiety leads to isolation, unable to interact with others and finds communication difficult due to anxiety."

In the AR, the SW indicated:

- The appellant has a good ability to communicate in speaking, satisfactory ability with hearing (note: "70% deaf in right ear") and poor ability with reading (note: "poor retention") and writing (note: "right-handed ???/ chronic pain"). The SW noted that the appellant did not complete high school and is "overwhelmed by information quickly."
- 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 most areas, specifically: bodily functions, emotion (note: "panic attacks"), impulse control (note: "fidgets continuously"), attention/concentration, executive, memory (note: "difficulty processing/ retaining new information"), motivation, motor activity, language, other neuropsychological problems and other emotional or mental problems (note: "easily frustrated"). There are moderate impacts assessed in the areas of consciousness and psychotic symptoms (note: "PTSD symptoms"). The SW commented that the appellant has insomnia and broken sleep and averages 4 hours per night. He has always struggled with ADHD symptoms and poor ability to focus, anxious, difficulty following through, not always recognizing consequences. Many issues of trauma as a child.
- For social functioning, the appellant requires periodic support/ supervision from another person with making appropriate social decisions (note: "socially withdrawn"), with developing and maintaining relationships (note: "low self esteem"), interacting appropriately with others (note: "isolates, avoids), and securing assistance from others (note: "procrastinates due to anxiety"). The appellant requires continuous support/ supervision from another person with dealing appropriately with unexpected demands, with a note by the SW that this "increases anxiety that is already significant."
- The appellant has marginal functioning in both his immediate and her extended social networks. The SW commented that the appellant has "3 panic attacks a month."
- Asked to describe the support/supervision required to maintain the appellant in the community, the SW wrote counselling. The SW added that the appellant "avoids anti-depressants due to suicidal thoughts when taking them."

In his self-report, the appellant wrote:

- Mentally, he has suffered from severe anxiety, depression, and panic attacks.
- He experienced physical abuse as a child.
- With not being able to take care of himself physically or financially, his anxiety is 'through the roof.' Simple things like opening the door to let his pet out are a huge struggle at times, let alone going to, or even thinking about, being in public places, which are extremely difficult.

***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 GP noted "as per patient's history," the appellant is continuously restricted with most of the DLA, specifically he is restricted with performing the DLA of personal self care, the meal preparation DLA, the basic housework DLA, the daily shopping DLA, the move about indoors and outdoors DLA, the use of transportation DLA, and the management of finances DLA. Regarding the degree of restriction, the GP wrote that the appellant "claimed to be restricted with daily shopping, however patient is able to do monthly grocery shopping by himself."
- The appellant is not restricted with the DLA of management of medications.

In the AR, the SW reported:

- The appellant requires periodic assistance from another person and takes significantly longer than typical with performing many tasks of DLA, specifically: the walking indoors and outdoors DLA ("3 to 5 times slower/ 100 meters max"), the personal care DLA (dressing- "numb hands", grooming- "pain takes 3 to 5 times longer", bathing- "1 to 2 times a week takes 3 to 5 times longer", toileting- "bloating, cramps, difficulty with bowel movements", feeding self- "difficulty holding fork occasionally", regulating diet, transfers in/out of bed- "30 minutes approximately", and transfers on/off chair- "needs a sturdy chair, ergonomic support"), the basic housekeeping DLA- "overwhelming, needs help, even dishes takes 7 to 10 times longer" (including laundry- "difficulty lifting"), the shopping DLA (going to and from stores- "needs parking placard", reading prices and labels- "buys familiar foods, difficulty reading all information", paying for purchases- "crowds further anxiety, avoids lineups", and carrying purchases home- "2 lbs. from building to car"). The appellant is independent with performing the task of making appropriate choices when shopping and he also uses an assistive device for his transfers on/off chair. The SW commented that "even minor physical tasks further pain and take 5 times longer."
- For the meals DLA, the appellant is independent with meal planning and safe storage of food and requires periodic assistance from another person and takes significantly longer with the tasks of food preparation- "extremely difficult ?? open jars, cut food, etc.", and cooking- "difficulty lifting/?? Make easy meals etc. 1 time a day.".
- Regarding the pay rent and bills DLA, the appellant is independent with budgeting and requires periodic assistance from another person and takes significantly longer than typical with banking- "online banking due to anxiety" and with paying rent and bills- "online."
- The appellant is independent with performing all of the tasks for the medications DLA (filling/refilling prescriptions, taking as directed, and safe handling and storage).
- For the transportation DLA, the appellant requires periodic assistance from another person with the tasks of getting in and out of a vehicle- "takes 3 to 5 times longer, depending on prior activity," and using transit schedules and arranging transportation- "difficulty initially." The appellant requires continuous assistance from another person with the task of using public transit- "unable due to anxiety." The SW commented that the appellant "lost 40 lbs. within last year due to poor diet and difficulty preparing food, chronic pain, stress, nausea."

In the amended AR, the SW added:

- The appellant shops approximately one time per month when he is having a better day, although all days he struggles.
- After shopping, he is unable to do much more as he feels stiff and in worse pain.

In his self-report, the appellant wrote:

- Even doing simple things like preparing food, doing dishes, or house chores are a struggle.
- Being in public places is extremely difficult.

***Need for Help***

Asked in the MR what assistance the appellant needs with DLA, the GP left this section blank. In the AR, the SW indicated that the appellant does not receive help for DLA and he "wants to do counselling but at this time cannot afford the gas." For help required where none is available, the SW wrote "cooking, cleaning, counselling." None of the listed assistive devices were identified by the SW as routinely used by the appellant to compensate for his impairment.

***Additional information***

In his Notice of Appeal dated August 15, 2019, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that his physician and assessor made a qualified, appropriate assessment. Although they had limited medical information, both have extensive experience dealing with disabilities. The ministry denial argues that fact.
Prior to the hearing, the appellant provided the following documents:

1) Emergency Record dated October 16, 1981 with a diagnosis of a fractured left radius;
2) Outpatient Record dated November 6, 1981 with an injury to the appellant's left forearm, removed cast;
3) Consultation and Operation Report dated June 9, 1982 regarding an emergency right orchiopexy and right inguinal herniotomy;
4) Discharge Summary dated July 20, 1982 following a herniotomy;
5) Imaging Report of the appellant's left elbow dated February 7, 1987;
6) Emergency/ Outpatient Record relating to an accident on February 27, 1987 with an injury to the appellant's left elbow;
7) History Sheet and Consultation and Operation Reports dated March 2, 1987 regarding a fracture of the left humerus as a result of a fall;
8) Consultation and Operation Reports dated March 6, 1987 regarding an injury to the appellant's left elbow from a fall;
9) Discharge Summary dated April 14, 1987;
10) Emergency/ Outpatient Record dated September 3, 1987 regarding an injured left elbow, ribs due to a sporting accident and a diagnosis of soft tissue injury;
11) Emergency/ Outpatient Record dated February 23, 1988 regarding tantrums, with threats of self harm, with a diagnosis of behavior disorder;
12) Emergency/ Outpatient Record dated April 30, 1993 regarding an injured mouth due to an altercation;
13) Discharge Summary dated May 11, 1994 regarding a sporting accident that resulted in a fractured mandible and multiple lacerations to the face and lips as well as multiple abrasions;

14) Operative Report dated May 13, 1994 for fractured mandible and multiple facial lacerations; and,
15) The appellant's written statement dated August 15, 2019.

At the hearing, the appellant's advocate, who was the SW who completed the AR, stated:

- The appellant has been confused by the whole process before the Tribunal.
- She sent a letter to the doctor and spoke to the doctor when the appellant was in her office. They had a lengthy conversation and the doctor changed her assessment of the severity of the appellant's mental impairment. She referred the appellant to mental health and added other areas of significant deficit to the appellant's cognitive and emotional functioning.
- She observes that the appellant has been shaking the whole time through the hearing because of his anxiety.
- She saw the appellant more than twice to complete the AR and she stands by her report. It took approximately 4 hours for her to complete the AR.
- The doctor did not see the appellant walking much and the advocate's assessment is that he is "stiff as a board." She acknowledges that this may be at least partially due to his anxiety. He also has difficulty with his hands and she could tell he was in pain.
- She has over 16 years experience dealing with PWD applicants and assesses that the appellant has lots of barriers. The doctor recognized the appellant's issues after talking with her.
- The appellant is receiving counselling and the doctor wanted to refer him to a psychiatrist.
- The appellant's physical and mental impairments have a cumulative effect because his physical problems have an impact on his mental health.
- The appellant needs help with cooking and cleaning.
- The appellant, like many, had trouble getting the PWD forms filled out.
- While she does not know the details of the scoring of the PHQ9 test at 23 and the GAD7 at 20, in her conversations with the GP she stated that the appellant is severely depressed and severely anxious.
- The reference in the ministry decision to frequency and duration fails to take into account that there are certain activities that may only be performed by the appellant once a month, such as grocery shopping. Also, if it normally takes 15 minutes to cook a meal, for a person to take 45 or 60 minutes to cook a meal, this is significant.

At the hearing, the appellant stated:

- He has not had his medical records and this has been a problem for him. He has never been one to whine and complain and did not go to the doctor for a long time.
- He was diagnosed with scoliosis as a child but there is nothing that can be done for it except to take over-the-counter pain medication and try to stay as active as possible. Since he did not go to the doctor for over 7 years, his files were deleted. He was able to obtain his records from a particular hospital from when he was a child. He has had depression from when he was a young child.
- He had a hospital admission where his aunt signed for him because his mother could not deal with him.
- He has had a few accidents since January and he mostly just sits at his computer and

does not even open the blinds of his place.

- As a result of his injuries, it is hard for him to walk from the front door to the garbage can, and it is even hard for him to open the door and get to that point.
- Because of his scoliosis, it is hard to stand at the sink to do dishes and his apartment is "disgusting" because he is not keeping up and it is embarrassing for him to admit it.
- His hands are severely painful.
- His diet has been diminished because he is behind in his rent and other bills. He has become very weak and he has sprained his wrist just trying to peel potatoes. He mostly buys frozen vegetables.
- With his anxiety, he experiences panic attacks.
- He had a bad sporting accident when he was a teenager and his jaw was wired shut. This accident affected his ability to turn his head to one side or the other.
- The biggest problem is getting time with the doctor. She does not see anything wrong with his neck but he does not understand how it could have gotten better. She has not ordered any X-Rays or further testing. He also mentioned that his grandmother had a hereditary bone condition and he has not been tested for it.
- When he was a child, he saw a psychiatrist for several years. He suffers from PTSD (Post Traumatic Stress Disorder) as a result of his sporting accident as a teenager.
- He goes shopping when it is late at night so there are fewer people. He uses the shopping cart like a walker, and he needs help carrying groceries.
- He called many doctors until he found one who would fill out the PWD reports.
- He does not like to take medications because they need to be monitored as a result of the potential negative side effects and he is only able to get to appointments once per month. He has to make difficult choices about spending money to make the lengthy drive to the appointments.
- He lives alone and only showers 1 or 2 times per month. He cannot afford the Hydro bill to shower more. He buys frozen foods that are easy to prepare since he has difficulty cutting food. He does not get any assistance and he does not like to ask for assistance. He used to "suck it up," and he is realizing he needs to accept help. He also needs to stay active. He talks to a counsellor every week.
- He is in pain every day, although he finds it a little worse when it rains. When he tries to do too much, he is in more pain for several days afterwards. If he walks a block or two, for example, he can hardly walk at all for 2 to 3 weeks. All the accidents he has had have "added up."
- Sometimes he gets dizzy just getting up to get a cup of coffee.

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

***Admissibility of Additional Information***

The ministry did not object to the admissibility of the additional documents. The panel considered the additional documents and admitted the appellant's written statement and the medical records as being in support of, and tending to corroborate, the appellant's medical conditions as 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.*

APPEAL NUMBER

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

## 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

### ***Duration***

In the reconsideration decision, the ministry wrote that the GP indicated in the MR that it is "unknown" whether the appellant's impairment is likely to continue for 2 years or more from the date of the report. The ministry acknowledged that the GP changed her response to "yes" in the amended MR and wrote that the GP's comments indicated that the appellant has been referred to mental health and the response to treatment might take more than two years. The ministry found that the GP's narrative does not confirm that the appellant's impairment is "likely" to continue for two years or more, rather, that his impairment "might" continue for two years or more.

In the appellant's written submission, he wrote that there is constant mention that he does not have any medical records to back up his claim but now he has medical records from his surgeries. The appellant wrote that with his physical injuries, for example his scoliosis and his neck, these do not get better over time, only worse. The appellant wrote that he has had problems with anxiety and depression since he was a young child due to mental and physical abuse from a care giver and a family member and he highlighted the Emergency/ Outpatient

record dated February 23, 1988 as indicating that the appellant "threats to kill himself and requests to be killed." At the hearing, the appellant's advocate argued that the GP subsequently acknowledged the extent of the appellant's mental health issues and made a referral to mental health when she changed her response to "yes."

Section 2(2)(a) of the EAPWDA stipulates that the ministry must be satisfied that the appellant's impairment is, in the opinion of a medical practitioner or nurse practitioner, likely to continue for at least 2 years. The GP confirmed a diagnosis in April 2019 with depressive disorder and anxiety disorder both through the appellant's self-history as well as the GP's observation that the appellant "seemed anxious with depressed mood" in her office, and her notation of the appellant's scores, which the ministry acknowledged were in the 'severe' range on two tests administered by the GP. The GP indicated in the amended MR that the appellant's impairment is likely to continue for two years or more. The GP also wrote in the amended MR that the appellant "will have to access treatment with psychiatry at mental health, awaiting referral. Response to treatment might take more than 2 years." The ministry found that the GP inferred by this additional comment that the appellant's mental impairment might continue for 2 years or more, but it might not continue for 2 years or more if he responds earlier to treatment.

The GP also wrote in the MR, regarding the appellant's health history, that according to the appellant "he has been on treatment for depression and anxiety in the past but was unable to tolerate the medications due to increased suicidal ideation." At the hearing, the appellant stated that he does not like to take medications because they need to be carefully monitored because of the potential negative side effects and is only able to get to appointments once per month. When these challenges to treatment of the appellant's depression and anxiety are considered along with the medical report from over 30 years ago, which included the appellant's threats of suicide and a diagnosis of a "behavior disorder," along with the GP's changed response to the duration question in the amended MR, the panel finds that the ministry was not reasonable to conclude that a medical practitioner has not provided an opinion that the impairment of the appellant's mental functioning is likely to continue for at least 2 years. Therefore, the panel finds that the ministry's conclusion that there was insufficient evidence to establish that, in the opinion of the medical practitioner, the appellant's impairment is likely to continue for at least 2 years was not reasonable.

***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 found that, although the GP diagnosed the appellant with depressive disorder and anxiety disorder, as the MR was completed during the appellant's first contact with the GP, who was not able to access his medical records, that there was no confirmation of the GP diagnoses or the appellant's mental functioning based on medical and other assessments. The ministry acknowledged that the GP reported that the appellant seemed anxious with depressed mood in the office and also

acknowledged that the appellant's scores on the tests administered to the appellant in her office reflect the range for severe depression and anxiety; however, the ministry also noted that the GP commented in the MR that the tests were "difficult to interpret in light of current situation." The panel notes that the GP wrote in the amended MR that the appellant needs to access treatment with psychiatry at mental health and he was awaiting a referral. The SW stated at the hearing that the GP acknowledged the severity of the appellant's mental impairment following their lengthy discussion and the GP's further visit with the appellant.

The ministry considered that the GP reported that the appellant has significant deficits in his cognitive and emotional functioning in the areas of emotional disturbance, motivation, motor activity and attention or sustained concentration, which were "observed during office visit," as well as in the areas of executive and memory, that were added in the amended MR, and wrote that the GP provided no further information on her observations. The ministry also considered that in the AR the SW reported that the appellant's impairment has a major impact to his daily cognitive and emotional functioning in the majority of areas, specifically bodily functions, emotion, impulse control, attention/concentration, executive, memory, motivation, motor activity, language, other neuropsychological issues and other emotional or mental problems (easily frustrated). The SW also assessed moderate impacts in the areas of consciousness and psychotic symptoms and noted: "PTSD symptoms". The ministry considered the additional comments by the SW that that the appellant has insomnia and broken sleep, he has always struggled with ADHD symptoms and poor ability to focus, anxious, difficulty following through, not always recognizing consequences, and he has many issues of trauma as a child, and the ministry questioned how the SW was able to substantiate that the appellant has "always" experienced ADHD given that she had known the appellant for a short time (2 weeks) and she did not complete any assessments or access any file or chart history. The ministry concluded that the SW's report on the appellant's daily functional skills may be based solely on the appellant's self report and not on her own assessment.

At the hearing, the SW, as the appellant's advocate, clarified that she has several years of experience with completing PWD reports and also spent approximately 4 hours questioning the appellant and making observations as she completed the AR. In the appellant's written statement, he wrote that the GP made a referral to mental health for him and, at the hearing, the appellant confirmed that he has been meeting with a counsellor every week over the telephone. The appellant wrote that his anxiety keeps him confined to his house and he would be anxious having a stranger in his home to help him. The appellant wrote that he gets panic attacks due to his anxiety, he had a panic attack when he received the ministry's reconsideration decision and he was relieved to be able to talk with his counsellor. The appellant referred to his previous injuries and highlighted an assault that caused severe head trauma and wrote that he suffers from severe PTSD as a result, and also the emergency admission when he was suicidal as a child. The appellant wrote that he is no longer suicidal and he stated at the hearing that he saw a psychiatrist for several years as a child.

In the reconsideration decision, the ministry considered that the GP reported in the MR that the appellant does not have any difficulties with communication while the SW indicated in the AR that the appellant has poor communication abilities in the areas of reading and writing and the ministry wrote that the reasons for the discrepancies between these two reports is not clear. However, while the ministry considered that, in the amended MR, the GP changed her assessment of the impact of the appellant's impairment on his social functioning, the ministry wrote that it was not clear what further information the GP relied on to change her initial report. In the amended MR, the GP reported that the appellant is continuously restricted in his social functioning and the GP wrote: "depression and anxiety leads to isolation, unable to interact with others and finds communication difficult due to anxiety." At the hearing, the SW clarified that the GP met with the appellant at the time she completed the amended MR and she also had a lengthy discussion with the GP.

The ministry considered that the SW indicated in the AR that the appellant requires periodic support/supervision in almost all areas of social functioning, specifically: with making appropriate social decisions, with developing and maintaining relationships, with interacting appropriately with others, and with securing assistance from others. with good functioning in both his immediate and extended social networks, and the appellant requires continuous assistance with dealing with unexpected demands. The ministry wrote that while the SW indicated that the appellant requires counselling in order to be maintained in the community, the SW also indicated that he could not afford the gas to attend at the time. At the hearing, the appellant clarified that he has been able to access weekly counselling over the telephone.

Given the evidence from both the GP and the SW of significant impacts to most areas of the appellant's cognitive, emotional and social functioning and in consideration of the GP's observations and testing during her assessment to confirm the diagnoses of depressive and anxiety disorders, and the additional medical history provided by the appellant, the panel finds that the ministry's determination that a severe mental impairment was not established under Section 2(2) of the EAPWDA was unreasonable.

***Severe Physical Impairment***

In the reconsideration decision, the ministry wrote that the GP reported that the appellant provided information that he was diagnosed with scoliosis at an early age, however, the GP was unable to locate prior medical information to corroborate the self-reported information, and the ministry was not satisfied that the information provided establishes a severe physical impairment. Unlike the mental health diagnoses, the GP did not make notation in the MR of any testing of the appellant's functioning during her assessment. The ministry also highlighted that the GP wrote in the MR that according to the appellant and the SW, the appellant's scoliosis and degenerative spine disease have significantly impaired the appellant's functional ability; however, the GP noted, the appellant "was able to walk unassisted in office with no gait impairment." At the hearing, the advocate argued that the GP did not have much opportunity to

observe the appellant's gait, which the SW assessed as being "stiff as a board" at least partially as a result of his physical impairment. In the reconsideration decision, the ministry reasonably considered that the GP did not update the information about the appellant's physical functioning when given the opportunity to do so in the amended MR.

The appellant wrote in his self-report that he was diagnosed with scoliosis in his back along with "two exploded vertebrae" in his neck, that he slipped and cut his knuckles on his right hand and severed nerves and tendons which have left his right hand almost completely useless, he has severe pain in his knees from several accidents, he has had nerve damage in his left hand since he broke both bones in his forearm near the elbow, and his elbow was fused and he still has limited use of his left arm and hand. The appellant wrote in his written statement that he has repeatedly tried to explain his physical disabilities to the GP and felt he was ignored, and she refused to send him for X-Rays of his neck when he requested them. In the reconsideration decision, the ministry reasonably considered that the GP only referred to the diagnosis of scoliosis in the MR and did not make changes in the amended MR. At the hearing, the SW stated that she had a lengthy conversation with the GP about the appellant's medical conditions prior to her completion of the amended MR.

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.

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 does not require any prostheses or aids for his impairment and he is able to walk 2 to 4 blocks unaided on a flat surface, climb 5 or more steps unaided, lift under 5 lbs., and remain seated 1 to 2 hours. The ministry wrote that the SW assessed the appellant in the AR as requiring periodic assistance and taking significantly longer than typical for all mobility and physical ability tasks, including walking indoors/outdoors, climbing stairs, standing, lifting, carrying and holding. The ministry noted that the SW indicated that the appellant takes 3 to 5 times longer and is limited to walking 100 meters maximum, which was revised in the amended AR to walking up to 2 blocks "some days." Asked at the hearing about the frequency of exacerbations to his condition, the appellant stated that he is in pain every day but the pain is worse when it is raining and after he has exerted himself physically.

In the reconsideration decision, the ministry considered that the SW reported in the AR that the

appellant is limited to lifting 5 lbs. and carrying and holding 2 lbs. due to pain, numbness and difficulty grasping things, and wrote that the GP did not comment on the condition of the appellant's hands, nor provide a diagnosis of a medical condition that impacts his grip or ability to lift, carry and hold.

Given the GP's stated reliance on the appellant's report for the scoliosis diagnosis and her observation of the appellant's unrestricted mobility, the absence of diagnoses by the GP for the medical conditions affecting the appellant's neck, his hands, knees, and arm, and insufficient information from the SW regarding the degree and frequency of exacerbations to his condition and his need for periodic assistance with mobility and physical activities, 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.

***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 and the SW are the prescribed professionals.

In the reconsideration decision, the ministry was not satisfied that the appellant has a severe physical and\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 although the GP indicated that the appellant is continuously restricted in almost all areas, including personal self care, meal preparation, basic housework, daily shopping, mobility inside/outside the home, transportation, and finances, the GP also indicated that the assessment was completed "as per patient's history," which the ministry found amounted to a self-report by the appellant. The ministry wrote that the GP noted in the comments regarding the degree of restriction that, while the appellant "claimed" he is continuously restricted with daily shopping, the appellant also reported that he can do his monthly grocery shop by himself. The panel finds that the ministry reasonably concluded that the GP's comment supported the finding that the GP considered the assessment of continuous restrictions to DLA as that of the appellant, and not her assessment as the prescribed professional. Section 2(2) of the EAPWDA requires that the restrictions to DLA must be confirmed in the opinion of a prescribed professional.

The ministry considered that the SW reported that the appellant requires periodic assistance

with almost all DLA, which take him 3 to 5 times longer, including dressing, grooming, bathing, toileting, feeding self, transfers in/out of bed, transfers on/off chair, laundry, basic housekeeping, going to and from stores, reading prices and labels, paying for purchases, carrying purchases home, food preparation, and cooking, banking, paying rent and bills, getting in and out of a vehicle, and using transit schedules and arranging transportation. The SW reported that the appellant requires continuous assistance from another person with the task of using public transit as he is "unable due to anxiety." The ministry considered that in the amended AR the SW added that the appellant shops approximately one time per month "when he is having a better day, although all days he struggles." The SW added that, after shopping, the appellant is unable to do much more as he feels stiff and in worse pain.

The ministry considered that the notes by the SW with respect to these tasks, including "numb hands," "pain takes 3 to 5 times longer," "bloating, cramps, difficulty with bowel movements, "difficulty holding fork occasionally," "overwhelming, needs help, even dishes takes 7 to 10 times longer," "difficulty lifting," "difficulty reading all information," "crowds further anxiety, avoids lineups," "online banking due to anxiety" and "even minor physical tasks further pain and take 5 times longer," do not specify the assistance the appellant requires or receives or the frequency and duration of these periods, i.e. how often he has "bad" or "better" days, in order for the ministry to determine whether the restrictions result in a significant impact to the appellant's overall functioning. At the hearing, the appellant stated that he is in pain all the time but it is worse when it is raining and when he has exerted himself physically, with no information about the frequency of these triggers to his physical pain. In the AR, the SW reported that the appellant experiences "3 panic attacks a month," with no further elaboration as to the duration of the impact to the appellant's overall functioning. At the hearing, the appellant stated that he receives weekly counselling from mental health services, however, there were no additional reports from a mental health specialist regarding the impacts of the appellant's severe mental impairment on his ability to perform his DLA.

In his written statement, the appellant wrote that while he thinks that he needs help with performing his DLA, he would have anxiety to have a stranger in his home doing the things that he believes he should be able to do himself and he needs and wants to do them by himself so he does not "completely give up." The appellant stated at the hearing that he believes he needs to stay as active as possible. The appellant wrote that he tried to tell the GP that he has problems with the simplest tasks around the house like sweeping and mopping, and the hardest thing on his hands, neck, back and knees is doing his dishes. At the hearing, the appellant stated that because of his scoliosis, it is hard to stand at the sink to do dishes and his apartment is "disgusting" because he is not keeping up and it is embarrassing for him to admit. The appellant stated that he goes shopping when it is late at night so there are fewer people, he uses the shopping cart like a walker, and he needs help carrying groceries. The appellant stated that he only showers 1 or 2 times per month, he cannot afford the Hydro bill to shower more, and he buys frozen foods that are easy to prepare since he has difficulty cutting food.

The appellant stated that he does not get any assistance and he does not like to ask for assistance, he is used to "suck it up," and he is realizing he needs to accept help. In his self report, the appellant wrote that being in public places is extremely difficult for him; however, there was no further information from a prescribed professional provided on the appeal to detail the extent of periodic assistance required with tasks of DLA performed in the community.

Given the lack of independent assessment by the GP of restrictions to the appellant's DLA, and the insufficient information from the SW regarding the extent of periodic assistance required from another person with many tasks of DLA, 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.

Asked in the MR what assistance the appellant needs with DLA, the GP left this section blank. In the AR, the SW indicated that the appellant does not receive help for DLA and he "wants to do counselling but at this time cannot afford the gas." For help required where none is available, the SW wrote "cooking, cleaning, counselling." None of the listed assistive devices were identified by the SW as routinely used by the appellant to compensate for his impairment.

As the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel finds that the ministry also reasonably concluded that, under section 2(2)(b)(ii) of the EAPWDA, it cannot be determined that the appellant requires help to perform DLA.

***Conclusion***

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation pursuant to Section 2(2) of the EAPWDA, was reasonably supported by the evidence. The panel confirms the ministry's decision. The appellant's appeal, therefore, is not successful.

| APPEAL NUMBER |
|---|

**PART G – ORDER**

**THE PANEL DECISION IS: (Check one)** ☒ **UNANIMOUS** ☐ **BY MAJORITY**

**THE PANEL** ☒ **CONFIRMS THE MINISTRY DECISION** ☐ **RESCINDS THE MINISTRY DECISION**

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

**LEGISLATIVE AUTHORITY FOR THE DECISION:**

*Employment and Assistance Act*

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

and

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

**PART H – SIGNATURES**

| PRINT NAME<br>S. Walters | |
|---|---|
| SIGNATURE OF CHAIR | DATE (YEAR/MONTH/DAY)<br>2019-09-26 |

| PRINT NAME<br>Mel Donhauser | |
|---|---|
| SIGNATURE OF MEMBER | DATE (YEAR/MONTH/DAY)<br>2019-09-26 |
| PRINT NAME<br>Marilyn Mellis | |
| SIGNATURE OF MEMBER | DATE (YEAR/MONTH/DAY)<br>2019-09-26 |