

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) reconsideration decision (RD) dated October 18, 2019, which found that the Appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) for designation as a person with disabilities (PWD). While the Ministry found that the Appellant met the age requirement and had an impairment which was likely to continue for at least two years, it was not satisfied that the evidence establishes that:

- The Appellant has a severe physical or mental impairment;
- The Appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- As a result of these restrictions, the Appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The Ministry also found that the Appellant is not 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* (EAPWDR) and the Appellant did not appeal the decision on this basis.

PART D – RELEVANT LEGISLATION

EAPWDA, Section 2

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 2

Employment and Assistance Act (EAA), Section 22(4)

PART E – SUMMARY OF FACTS

The evidence before the Ministry at the time of the RD included the PWD Application comprised of:

- The applicant information and self report (SR) completed by the Appellant and dated July 8, 2019;
- A Medical Report (MR) dated July 23, 2019 and completed by the Appellant's General Practitioner (GP) who has known the Appellant since September 2012 and who has seen the Appellant 2 to 10 times in the past year; and,
- An Assessor Report (AR) dated July 23, 2019, also completed by the GP.

The evidence also included a Request for Reconsideration (RFR) signed by the Appellant on September 20, 2019 which includes a questionnaire addressed to the Appellant's GP that was prepared by a community services agency (the Agency Questionnaire or AQ) on September 26, 2019. The GP has agreed with all of the questions posed by the Agency, as set out below, in a signed response dated September 30, 2019.

Diagnoses

In the MR, the GP diagnosed the Appellant with anxiety with a date of onset of 2012, myofascial pain since March 2013, and arthritis of the cervical spine (C-spine) with an unidentified date of onset.

Physical Impairment

In the MR, the GP states that the Appellant had injured their left shoulder and forearm at work in 2013 which has resulted in chronic myofascial pain and for which the Appellant takes medication at night. The GP also states that the Appellant has "*moderate anxiety*" because the myofascial pain treatments can cause side effects. The GP also indicates that the Appellant has declined referral to a pain clinic, as the Appellant fears they would not be able to tolerate the injections and that they have been "*weaned off*" one form of pain medication. The GP states that the Appellant's left trapezius muscle causes significant chronic pain, disability and anxiety, causing them to use their right hand and arm for most daily tasks. The GP indicates that a recent X-ray shows some facet arthropathy. The GP writes that the Appellant has always been reluctant to start anxiety medication and is "*unable to tolerate many medications/interventions*". With respect to functional skills, the GP reports that the Appellant can walk 1 to 2 blocks unaided on a flat surface, climb more than 5 steps unaided, lift 7 - 16 kg., and can remain seated for 1 - 2 hours.

In the section of the AR where the assessor is asked to indicate the assistance required related to impairments that directly restrict the applicant's management of mobility and physical abilities, the GP indicates that the Appellant is independent in all areas (walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding). No further explanations or comments are provided. Where asked to provide any additional information that might be relevant to understanding the nature and extent of the applicant's impairment and its effect on DLA, the GP writes "*(Appellant) has pain – myofascial in left trapezius. This means (that the Appellant) has to use (their) right arm for a lot of tasks (and) cannot work for longer than 4 hours (before they get) very fatigued*".

In the SR, the Appellant states that they have pain in different spots of their left arm, back, shoulder and up the left side of their neck at different times. The Appellant states that sweeping aggravates the pain and pushing and pulling is restricted. They state that they have a lot of headaches since their injury 6 years ago and that they have “*never had a day without (pain) in many spots*”. The Appellant also states that they have osteoarthritis in their shoulder, neck, right knee, fingers and left foot.

In the AQ, the GP has indicated that they agree with the following assessments of the Appellant's functional skills: the Appellant can walk up to 1 block or for 5 minutes at a time, needs to use handrails when climbing stairs, can remain seated for 30 - 45 minutes, and is only able to stand for 30 minutes at a time.

Mental Impairment

Apart from the anxiety described above, the GP does not provide a diagnosis of a mental health condition or brain injury. In the MR, the GP indicates that the Appellant does not have any significant deficits with cognitive and emotional function.

In the section of the AR where the prescribed professional is asked to indicate the degree to which the applicant's mental impairment restricts or impacts daily functioning, the GP indicates no impacts in any areas, and that the Appellant's ability to communicate (speak, read write and hear) is good.

The Appellant does not identify any mental impairments in the SR.

In the AQ, the GP indicates (with comments in *italics*) that they agree with the Appellant's assessment that the Appellant has moderate deficits with cognitive and emotional functioning in the areas of bodily functions (*only eats once per day, requires medication to sleep and only sleeps for 6 hours*), emotion (*anxiety*), attention/concentration (*minimal to moderate*), executive functioning (*planning and organizing - minimal to moderate*), and memory.

Restrictions in the Ability to Perform DLA

In the MR, the GP has ticked a box marked “no” in answer to the question: “Has the applicant been prescribed any medications and/or treatments that interfere with his/her ability to perform (DLA)” and in answer to the question “Does the impairment directly restrict to the person's ability to perform (DLA)”.

In the AR, the GP states that the Appellant is independent with respect to all listed DLA in all areas (personal care, basic housekeeping, shopping, meals, paying rent and bills, medications, transportation, making appropriate social decisions, ability to develop and maintain relationships, interacting appropriately with others, ability to deal appropriately with unexpected demands, and ability to secure assistance from others). In assessing how the applicant's mental impairment impacts their relationship with their immediate and extended social networks, the GP has ticked “good functioning”.

In the RFR, the Appellant states that they cannot pull the car door closed with their left arm.

In the AQ, the GP indicates that they agree with the Appellant's assessment that they are unable to perform the following DLA “*due to a combination of ...health conditions*”: regulate diet (*only eats once per day*), meal planning, food preparation, cooking (*relies on easy, prepared foods*), budgeting, filling/refilling prescriptions (*has been cut off extended medical coverage and not covered by*

Pharmacare), using public transit (*unable to due to anxiety*), ability to develop and maintain relationships, ability to deal with unexpected demands (*anxious/overwhelmed*) and ability to seek assistance from others. No additional explanations are provided.

Need for Help

In the MR, the GP indicates that the Appellant does not require any prostheses or aids for their impairment.

In the AR, the GP indicates that the Appellant does not get help from anyone for their DLA and does not require any assistive devices. The GP also states that the Appellant does not have an assistance animal.

The Appellant does not indicate whether they need any assistance in performing DLA in the SR.

In the AQ, the GP agrees with the Appellant's assessment that the Appellant requires continuous assistance with all of the DLA listed in the "Restrictions in the Ability to Perform DLA" section above. No further comments are provided.

Additional Information Submitted after Reconsideration

In the Notice of Appeal (NOA), the Appellant writes that they disagree with the Ministry's decision "*because of my depression and anxiety, pain and discomfort daily, with my work injury 6 years ago, causes a lot of pain and headaches with everything I do*".

At the hearing, the Appellant introduced new written evidence in the form of a one page hand-written note dated November 17, 2019 and signed by the Appellant's adult child (the Note) listing some home maintenance activities, including yard clean-up, gutter cleaning and chopping firewood, that the Appellant's adult child undertakes on behalf of the Appellant.

At the hearing the Appellant stated that in 2018 they had been referred to a specialist for a nerve damage test which involved an electric shot to assess the Appellant's reflexes in their left arm, but that the Appellant had not been able to proceed with the test at the time due to their anxiety relating to a fear of the electric shock. The Appellant further stated that a different specialist was able to conduct the test by a method that did not involve an electric shock in August 2019 and that the results of the test "*proves (the Appellant's) nerves aren't damaged*". The Appellant said that they are now waiting a referral appointment with a specialist to see whether the Appellant has carpal tunnel syndrome (CPT) in both of their arms.

The Appellant also stated that they are unable to undertake many of the activities that the Ministry thinks they can do. The Appellant said that they have so much depression and anxiety that they can't go out of the house, that they are often incapable of making appointments for activities such as getting their hair cut or attending the dentist, and that they put off shopping for groceries until there is nothing left in the house to eat. The Appellant also explained that sometimes they are so depressed that they don't even get dressed, that their depression "*has been building year-by-year*", and that they don't know what to do about it. With regard to housekeeping, the Appellant explained that they cannot afford to engage a housekeeper, and that, while they can sweep the floor, they can only vacuum one room at a time with

rests in between, and that when emptying the dishwasher the Appellant has to take out one dish at a time. The Appellant also said that they can undertake activities like raking leaves, but any physical activity like that causes them pain and results in headaches. With respect to meal preparations, the Appellant said that once in a while they will cook a large quantity of food, divide the food into single servings and freeze it for later. The Appellant explained that they usually will not eat properly, indicating that they will sometimes get by on toast or pre-prepared food that can be cooked with minimal effort. The Appellant stated that there is a food bank a block from their home and that the close proximity of the food bank has really been a big help.

The Appellant explained that they had worked for the same employer for 17 years and that in 2004 due to a workplace injury the Appellant had been off work and receiving worker's compensation insurance benefits for 6 years. The Appellant then returned to work and several years ago the structure and composition of the employer's business changed. As a result, the Appellant's workplace was shut down and 3 years ago they had been forced to move to a different worksite and reduce their hours of work to 3 days per week. The Appellant explained that their depression caused them to cry often at work and that they would have to take time off work because of the stress. The Appellant explained that they were in the habit of getting notes from their GP to provide to their employer, but for some visits they forgot to ask the GP for a note. Eventually the Appellant's employer contacted the Appellant by email requiring a response, but the Appellant did not see the email, did not respond, and was fired as a result. The Appellant stated that after being fired they haven't worked for 5 months and that they are currently surviving on the equity represented by the proceeds from the sale of their house several months ago.

The Appellant indicated that they used to have 3 friends who had been good friends for 20 years but they had lost them because of their depression. The Appellant said that they had one sibling who they are no longer in contact with. In response to a question from the Panel the Appellant stated that their adult child lived with the Appellant for a period of time but did not live with them anymore.

In response to a question from the Ministry, the Appellant stated that they had sought regular help from a social services agency to assist with their mental impairments for a period of about 6 months and that this has provided some relief. The Appellant also stated that they have been taking medication as prescribed by the GP, but that they have not been able to stay on any particular medication for more than 3 or 4 months and that they have had to apply for Pharmacare benefits as they cannot afford to continue to pay for medication.

In response to a question from the Panel, the Appellant stated that they were present and participated in an interview with the GP when the GP completed the MR and the AR, and that the GP and the Appellant were both present when the AQ was completed.

At the hearing, the Ministry relied on its RD and explained that the Ministry had determined that the legislative criteria for the PWD designation were not met in this instance as there are significant discrepancies between the information provided by the GP in the original application and in the AQ, and that there is no narrative to explain those discrepancies. The Appellant stated that it must be because the GP had provided the initial assessments based on the Appellant's functioning on their best days, and that the GP did not realize how bad the bad days are.

Admissibility of Additional Information

Section 22(4) of the EAA provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the Ministry when the decision being appealed was made and “*oral and written testimony in support of the information and records*” before the Ministry when the decision being appealed was made, i.e. information that substantiates or corroborates the information that was before the Ministry at reconsideration. Because a panel can only accept oral and written testimony in support of the information and records before the Ministry when the decision was made, there is limited discretion for a panel to admit new evidence. Once the panel has determined which additional evidence is admissible under EAPWDA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, panels must determine whether the decision under appeal was reasonable based on all admissible evidence.

The Panel considers the written information in the NOA to be argument.

The Ministry objected to the admittance of the information in the Note on the basis that it was not information that the Ministry had at reconsideration.

The Panel considers the information in the Note to be admissible because it is in support of information that was before the Ministry at reconsideration but assigns little weight to the information in the Note because it largely provides information about specific home maintenance activities that are not included among the specific DLA defined in Section 2(1) of the EAPWDR; the sole possible exception being the final part of the Note which states that the Appellant’s adult child helps the Appellant with “... *pretty much everything (the Appellant) can’t do and has trouble doing*”. These activities *might* reasonably include some of the DLA specified in Section 2(1) of the EAPWDR. However, the Panel notes that the part of the Note that says that assistance is provided with “*pretty much everything the Appellant can’t do ...*” lacks the necessary specific detail to confirm that the activities referred to include any of the Appellant’s DLA, and if so which ones. Therefore the Panel assigns little weight to that part of the Note.

The Panel notes that the verbal evidence presented at the hearing by the Appellant relating to their recent nerve damage tests and the possibility of a diagnosis of CTS was not among the specific diagnoses listed by the GP in the MR and was not otherwise information or in support of information that was before the Ministry at reconsideration. Therefore the Panel did not admit that additional information in accordance with Section 22(4)(b) of the EAA.

Similarly, with respect to the verbal evidence presented at the hearing by the Appellant relating to their depression, the Panel finds that the evidence is not admissible as depression was not among the specific diagnoses listed by the GP in the MR and was not otherwise information or in support of information that was before the Ministry at reconsideration. Therefore the Panel did not admit that additional information relating the Appellant’s depression or its impact on their DLA.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the Ministry's RD, which found that the Appellant is not eligible for 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. Was it reasonable for the Ministry to determine that the evidence does not establish that the Appellant has a severe mental or physical impairment and that the Appellant's DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods? Was it reasonable for the Ministry to determine that as a result of any direct and significant restrictions it could not be determined that the Appellant requires the 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 ...

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).

The EAA provides as follows:

Panels of the tribunal to conduct appeals

22 (4) In a hearing referred to in subsection (3), a panel may admit as evidence only

- (a) the information and records that were before the minister when the decision being appealed was made, and
- (b) oral or written testimony in support of the information and records referred to in paragraph (a).

The EAR provides as follows:

Procedures

86 The practices and procedures of a panel include the following: ...

- (b) the panel may hear an appeal in the absence of a party if the party was notified of the hearing ...

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. Therefore 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

Severity of Impairment

Neither the terms "*impairment*" nor "*severe*" are defined in the EAPWDA. The Cambridge Dictionary defines "*impairment*" in the medical context to be "*a medical condition which results in restrictions to a person's ability to function independently or effectively*" and defines "*severe*" as "*causing very great pain, difficulty, worry, damage, etc.; very serious*". "*Impairment*" is defined in the MR and the AR sections of the PWD application form to be "*a loss or abnormality of psychological, anatomical, or physiological structure or function causing a restriction in the ability to function independently, appropriately or for a reasonable duration*". The Panel finds that the Ministry's definition of "*impairment*" as set out in the MR and the AR, while not defined in the legislation, is a reasonable definition of the term for the purpose of partially assessing an applicant's eligibility for the PWD designation.

A diagnosis of a severe impairment does not in itself determine PWD eligibility. Section 2(2) of the EAPWDA requires that in determining whether a person may be designated as a PWD, the Ministry must be satisfied that the individual has a severe physical or mental impairment with two additional characteristics: in the opinion of a prescribed professional; it must both be likely to continue for at least two years [EAPWDA 2(2)(a)] and it must significantly restrict a person's ability to perform DLA continuously or periodically for extended periods, resulting in the need for the person to require assistance in performing those activities [EAPWDA 2(2)(b)]. Therefore, in determining PWD eligibility, after assessing the severity of an impairment the Ministry must consider how long the severe impairment is likely to last and the degree to which the ability to perform DLA is restricted and help in performing DLA is required. In making its determination the Ministry must consider all the relevant evidence, including that of the Appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a prescribed professional – in this case the Appellant's GP.

Physical Functioning

The Ministry's position is that there are significant discrepancies between the Appellant's physical functioning as described in the MR and the AR and the description of physical functioning in the AQ, and that, as there is no explanation to explain these discrepancies, the Ministry is unable to confirm that the Appellant has a severe degree of impairment in their ability to mobilize. The Appellant's position is that they have pain in different parts of their body, and that as a result, DLA are either avoided or put off as long as possible.

Panel Decision

The Panel notes that the GP's assessment of the Appellant's physical functioning as expressed in the Appellant's application for a PWD designation varies from the same assessments provided in the AQ. For example, while the GP indicates in the MR that the Appellant can walk 1-2 blocks unaided on a flat surface, the GP states in the AQ that the Appellant can walk less than 1 block or for up to 5 minutes at a time. The Panel further notes that there is a box in the MR where the prescribed professional can tick "less than 1 block". Similarly, the GP indicates in the MR that the Appellant can remain seated for 1 to 2 hours, whereas in the AQ the GP indicates that the Appellant is only able to sit for 30 to 45 minutes. Again, a box is provided in the MR where the prescribed professional can tick "less than one hour". While these discrepancies might not be considered significant, the Panel also notes that both the MR and the AQ provide space for comments or explanations, and that the instructions in the MR and the AR are that the prescribed professional is to "*include additional information as required*". The Panel notes that no comments, explanations or additional information is provided to explain how the functional skill assessments were determined or what factors might have caused the GP to give varying capability assessments in the MR versus the ratings that the GP provided in the AR. Without any explanations, the Ministry would only be able to see that the assessments were inconsistent, and would not know why, or which of the two is more accurate, thus reasonably concluding that it is unable to confirm that the Appellant has a severe degree of impairment in their ability to mobilize.

With respect to the Appellant's argument as expressed at the hearing that the GP must have assessed the Appellant's capabilities in the MR as representing their abilities on their best days, the Panel notes that the instructions directed to the prescribed professional in Section 2 of the MR say, in part, "*The purpose of the (MR) is to provide information to the ministry about the applicant's physical or mental*

impairments associated with diagnosed medical conditions ... The emphasis is on how the medical conditions and impairment affect the Applicant's ability to perform (DLA) ...". As the assessments contained in the MR are to be used to determine the severity of the applicant's physical or mental capabilities, the Panel finds that it is clear that the prescribed professional is expected to indicate the severity and frequency of impairment on the applicant's worst days, in addition to indicating whether the impairments are periodic or continuous.

Having reviewed all of the evidence, the Panel finds that the Ministry reasonably determined that, based on all of the evidence available at reconsideration, the information does not demonstrate that the Appellant has a severe degree of physical impairment.

Mental Functioning

The Appellant's position, as expressed in their verbal testimony at the hearing, is that they have severe anxiety and depression. As is the case with physical functioning, the Ministry's position is that there are significant discrepancies between the information provided in the MR and the AQ, and that the GP does not provide any narrative to account for those discrepancies.

Panel Decision

As is the case with physical functioning, the Panel notes that the GP's assessment of the Appellant's mental functioning in the application varies substantially from the same assessments provided in the AQ. Although there are no formalized criteria to define what constitutes mild, moderate or severe cognitive deficits, generally professionals determine the severity of a mental impairment by assessing the number of skill areas affected by the deficit, the severity of the deficits in psychological processes, and the degree of impairment in skill areas. In the application for PWD benefits, the GP does not provide a diagnosis of a mental health condition other than anxiety. Furthermore, depression is not a mental condition diagnosed by the GP in the original application or in any of the other written evidence provided, and in the MR the GP indicates that the Appellant *does not have any significant deficits* with cognitive and emotional functioning. In addition, the Panel notes that the Appellant does not identify any mental impairments in the SR. On the other hand, in the AQ the GP indicates that they agree with the Appellant's assessment that the Appellant has *moderate deficits in a large number of the skill areas* of cognitive and emotional functioning provided in the AQ (specifically in the areas of bodily functions, emotion, attention/concentration, executive functioning and memory). The Panel notes that these discrepancies are not explained, despite the fact that there are places in the AQ that prompt the GP for comments.

The Panel has reviewed all the evidence and finds that the Ministry reasonably determined that, based on the information provided, there was insufficient unvarying information to establish that the Appellant has a severe mental impairment.

Restrictions in the Ability to Perform DLA

The Appellant's position is that they have so much depression and anxiety that they have significant difficulty performing a significant number of DLA, including personal hygiene, basic housekeeping, and shopping, and that, as a result, these DLA are either not completed, put off as long as possible or performed by the Appellant's adult child. The Ministry's position is that, while the GP reports that the

Appellant's impairments do not directly restrict their ability to perform DLA in the MR, and indicates in the AR that the Appellant is independent in all activities, including social functioning, the GP indicates in the AQ that the Appellant either requires continuous assistance or is otherwise unable to perform a large number of activities. Due to the discrepancies in the two documents and the fact that the GP has not provided a narrative to explain the discrepancies, the Ministry is not satisfied that the Appellant has a severe impairment that directly and significantly restricts the Appellant's ability to perform DLA.

Panel Decision

Section 2(2)(b) of the EAPWDA requires that the Ministry be satisfied that a prescribed professional has provided an opinion that an applicant's severe impairment *directly* and *significantly* restricts their DLA, continuously or periodically for extended periods. In this case, the GP is the prescribed professional. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the MR and, with additional details, in the AR.

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, wherein the prescribed professional is instructed to check marked boxes and to provide additional explanations, for example, a description of the type and amount of assistance required. DLA, as defined in the legislation, do not include the ability to work. As noted above, the restriction is to be in the opinion of a prescribed professional, which in this case is the GP.

The Panel notes that the GP has not provided any comments to explain the significant discrepancies between the assessments provided in the Appellant's application and the AQ. As a result it is not apparent how or why the assessments are different or which assessment is accurate.

The Panel has reviewed all the evidence and, based on the above analysis, finds that the Ministry reasonably determined that there was insufficient information to establish that the Appellant has a severe impairment that, in the opinion of a prescribed professional, directly and significantly restricts the Appellant's ability to perform DLA.

Help with DLA

The Appellant's position is that they either put off completing DLA, take considerably longer to complete DLA, or rely on their adult child to assist in performing several DLA from time-to-time. The Ministry's position is that, because it has not been established that DLA are significantly restricted it cannot be determined that significant help is required from another person.

Panel Decision

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. 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 one or more DLA.

Having found that the Ministry was reasonable in concluding 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 DLA as required by section 2(2)(b)(ii) of the EAPWDA.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the Panel finds that the Ministry’s RD, which determined that the Appellant was not eligible for the PWD designation under Section 2 of the EAPWDA, was reasonably supported by the evidence and was a reasonable application of the EAPWDA in the circumstances of the Appellant, and therefore confirms the 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

Simon Clews

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/11/20

PRINT NAME

Tina Ahnert

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

Kulwant Bal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)