

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 06 November 2019 that denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in section 2 of the *Employment and Assistance for Persons with Disabilities Act*, section 2. Specifically, the ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment and that in the opinion of a prescribed professional the appellant's impairment

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

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

The ministry determined that the appellant satisfied the other criteria of having reached 18 years of age and the impairment continuing for at least 2 years.

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

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA) – section 2
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – sections 2 and 2.1.

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

1. The appellant's PWD Designation Application dated 20 August 2019. The Application contained:
 - A Self Report (SR).
 - A Medical Report (MR) dated 27 August 2019, completed by a general practitioner (GP) who has known the appellant for 20 years and has seen the appellant 2-10 times in the past year.
 - An Assessor Report (AR) dated 20 August 2019, completed by a physical therapist (PT) who has met the appellant once. The PT writes, "This is a one time assessment, as a PT I can only contribute to the physical sensation & biomechanical losses. Self-report is the logical resource for ADL [activities of daily living] levels & management."
2. The appellant's Request for Reconsideration, dated 21 October 2019, attached to which is a submission giving reasons.

In the MR, the GP provides the following diagnoses related to the appellant's impairment: Insulin Dependent Diabetes (onset 1993), Depression and Anxiety.

In the AR, the PT describes the impairment that impacts the appellant's ability to manage DLA as "Diabetic neuropathy, significant strength loss, sensation loss, chronic pain, depression & anxiety, all of which can significantly limit ADL completion."

In the AR, the PT describes the appellant's living environment as living with an elderly parent with disabilities.

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

Severity/health history***Physical impairment*****MR:**

Under Health History, the GP writes that the appellant's poorly controlled diabetes leads to retinopathy and peripheral neuropathy and that the appellant has frequent hypoglycemia, resulting in disability: loss of consciousness, agitation.

Regarding functional skills, the specialist indicates that the appellant can walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, is limited to lifting 15 to 35 lbs. and there are no limitations regarding remaining seated.

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

AR:

Respecting mobility and physical ability, the PT assesses the appellant as independent for all listed areas of mobility and physical ability: walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding. The PT comments, "Independent but significantly limited capacity and endurance, with 10/10 nerve pain onset & muscle spasms. Prolonged disability which can limit ADLs to prolong active (*sic*) prior to."

Under Additional Information, the PT writes:

"[The appellant] has lost significant sensation [in the] feet due to [...] diabetic neuropathy. This is accompanied with a significant amount of muscle atrophy with triceps surae to 3-/5 for strength loss. The global UE [lower extremity] weakness, paired with sensation loss can further contribute to neurological pain. This is again further exacerbated with struggling mental health."

Mental impairment

MR:

Under Health History, the GP writes:

"Depression and Anxiety: long-standing. As never being free of it despite medication. Very emotional. Bursts into tears frequently. She becomes very anxious.
[The appellant] has somehow managed to work, but now finding it very difficult to cope."

The GP indicates that the appellant has difficulties with communication, with a cognitive cause, commenting, "Forgetful. Emotional lability."

The GP indicates that the appellant has significant deficits with cognitive and emotional function in the areas of executive, memory, emotional disturbance, motivation, and attention or sustained concentration.

Under Additional Comments, the GP writes that the appellant is not able to currently function, has been referred to a psychiatrist but that improvement is unlikely in the near future, and is not fit for work.

AR:

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

The PT does not assess the degree to which the appellant's mental impairment impacts daily functioning, leaving this section of the AR blank.

Ability to perform DLA

MR:

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

- Restricted on a periodic basis: Personal self care, meal preparation, management of finances, and social functioning.

- Not restricted: basic housework, daily shopping, mobility inside the home, mobility outside the home, and use of transportation.
- Unknown: management of finances.

The GP explains “periodic” as “poor ability when depression is worse.”

The GP explains restrictions with social functioning by writing, “Very emotional. Cannot cope with problems.”

As an additional comment, the GP writes, “Severe disability.”

AR:

The PT provides the following assessments of the assistance the appellant requires in performing DLA:

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

The PT comments, “No assistance required, however with physical activity & exertion there is significant 10/10 pain which can limit the continued activity levels & be bed bound due to pain.”

The PT adds, “Prolonged standing up to 2-30 minutes progressively increases neurological pain. Can complete cooking & food preparation if self modifies activity => sitting.”

Social functioning

The PT assesses the support/supervision required for social functioning as follows

- Making appropriate social decisions – independent.
- Developing and maintaining relationships – Independent.
- Interacting appropriately with others – independent
- Dealing with unexpected demands – periodic support/supervision required (“Stress/anxiety can limit tolerance”).
- Securing assistance from others – “Paranoid at times.”

The PT assesses the appellant's relationship with both immediate and extended social networks as “good functioning.”

Help provided/required

MR:

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

When asked what assistance the appellant needs with DLA, the GP writes, "Not sure."

AR:

The PT indicates that the appellant requires the use of orthotics.

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

The PT indicates that the appellant requires help for DLA from family and friends, commenting, "Family and friends help with mental health, physical exertion when limited."

Self Report

The ministry fully reproduced the SR in the reconsideration decision. To summarize, the appellant describes her disability as IDDM [Insulin-dependent diabetes mellitus] (Diabetes, since April 1990), depression and anxiety since 1993, and extreme fatigue. She writes that:

- She has had insulin dependent diabetes for 29 years now. As a result of diabetes, she has peripheral nerve disease in her legs and feet. It is like having lightning shooting down her legs and having nails in her feet, with spasms in the feet and legs causing great pain. The longer she is up on her feet, the worse it becomes and it can take a long time to calm down. She cannot walk even around home without shoes on now.
- She has tried special insoles, different shoes, slippers, etc., medicinal marijuana cream, and medications, but nothing calms the pain down.
- She has also been treated for retinal neuropathy and continues to be monitored every 4 months at the retinal surgeon's office.
- She also suffers from depression and anxiety. She has taken medication since 1993 and it did work until about 1-2 years ago. Her doctor has seen her every 3 months for years to monitor her depression and diabetes. It causes her huge stress and discomfort when she can't get over the depression. She will be seeing a psychiatrist to help her further.
- Lastly, she has extreme fatigue which will not go away. She can sleep for 12++ hours and still be exhausted when she gets up. This began 1-2 years ago and it has become unmanageable. She often needs to sleep during the day. If driving, she pulls over and sleeps in her car or a park. Her sleep is very restless. Sometimes her legs become so restless that she can't sleep for hours. She also urinates about every 1.5 to 2.5 hours at night so she can't get a full sleep.
- These problems affect her life since she has no ambition to do much because she knows she will suffer worse pain afterwards. After walking or standing for 15 minutes or sometimes longer, she starts to get the spasms. Her feet are always numb, tingling yet painful too. It takes a long time for the pain to subside once she lays down. Going for walks was her best activity but she can no longer do it. It just hurts too much.
- All this affects her relationships, friendships, activities (swimming, walking, playing with her grandchildren) and former work.

Request for Reconsideration

The ministry also fully reproduced the appellant's reconsideration submission. Highlights include:

- The appellant's doctor did not discuss, nor did he entirely know what supports she has used to live her life; nor did the physiotherapist who just assessed her physical ability to function. So, this is to explain what supports she needs.
- With her insulin-dependent diabetes, she needs an enormous amount of time to recover after walking or standing to help alleviate the severe pain that occurs with that activity. The physiotherapist recommended that she use a cane to assist with walking and she has now been using one in the house but finds that it does not help with the pain in her feet and legs.
- She now has a new glucose reader that tracks her blood sugar levels, so she knows when she is going to go low or high but still has no recourse when it happens. She falls over and get very dizzy, confused and disorientated with low sugars so she is hoping that the cane will help with this.
- Her doctor reported that she can walk, stand and carry regular amounts. That is not at all true. She needs to have her legs up to help alleviate the pain. After walking for a short period of time she needs a long time to recuperate so she can walk again. This can be hours or a full day depending on what she was doing. [A parent] does most of the grocery shopping, so she doesn't have to. She limits her time doing chores, so as not to get so sore and tired. A friend comes every week to do cleaning at home for her as this is an agreement that she made with her [parent] upon moving in.
- She uses a raised toilet seat with handles and a bath bench in the shower so she can sit and not fall in the shower. She showers only when [the parent] is home in case of a fall.
- Her glucose levels are so bad that they go up and down like a yo-yo. When the sugars are low it takes a while to feel it. She then gets blank, confused, angry, crying, and needs to lay down and eat. She often passes out especially at night-time. She always seems to wake up afterwards but then her sugars rise to dangerous levels and it makes her light-headed, extremely tired and thirsty.
- She also suffers from anxiety and depression. This is exacerbated by the constant pain and inability to live her life as she always has. She can't go for walks anymore, go window shopping, visit with friends, do her craft hobby, or volunteer.
- She is too tired, stressed and anxious to go out with friends. She has one friend that she visits with and who comes to clean her house, but she has no other social outlets. She does see her daughter and grandkids as the friend brings them over to visit.
- She has problems with her sleep to an extreme. She is so tired all the time that she often sleeps 12+hours a day or often through the entire day and onto the next day. Suffering excessive anxiety and depression, she finds it hard to concentrate on tasks, especially recalling information and remembering what to do next. Being depressed is exhausting. She uses the toilet during the night about every 1.5 to 2 hours, so she has very interrupted sleep.

Notice of Appeal

The appellant's Notice of Appeal is dated 15 November 2019. No Reasons were provided.

The hearing

With the consent of the appellant, a ministry worker attended the hearing as an observer.

At the hearing, the appellant submitted a package of documents that consisted of:

- A letter from the GP dated 13 December 2019 in which the GP confirms that the appellant is permanently disabled due to severe depression, pain due to peripheral neuropathy, and brittle diabetes. The GP concurs with the psychiatrist's evaluation (see below) that the appellant is totally disabled and unfit for work.
- Psychiatry Consult dated 10 December 2019, completed by a psychiatrist who concluded that the appellant, by reason of recurrent major depressive disorder, despite good treatment, in combination with her brittle diabetes and its resulting chronic neuropathic pain, ophthalmological involvement, and now concerns about renal dysfunction, is disabled to the point that she is unable to work.
- Charts for several days showing significant hourly variability in the appellant's blood sugar readings.

In her presentation, the appellant covered much the same ground as in the SR and reconsideration submission. In particular, she explained that despite seeing the GP every three months for the past many years, the GP has focused on treating her brittle diabetes and has shown little interest in how she manages her life. She now recognises that the MR and the GP's letter submitted on appeal does not contain the kind of information requested by the ministry on the impact of her medical conditions on daily functioning.

The appellant described at some length how "brittle" her diabetes was – extreme variability in blood sugar within any 24-hour period, differing day-to-day even if diet and exertion remained the same. The resulting peripheral neuropathy means that even walking a short distance results in extreme pain in her feet and having to rest and put her feet up to relieve the pain. Her diabetic condition has also led to increased protein in the urine, causing concern over the health of her kidneys and anxiety that she will have to go on kidney dialysis. The appellant also explained that she had episodes every 3 or 4 years of diabetic ketoacidosis (DKA), a life-threatening situation that required hospitalization.

The appellant also described her anxiety and depression, which now seem resistant to treatment. She said that she is fortunate to have a friend of 30 years who provides support. However, because of her anxiety she can't complete daily tasks and decision-making is difficult.

The ministry stood by its position at reconsideration.

Admissibility of additional information

The panel finds that the information provided by the appellant in the documents submitted on appeal and in her testimony at the hearing are in support of the information and records before the ministry at reconsideration, as this information tends to corroborate the diagnoses and health history provided by the GP in the MR and the appellant's description of how her medical conditions impact her daily functioning as set out in the SR and the reconsideration submission. The panel therefore admits this information as evidence pursuant to section 22(4) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

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

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

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

The ministry determined that the appellant satisfied the other criteria of having reached 18 years and the impairment continuing for at least 2 years.

The following section of the EAPWDA applies to this appeal:

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

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

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

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

The following sections of the EAPWDR applies to this appeal:

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self care;
- (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
 - (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.
- (2) For the purposes of the Act, "**prescribed professional**" means a person who is
 - (a) authorized under an enactment to practise the profession of
 - (i) medical practitioner,
 - (ii) registered psychologist,
 - (iii) registered nurse or registered psychiatric nurse,
 - (iv) occupational therapist,
 - (v) physical therapist,
 - (vi) social worker,
 - (vii) chiropractor, or
 - (viii) nurse practitioner, or
 - (b) acting in the course of the person's employment as a school psychologist by
 - (i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or
 - (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*,
 if qualifications in psychology are a condition of such employment.

Alternative grounds for designation under section 2 of Act

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

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

Analysis

Severity of impairment

Preliminary Considerations

The designation of a person as a person with disabilities arises from the application of legislation – section 2 of the EAPWDA reproduced above. It is clear from this legislation that PWD designation is at the discretion of the minister. However, it is also clear that this discretion is limited, by requiring the minister to be "satisfied" that the applicant meets the criteria set out in section 2.

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

In the MR and in the letter submitted on appeal, as well as in the psychiatry consult, both the GP and the psychiatrist state that the appellant is not fit to work. In the reconsideration decision, the ministry notes that employability or vocational abilities are not considered when assessing eligibility for PWD designation.

Section 2(2) of the EAPWDA can be read as *“The minister may designate a person ... as a person with disabilities ... if the minister is satisfied that the person ... has a severe mental or physical impairment that (b) ...*

(i) directly and significantly restricts the person's to perform daily living activities ...

(ii) as a result, ..., the person requires help to perform those activities.”

As the focus is on whether an impairment *“directly and significantly restricts the person's ability to perform daily living activities ...”*, and as employability or ability to work is not listed in section 2(1) of the EAPWDR as a DLA, the panel finds that ministry was reasonable in not taking into account any reported employability restrictions in applying the impairment criteria set out in section 2(2) of the EAPWDA. In other words, it is unreasonable to expect the ministry to assume that difficulty in attending or performing a job extends to other areas of daily functioning.

Panel note

Employability can be an indirect factor for PWD designation. The legislation provides for “alternative grounds” for PWD designation, one of which, listed in section 2.1 of the EAPWDR, is a person who is considered to be disabled under section 42 (2) of the *Canada Pension Plan* (Canada) – i.e. a person meeting the disability criterion for CPP disability pension eligibility. This section of the federal statute reads in part:

(a) a person shall be considered to be disabled only if he is determined in prescribed manner to have a severe and prolonged mental or physical disability, and for the purposes of this paragraph,

(i) a disability is severe only if by reason thereof the person in respect of whom the determination is made is incapable regularly of pursuing any substantially gainful occupation, and

(ii) a disability is prolonged only if it is determined in prescribed manner that the disability is likely to be long continued and of indefinite duration or is likely to result in death;

Note that the determination must first be made, not by the BC ministry, but “in prescribed manner” – that is, through the federal CPP application and adjudication process, including consideration of CPP contribution history.

Physical impairment

The position of the appellant is that the information provided by the GP and the PT clearly determine that her brittle diabetes, and resulting peripheral neuropathy, retinal neuropathy and kidney issues, all point to a serious medical condition. Such a serious condition can only lead to a significantly limited ability to manage daily tasks, and therefore the ministry was not reasonable in finding that severe physical impairment has not been documented.

The position of the ministry, as set out in the reconsideration decision, is that not enough evidence is provided in the assessments completed by the GP and the PT to demonstrate that the appellant has a severe impairment of her physical functioning. In making this determination, the ministry reviewed the information provided in the MR and AR (see Part E above), noting the following:

- The GP’s functional skills assessments that the appellant can walk 4+ blocks unaided, etc.
- The GP indicating that the appellant does not require an assistive device.
- The PT assessing the appellant as independent managing activities requiring mobility and physical ability, though noting significantly limited capacity and endurance with 10/10 nerve pain onset and muscle spasms.

The ministry noted that that this latter assessment by the PT suggests that the appellant cannot engage in prolonged activity in these mobility physical ability areas without the onset of severe pain and muscle spasms. The ministry stated that unfortunately the PT does not indicate that the appellant takes significantly longer to complete these activities or that she requires an assistive device to complete them. The ministry acknowledged that in the reconsideration submission the appellant stated that the PT had recommended a cane to assist with mobility and stability and that she also reports that she uses a raised toilet seat and a bath bench in the shower. However, except for orthotics, the PT does not indicate that the appellant uses an assistive device.

Panel finding

As the ministry noted in the reconsideration decision, a diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. To assess the severity of impairment the ministry must consider the nature of the impairment and the extent of its impact on daily functioning. As the ministry also noted, it cannot be left to draw its own conclusions as to the impact the appellant’s medical condition has on daily functioning and related restrictions to the ability to manage DLA. As discussed above, for the minister to be “satisfied” that this or any other criterion is met, the ministry must rely on the assessments provided by the independent and professional medical practitioner and prescribed professional

(in this case the GP and PT) completing the application, so that the minister has sufficient information on the nature and extent of the impacts of the person's medical conditions on daily functioning to make an evidence-based decision.

The panel acknowledges that in the SR, in her reconsideration submission and in her testimony at the hearing, the appellant has provided compelling information on the debilitating nature of her diabetic condition. The PT has also offered useful biomechanical information (muscle atrophy, 10/10 pain, lower extremity weakness and sensation loss, etc.). However, considering the GP's functional skills assessments (appellant can walk 4+ blocks unaided, etc.) and the PT's assessment that the appellant is independent – i.e. not requiring the use of an assistive device or needing to be accompanied – for mobility and physical abilities, and without any explanation by the PT as to how much longer than typical it takes for such activities and the recovery time between them, the panel finds that the ministry was reasonable in determining that a severe physical impairment has not been established.

Mental impairment

The appellant's position is that the psychiatrist in the consult report submitted at the hearing states that she suffers from major depressive disorder, a mental health condition that the ministry should deem to be a severe mental impairment.

The position of the ministry is that the information provided in the PWD Application does not demonstrate a severe impairment of mental functioning. In reaching this conclusion, the ministry reviewed the assessments provided by the GP and the PT (see Part E above), noting in particular:

- The PT not providing in the AR an assessment of impacts to cognitive and emotional functioning. Absent such an assessment, the ministry must rely on information provided by the GP in the MR.
- The GP indicating that the appellant's depression and anxiety are long-standing and that she has never been free of them despite medication, identifying significant cognitive and emotional deficits in 5 of 12 areas, and reporting that the appellant is very emotional, bursting into tears frequently and becoming very anxious.
- Referring to the GP's assessments of the appellant's ability to manage DLA, the GP describes the degree of periodic restrictions in four areas, including social functioning, as "severe disability," and explains "periodic" as "Poor ability when depression is worse," without describing the frequency or duration of those periods when depression is worse. Without such information, the ministry was unable to determine that the symptoms of depression are severe for prolonged periods of time and therefore present a significant restriction in the appellant's decision-making ability.
- The information provided by the GP and PT regarding restrictions in the appellant's social functioning abilities. See below under *Direct and significant restrictions in the ability to perform DLA*. The ministry found that these assessments do not indicate severe impairment of the appellant's abilities in relating to, communicating or interacting with others effectively.

Panel finding

Given the information regarding severity of mental impairment as summarized in Part E above and as reviewed by the ministry, and in particular the absence of any assessments provided by the PT on the impact of the appellant's mental health condition on cognitive and emotional functioning, the panel views as reasonable that the ministry would find it difficult to assess the degree of the appellant's mental impairment.

While diagnosing major depressive disorder and stating that the appellant is unable to work, the psychiatrist in the consult report did not provide much information on the impacts of the diagnosed condition on the appellant's ability to function on a daily basis.

In the SR, the appellant stated that she has taken medication for her depression and anxiety since the early 1990s and this worked until about 1- 2 years ago. She writes that it causes her huge stress and discomfort when she can't get over it and will be seeking the help of the psychiatrist. In the reconsideration submission, she writes that she used to have a social life when she was properly treated for depression, but she no longer has a social life because she is too tired, stressed and anxious to go out with friends, except for one friend she visits with and who comes to clean her house. At the hearing, the appellant stated that she has difficulties making decisions, but provided no context regarding these difficulties.

Without a clear picture of how, to what extent, for how long and under what circumstances the appellant's mental health conditions restrict daily functioning, the panel finds that the ministry was reasonable in determining that a severe mental impairment has not been established.

Direct and significant restrictions in the ability to perform DLA

The panel understands from the appellant's testimony at the hearing that she views the brittle diabetes and the anxiety and depression diagnosed by the GP and psychiatrist as having a crippling impact on all aspects of daily functioning.

In the reconsideration decision the ministry held that the appellant does not have a severe impairment that, in the opinion of the prescribed professional, directly and significantly restricts her ability to perform the DLA set out in the legislation. In coming to this conclusion, the ministry stressed that the assessment of restrictions to the ability to manage DLA and assistance required as a result are considered together with the GP's and PTs assessments of basic physical and mental functioning.

The ministry noted that in the MR the GP assesses the appellant as having periodic restrictions with personal self-care, meal preparation, management of medications and social functioning. As it noted when considering severity of mental impairment, the GP explains "periodic" as "Poor the ability when depression is worse," without describing the frequency or duration of those periods when depression is worse. Without such information, the ministry found it difficult to determine that the symptoms of depression are severe for prolonged periods of time. The ministry also noted that the GP indicates that the appellant does not have any restrictions with basic housework, daily shopping, mobility inside the home mobility outside the home and use of transportation and does not assess the ability to manage finances. When asked what assistance is required with DLA, the GP indicates "Not sure."

The ministry also reviewed the PT's assessments in the AR regarding ability to manage DLA where the PT indicates that the appellant is independent with all listed activities, with comments that "No assistance required, however with physical activity & exertion there is significant 10/10 pain which can limit the continued activity levels & be bed bound due to pain" and "Prolonged standing up to 2-30 minutes progressively increases neurological pain. Can complete cooking & food preparation if self modifies activity => sitting." The ministry noted that the PT does not indicate whether, as a result of the need to self-modify when managing certain activities, the appellant takes significantly longer to complete them. The ministry further noted that the PT does not describe the frequency or duration of those periods when the appellant is bedbound.

Panel finding

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

Under the legislation, there are two sets of DLA at issue in this appeal: the eight DLA (prepare own meals, etc.) set out in paragraph (a) of EAPWDR section 2(1) applicable to a person with a severe physical or mental impairment, and the two "social functioning" DLA set out in paragraph (b) of that section applicable only to a person with a severe mental impairment – make decisions about personal activities, care or finances (the "decision-making" DLA) and relate to, communicate or interact with others effectively (the "interacting with others" DLA). The panel notes that there is some overlap between the paragraph (a) DLA and the decision-making DLA for the following abilities: regulating diet (under personal care), making appropriate choices (shopping), meal planning (food preparation), budgeting (pay rent and bills) and taking as directed (medications).

For the paragraph (a) DLA, as the ministry noted, the GP has not provided any detailed information in the MR in describing "periodic" with regard to the three DLA identified by the GP as periodically restricted. Similarly, the PT has not provided information in the AR regarding how much longer than typical it takes for the appellant to "self-modify" due to pain in managing some activities. Without information that would provide a clearer picture of the extent to which the appellant's ability to perform DLA is restricted, the panel finds that it would be difficult for the ministry to conclude that the appellant's ability to manage these paragraph (a) DLA is significantly restricted.

As to paragraph (b) DLA, the same lack of information applies to the GP's assessment of social functioning being assessed as periodically restricted.

In the AR, the PT has not identified any of the tasks (e.g. regulating diet, etc.) with a decision-making component as requiring the assistance of another person or taking significantly longer than typical. For the five listed social functioning areas (making appropriate social decisions, etc.) the PT has assessed the appellant as independent in four areas and requiring periodic support/supervision for dealing with unexpected demands, commenting "Stress/anxiety can limit tolerance," without, as the ministry noted, explaining the degree and duration of the support/supervision required. The PT described the appellant's relationship with her immediate and extended social networks as "good functioning." Considering this information, it would be difficult for the ministry to find that as a result of the appellant's mental health conditions, her ability to manage these DLA is significantly restricted.

Given that a severe impairment has not been established and considering the GP's and PT's assessments reviewed above, the panel finds that the ministry was reasonable in determining that the information provided does not establish that, in the opinion of a prescribed professional, the appellant's ability to perform DLA is significantly restricted either continuously or for extended periods.

Help required

In the reconsideration decision, the ministry held that, as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required.

Panel finding

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of being directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods, a person must also require help to perform those activities. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

Although the appellant benefits from the assistance and support of a friend and has begun using a cane, neither the GP nor the PT reported any detailed information on the nature, type, frequency or duration of assistance required from another person, the use of an assistive device or the services of an assistance animal, and since the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel finds that the ministry reasonably concluded that under section 2(2)(b)(ii) of the EAPWDA it cannot be determined that the appellant requires help to perform DLA.

Conclusion

The panel finds that the ministry's reconsideration decision that the appellant was not eligible for PWD designation was reasonably supported by the evidence. The panel therefore confirms the

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ministry's decision. The appellant is not successful on appeal.

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PART G – ORDER

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

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

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

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

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

and

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

PART H – SIGNATURES

PRINT NAME

Richard Roberts

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019 December 20

PRINT NAME

Trevor Morley

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 December 20

PRINT NAME

Donald Storch

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 December 20