

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry's reconsideration decision dated November 15, 2019 which held that the appellant was not eligible for a Persons With Disabilities (PWD) designation under sections 2 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) and regulation 2, section 2.1 of the Employment and Assistance for Persons with Disabilities Regulations (EAPWDR).

Specifically, the ministry noted the five criteria set out in section 2 (2) and (3) of the EAPWDA must all be met for the minister to grant this designation: age and duration of disability (which the ministry has approved) as well as the severity of impairment, whether the appellant's daily living activities are directly and significantly impacted by the impairment(s) and the degree of assistance the appellant requires because of the restrictions (which the ministry denied).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 2
Employment and Assistance for Persons with Disabilities Regulations (EAPWDR), regulation 2 and 2.1

PART E – SUMMARY OF FACTS

The following key dates and information were noted:

On September 9, 2019 the appellant submitted an application for PWD designation.

On September 23, 2019, the application was denied.

On October 31, 2019, the appellant submitted a Request for Reconsideration.

On November 15, 2019, the minister reviewed the Request for Reconsideration and denied the request.

Background:

The appellant has been suffering from severe degenerative disc degeneration and asthma for quite some time and these conditions are expected to last for more than two years. The appellant's physician states that pain is chronic, severe and impacts some daily living activities including dressing, housework and childcare, taking significantly longer on a continuous basis to complete these activities. The asthma episodes are disabling with shortness of breath. The physician states that the chronic back pain causes fatigue and depression.

The appellant feels that many of the questions on the PWD application were answered incorrectly or incompletely by the physician. For example, the appellant is able to lift 5-15 lbs (not kg) on good days.

G During the hearing, the appellant described in detail the restrictions experienced in daily living. On the bad days, the appellant is unable to shop, cook, prepare meals, clean the house and attend to the children. Neither the appellant nor physician indicate how often there are bad days. The family helps when they are able, however there is no consistent help. The appellant describes debilitating pain and the inability to breathe well as mitigating factors. Complicating the health situation, the appellant reports suffering from low thyroid, low iron and carpal tunnel syndrome in the hands.

The physician does not indicate any of these complicating conditions in reports. What is indicated is the inability to walk less than one block on a flat surface unaided, climb 5+ stairs unaided (depending upon pain levels) lift from 5-10 pounds and remaining seated for less than one hour (1/2 an hour). Further, the appellant is able to walk, climb stairs, stand, lift, carry and hold items independently, all of which take significantly longer (2-3 times longer with some activities). No other estimates are given on how long it takes to complete other DLA's.

The minister acknowledges that miscommunication can occur, however the description of the restrictions on the DLA's that the appellant describes have not been confirmed by the physician or prescribed professional. The ministry also acknowledges that the appellant has limitations to physical functioning due to back pain, however the information provided by the physician does not establish a severe physical impairment. The ministry states that while the legislation does not specifically require frequency and duration of restrictions to be explained, they find this information to be valuable in determining the significance of restrictions. The ministry does not consider taking 2-3 times longer to complete personal self care activities or activities related to preparing meals to represent a significant restriction to the ability to complete these chores. Neither the physician nor the appellant indicate how much longer it takes to complete basic housekeeping or transfers in and out of vehicles. A mental impairment has not been identified.

Considering the information submitted by the physician, the ministry was unable to establish that the majority of the restrictions are significant, that continuous assistance from another person is needed or that the appellant is unable to perform these activities.

At the hearing the ministry relied upon the reconsideration decision. They explained that the decision on this file was made based upon the pertinent legislation and the facts and information before the ministry at the time of the decision.

Applicable Legislation:**Employment and Assistance for Persons with Disabilities Act****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).

Employment and Assistance for Persons with Disabilities Regulation

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 authorized under an enactment to practice the profession of
 - (a) medical practitioner,
 - (b) registered psychologist,
 - (c) registered nurse or registered psychiatric nurse,
 - (d) occupational therapist,
 - (e) physical therapist,
 - (f) social worker,
 - (g) chiropractor, or
 - (h) 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 at any time has been determined by Community Living BC to be eligible to receive community living support under the Community Living Authority Act;
- (d) a person who at any time been determined by Community Living BC to be eligible to receive community living support under the Community Living Authority Act to assist that family in caring for that person;
- (e) a person who is considered to be disabled under section 42 (2) of the Canada Pension Plan (Canada).

PART F – REASONS FOR PANEL DECISION

The decision under appeal is the Ministry's reconsideration decision dated November 15, 2019 which held that the appellant did not meet the criteria for a Persons With Disabilities designation under sections 2 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) and regulations 2 and 2.1 of the Employment and Assistance for Persons with Disabilities Regulations (EAPWDR).

Specifically, the ministry noted the five criteria set out in section 2 (2) and (3) of the EAPWDA must all be met for the minister to grant this designation: age and duration of disability (which the ministry has approved) as well as the severity of impairment, whether the appellant's daily living activities are directly and significantly impacted by the impairment(s) and the degree of assistance the appellant requires because of the restrictions (which the ministry denied).

Findings of the Panel:

All information submitted to the appeal panel was carefully reviewed and the appellant's submissions and testimony were thoroughly considered.

The panel finds that the ministry's reconsideration decision of November 15, 2019, which held that denial of the appellant's application for Persons With Disabilities designation, was a reasonable application of the Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2, as well as the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 2 and 2.1, considering the information submitted at the time of reconsideration and the circumstances of the appellant. While the appellant's physician noted that there was significant restriction in some of DLA's, taking 2-3 times longer to complete some tasks, there was insufficient information from the doctor to determine if the impairments were severe or continuous enough to warrant a PWD designation at the time of reconsideration. It was noted that the appellant could re-apply for Persons With Disabilities designation, should the criteria be met.

The panel confirms the ministry's decision. The appellant is unsuccessful in this appeal.

APPEAL NUMBER

PART G – ORDER

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

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

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

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

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

and

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

PART H – SIGNATURES

PRINT NAME

Jan Lingford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/05/09

PRINT NAME

Angie Blake

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/06/18

PRINT NAME

William (Bill) Reid

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/0/18