

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 15 January 2020 that denied the appellant designation as a person with disabilities (PWD) under section 2 of the *Employment and Assistance for Persons with Disabilities Act*. The ministry found that the appellant meets the age and duration requirements, but was not satisfied that:

- the appellant has a severe mental or physical impairment;
- the appellant's impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform daily living activities ("DLA") either continuously or periodically for extended periods; and
- as a result of restrictions caused by the impairment, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

The ministry also found that the appellant is not 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* ("EAPWDR"). As there was no information or argument provided for PWD designation on alternative grounds, the panel considers that 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 submitted on 07 October 2019. The Application contained:
 - A Self Report (SR): the appellant chose not to complete
 - A Medical Report (MR) dated 28 May 2019, completed by a general practitioner (GP) who has known the appellant for more than 30 years and seen the appellant 11 or more times in the past year.
 - An Assessor Report (AR) dated 28 May 2019, completed by the same GP.
2. The appellant's Request for Reconsideration, dated 16 December 2019. Under Reasons, the appellant writes "See Doctor's Letter," referring to a letter from the GP dated 11 December 2019, along with the GP's revisions to the MR.

In the MR, the GP provides the following diagnoses related to the appellant's impairment: Severe depression (of onset: 2016), Severe Generalized anxiety (onset: 2016), Severe arthritis of knee, left wrist, and other (date of onset not provided), Multiple concussions (first at age 19).

The panel will first summarize the evidence from the MR, the AR and the GP's letter at reconsideration as it relates to the PWD criteria at issue in this appeal. Revisions to the MR provided by the GP at reconsideration will be shown in *italics*.

Duration

MR:

The GP did not provide any indication as to the duration of the appellant's impairment.

In the Reconsideration revision, the GP indicated that the appellant's impairment is likely to continue for 2 years or more, commenting, "In my opinion, 5 years at least, or permanently."

Severity/health history

Physical impairment

MR:

The GP left the Health History section blank, not providing any narrative of the severity of the appellant's medical conditions relevant to impairment.

In the reconsideration revision, the GP notes:

- *Cannot walk or stand > 15 minutes. (Due to knees swelling & pain) 3 knee surgeries.*
- *Cannot carry or lift loads (knees).*
- *Cannot carry or deliver objects (L wrist). Drops items. 1 wrist surgery.*

Regarding functional skills, the GP indicates that the appellant can walk 2 to 4 blocks unaided on a flat surface, can climb 5+ steps unaided, is limited to lifting 7 to 16 kg and can remain seated for less than 1 hour ("Knee & back <15 minutes").

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 GP assesses the appellant as independent for walking indoors, walking outdoors, and standing, and taking significantly longer than typical for climbing stairs ("more cautious") and for lifting, and carrying and holding (" $<20\text{kg}$, sometimes $<5\text{kg}$ {wrist}").

Mental impairment

MR:

In the reconsideration revision under Health History, the GP writes:

- "Concussions forgetful – loses track of time. Emotional & mental disorder."

Under Additional Comments, the GP writes:

"Severe depression unresponsive to medication or psychotherapy.
PTSD (childhood abuse severe) (family illnesses and deaths)
Severe Generalized anxiety disorder."

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

The GP indicates that the appellant has no difficulties with communication.

AR:

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

The GP assesses the degree to which the appellant's mental impairment impacts daily functioning as follows:

- Major impact: bodily functions (sleep disturbance), emotion, impulse control, attention/concentration, executive, memory, and motivation.
- Moderate impact: consciousness (often forgetful), and motor activity.
- Minimal impact: nil.
- No impact: insight and judgment, language, psychotic symptoms, other neuropsychological problems and other emotional or mental problems.

Ability to perform DLA

MR:

The GP indicates that the appellant's impairment does not restrict the ability to perform DLA.

AR:

The GP 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.

Social functioning

The GP 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.
- Securing assistance from others – independent

The GP 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.

AR:

The GP indicates that assistance for DLA is provided by family.

The GP does not indicate that the appellant uses any of the listed assistive devices.

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

Request for Reconsideration

In the letter at reconsideration, the GP reviews his professional qualifications related to dealing with injuries, explaining that many of the appellant's disabling conditions result from injuries. The GP then provides notes of interactions with the appellant during the PWD application and reconsideration stages. In the Progress Note for 09 December 2019 the GP quotes the appellant (substantially along the lines of the Health History reconsideration revisions noted above), then summarizes:

"Specific limitations reviewed: Can only walk two to four blocks, climb up to five steps, lift 2 to 7 kg, and sit for less than 15 minutes due to his knee and back conditions. Cognitive and emotional deficits include poor memory, depression, anxiety, lack of motivation or

enthusiasm despite wanting to be active and poor concentration with markedly limited sustained concentration and attention. Other medical conditions include severe depression that has been unresponsive to medication and psychotherapy, PTSD due to severe childhood abuse and chronic illnesses and deaths in his family, a severe generalized anxiety disorder (GAD) and, again, the consequences of at least three moderate and three severe concussions (TBI - traumatic brain injuries) including forgetfulness, losing track of the time and sequential tasks, losing items and chronic very frustrating mental and emotional dysfunction. As his physician since he was 19 years old, I can attest to this history and the progressively worse disability as noted.”

The GP concludes the letter with the following:

“In summary, it is my medical opinion that [the appellant] is disabled from gainful employment due to the conditions named and explained in my chart notes, and that his disability is permanent. Therefore, I strongly support his appeal of the decision to reject his application for PWD status.”

Notice of Appeal

The Notice of Appeal is dated 30 January 2020. Under Reasons for Appeal, the appellant refers to a handwritten attachment, which reads:

“Due to my injuries, this is how it’s impacting my life:

- After many concussions I am now forgetting a lot. Ex: Drove to [store], 5-min drive, shopped, then walk home forgetting I drove. Sometimes I can’t remember where I’ve parked. Started car, went inside to look for car keys, fell asleep. Car ran out of gas in driveway. These are just couple of examples.
- 3 knee operations: after being on my feet for too long – i.e. working in 8 hr. shift, my left knee swells and throbs for 2 days after. Unable to go back to work.
- Wrist operation: I have probably less than 50% strength in my wrist. I am constantly dropping things. I try to pick up. Not ideal [for] a worker carrying things.
- It’s my memory loss that is really affecting me the most.

P.S. I have been fired from my last 2 jobs because I was not able to fulfill my duties.”

The hearing

With the consent of both parties, the hearing was conducted in writing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

The appellant did not provide a submission for the hearing.

In an email dated 21 February 2020, the ministry stated that its submission will be the reconsideration summary provided in the Record of Ministry Decision.

Admissibility of additional information

The panel finds that the information provided by the appellant in the attachment to the Notice of

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Appeal is reasonably required for a full and fair disclosure of the matter under appeal, as it contributes to the panel's understanding of the nature of the appellant's impairments, the severity of which is at issue in this appeal. 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 that in the opinion of a prescribed professional

(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 material submitted by the independent and professional medical practitioner and prescribed professional (in this case the GP) 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.

Employability

In the reconsideration letter, the GP writes that as a result of his medical conditions, the appellant is disabled from gainful employment.

In the reconsideration decision, the ministry noted that the PWD Application is not intended to assess employability or vocational abilities, as stated on the cover page of the MR.

Panel finding

The panel notes that 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 ability 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 a 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 prescribed by federal regulation, including consideration of CPP contribution history.

Physical impairment

The appellant's position

The panel understands from the Notice of Appeal that the appellant's position is that it is unreasonable for the ministry not to find the knee and wrist conditions described by the GP as representing a severe physical impairment, considering their disabling impacts on employability.

The ministry's position

The position of the ministry, as set out in the reconsideration decision, is that the information provided in the PWD application and in the Request for Reconsideration does not establish that the appellant has a severe physical impairment. In reaching this conclusion, the ministry reviewed the information provided by the GP in the MR and AR and at reconsideration relating to physical impairment (see Part E above). The ministry noted that the GP, in assessing the appellant as taking significantly longer than typical to lift, carry and hold items, limited to less than 20 kg. and sometimes less than 5 kg due to the wrist condition, did not specify how much additional time is required to complete these tasks or how frequently the ability to do lift, carry and hold is limited to under 5 kg., making it difficult to confirm a severe impairment in these areas.

The ministry stated that it considered the reports of the appellant's physical functioning, mobility and physical ability in conjunction with the GPs reports regarding DLA to determine whether the appellant experiences a severe degree of impairment due to the medical conditions. The ministry noted that in the MR, the GP indicates that the appellant is not restricted in the ability to perform DLA. In the AR, the GP indicates that the appellant is independent and does not require assistance or take longer to complete any DLA with the exception of requiring periodic support/supervision with one aspect of social functioning. The ministry noted that the GP did not revise these reports when given the opportunity to do so at reconsideration.

The ministry acknowledged that appellant has restrictions in physical functioning but, based on its analysis above, given the information provided by the GP, the ministry was unable to confirm that these restrictions result in a severe degree of physical impairment.

Panel finding

The panel has addressed the appellant's position regarding employability under Preliminary

Considerations above. As noted in Part C above, there is nothing in the Record regarding the appellant being in one of the prescribed classes eligible for PWD designation on alternative grounds. In particular, there is no information to suggest that the appellant has applied for and is in receipt of a CPP disability pension, thereby providing the ministry the necessary information to consider the appellant eligible for PWD designation under the alternative grounds of section 2.1 of the EAPWDR.

With regard to the impairment/DLA/help required criteria that the ministry applied in making its decision, the panel notes:

- A. As the ministry stated in the reconsideration decision, an “impairment”, as defined by the ministry in the MR and AR, is a loss or abnormality of psychological, anatomical or physiological structure or function causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration. The panel finds this definition of impairment to be reasonable, given the emphasis in the legislation on restrictions and help required

Thus, a diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment.

- B. The panel notes that 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) in the opinion of a prescribed professional
- (i) directly and significantly restricts the person's ability to perform daily living activities ...
 - (ii) as a result ..., the person requires help to perform those activities.”

It is clear from the sentence structure of section 2(2) that the clause that reads,

“that (b) in the opinion of a prescribed professional

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

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

can be read as essentially defining a “severe” impairment.

Focussing on the information provided by the GP regarding the appellant’s ability to perform DLA, in the MR the GP clearly indicates “No” in answer to the question, “Does the impairment restrict the person’s ability to perform Daily Living Activities?” For the DLA of “moving about indoors and outdoors,” (under Functional Skills) the GP indicates that the appellant can walk 2 to 4 blocks unaided on a flat surface, can climb 5+ steps unaided, is limited to lifting 7 to 16 kg and can remain seated for less than 1 hour (“Knee & back <15 minutes”). In the AR under Mobility and Physical Ability, the GP assesses the appellant as independent for walking indoors, walking outdoors, and standing, and taking significantly longer than typical for climbing stairs (“more cautious”) and for lifting, and carrying and holding (“<20kg, sometimes <5kg {wrist}”). In the reconsideration revision to the MR, the GP notes: “Cannot walk or stand > 15 minutes. (Due to knees swelling & pain). Cannot carry or lift loads (knees). Cannot carry or deliver objects (L wrist). Drops items.” As the ministry noted, the GP has not provided sufficient information that would enable it to assess the degree to which the appellant’s knee and wrist conditions restrict

this DLA: for example, no information is provided how frequently the appellant is limited to carrying loads > 5kg. Without such information, and given the level of functionality otherwise reported, the panel finds that the ministry reasonably found that this DLA has not been shown to be significantly restricted.

As to the other 7 DLA requiring physical effort, as the ministry noted, in the AR the GP assessed the appellant as independent for all tasks within each of these DLA, not requiring assistance from another person or taking significantly longer than typical. Accordingly, it cannot be said that the evidence shows that the appellant's ability to perform the daily living activities (plural) requiring physical effort is directly and significantly restricted by the appellant's medical conditions. The panel therefore finds that the ministry was reasonable in finding that a severe physical impairment has not been established.

Mental impairment

The appellant's position

The appellant, in the Notice of Appeal, stresses how the history of concussions (6 according to the GP) has the greatest impact on daily functioning, citing 2 examples of "forgetting a lot." The GP in the reconsideration letter also notes that "Cognitive and emotional deficits include poor memory, depression, anxiety, lack of motivation or enthusiasm despite wanting to be active and poor concentration with markedly limited sustained concentration and attention. Other medical conditions include severe depression that has been unresponsive to medication and psychotherapy, PTSD due to severe childhood abuse and chronic illnesses and deaths in his family, a severe generalized anxiety disorder (GAD)" along with memory issues. Given this information, the appellant would argue that the ministry was unreasonable in finding that a severe mental impairment has not been established.

The ministry's position

In the reconsideration decision, the ministry found the information provided in the PWD application and in the Request for Reconsideration does not establish that the appellant has a severe mental impairment. In making this determination, the ministry reviewed the information provided by the GP, including the cognitive and emotional deficits reported by the GP in the MR and, in the AR, the major impacts on daily functioning in 6 areas, and moderate impacts in 2 areas, arising from the appellant's mental impairment/brain injury. However, when the ministry considered these deficits and impacts in conjunction with the GP's reports regarding the appellant's ability to manage DLA, the ministry was unable to determine that the appellant has a severe degree of mental impairment. The ministry based this finding on the GP's report in the MR that the appellant is not restricted with DLA and the assessments in the AR that the appellant does not require assistance with any DLA, with the exception of requiring periodic support/supervision to deal with unexpected demands.

The ministry acknowledged that, while the appellant's life is impacted as a result of multiple serious mental health conditions, based on the information provided by the GP a severe degree of mental impairment has not been established.

Panel finding

The panel notes that in reaching the conclusion that a severe mental impairment has not been established, the ministry relied on the same approach as the for severity of physical impairment discussed above – that is, basing the test for severity on the information provided by the GP regarding the appellant's ability to perform DLA. As discussed above, this approach follows from the wording of the legislation and the meaning of "impairment." As is the case with physical impairment, the panel considers this to be a reasonable approach to assessing severity of mental impairment.

Under the legislation, there are two sets of DLA at issue for a person with a mental impairment: the 8 DLA (prepare own meals, etc.) set out in paragraph (a) of EAPWDR section 2(1) applicable to a person with either a physical or mental impairment, and the 2 "social functioning" DLA set out in paragraph (b) of that section applicable to a person with a 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).

The GP has assessed the appellant as independent for the paragraph (a) DLA (though with some restrictions relating to the DLA of moving about indoors and outdoors as discussed under physical impairment above); therefore, the GP has not assessed any restrictions for the "overlapping" decision making abilities. The GP has indicated the appellant requires periodic support/supervision for dealing with unexpected demands, but has not described the frequency, duration, nature or extent of such assistance, making it difficult for the ministry to assess whether the restriction in this ability is significant.

Regarding the "interacting with others" DLA, there is little indication that the appellant is restricted in this regard. Indeed, the GP assesses the appellant's ability to communicate as good/satisfactory and relationships with both immediate and extended social networks as "good functioning."

Considering the lack of information pointing to the appellant being significantly restricted in social functioning, and the GP's overall assessment that the appellant's impairments do not restrict the ability to perform DLA, the panel finds that the ministry reasonably determined that a severe mental impairment has not been established.

Direct and significant restrictions in the ability to perform DLA

In the reconsideration decision the ministry held that, based on the information provided by the GP, the appellant does not have a severe impairment that, in the opinion of the prescribed professional, directly and significantly restricts the ability to perform the DLA set out in the legislation. In making this determination, the ministry reviewed the same information upon which it based its findings that a severe physical or mental impairment has not been established.

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. 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.

Given the information provided by the GP in the MR and AR reviewed above, including the GP answering "No" to the question "Does the impairment restrict the person's ability to perform Daily Living Activities?" 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

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 GP noted that help required for DLA is provided by family, neither the appellant nor the GP reported any detailed information on the nature, type, frequency or duration of assistance required from another person, or 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 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)

2020 March 09

PRINT NAME

Melissa McLean

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 March 09

PRINT NAME

Donald Storch

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 March 09