

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated February 19, 2020 which found that the appellant did not meet two of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that the appellant has a severe physical and mental impairment that is likely to continue for at least two years. However, the ministry was not satisfied the evidence establishes that:

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

The ministry also determined that the appellant is not in any of the classes of persons set out in section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation* who may be eligible for PWD designation on alternative grounds.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 2 and 2.1

PART E – SUMMARY OF FACTS

The appellant advised that the social worker assisting the appellant could not attend the hearing; however, the appellant expressed the desire to proceed with the hearing in the absence of an advocate.

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the appellant's information and self-report dated December 11, 2019, a medical report (MR) and an assessor report (AR) both dated December 10, 2019 and completed by a nurse practitioner (NP) who had not met the appellant prior to completing the reports.

The evidence also included the appellant's Request for Reconsideration dated January 20, 2020.

Diagnoses

In the MR, the NP diagnosed the appellant with seven abdominal surgeries in November 2012, breast infection/ removal of tissue in May 2019, AC repair left shoulder in April 2017, as well as anxiety with an onset in December 2008 and depression with an onset in November 2012. Asked to describe the appellant's mental or physical impairments that impact the appellant's ability to manage daily living activities (DLA), the NP wrote in the AR: "multiple hernia/ abdominal surgeries- extensive in nature, left shoulder symptoms, and ongoing anxiety."

Daily Living Activities (DLA)

In the MR and the AR, the NP reported:

- In terms of health history, the appellant has "history of 7 abdominal surgeries that have been quite extensive in nature. There is another pending. Surgery in 2020 to remove particles of the broken mesh from one of the hernia repairs. The surgeon has told the patient that it will unlikely resolve the daily pain [the appellant] experiences. [The appellant] is unable to lift, exercise, bending or turn [the appellant's] body without experiencing pain that stops [the appellant] 'in [the appellant's] tracks.' [The appellant] is experiencing anxiety that has been longstanding. [The appellant] is teary and overwhelmed. [The appellant] has a hard time concentrating and learning new things because of [the appellant's] symptoms. Much of [the appellant's] anxiety is related to [the appellant's] ongoing medical concerns which aren't likely to change any time soon."
- The appellant has not been prescribed medication and/or treatment that interfere with the appellant's ability to perform DLA.
- The appellant is not restricted with the meal preparation DLA, the management of medications DLA, the use of transportation DLA, the management of finances DLA, with social functioning, and with mobility inside the home. The appellant is continuously restricted with the basic housework DLA, the daily shopping DLA, and with mobility outside the home.
- Regarding the assistance required with DLA, the NP wrote that for grocery shopping that appellant "requires another person to complete lifting" and with housework the appellant is "unable to vacuum, laundry. Unable to lift or bending over and, therefore, any associated activities."
- In the additional comments to the MR, the NP wrote that the appellant "lives with a

roommate who is providing necessary medical/ ADL support to [the appellant]. [The appellant] needs help with cleaning and dressing [the appellant]. [The appellant] has another surgery pending which then will require [the appellant] to need support getting in/out bath/bed. [The appellant] has been unable to work due to [the appellant's] ongoing health concerns and anxiety related to [the appellant's] health concerns."

- Asked to describe the appellant's mental or physical impairments that impact the appellant's ability to manage DLA, the NP wrote "multiple hernia/abdominal surgeries-extensive in nature; left shoulder surgery, ongoing anxiety."
- For the move about indoors and outdoors DLA, the appellant is independent with walking indoors with a note that the appellant uses "railings in bathroom/ stairs" and takes significantly longer with walking outdoors, with a note that the appellant is "able to walk 2 to 4 blocks."
- For the personal care DLA, the appellant is independent with performing the tasks of grooming, toileting, feeding self, and regulating diet, and requires periodic assistance from another person with the tasks of dressing (note: "requires help dressing- can't put on [the appellant's] own bra, unable to bend over to put shoes on by [the appellant's] self unless slip on"), bathing, transfers in/out of bed and transfers on/off chair (note: "does require help with mobility post abdominal surgery").
- Regarding the basic housekeeping DLA, the appellant requires periodic assistance from another person with the laundry task (note: "unable to lift a laundry basket") and with the task of basic housekeeping (note: "help with vacuuming, cleaning floors, cleaning bathtubs").
- For the shopping DLA, the appellant is independent with the tasks of going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases, and requires periodic assistance from another person with the task of carrying purchases home (note: "unable to carry groceries").
- Regarding the meals DLA, the appellant is independent with all tasks, specifically meal planning, food preparation, cooking and safe storage of food. The NP did not provide any explanation or description.
- For the pay rent and bills DLA, the appellant is independent with all tasks, specifically with banking, budgeting, and pay rent and bills.
- For the medications DLA, the appellant is independent with all tasks, specifically with filling/refilling prescriptions, taking as directed, with safe handling and storage.
- Regarding the transportation DLA, the appellant takes significantly longer than typical with the task of getting in and out of a vehicle (note: "takes a prolonged time to get in and out [the appellant's] vehicle") and the other tasks do not apply (using public transit and using transit schedules and arranging transportation).
- The appellant is independent with all aspects of social functioning, specifically: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The NP did not provide further comment. The appellant has good functioning with the appellant's immediate and extended social networks.

In the appellant's self-report, the appellant wrote:

- The appellant's health has always given the appellant "grief"; however, since 2012 it has escalated to not only physical but extreme mental despair.

- In 2017, the appellant underwent surgery to insert a mesh and repair a hernia, and this “totally impaired” the appellant’s ability to bend, lift, push or pull anything over 10 lbs. This threw the appellant into a “spiral of depression, hate, anger, crying all the time, a feeling of uselessness, ugly.”
- The appellant has no strength to do day-to-day things. The appellant cannot bend over to tie the appellant’s shoes.
- The appellant’s anxiety every day leaves the appellant unable to function outside of the house. Even with the antidepressant and anxiety, pain medications nothing helps.
- In 2017 the appellant had to have a shoulder replaced and it was so much to put the appellant’s body through another surgery. The appellant woke up during the surgery and this left the appellant “completely traumatized for life.”
- The appellant has little motor skills in the appellant’s left shoulder. The appellant has no strength to lift and trouble to get the appellant’s shirts and undergarments on daily.
- In 2019, a lump developed on the appellant’s breast and the appellant had to undergo another surgery. This experience has depleted the appellant’s social skills and energy.
- The appellant is seeking counseling.
- The appellant has constant and severe diarrhea 24 hours a day. This makes the appellant feel ashamed. The appellant cannot be anywhere without a toilet within a 5-foot radius at any given time.
- The appellant wants to give up daily as the pain, the restrictions, and the mental anguish are too much.
- The appellant struggles daily to get up, shower, get dressed and try to function.
- The appellant’s emotions are “so raw” that the appellant cannot talk to people and just starts crying.

Need for Help

The NP reported in the MR that the assistance required with DLA are with grocery shopping and the appellant “requires another person to complete lifting” and with housework as the appellant is “unable to vacuum, laundry” and is “unable to lift or bending over and, therefore, any associated activities.” The NP indicated in the AR that the appellant receives help from family and friends.

Additional information

In the Notice of Appeal dated March 2, 2020, the appellant expressed disagreement with the ministry’s reconsideration decision and wrote that the appellant never had a chance to present information, the appellant’s medicals or anything. The appellant has been extremely ill and missed the cut-off date and the appellant is having a nervous breakdown.

Prior to the hearing, the appellant provided the following additional documents:

- 1) Letter date January 16, 2020 in which the NP who completed the original AR wrote:
 - The NP met with the appellant for an hour and half and went through the appellant’s history in depth.
 - The NP has supporting documents from the appellant’s Primary Care Provider who was not qualified to fill out the forms as a GP from another province.
 - The NP determined that the appellant’s surgeries have left the appellant with chronic pain and decreased mobility.

- The long-term nature of the appellant's disability has led to depression and anxiety.
 - The appellant's symptoms are unlikely to improve significantly over time.
- 2) Letter dated February 12, 2020 to the ministry in which a social worker (SW) indicated:
- The NP who completed the original AR had limited contact with the appellant.
 - The SW has been the Assessor for a large number of PWD applications over the past five years. A new AR is enclosed as the SW spent more time with the appellant and completed a number of home visits and has a more complete perspective of the appellant's needs.
 - The community physiotherapist (PT) and the SW conducted a home visit with the appellant which showed many concerns with the appellant's ability to complete ADL's independently. The appellant required far more assistance from other people and from assistive devices than the original PWD application stated.
 - The PT made comments that:
 - the appellant is to wear abdominal binders, especially for any activity;
 - the appellant states the appellant has great difficulty getting in/out of the tub and has been stuck and unable to get out;
 - the appellant has ongoing bowel issues since abdominal surgeries (stressful and worrisome as the appellant needs to be aware at all times and plan outings dependent on need for and locations of nearest bathrooms);
 - the appellant takes much longer to transfer due to increased pain;
 - the appellant requires assistance for house cleaning, family vacuums as appellant unable, requires assistance for laundry as well;
 - use of hands for support required for sit-stand;
 - stairs independent but slow, deliberate and guarded, requires hand support;
 - gait is antalgic in appearance, seems guarded with decreased arm swing.
 - The PT recommended equipment to assist with safe transfer and ease of movement, specifically: tub rail, bedrail and shower chair.
 - The PT provided advice re car transfers, pacing and energy conservation tips: sitting to prep food, more breaks during cooking or house cleaning, etc., gentle exercise options such as pool programming if tolerated may help with pain.
 - The comments and recommendations by the PT coincide with the assessment the SW conducted. The SW witnessed a person who has struggled ongoing and continuously for years with chronic comorbidities, fear, anxiety, and depression.
 - The appellant has ongoing assistance from family, friends, and roommate and, without this assistance, the SW would question the appellant's ability to live independently. The appellant would be unable to complete many ADL's independently and would struggle.
 - Chronic pain causes ongoing, continuous physical and psychological concerns, which the appellant displays, and these ongoing concerns affect the appellant's ability to complete ADL's and the appellant requires assistance from others and from assistive devices to attempt to complete ADL's.
 - The appellant requires ongoing and continuous assistance with many ADL's and if attempting ADL's independently many take the appellant 5 to 7 times longer to complete due to pain, fatigue, stiffness and soreness, fear, anxiety and depression.

3) AR dated February 12, 2020 in which the SW reported:

- Asked to describe the appellant's mental or physical impairments that impact the appellant's ability to manage DLA, the appellant experiences ongoing and continuous pain associated with surgeries and complicated/unsuccessful recoveries from abdominal surgeries. The appellant has major pain with past shoulder surgery and experiences ongoing depression and anxiety.
- For the move about indoors and outdoors DLA, the appellant is independent with walking indoors with a note that the appellant "uses railings in stairs, bathroom" and takes 5 to 7 times longer than typical, and is independent with walking outdoors and also takes 5 to 7 times longer.
- Regarding the appellant's cognitive and emotional functioning, the appellant's anxiety is overwhelming and affects all aspects of the appellant's life and ability to complete ADL's. The appellant is extremely socially isolated due to physical and mental health concerns.
- Regarding the personal care DLA, the appellant is independent with grooming (note: 5 to 7 times longer), toileting (note: "10 times longer- plan to be near bathroom, 1-3 hours in bathroom, bowel concerns"), and feeding self. The appellant requires periodic assistance from another person with dressing (note: "5 to 7 times longer- takes 2-3 hours to shower, dress, groom"), bathing (note: "5 to 7 times longer") and uses bath bar and shower chair as assistive devices,, regulating diet, transfers in/out of chair (note: "5 to 7 times longer") and requires a bed rail as an assistive device to get out of bed, and transfers on/off chair (note:"5 to 7 times longer- slow").
- Regarding the basic housekeeping DLA, the appellant requires continuous assistance from another person with laundry (note: "roommate assist 80 to 100%, cannot lift") and with basic housekeeping (note: "family assists 80 to 100%, [family vacuum 100%").
- For the shopping DLA, the appellant is independent with reading prices and labels, making appropriate choices, and paying for purchases, and requires continuous assistance from another person with going to and from stores (note: "80 to 100% family goes to store, [the appellant] unable") and carrying purchases home (note: "unable; cannot lift").
- In the additional comments, the SW wrote that the appellant struggles ongoing and continuously with completing ADL's that require movement and bending. The appellant must sit to put on pants/socks so often remains in pajamas. Toileting- completes independently but struggles with bowel concerns and must be by bathroom right after eating with very loose bowels and may stay in bathroom 1 to 3 hours. The appellant must have a plan for which bathroom to use if outside home, therefore stays home, becoming isolated. Extremely guarded when walking due to fear of pain, falling so takes 5 to 7 times longer to move about.
- Regarding the meals DLA, the appellant is independent with all tasks, specifically meal planning (note: "5 to 7 times longer"), food preparation (note: "5 to 7 times longer- must sit to prep food"), cooking (note: "5 to 7 times longer- unable to lift"), and safe storage of food.
- For the pay rent and bills DLA, the appellant is independent with all tasks, specifically with banking, budgeting, and pay rent and bills. The SW noted that the

appellant “completes all online due to physical/emotional isolation.”

- For the medications DLA, the appellant is independent with the tasks of taking medications as directed and with safe handling and storage. The appellant requires continuous assistance from another person with filling/refilling prescriptions (note: “10- can call to fill but [family] picks it up”).
- Regarding the transportation DLA, the appellant is independent with the task of using transit schedules and arranging transportation, requires periodic assistance from another person with the task of getting in and out of a vehicle (note: “5 to 7 times longer- struggles to get in/out of vehicle”) and requires continuous assistance from another person with the task of using public transit (note: “cannot due to bowel issues”).
- The SW provided comments that “due to ongoing, chronic pain [the appellant] struggles ongoing and continuously with ADL’s that require movement. [The appellant] is very fearful of falling, so is very slow with moving about; extremely guarded. Due to ongoing bowel concerns, [the appellant] struggles to leave [the appellant’s] home. [The appellant] must sit to prepare food, unable to lift heavy groceries, etc.”
- The appellant is independent with aspects of social functioning, specifically: making appropriate social decisions and interacting appropriately with others. The appellant requires periodic support/supervision with developing and maintaining relationships (note: “struggles due to isolation”), dealing appropriately with unexpected demands (note: “great deal of fear and anxiety 100% of the time”), and securing assistance from others (note: “has been difficult, but beginning to”). The appellant has good functioning with immediate social network and marginal functioning in extended social networks (note: “extreme isolation due to physical pain/ anxiety”). Asked to describe the support/supervision required which would help maintain the appellant in the community, the SW wrote: “support of family 100% of the time.”
- Help required for DLA is provided by family, friends and health authority professionals. The SW commented: “ongoing support from family, friends, roommate, community PT, primary care SW.” For help required but there is none available, the SW wrote: “chronic pain program would be beneficial to learn about pain and affect on mental health; exercise program- gentle movement.”
- The appellant routinely uses braces (“abdominal binders”), toileting aids, bathing aids (“tub rails, bath seat, bath bar”) and other (“bed rail”) to help compensate for the appellant’s impairment. The SW wrote that the appellant uses abdominal binders and has begun to use bath seat, bath bars, bed rails to assist with getting in/out of bed and bath; uses 100% of the time. For equipment required but not currently available, the SW wrote that a “cane or walking stick when in public may stabilize [the appellant] and allow [the appellant] to feel less fear.”
- Additional information included that the appellant has struggled to maintain independence but is learning about community supports and assistive devices and available help. Due to ongoing, chronic pain from past and ongoing abdominal surgeries and concerns, the appellant is extremely fearful and has long-standing anxiety and depression. The appellant requires ongoing assistance 50 to 100% of the time by roommate and family to complete any ADL’s that require movement

such as housekeeping, vacuuming, and laundry. Personal ADL's take the appellant 5 to 7 times longer to complete as the appellant must stop frequently to rest and relax, allow pain to diminish. The appellant is very fatigued. Due to shoulder pain the appellant is unable to lift any weight and requires assistance from others.

- 4) Letter dated February 13, 2020 in which a medical practitioner wrote that the appellant has disabilities and limitations due to multiple medical conditions, which include osteoarthritis in knees and shoulders, a left shoulder replacement, a torn ulnar nerve, fractured foot, and multiple hernia surgeries for the same hernia. The appellant continues to have pain and swelling at the hernia site. These comorbidities have a significant effect on the appellant's mental health, leading to increased depression and anxiety. They have also affected the appellant's DLA, "making them much more difficult."
- 5) Letter dated February 13, 2020 in which a general surgeon wrote that the appellant has been under the surgeon's care for several years mainly regarding debilitating abdominal wall herniations that were difficult to manage. Several sequential surgical repairs did not completely resolve the appellant's complaints. The appellant's current condition, including the history mentioned, apparently is preventing the appellant from full-time employment, not tolerating the physical strain and has also seriously affected the appellant's daily living.
- 6) Letter dated February 14, 2020 to the ministry in which the SW explained delay issues; and,
- 7) Undated graphics regarding chronic pain cycles.

At the hearing, the appellant stated:

- Since 2012, the appellant has been dealing with the application for PWD alone and the appellant did not understand what the ministry was asking for.
- About 4 months ago, the appellant had a "mental breakdown" and the appellant began to get some help. The appellant found the SW who has been helping and the appellant has a PT helping now as well. The PT would like the appellant to try water yoga, which gives the appellant some hope for improvement.
- Before getting help, a young grandchild was cleaning for the appellant.
- Now the appellant has a bar on the bed which assists with getting in and out of bed, which the appellant could not do alone before.
- Before, the appellant needed another person to help with getting in and out of the shower, and now the appellant has a tub chair so the appellant can take a shower without someone accompanying. The appellant feels better about recovering some privacy.
- The appellant has obtained a lift in the bathtub and it is the first time being able to take a bath in 8 years.
- Railings have been installed so that the appellant can get up and down the stairs.
- The appellant has requested a raised toilet so the appellant will not need help with toileting.
- The appellant is also trying to get a walking stick to help with walking. With the walking stick, the appellant hopes to be able to walk more than 1 block. The appellant has been guarded with walking because the appellant is always afraid that the mesh will "tear out" in the appellant's abdomen. If the appellant has another surgery, there is a good chance

the appellant will be “significantly handicapped.”

- The appellant has been trying to get all of the equipment needed, some of which has been borrowed from the Red Cross.
- A family member helps the appellant get dressed because of the pain in the appellant’s left shoulder. The scar tissue on the appellant’s abdomen has caused the loss of core strength. The appellant would like to be able to dress without assistance but that is not possible.
- Relatives take the appellant grocery shopping or complete the shopping for the appellant.
- The appellant can do prep for cooking since the appellant sits at the table.
- A grandchild does the laundry for the appellant and the appellant can fold the laundry.
- The appellant requires more assistance than the appellant is currently getting. The SW was over to the appellant’s residence a couple of weeks ago and the SW had to carry the appellant from the upstairs to the living room because the appellant was “so weak.”
- The appellant saw a psychiatrist and the appellant was referred to a counsellor who the appellant met a couple of weeks ago. In terms of stress level, the appellant was at a “6” on the scale and is now higher on the scale at “36.”
- The appellant is alone a lot because the appellant cannot get out. The appellant has little family and the appellant does not really know how to deal with people.
- The NP completed the initial reports for the PWD application because the appellant’s GP is in another province and the ministry did not accept the GP’s reports. The NP did not know how to fill out the reports. The NP did not observe the appellant completing DLA and did not consult at all with the GP.
- When the appellant was referred to the SW and the psychiatrist, the appellant realized that the appellant had not known what the ministry was asking for. The appellant realized the need to reach out to people. The appellant does not like to “bother” people in asking for help.
- Now that the appellant has been receiving help, the “breakdowns” are much less frequent.
- The SW visited the appellant in the appellant’s home and observed the appellant prior to completing the AR. The appellant agreed that the information in the AR is an accurate reflection of the appellant’s ability to perform DLA.
- Filling and refilling prescriptions would take “all day” if the appellant had to try to perform this task and walk to the pharmacy. Instead, the appellant’s family picks up the prescriptions.
- Toileting takes 10 times longer as a result of the complications with the appellant’s second surgery. Pieces of the mesh “splintered off” so that approximately 1 to 3 hours after the appellant eats, the appellant has to remain within 5 minutes of a bathroom and the appellant may be a long time in the bathroom. The appellant had a colonoscopy, which was clear, and the appellant is refusing to have further surgery.

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

Admissibility of Additional Information

After it was confirmed that it was the panel’s role to determine admissibility and to consider and weigh the additional documents, the ministry did not object to the admissibility of the additional

documents. The panel considered that the appellant's testimony and the appellant's additional documents related to the ministry's denial of PWD designation due to the ministry not being satisfied regarding the degree of impacts to the appellant's DLA and the appellant's need for significant help and, therefore, as being reasonably required for a full and fair disclosure of all matters related to the decision under appeal pursuant to Section 22(4) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for PWD designation, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the evidence does not establish that the appellant's DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, it could not be determined that, as a result of those restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a PWD are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

The EAPWDR provides as follows:

Definitions for Act

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

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

- (i) prepare own meals;
- (ii) manage personal finances;
- (iii) shop for personal needs;
- (iv) use public or personal transportation facilities;
- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self care;
- (viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

- (i) make decisions about personal activities, care or finances;
- (ii) relate to, communicate or interact with others effectively.

(2) For the purposes of the Act, "**prescribed professional**" means a person who is

(a) authorized under an enactment to practise the profession of

- (i) medical practitioner,
- (ii) registered psychologist,
- (iii) registered nurse or registered psychiatric nurse,
- (iv) occupational therapist,
- (v) physical therapist,
- (vi) social worker,
- (vii) chiropractor, or
- (viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

- (i) an authority, as that term is defined in section 1 (1) of the Independent School Act, or
- (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the School Act,

if qualifications in psychology are a condition of such employment.

Part 1.1 — Persons with Disabilities**Alternative grounds for designation under section 2 of Act**

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

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the Community Living Authority Act;
- (d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the Community Living Authority Act to assist that family in caring for the person;
- (e) a person who is considered to be disabled under section 42 (2) of the Canada Pension Plan (Canada).

Eligibility under section 2.1 of the EAPWDR

In the absence of any evidence or argument respecting eligibility for PWD designation under section 2.1 of the EAPWDR, the panel finds that the ministry reasonably determined that it has not been established that the appellant falls within the prescribed classes of persons under that section. The panel's discussion below is limited to eligibility for PWD designation under section 2 of the EAPWDA and section 2 of the EAPWDR.

Eligibility under section 2 of the EAPWDA

In the reconsideration decision, the ministry was satisfied that the appellant has a severe mental impairment and a severe physical impairment that are likely to continue for at least two years. However, the ministry was not satisfied the evidence establishes that the appellant's DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and, as a result of these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

Restrictions in the ability to perform DLA

Section 2(2) of the EAPWDA requires that a severe impairment directly and significantly restricts the appellant's ability to perform the DLA either continuously or periodically for extended periods, as confirmed by the opinion of a prescribed professional. The direct and significant restriction may be either continuous or periodic. If the restriction is periodic, it must be for an extended time. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the MR and, with additional details, in the AR. Therefore, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairment either continuously or periodically for extended periods. In this case, the NP, the SW, and the PT are the prescribed professionals.

In the reconsideration decision, the ministry reviewed the information in the MR and considered that the NP reported that the appellant is continuously restricted in performing basic housework, daily shopping and mobility outside the home. The ministry wrote that, in describing the nature and extent of the assistance required, the NP indicated that the appellant required another person to complete lifting for grocery shopping and that the appellant is unable to vacuum or do laundry and is “unable to lift or bending over and, therefore, any associated activities.” The ministry wrote that the NP indicated that the appellant is unrestricted in all other assessed activities, specifically in the ability to perform meal preparation, management of medications, mobility inside the home, use of transportation, management of finances, and social functioning.

The ministry also reviewed the information in the AR and wrote that while the NP reported that the appellant requires periodic assistance with many tasks of DLA, such as dressing and grooming (sic), transfers in/out of bed and on/off a chair, laundry, basic housekeeping, and carrying purchases home, no additional information was provided to explain the type or the duration in which the appellant requires assistance to manage these activities. The ministry also wrote that as the NP indicated that the need for periodic assistance with transfers applied after the appellant undergoes surgery and this need may be of a temporary nature and there was no further information to indicate how long this may occur.

The ministry also wrote that although the NP indicated that the appellant takes longer with the task of getting in and out of a vehicle, the NP did not describe how much longer the appellant takes to manage this activity. The ministry wrote that the NP reported that the appellant is independently able to manage many tasks of DLA, including activities of personal care, shopping, meals, paying rent and bills, medications, and transportation. The ministry wrote that the NP indicated that the appellant is independently able to manage all areas of social functioning, has good functioning in both the appellant’s immediate and extended social networks, and no information was provided to indicate the appellant requires support/supervision to remain in the community. The panel notes that the ministry did not consider the information provided by the appellant in the self report to clarify the reports by the NP.

At the hearing, the appellant stated that the NP completed the initial reports for the PWD application because the appellant’s GP is in another province and the ministry did not accept the GP’s reports. The appellant stated that the NP did not know how to fill out the reports as the NP did not observe the appellant completing DLA and did not consult with the GP. In the MR, the NP indicated that the NP met with the appellant for the first time to prepare the reports for the PWD application. In the letter date January 16, 2020, the NP wrote that the NP met with the appellant for an hour and half and went through the appellant’s history in depth.

In the letter dated February 12, 2020, the SW indicated that the NP who completed the original AR had limited contact with the appellant whereas the SW spent more time with the appellant and completed a number of home visits and had a more complete perspective of the appellant’s

needs. The SW wrote that the SW also conducted a home visit along with the community PT that showed many concerns with the appellant's ability to complete ADL's independently. The SW wrote that the appellant required far more assistance from other people and from assistive devices than the original PWD application stated. The appellant stated at the hearing that prior to completing the revised AR, the SW visited the appellant in the appellant's home and the appellant agreed that the information in the revised AR is an accurate reflection of the appellant's ability to perform DLA. The panel placed significant weight on the information in the revised AR, supplemented by information from the PT in the February 12, 2020 letter, as both the SW and the PT had observed the appellant completing DLA in the home environment and the appellant agreed that their assessment was an accurate reflection of the appellant's impairment.

The revised AR prepared by the SW included an abundance of information that was not available in the original AR prepared by the NP and changed some of the assessments of the appellant's ability to perform tasks of DLA. The SW wrote that the appellant experiences ongoing and continuous pain associated with surgeries and complicated/unsuccessful recoveries from abdominal surgeries, has major pain with past shoulder surgery, and experiences ongoing depression and anxiety, all of which impact the appellant's ability to manage DLA. For the move about indoors and outdoors DLA, the SW added that the appellant takes 5 to 7 times longer than typical with walking indoors and walking outdoors. The SW commented that the appellant is extremely guarded when walking due to fear of pain. At the hearing, the appellant stated that they are trying to get a walking stick to help with walking since the appellant has been guarded and always afraid that the mesh will "tear out" in the appellant's abdomen. In the February 12, 2020 letter, the SW referred to the PT's assessment that the appellant is to wear abdominal binders as an assistive device, "especially for any activity."

Regarding the personal care DLA, the SW added details that the appellant takes 5 to 7 times longer with dressing, grooming, and bathing, 10 times longer with toileting, and 5 to 7 times longer with transfers in/out of bed and on/off chair. Given that the NP provided information that there have been seven abdominal surgeries to date, the panel finds that the ministry unreasonably concluded in the reconsideration decision that the NP's comment that the appellant "does require help with mobility post abdominal surgery" (relating to transfers in/out of bed and on/off chair) referred to a future, as yet unscheduled surgery and undetermined impacts. The SW commented that the appellant must have a plan for which bathroom to use if outside home, therefore the appellant stays home, becoming isolated. At the hearing, the appellant stated they have requested a raised toilet as an assistive device so the appellant will not need the assistance of another person with toileting. In the additional comments, the SW wrote that personal ADL's take the appellant 5 to 7 times longer to complete as the appellant must stop frequently to rest and relax, allow pain to diminish. The SW also indicated that the appellant uses a number of assistive devices for personal care, including a bath bar, and shower chair and a bed rail.

Regarding the basic housekeeping DLA, the SW assessed the appellant as requiring continuous assistance from another person with laundry and with basic housekeeping, rather than periodic assistance as originally assessed by the NP, with assistance provided 80 to 100% with laundry since the appellant "cannot lift," and 80 to 100% with housekeeping and 100% with vacuuming. For the shopping DLA, the SW indicated that the appellant is not independent with going to and from stores and, instead, requires continuous assistance from another person, with assistance provided 80 to 100% of the time, and the appellant requires continuous assistance with carrying purchases home as the appellant is "unable." Regarding the meals DLA, the appellant takes significantly longer than typical with the tasks of meal planning, food preparation, and cooking, all of which take the appellant 5 to 7 times longer than typical particularly since the appellant is "unable to lift."

For the medications DLA, the SW assessed the appellant as requiring continuous assistance from another person with filling/refilling prescriptions as the appellant's family picks up the prescriptions. At the hearing, the appellant stated that this task would take "all day" if the appellant had to try to walk to the pharmacy. Regarding the transportation DLA, the SW assessed the appellant as requiring periodic assistance from another person with getting in and out of a vehicle, taking 5 to 7 times longer, and requires continuous assistance with the task of using public transit, which the appellant cannot perform "due to bowel issues." The SW added that due to ongoing bowel concerns, the appellant struggles to leave the home.

Regarding the appellant's cognitive and emotional functioning, the SW added comments in the AR that the appellant's anxiety is overwhelming and affects all aspects of the appellant's life and ability to complete ADL's. The SW noted that the appellant is extremely socially isolated due to physical and mental health concerns. The SW also assessed the appellant as requiring periodic support/supervision with developing and maintaining relationships as the appellant "struggles due to isolation, with dealing appropriately with unexpected demands as a result of "great deal of fear and anxiety 100% of the time," and with securing assistance from others. While the SW also assessed the appellant with good functioning with the appellant's immediate social network, the SW assessed the appellant with marginal functioning in the appellant's extended social networks and wrote: "extreme isolation due to physical pain/ anxiety." While the NP had not responded when asked in the AR to describe the support/supervision required which would help maintain the appellant in the community, the SW wrote: "support of family 100% of the time."

In the self-report, the appellant wrote that anxiety every day leaves the appellant unable to function outside of the house and even with the antidepressant and anxiety, pain medications "nothing helps." The appellant wrote that the appellant wants to give up daily as the pain, the restrictions, and the mental anguish are too much, the appellant's emotions are "so raw" that the appellant cannot talk to people and just starts crying. At the hearing, the appellant stated that

about 4 months ago, the appellant had a “mental breakdown” and the appellant began to get some help. The appellant stated that the appellant had been referred to a psychiatrist and had a meeting with a counsellor and the appellant’s “breakdowns” are now less frequent. In the February 12, 2020 letter, the SW wrote that chronic pain causes ongoing, continuous physical and psychological concerns, which the appellant displays, and these ongoing concerns affect the appellant’s ability to complete ADL’s and the appellant requires assistance from others and from assistive devices to attempt to complete ADL’s.

Given the revised assessment of the appellant’s ability to perform tasks of DLA and the added detail regarding the frequency and duration of the appellant’s need for periodic assistance with some tasks and further information regarding how much longer it takes the appellant to complete others, the panel finds that the ministry was no longer reasonable to conclude that the evidence is insufficient to show that the appellant’s overall ability to perform DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

In the reconsideration decision, the ministry held that, as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required. Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of being directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods, a person must also require help to perform those activities. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

The NP indicated in the AR that the appellant receives help from family and friends. The SW added that the help required for DLA is also provided by health authority professionals and commented: “ongoing support from family, friends, roommate, community PT, primary care SW.” While the NP did not indicate that any assistive devices were used by the appellant, the SW reported that the appellant routinely uses braces (“abdominal binders”), toileting aids, bathing aids (“tub rails, bath seat, bath bar”) and other (“bed rail”) to help compensate for the appellant’s impairment. The SW wrote that the appellant uses abdominal binders and has begun to use bath seat, bath bars, bed rails to assist with getting in/out of bed and bath; uses 100% of the time. For equipment required but not currently available, the SW wrote that a “cane or walking stick when in public may stabilize [the appellant] and allow [the appellant] to feel less fear.” With the additional information provided by the SW, the panel finds that the ministry is no longer reasonable to conclude that, under section 2(2)(b)(ii) of the EAPWDA, it cannot be determined that the appellant requires help to perform DLA.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation pursuant to Section 2(2) of the EAPWDA, was no longer reasonably supported by the evidence. The panel rescinds the ministry's decision. The appellant's appeal, therefore, is successful.

APPEAL NUMBER
2020-00064

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
S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)
2020-03-23

PRINT NAME
Susanne Dahlin

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2020-03-23

PRINT NAME
Adam Rollins

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2020-03-23