

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD) dated March 4, 2020, which found that the Appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) for designation as a person with disabilities (PWD). While the Ministry found that the Appellant met the age requirement and had an impairment which was likely to continue for at least two years, it was not satisfied that the evidence establishes that:

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

The Ministry also found that the Appellant is not one of the prescribed classes of persons who may be eligible for PWD designation on the alternative grounds set out in Section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) and the Appellant did not appeal the decision on this basis.

**PART D – RELEVANT LEGISLATION**

EAPWDA, Section 2

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

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

## PART E – SUMMARY OF FACTS

The evidence before the Ministry at the time of the RD included the PWD Application comprised of the applicant information and self report (SR) completed by the Appellant on October 14, 2019, a Medical Report (MR) dated October 16, 2019 and completed by the Appellant's General Practitioner (GP) who has known the Appellant for 9 – 10 years and who has seen the Appellant 2 – 10 times in the past year, and an Assessor Report (AR) dated November 12, 2019, also completed by the GP.

The evidence also included:

- A letter dated February 3, 2020 from the Appellant to "*Whom it May Concern*" (the February 3 Letter) requesting an extension of the deadline to complete the RFR because the Appellant has one meeting scheduled with one of their doctors on February 3, 2020 and another meeting with the other doctor on February 5, 2020 and the Appellant will not be able to meet the current deadline "*due to the time required (by the Appellant's) medical team to complete and submit additional information*"; and
- A Request for Reconsideration form (RFR) signed by the Appellant on February 4, 2020 and a separate 4 page letter completed by the Appellant on February 10, 2020 providing the reasons for the RFR, stating:
  - The GP did not include a diagnosis of lateral epicondylitis which affects the Appellant 7 days a week. On 3 of those days the pain "*decreases to the point where it is noticeable, but does not noticeably affect (their) life*". On the other 4 days, the Appellant has to use their non-dominant hand or postpone activities, and has difficulty with dressing, "*specifically buttons and zippers*";
  - Inconsistencies between the information provided by the Appellant in the SR and the GP in the MR and the AR are the result of the GP rarely seeing the Appellant on their worst days and that the GP tends to see the Appellant early in the day when the Appellant's symptoms are "*generally at their mildest*";
  - Although the Appellant can walk 1 – 2 blocks on a good day, on a moderate or bad day walking would be severely limited;
  - Although the Appellant can remain seated for more than 30 minutes, it is not without significant pain and discomfort;
  - Over the past 6 weeks the Appellant has developed pain and swelling in their right knee, which has been so painful that the Appellant required urgent medical care at a medical centre in an adjacent community;
  - The Appellant is in the process of obtaining assistive devices, including support bars for the toilet and bathtub, a toilet seat riser and a folding walker;
  - Since completing the original PWD application, the GP has referred the Appellant to a psychiatrist to assist them with their mental health. The psychiatrist has prescribed much stronger new medication, which the Appellant is concerned might cause a reaction with their other medications, and additional counselling;

- Despite the new medication, the Appellant still feels “*hopeless and anxious*”, and as a result is unable to get things done without the assistance of family and friends, who the Appellant has to rely on to buy groceries, prepare meals, perform housekeeping and remind the Appellant of things they need to do;
- The Appellant’s memory has deteriorated in the last 3 months to the point where they have to leave notes everywhere to remember to complete tasks, and they often forget conversations or meetings with others, and that friends and family have encouraged the Appellant to be tested for dementia. The Appellant has discussed further testing with their GP;
- The Appellant has difficulty remembering to eat, and is often unable to prepare meals on most days;
- The Appellant does not agree with the GP’s assessment as set out in the AR that the Appellant does not have problems with cognitive and emotional functioning, and that further tests will confirm that they do have significant defects in this area; and,
- The Appellant has sought supporting documentation from the GP and the psychiatrist “*to address the concerns raised by (the Ministry) regarding (the Appellant’s) PWD designation denial*”, and that those documents will be “*provided on completion*”.

### **Diagnoses**

In the MR, the GP diagnosed the Appellant with ulcerative colitis with a date of onset of 2006, fibromyalgia with a date of onset of 2015, and depression, also with a date of onset of 2015.

### **Physical Impairment**

In the MR, the GP states that the Appellant has chronic symptoms of ulcerative colitis, and that the time spent by the Appellant managing their bowels severely impacts their sleep, with frequent awakening and shortened sleep duration, and that the Appellant has lost the ability to squat/bend repeatedly. With respect to functional skills, the GP reports that the Appellant can walk more than 4 blocks unaided on a flat surface, climb more than 5 steps unaided, lift 7 to 16 kg, and has no limitation in how long they can remain seated. The GP has not made any comments in the section of the MR where the prescribed professional is asked to provide any additional information that might be considered relevant in understanding the significance of the Appellant’s medical condition and the nature of their impairment.

In the section of the AR where the assessor is asked to indicate the assistance required related to impairments that directly restrict the applicant’s management of mobility and physical abilities, the GP indicates that the Appellant is independent in walking indoors but takes significantly longer than typical for the other activities (standing, walking outdoors, climbing stairs, lifting, and carrying and holding), indicating that the Appellant has periodic impairment with pain for all activities except walking indoors. Where asked for further comment, the GP has written “*Ongoing myalgias with fibromyalgia and weariness with recurrent amnesia and sleep disturbance*”.

In the SR, the Appellant states that their ulcerative colitis limits the Appellant’s ability to work and function normally due to frequent painful cramps, stomach aches and urgent explosive diarrhea, and that their sleep is often interrupted at night with frequent trips to the bathroom. The Appellant also states that fibromyalgia causes chronic pain and fatigue and an inability to stay in one position for any length of

time. With respect to lateral epicondylitis (a diagnosis which has not been identified by the GP), the Appellant states that it limits their ability to perform repetitive tasks.

### ***Mental Impairment***

In the MR, the GP has written “*Depression becoming increasingly a factor with marked dysphoria sociophobia, lability of mood (and) limited concentration skills*”. In the section of the MR where the prescribed professional is asked if there are any significant deficits with cognitive and emotional function, the GP has ticked “yes” for the areas of memory, emotional disturbance, motivation and attention and sustained concentration, adding the comment “*Depression large factor with loss of concentration & ability of mood and isolation. (Decreased) motivation*”.

In the section of the AR where the assessor is asked to indicate the level of ability to communicate, the GP indicates that the Appellant’s abilities are good in all areas (writing, speaking, reading ability and hearing). Where asked to indicate to what degree the applicant’s mental impairment restricts or impacts functioning, the GP has indicated a major impact on bodily functions and emotion, a moderate impact on attention/concentration and memory, a minimal impact on consciousness and motivation, and no impact on impulse control, insight and judgment, executive functioning, motor activity, language, psychotic symptoms, other neuropsychological problems, and other emotional or mental problems. With respect to social functioning, the GP indicates (with comments in italics) that the Appellant needs periodic support or supervision in dealing appropriately with unexpected demands (*despondent, depression, lack of motivation*), but is independent in all other areas (making appropriate social decisions, ability to develop and maintain relationships, appropriate interaction with others and ability to secure assistance from others). The GP also indicated that the Appellant has very disruptive functioning with their immediate social network (*severely withdrawn – avoids contact and socialization*), and marginal functioning with their extended social networks (*as noted – chronically disrupted by bowels/pain – depression*). The GP does not describe the degree of support or supervision required in the space provided, and makes no other comments or explanations.

Other than tiredness and forgetfulness resulting from physical impairments, the Appellant has not described any mental impairments in the SR. In the RFR, the Appellant states that over the past three months their memory has deteriorated to the point that friends and family have encouraged the Appellant to be tested for dementia.

### ***Restrictions in the Ability to Perform DLA***

In the MR, the GP indicates that the Appellant has been prescribed several medications or treatments (Asacol, Amitriptyline, Tramadol, and Prednisone) that interfere with their ability to perform DLA, adding “*Sedation secondary to tricyclic antidepressants and narcotic analgesic and weariness and insomnia with recurrent Prednisone usage*”. Regarding the anticipated duration of the medication, the GP has written “*Ongoing need for medications. Prednisone periodically*”. In the section of the MR where the prescribed professional is asked whether the Appellant’s impairment directly restricts the Appellant’s ability to perform DLA, the GP has ticked “Yes”, and has indicated that the Appellant is periodically restricted with personal self care, meal preparation, management of medications and mobility outside the home, adding the comment “*sleep disturbance frequent and colitis persistent with severe flairs limiting ability for self care*”. In addition, the GP indicates that the Appellant is continuously restricted in basic housekeeping and daily shopping. Where asked for additional comments regarding the degree of restriction, the GP writes “*Severe myalgia and chronic colitis → markedly disabled*”. The GP further indicates that the

Appellant's social functioning activities are restricted, adding the comment "*Severely isolating self with self care challenges with colitis*".

In the AR, the GP states that the Appellant requires assistance and takes significantly longer with bathing ("*Severe colitis, cramping*"), toileting ("*Diarrhea*"), basic housekeeping and laundry ("*Severe colitis, cramping, Diarrhea, Myalgia*"), going to and from stores ("*Depression, Sociophobia*"), food preparation and cooking ("*Often severe fatigue, despondency, myalgia, fatigue*"). Where asked for additional comments, the GP writes "*Patient is severely impaired by bowel frequency/diarrhea/pain → insomnia. Diffuse, at times severe, myalgias/pain. Depression/sociophobia – markedly limiting activity and motivation despite therapy*". Where asked in the AR to provide any additional information relevant to understanding the nature and extent of the Appellant's impairment and effect on DLA, the GP writes "*As noted in (the MR)*".

In the SR the Appellant states that their symptoms have gotten much worse over the past year, adding that the symptoms adversely affect their sleep, memory, concentration, focus and physical stamina, to the extent that "*by the end of the day (the Appellant is) exhausted, physically and mentally*". The Appellant also states that they hardly ever leave the house unless absolutely necessary as being in public can be embarrassing and they have to plan outings based on how their stomach is acting and how long it has been since they last ate. The Appellant explains that they used to shower every day and take pride in their appearance, but now only shower once or twice a week. The home has fallen into disrepair, the Appellant can no longer perform even basic upkeep, and they feel overwhelmed just tidying up, vacuuming and doing laundry. The Appellant writes that they used to enjoy having friends and family to dinner, but now they have trouble even preparing their own meals.

### ***Need for Help***

In the MR the GP indicates that the Appellant does not require any prostheses or aids for their impairment. Where asked what assistance the Appellant requires with DLA, the GP writes "*Unable to maintain activities – needs assistance to manage household/pets*".

In the section of the AR that asks who provides the help required for DLA the GP has ticked "Family" and "Friends" and has written "*Needs frequent checking in and cueing to ensure functioning and safety. Worry of self neglect*". The GP does not identify the need for the use of any assistive devices and indicates that the Appellant does not have an assistance animal.

In the SR the Appellant writes that they ask friends and family to pick things up for them when shopping and to help with the housework, adding "*I really don't know what I would do without their help now*".

In the RFR the Appellant states that they are unable to get things done without the assistance of family and friends, on whom the Appellant relies to buy groceries, prepare meals, perform housekeeping and remind the Appellant of things they need to do.

### ***Additional Information Submitted after Reconsideration***

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once the panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the

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time it was made, panels must determine whether the decision under appeal was reasonable based on all admissible evidence.

In the Notice of Appeal (NOA), the Appellant does not state why they disagree with the Ministry's RD. Neither the Ministry nor the Appellant provided a written submission or any other additional written information after the RD was made.

## **PART F – REASONS FOR PANEL DECISION**

The issue under appeal is whether the Ministry's RD, which found that the Appellant is not eligible for designation as a PWD, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. Was it reasonable for the Ministry to determine that the evidence does not establish that the Appellant has a severe mental or physical impairment and that the Appellant's DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods? Was it reasonable for the Ministry to determine that as a result of any direct and significant restrictions it could not be determined that the Appellant requires the help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA?

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

### **Persons with disabilities**

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

The EAPWDR provides as follows:

**Definitions for Act**

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

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

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

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

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

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

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

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

**Part 1.1 — Persons with Disabilities**

**Alternative grounds for designation under section 2 of Act**

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

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;



- (c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the Community Living Authority Act;
- (d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the Community Living Authority Act to assist that family in caring for the person;
- (e) a person who is considered to be disabled under section 42 (2) of the Canada Pension Plan (Canada).

The EAA provides as follows:

**Panels of the tribunal to conduct appeals**

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

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

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***Eligibility under section 2.1 of the EAPWDR***

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

***Eligibility under section 2 of the EAPWDA***

**Severity of Impairment**

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

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

including that of the Appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a prescribed professional – in this case the Appellant's GP.

### **Physical Functioning**

The Ministry's position is that there is no information provided by the GP to explain the periodic nature of the Appellant's impairment or the amount of additional time they take to perform certain aspects of physical functioning (walking indoors, climbing stairs, standing, lifting and carrying and holding), and that as a result the Ministry is unable to determine that the Appellant is significantly impacted on a continuous basis. In addition, the Ministry notes that GP has indicated that the Appellant does not require the use of any prostheses or aids to manage their physical functioning. Therefore the Ministry concludes that the functional skill limitations as described by the GP do not describe a severe degree of physical impairment.

The Appellant's position is that ulcerative colitis limits their ability to work and function normally and that fibromyalgia causes chronic pain and fatigue and an inability to stay in one position for any length of time. The Appellant also notes that the GP did not include a diagnosis of lateral epicondylitis which affects their physical functioning, that since submitting the PWD application the Appellant has developed pain and swelling in their right knee, which required urgent medical care, and that inconsistencies in the assessments provided by the Appellant and the GP are the result of the GP rarely seeing the Appellant on their worst days.

### ***Panel Decision***

The Panel notes that, while the GP states in the AR that the Appellant has "*periodic impairment (in mobility and physical ability,) with pain*", the GP does not provide an indication of how often the Appellant is impaired with pain. In addition, the Panel notes that GP, despite being prompted in the MR to do so, has not provided any additional information that might help the Ministry understand the significance of the Appellant's medical condition and the nature of their impairment.

The Panel further notes that the GP did not include lateral epicondylitis in the list of diagnosed conditions. As the legislation says that the fundamental basis for an analysis of an applicant's physical and mental abilities is the evidence provided by a prescribed professional, the Panel finds that the Ministry reasonably relied on the GP to give a full account of medical diagnoses relevant to an assessment of the Appellant's physical and mental functioning, and therefore the Ministry was reasonable in not considering any of the impacts of lateral epicondylitis on the Appellant's physical functioning. For the same reason, the Panel finds that the Appellant's pain and swelling in their right knee, which developed approximately two months after the PWD application was submitted, would not reasonably be included in the Ministry's assessment of physical functioning.

Regarding additional medical information which might have been helpful in ensuring a full and fair disclosure of all matters related to the decision under appeal, the Panel notes that the Appellant had appointments scheduled with their medical practitioners in early February 2020 and indicated in the February 3 Letter that they intended to submit additional information following those appointments. The Panel further notes that there is no evidence that any subsequent documentation was submitted to the Ministry and no additional written information was included in the appeal record.

Having considered all of the available evidence, the Panel finds that the information provided by the GP was reasonably viewed by the Ministry as not establishing a severe physical impairment as required under the legislation.

### **Mental Functioning**

The Ministry's position is that the information provided by the GP "*does not describe a severe degree of impact on (the Appellant's) daily (mental) functioning*" and that as a result the Ministry is not satisfied that the information provided is evidence of a severe mental impairment.

The Appellant's position is that they suffer tiredness and forgetfulness and that over the past three months their memory has deteriorated to the point that where the Appellant often forgets to eat, they have to make notes to remember to complete tasks, they often forget conversations or meetings with others, and friends and family have encouraged the Appellant to be tested for dementia. The Appellant also indicates that they believe that further tests will confirm that they have significant defects in their cognitive and emotional functioning.

### ***Panel Decision***

The Panel notes that in its RD, the Ministry summarizes the GP's assessments of the impacts (major, moderate, minor and none) on the Appellant's cognitive and emotional daily functioning, including that there are major impacts to bodily functions and emotion and moderate impacts on attention/concentration and memory, further noting that the GP has indicated that depression is a "*large factor with loss on concentration ...*" and that there are no difficulties with communication. The Ministry concludes that the information provided is not evidence of a severe mental impairment without explaining how it comes to that conclusion.

The Panel notes that the RD makes no mention of the GP's assessments that the Appellant's depression has become "*increasingly a factor with marked dysphoria sociophobia, lability of mood (and) limited concentration skills*", that the Appellant has very disruptive functioning with their immediate social network to the point that they are severely withdrawn and isolated, that their social functioning activities are restricted, and that they avoid contact and socialization. On the other hand, the GP states that the Appellant receives considerable help from friends and family, which would suggest a functional immediate social network.

Section 24 of the EAA requires that, after holding the hearing, a panel must determine whether the decision being appealed is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision. The Panel notes that there are inconsistencies in the evidence provided by the GP regarding functioning within the Appellant's social network, and that the additional documentation from the GP and the psychiatrist referred to in the RFR, which the Appellant stated they were going to get at their medical appointments on February 3, 2020 and February 5, 2020, is not included in the appeal record. In addition, the Panel notes that the Appellant's statement in the RFR that their memory has deteriorated in the last 3 months has not been substantiated by a prescribed professional.

Even though the Ministry did not appear to consider all of the GP's evidence of mental impairments or to fully explain the connection between their findings and conclusion, the Panel, having considered all of

the information contained in the appeal record, finds that the Ministry's decision is reasonably supported by the evidence.

### **Restrictions in the Ability to Perform DLA**

The Ministry's position is that, while the GP provides evidence that the Appellant's impairment restricts their ability to perform DLA, no information is provided to explain the frequency or duration of restrictions caused by severe flare-ups of the Appellant's condition and no information is provided to identify how much longer impacted DLA take to perform. Therefore the Ministry has determined that the evidence does not establish that impairment significantly restricts DLA either continuously or periodically for extended periods.

The Appellant's position is that their symptoms have gotten much worse over the past year, negatively impacting their sleep, memory, concentration, focus and physical stamina, and that they hardly ever leave home unless absolutely necessary. The Appellant states that they perform personal hygiene much less frequently than they used to, and that they can no longer take care of meal preparation or basic housekeeping DLA.

### ***Panel Decision***

Section 2(2)(b) of the EAPWDA requires that the Ministry be satisfied that a prescribed professional has provided an opinion that an applicant's severe impairment *directly* and *significantly* restricts their DLA, continuously or periodically for extended periods. In this case, the GP is the prescribed professional. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the MR and, with additional details, in the AR. DLA do not include the ability to work. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. There is also a component related to time or duration - the direct and significant restriction must be either continuous or periodic. If periodic, it must be for extended periods. In the MR and the AR, prescribed professionals are instructed to check marked boxes and to provide additional explanations; for example, a description of the type and amount of assistance required and the frequency and duration of periodic restrictions.

The Panel finds that the Ministry was reasonable in determining that, where an applicant for a PWD designation is periodically restricted in a DLA, it must have evidence to determine the frequency and duration of such periodic restrictions in order to assess an applicant's ability to perform that activity. While the GP identifies medication that restricts the Appellant's ability to perform DLA in the MR, the Panel notes that the GP does not describe whether the restrictions are continuous or periodic. In addition, the Panel notes that, while the GP has indicated in the MR that the Appellant is periodically restricted with personal self care, meal preparation, management of medications and mobility outside the home, the GP has not identified the frequency or duration of those restrictions. The Panel further notes that the GP does not make any comments to clarify the contradictions in the section of the AR dealing with social functioning (i.e. that the Appellant is severely isolated yet at the same time receives regular help from family and friends).

Based on all of the available evidence, the Panel concludes that the Ministry reasonably determined that the GP's information does not establish direct and significant restrictions in the ability to perform DLA either continuously or periodically for extended periods.

### **Help with DLA**

The Appellant's position is that they rely family and friends for assistance with a variety of DLA, and that they also rely on family and friends to remind them of things that the Appellant needs to do.

The Ministry's position is that, because it has not been established that DLA are significantly restricted either continuously or periodically for extended periods, it cannot be determined that significant help is required from another person.

### ***Panel Decision***

Section 2(2)(b)(ii) of the EAPWDA requires that, *as a result of direct and significant restrictions* in the ability to perform DLA, a person requires help to perform those activities. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform one or more DLA.

Having found that the Ministry was reasonable in concluding that this precondition was not met, the Panel also finds that the Ministry reasonably concluded that it cannot be determined that the Appellant requires help to perform "those activities" as a result of direct and significant restrictions with DLA as required by section 2(2)(b)(ii) of the EAPWDA.

### **Conclusion**

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

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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

Simon Clews

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/05/06

PRINT NAME

Kulwant Bal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/05/06

PRINT NAME

Carla Tibbo

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/05/06