

### **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 April 20, 2020, which held that the appellant did not meet 3 of the 5 statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) for designation as a person with disabilities (PWD). The ministry found that the appellant met the requirements of having reached 18 years of age and having a medical practitioner confirm that the appellant's impairment is likely to continue for at least 2 years.

However, the ministry was not satisfied 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 those restrictions, in the opinion of a prescribed professional, 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 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**

### Information before the ministry at reconsideration

- The appellant’s PWD application comprised of:
  - A Medical Report (MR) and an Assessor Report (AR), both dated February 10, 2020, completed by a general practitioner (GP) who has seen the appellant twice in 6 months. The GP notes that the appellant has been seen in the GP’s group practice for 3 years, having seen other doctors in the group practice 12 times in the past 12 months.
  - A Self-report (SR) dated February 10, 2020, completed by the appellant.
- “Application Persons with Persistent Multiple Barriers,” completed February 2020 by both the appellant and the GP.
- December 9, 2019 consultation letter from a neurologist.
- Cervical spine MRI results dated May 30, 2019.
- The appellant’s March 25, 2020 Request for Reconsideration, which did not include additional information.

### Information provided on appeal and admissibility

A ministry Request for Reconsideration form signed and dated April 22, 2020, in which the appellant reports:

- Being unable to go back to work since having a fall.
- Needing help from the appellant’s children to lift and move things, etc.
- Being in constant pain and worrying about financial needs.
- Waiting months for specialist appointments, still nothing
- Wanting to get stronger and better and return to work.
- Degenerative discs means that they will get worse and every day they are.

The appellant’s Notice of Appeal, dated April 22, 2020, which did not include additional information.

In accordance with section 22(4) of the *Employment and Assistance Act* (EAA), the panel may consider evidence the panel considers is “reasonably required for a full and fair disclosure of all matters related to the decision under appeal.” On this basis, the panel admitted the information provided the appellant in the appeal submission and at the hearing all of which directly relates to the impacts on the appellant’s functioning due to degenerative disc disease. The ministry did not provide additional evidence on appeal and had no objection to the admission of the information provided by the appellant.

The positions of both parties are set out in Part F of this decision.

Summary of relevant evidence

Diagnoses and Health History

In the MR, the GP diagnoses Degenerative Disc Disease (date of onset February 2019). Significant neck and right upper extremity pain due to cervical radiculopathy due to degenerative disc changes. Range of motion in right arm and shoulder is limited. Due to pain and limited range of motion the appellant is not able to return to the appellant's physically demanding job, which requires lifting and pushing, and may need surgery if there is no improvement with medication and conservative management.

In the PPMB application, the GP identifies intervertebral disc disorder with myelopathy that is not episodic in nature and has existed for 1 year.

Referencing the May 30, 2019 cervical spine MRI, the neurologist notes degenerative disc changes at C5-C6 and C6-C7 levels with mild central spinal canal stenosis and neuroforaminal narrowing. On examination, the neurologist noted: preserved strength in bilateral upper extremities both proximally and distally (in particular, biceps, triceps, wrist extensors and finger extensors at full strength). Given the appellant's symptoms, the neurologist considers it reasonable to hold off returning to work as a [occupation] for the following 3-6 months until a more definitive care plan has been laid out and symptomatic improvement achieved.

Physical Impairment

In the MR and AR, the GP reports:

- Able to walk 4+ blocks unaided on a flat surface. Standing and walking indoors and outdoors are managed independently.
- Able to climb 5+ stairs unaided.
- Lifting limited to under 5 lbs. Lifting, carrying and holding require continuous assistance from another person.
- No limitation for remaining seated.
- No prostheses or aids are required. Braces on the right elbow are used to reduce pain.

In the SR, the appellant reports:

- Tingling, stiffness and numb feeling in the right hand, mainly in the index and middle fingers.
- Tightness of the forearm that feels like pulled muscles.
- Slipped discs at C5-C6 and C6-C7 cause headaches and a stiff neck.
- Headaches cause sharp pains that lead from the neck down the right arm.

In the PPMB application, the appellant identifies "physical limitations" as being a severe barrier to employment.

The neurologist notes that the appellant reports symptoms of pain, particularly in the right forearm and elbow region along with symptoms of numbness tingling in digits 2 and 3 of the right hand, which the neurologist suspects are likely multifactorial – C7 cervical radiculopathy and perhaps musculoskeletal pain symptoms in the right forearm from tendinopathy.

At the hearing, the appellant stated that every day is different, with the pain getting worse over time. The appellant has difficulty around the house and requires 9 tablets a day for pain plus a new medication started in January that is taken at bedtime. The appellant is very frustrated and wants to get better. The appellant can't go back to work because of the physical demands - can't manage "a job over 50 lbs." Because the appellant does not have a doctor, the clinic is the doctor. The appellant has been seen by other doctors at the clinic more often than the GP who completed the PWD application but was told by the clinic that it was okay for the GP to complete the PWD application.

### Mental Impairment

There is no diagnosis of a mental impairment or brain injury.

The GP reports that there are no difficulties with communication – speaking, reading, writing, and hearing abilities are good.

In the MR, a significant deficit in 1 of 11 specified areas of cognitive and emotional function is identified – emotional disturbance "Chronic pain and being off work has caused significant anxiety and depression." In the AR, no impact on daily functioning is reported for all 14 listed areas of cognitive and emotional functioning, including emotion.

In the written appeal submission, the appellant reports having had anxiety, depression and bi-polar since the age of 25 and that the stressors of doing paper work and being denied [PWD designation] is very hard. At the hearing, the appellant described stress resulting from the inability to pay bills due to the inability to return to work.

### DLA

In the MR, the GP reports:

- Meal preparation and basic housework are periodically restricted – "has limitation for meal preparation when it needs significant work of arms including lifting containers or chopping."
- Personal self-care, management of medications, mobility inside and outside the home, use of transportation, management of finances, and social functioning are not restricted.
- The appellant has not been prescribed medications or treatments that interfere with ability to perform DLA.
- "No need for assistance."

In the AR, the GP reports:

- Pain and significant decrease in range of motion of right upper extremity impacts the ability to manage DLA.
- For personal care, dressing takes significantly longer. "Intermittently has exacerbations that needs assistance for dressing." Other listed tasks are managed independently and not identified as taking significantly longer (grooming, bathing, toileting, feeding self, regulate diet, transfers in/out of bed and on/off chair).
- Both aspects of basic housekeeping (laundry and basic housekeeping) require periodic assistance from another person. Children assist when lifting and/or pushing/pulling is required.
- For shopping, carrying purchases home requires periodic assistance from another person. No information

is provided for the other listed tasks – going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases are managed independently.

- For meals, food preparation and cooking require periodic assistance from another person “where it requires lifting and/or pushing.” Meal planning and safe storage of food are managed independently.
- All listed tasks of paying rent and bills, medications, and transportation are managed independently.
- All listed aspects of social functioning are managed independently and good functioning with immediate and extended social networks is reported.

In the SR, the appellant reports that due to degenerative disc disease it takes longer to put clothes on and get ready, holding objects strains the forearm, and glasses have been dropped because of having no feeling. The appellant can't drain pots because of the weight and strain put on the arm (feels like tendons are being pulled out), isn't able to clean “to my hundred percent,” and can't lift items and carry them without being in pain. The appellant is unable to return to work.

*Need for Help*

The GP indicates that help is provided by family and that the appellant uses braces on the right elbow to reduce the pain.

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

### **Issue on Appeal**

The issue on appeal is whether the ministry's decision to deny the appellant 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. That is, was the ministry reasonable when determining that the appellant is not a person described in section 2.1 of the EAPWDR and that the requirements of section 2(2) of the EAPWDA were not met because:

- a severe physical or mental impairment was not established;
- the appellant's DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and
- as a result of those restrictions, in the opinion of a prescribed professional, the appellant does not require an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA?

### **Panel Decision**

#### **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**

##### **Physical Impairment**

##### ***Positions of the Parties***

Noting that the information provided by the GP may not accurately describe the degree to which degenerative disc disease impacts daily functioning due to the GP's lack of familiarity with the appellant, the appellant's position is that the symptoms of the degenerative disc disease are getting worse, requiring constant pain medication and limiting functioning at home and preventing the return to work.

The ministry notes that the PWD application is not intended to assess employability or vocational abilities but rather "impairment" which is defined in the application as 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. Taking into consideration all of the information provided, the ministry concludes that although the appellant's life is impacted as a result of degenerative disc disease, the degree of impairment reflected is moderate, not severe. In particular, the ministry notes that the use of a brace in and of itself does not confirm a severe degree of impairment and that most DLA are managed independently. Additionally, the ministry finds that although reported as unable to lift more than 5 lbs. and requiring continuous assistance with all lifting, carrying and holding, this degree of restriction is not reflected in the assessment of the ability to manage DLA.

### *Panel Analysis*

The appellant is diagnosed with degenerative disc disease, as confirmed by the GP in the PWD and PPMB applications and by the neurologist. Both the medical documentation and the appellant's own information confirm an impact on the appellant's physical functioning due to the degenerative disc disease. However, the information indicates that the greatest impact is on the appellant's ability to work in what both the appellant and GP describe as a physically demanding job that requires lifting and pulling significant weight.

As the ministry notes, the requirements for PWD designation do not directly relate to the ability to work. Instead, PWD eligibility centres on the degree to which a medical condition impairs the ability to manage basic physical activities. In the appellant's case, the appellant is reported to have good functioning in terms of standing, walking indoors and outdoors, climbing stairs, and remaining seated.

Limitations are identified for lifting, carrying and holding; however, the information respecting the degree of impairment is unclear. The neurologist's assessment is that the appellant's upper extremity strength is preserved but range of motion or the ability to lift, carry or hold items is not assessed. The GP reports that lifting is limited to weights less than 5lbs., that continuous assistance from another person is required and that the appellant uses an elbow brace. However, the GP also reports that DLA tasks involving lifting, carrying and/or holding either require no assistance or periodic assistance. The appellant reports being unable to manage weights of 50 lbs. and also that help with lighter household objects is required due to pain, tingling and numbness.

Given the inconclusive information respecting the appellant's ability to lift, carry and hold and considering the good functioning assessed for all other aspects of physical mobility and ability, the panel considers the ministry reasonable in concluding that a severe physical impairment has not been established.

### *Mental Impairment*

#### *Positions of the Parties*

The appellant does not expressly argue that a severe mental impairment has been established.

The ministry's position is that a severe mental impairment is not established on the evidence. Specifically, although the GP notes a significant deficit regarding emotional disturbance, the GP does not diagnose a medical condition which explicitly gives rise to a mental impairment and reports no impacts to daily cognitive and emotional functioning and independence in all activities related to making decisions regarding personal activities, care and finances, as well as social functioning.

*Panel Analysis*

Where asked to specify diagnoses related to an applicant's impairment, the GP does not diagnose a mental disorder or condition. While the appellant notes a history of anxiety, depression and bipolar disorder and the GP reports a significant deficit for "emotional disturbance" caused by chronic pain and being off work, no impact on daily functioning is assessed for any of the 14 listed areas of cognitive and emotional functioning. Additionally, no difficulties are assessed for communication and social functioning or any DLA tasks.

Based on the information provided, the panel considers the ministry's conclusion that a severe mental impairment has not been established to be reasonable.

*Restrictions in the ability to perform DLA*

*Positions of the Parties*

The appellant's position is that daily functioning at home is restricted by the worsening symptoms of degenerative disc disease.

Noting that it relies on the medical opinion and expertise of the appellant's GP and other prescribed professionals, the ministry concludes that the GP's assessment of the ability to perform DLA does not establish significant restrictions that are either continuous or periodic for extended periods. The GP reports that the appellant is not restricted in the majority of DLA and where restrictions are identified, the GP does not provide information, such as frequency and duration of the restriction or how much longer an activity takes, in order to confirm that the restriction is severe and for extended periods. The ministry also notes that the GP reports both that assistance with DLA is required from the appellant's children and that "no assistance is required."

*Panel Analysis*

Section 2(2)(b)(i) of the EAPWDA requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether or not it is satisfied, is dependent upon the evidence from prescribed professionals. 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.

DLA are defined in section 2(1) of the EAPWDR and are listed in both the MR and the AR sections of the PWD application with the opportunity for the prescribed professional to check marked boxes and provide additional narrative.

In the appellant's case, both the GP and the neurologist are prescribed professionals. However, only the GP assesses the appellant's ability to perform the DLA defined in the legislation. The ability to work is not one of the DLA defined in the legislation. In the MR, the GP reports that except for meal preparation and basic housekeeping, which are periodically restricted, the appellant is not restricted in the ability to manage DLA. In the AR, where each DLA is broken down into listed tasks, the GP confirms those periodic restrictions and the need for



periodic assistance with meals and housekeeping from another person when lifting, pushing or pulling is involved. In the AR, the GP also reports that one task of personal self-care, dressing, takes significantly longer and requires assistance due to intermittent exacerbations and that one task of shopping, carrying purchases home, requires periodic assistance from another person. However, as previously discussed, the appellant's lifting abilities are unclear and there is insufficient description of the periodic restrictions in order to establish the restrictions as being significant or for extended periods.

Therefore, given that the appellant is assessed as independently managing most DLA tasks independently and noting the lack of information respecting those tasks for which there are periodic restrictions, the panel concludes that the ministry was reasonable in determining that the evidence does not establish that in the opinion of a prescribed professional the appellant's impairment *significantly* restricts the ability to perform DLA either *continuously or periodically for extended periods*.

#### Help to perform DLA

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. 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 DLA.

The establishment of direct and significant restrictions with DLA is a precondition of the need for help criterion. As the panel found that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel also finds that the ministry reasonably concluded that it cannot be determined that the appellant requires help to perform DLA as required by section 2(2)(b)(ii) of the EAPWDA.

#### Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was reasonably supported by the evidence, and therefore confirms the decision. The appellant is not successful on appeal.

**Relevant Legislation**

**EAPWDA**

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 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).

**EAPWDR**

**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.

(3) The definition of "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

### **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](#);

APPEAL NUMBER  
2020-00122

(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).

APPEAL NUMBER  
2020-00122

**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

Jane Nielsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/05/12

PRINT NAME

Rick Bizarro

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/05/12

PRINT NAME

Linda Pierre

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/05/12