

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated July 31, 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* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that the impairment is likely to continue for at least two years. However, the ministry was not satisfied 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 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 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 June 16, 2020, a medical report (MR) and an assessor report (AR) both dated June 25, 2020 completed by a general practitioner (GP) who has known the appellant for 3 years and has met with the appellant 2 to 10 times in the past 12 months.

The evidence also included the following documents:

- 1) Anesthesiology Consult Report dated July 19, 2017;
- 2) Diagnostic Imaging Report dated July 28, 2019;
- 3) Letter from an ophthalmic surgeon dated March 16, 2020; and,
- 4) Request for Reconsideration dated July 20, 2020.

Diagnoses

In the MR, the GP diagnosed the appellant with thyroid disease with bilateral exophthalmos with an onset in July 2018, asthma/ COPD [Chronic Obstructive Pulmonary Disorder] and chronic venous insufficiency with onset in 2015, chronic left knee pain and back pain with an onset in 1999, and anxiety and depression with an onset in May 2017. Asked to describe the appellant's mental or physical impairments that impact the ability to manage daily living activities (DLA), the GP wrote in the AR: "mild anxiety and depression; major visual problems with double vision; left knee and low back pain."

Physical Impairment

In the MR and the AR, the GP reported:

- In terms of the appellant's health history, the GP wrote: "mild COPD and asthma- well controlled." "...seeing double vision and has great difficulty focusing, including reading." "CT scan confirms bilateral exophthalmos (illegible) ...awaiting eye surgery." "The eye problem is moderate to severe and is the worst of [the appellant's] problems but may be treatable with surgery in future." "...left knee is moderately painful and [the appellant] wears a knee brace some days." "Moderate chronic low back pain."
- The appellant requires an aid for the impairment. The GP wrote that the appellant "wears a left knee brace and uses a walker on occasion."
- Regarding the degree and course of impairment, the GP wrote that the appellant "is awaiting eye surgery but it will take a long time to get and then [the appellant] will need strabismus surgery and need a recovery period."
- In terms of functional skills, the appellant has no limitations with functional skills as the appellant can walk 4 or more blocks unaided on a flat surface, climb 5 or more steps unaided, and has no limitation with lifting or with remaining seated.
- The appellant is periodically restricted with mobility inside and outside the home and the GP noted "sometimes left knee is more severe than others."
- In the AR, the appellant is assessed as being independent with all areas of mobility and physical ability, specifically walking indoors and walking outdoors, with climbing stairs, and standing, and with lifting and carrying and holding. The GP did not provide any description or identify any assistive devices used by the appellant.
- In the section of the AR relating to assistance provided, the GP indicated that assistance is provided through the use of assistive devices, specifically a walker and a left knee

brace.

- In the additional information to the AR, the GP wrote that the appellant “is awaiting eye surgery and after it is done [the appellant] may be much improved overall. [The appellant’s] low back and knee pain are unlikely to improve.”

In the Diagnostic Imaging Report dated July 28, 2019, the physician indicated an impression of “mild bilateral exophthalmos which can be seen with thyroid orbitopathy. Otherwise normal CT orbits.”

In the letter dated March 16, 2020, the ophthalmic surgeon wrote an assessment of:

- “Strabismus secondary to thyroid eye disease. Still active. Consider orbital surgery to bring eyes in (3 wall decompression) when inflammatory stage is settled, or if optic neuropathy presents. Follow up 3 to 6 months, if still stable, then consider decompression then. Smoking cessation discussed- patient understands needs to quit before proceeding and has been trying to quit.”
- “Amaurosis with fall- has had before. Currently stable and no ophthalmological cause- to see [appellant’s] GP for carotid and cardiovascular work up.”

In the self-report, the appellant wrote:

- The appellant has Hyperthyroidism. There is surgery but the appellant has been told it will be a year to three until they will have a date.
- Looking into a convex mirror, which is necessary for knowing what is around, is hard because the appellant’s eyes separate into two different directions.
- The appellant can see between 4 to 50 feet and not closer.
- If the appellant’s head is still and the appellant looks side-to-side, the appellant’s vision goes blurry and the appellant wants to throw up.
- The appellant has had concentration headaches for months at a time.
- On top of the eye issues, the appellant was in a Motor Vehicle Accident (MVA) and still struggles with back problems and the left knee has had all the cartilage removed.
- COPD and asthma are conditions for which the appellant is medicated.
- The appellant slows down since there is dizziness with moving too fast. The appellant has had several falls trying to get on a bicycle and at home.
- If the appellant catches what is happening, the appellant sits down and focuses on controlling both eyes. Not every day is as bad as the other. Most times the appellant can control the appellant’s eyes from drifting apart, which requires focus. When the appellant cannot stay at home, the appellant lets family know to check in.
- After a couple of hours of forcing the eyes together, the appellant will generally have to lie down because of headache and dizziness.

In the Request for Reconsideration, the appellant wrote:

- The appellant’s walking ability depends on how much pain the appellant is in that day. On a bad day, the appellant could not walk a block without severe pain or have to use the walker.
- Most of the time, the appellant cannot stand for more than 5 minutes without terrible back pain which forces the appellant to sit down.
- The appellant can lift 50 lbs. but not repetitively and not on a bad day.

- The appellant's left knee has had two surgeries and is a managed issue due to the brace. Approximately 70% of the cartilage has been removed and the appellant can no longer run and has trouble with stairs.
- The appellant's circulation has been an issue as well. If the appellant gets a scratch on the lower legs, it is very hard to heal and can lead to larger wounds or gangrene if not treated. The appellant is dealing with two wounds now on the right foot and is having major swelling problems.
- The appellant's eyes are currently the biggest problem as it is all day, all the time. It is hard for the appellant to focus, to use both eyes at the same time. The longer the appellant forces them together, causes bad headaches. The appellant gets double vision more than 25 times per day, which makes the appellant dizzy and fall sometimes.
- Since the appellant was diagnosed 2 years ago, the appellant has had approximately 15 falls.

Mental Impairment

In the MR and the AR, the GP reported:

- In terms of the appellant's health history, the GP wrote that "depression and anxiety persist but is mild."
- The appellant has no difficulties with communication.
- The appellant has significant deficits with cognitive and emotional functioning in the areas of language, emotional disturbance, motivation, impulse control, and attention or sustained concentration. The GP provided comments that the appellant "cannot read easily due to current eye problem. Mild anxiety persists which affects [the appellant's] attention."
- The appellant is not restricted in social functioning.
- In the AR, the GP indicated that the appellant has a good ability to communicate in speaking and hearing, satisfactory ability with writing, and poor ability to read.
- With respect to the section of the AR relating to daily impacts to the appellant's cognitive and emotional functioning, the GP assessed two major impacts in the areas of motivation and "other neuropsychological problems (e.g. visual/spatial problems; psychomotor problems; learning disabilities; etc.- explain on next page)." There are moderate impacts assessed in the areas of bodily functions, emotion, insight and judgment, attention/concentration, and other emotional or mental problems (e.g. hostility- explain on next page). There are minimal or no impacts assessed to the remaining listed areas of functioning and there was no attached page for additional comments by the GP.
- For social functioning, the appellant is independent with making appropriate social decisions, interacting appropriately with others, and dealing appropriately with unexpected demands. The appellant requires periodic supervision in the areas of developing and maintaining relationships and securing assistance from others. The GP did not add an explanation or description of the periodic supervision required.
- The appellant has good functioning in the immediate social network and marginal functioning in the extended social network. The GP did not provide further comments to explain.
- Asked to describe the support/supervision required to maintain the appellant in the community, the GP left this section blank.

In the self-report, the appellant wrote:

- The appellant has a very hard time reading.
- Depression and anxiety are conditions for which the appellant is medicated.
- For periods of time the appellant can read and work on the computer but the appellant gets headaches from concentrating to read and everything gets blurry.

In the Request for Reconsideration, the appellant wrote:

- As for the appellant's mental health, the appellant has shakes and anxiety attacks almost every day.
- The doctor prescribed [medication] and it has reduced the severity, but [the appellant] has bouts of compulsive crying especially in social settings which is embarrassing.
- The drug has also reduced [the appellant's] depression but not gone.

Daily Living Activities (DLA)

In the MR and the AR, the GP reported:

- The appellant has not been prescribed medication that interferes with the ability to perform DLA.
- The appellant is not restricted with several DLA, specifically: personal self care, management of medications, daily shopping, use of transportation, and management of finances.
- The appellant is periodically restricted with the meal preparation DLA, the basic housework DLA, and the move about indoors and outdoors DLA. Regarding the "periodic" restriction, the GP wrote that "sometimes left knee is more severe than others."
- Asked to describe the degree of restriction, the GP left this section blank.
- Asked to describe the assistance that the appellant requires with DLA, the GP wrote: "Brother and sister-in-law help with groceries and meal preparation often."
- In the AR, the GP indicated that the appellant is independent with walking indoors and walking outdoors, with no need for the assistance of another person or the use of an assistive device.
- The appellant is independent in performing all of the tasks of several listed DLA, specifically the personal care DLA (dressing, grooming, bathing, feeding self, regulating diet, transfers in/out of bed and on/off chair), the basic housekeeping DLA (including laundry), the meals DLA (meal planning, food preparation, cooking, and safe storage of food), the pay rent and bills DLA (including banking and budgeting), the medications DLA (filling/refilling prescriptions, taking as directed, safe handling and storage) and the transportation DLA (getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation).
- For the shopping DLA, the appellant is independent with performing the tasks of making appropriate choices, paying for purchases, and carrying purchases home, while needing periodic assistance from another person with the tasks of going to and from stores and reading prices and labels. The GP wrote that the appellant "is always in discomfort (low back and left knee). Family helps [the appellant]. No safety issues."

In the self-report, the appellant wrote:

- The appellant has Hyperthyroid and this condition has severely made the appellant incapable of driving and this has impacted the appellant's ability to make a living. The

appellant has not worked in almost two years.

- The appellant has a good support group (brother and sister-in-law) who help the appellant cook or fill out paperwork.
- Just functioning is difficult day-to-day, but the appellant is able to do enough to get basics done.

In the Request for Reconsideration, the appellant wrote:

- As for house chores, the appellant has great difficulty so the appellant bought a dishwasher because the appellant cannot stand over the sink.
- When the appellant has “a better back day” the appellant attempts chores “till it hurts too much.”
- Most meals are made for the appellant or the appellant buys easy-to-cook food or pre-made meals.
- Most days the appellant is “just able” to function but the appellant has family and tools to help on the bad days probably “twice a week if [the appellant] were to average it out.”
- The appellant’s support group has been excellent as they check in on the appellant constantly every 2 to 3 hours to make sure the appellant is okay.

Need for Help

The GP reported in the AR that the appellant receives help from family. The GP indicated that the appellant used a walker and a left knee brace as assistive devices to help compensate for impairment.

Additional information

In the Notice of Appeal dated August 6, 2020, the appellant expressed disagreement with the ministry’s reconsideration decision and wrote that the appellant has been getting help for two years. It is not possible for the appellant to make it physically or financially another three years. The appellant would like help from an advisor or another doctor.

Prior to the hearing, the appellant submitted a letter dated August 18, 2020 in which the ophthalmologist who specializes in pediatric ophthalmology and strabismus, cataract, and comprehensive ophthalmology and ocular electrophysiology wrote:

- The appellant experiences double vision all the time.
- The appellant has quit smoking pretty much. The appellant is not passing out if the appellant coughs and/ or sneezes. Since the appellant has cut down on smoking, the appellant’s eyes are not as swollen and [the ophthalmic surgeon] thinks they do not need to do the decompression surgery.
- There is an assessment of exotropia and Grave’s disease.
- The appellant has a significant strabismus and would benefit from strabismus surgery.
- The appellant would like to proceed with surgery and is aware that the result is sometimes not 100% predictable and that many patients require additional surgeries over their lifetime. The appellant has been added to the waiting list for surgery.
- The appellant has disabling double vision that will make most binocular visual tasks difficult if not impossible, which is assumed would have an impact on the appellant’s work.

At the hearing, the appellant stated:

- The appellant went to see the ophthalmologist who wrote the August 18, 2020 letter because the appellant felt the GP was “insufficient.” The appellant has gone in to see the GP with black eyes when the appellant has fallen and the GP says the appellant “is tough” and do tests, like X-Rays. The appellant would like to find another doctor.
- Every day is like walking in a minor earthquake that never ends. Seeing 2, 4, or 6 of everything makes it hard to walk. The appellant needs to use a cane or a walker. Physically, the appellant can walk if the appellant has not fallen and hurt the appellant’s back, but the appellant cannot see unless the appellant sits down and stabilizes and uses one eye.
- If the appellant tries to chop vegetables, the appellant sees 20 fingers and the appellant risks chopping his fingers.
- There are three people who live upstairs and they cook for four, including the appellant. They make sure the appellant gets meals.
- The appellant has fallen in the kitchen, which is a dangerous place to fall, and the appellant tries to stay out of the kitchen.
- When walking, the appellant puts hands on things to stabilize and to function. If the appellant lets go, there is a good chance the appellant will fall, which makes things difficult.
- The appellant fell through a doorway and landed on the appellant’s back. The appellant has had trouble even going to the washroom as the appellant has to fall onto the toilet and it is “awful.”
- The appellant enlarges the font to be able to read on the computer. The appellant gets “massive” headaches from trying to keep the appellant’s eyes together.
- The appellant has always been an independent person and his current dependence is hard. The appellant’s brother lives upstairs in the residence and supports the appellant. The appellant can call him anytime and he comes to help.
- The appellant keeps falling and the appellant’s back gets “all messed up.” The appellant uses a walker as it helps keep the appellant stabilized.
- The specialist talked about different ways to read or walk around without running into things. There was a recommendation to tape one of the lenses of the appellant’s glasses to let the light in but only see out of one eye.
- The appellant has previous injuries to the knee and back that can be aggravated by a fall.
- The appellant rode a stationary bicycle until the appellant fell off, so the appellant has trouble getting exercise.
- The appellant has requested 3 times for the GP to make a referral to a thyroid specialist but the GP has not made the referral. The GP is doing the bare minimum. The ophthalmologist is referring the appellant to a thyroid specialist but the appellant does not yet have an appointment date.
- The appellant’s vision has gotten worse. The appellant does not chop anything and cannot stand at the sink to do dishes.
- The appellant struggles to do any housecleaning because of back pain and dizziness. The appellant “ends up on the floor half the time” because of a fall.
- The appellant has a tendency to bump into door frames and to kick tables because they are not properly seen.
- Fortunately, the grocery store is 1 block from the appellant’s residence and the appellant

has arranged for staff there to help the appellant with shopping.

- Because the falls are so random, the appellant has people who call every 2 hours during the day to make sure the appellant is okay.
- The appellant's brother works at home and he checks on the appellant every few hours.
- The ophthalmologist is booking surgery for the appellant but there is no date yet. There are risks to the surgery.
- The appellant would like to get another doctor and will be seeing a thyroid specialist.

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

Admissibility of Additional Information

The ministry did not object to the admissibility of the letter from the ophthalmologist dated August 18, 2020. The panel considered the appellant's oral testimony and the letter as relating to the ministry's denial of PWD designation 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 has a severe mental or physical impairment and that 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**Severe Physical Impairment**

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical impairment. The ministry acknowledged that the appellant was diagnosed by the GP with thyroid disease with bilateral exophthalmos, asthma/ COPD, chronic venous insufficiency and chronic left knee and back pain. The ministry considered the GP's comments in the health history in the MR that there is "mild COPD and asthma- well controlled," the "left knee is moderately painful and [the appellant] wears a knee brace some days," there is "moderate chronic low back pain," and the appellant is "seeing double vision and has great difficulty focusing, including reading" and "the eye problem is moderate to severe and is the worst of [the appellant's] problems but may be treatable with surgery in future." The GP also wrote in the AR that the appellant has "major" visual problems with double vision.

In the letter dated March 16, 2020, the ophthalmic surgeon wrote an assessment of "strabismus secondary to thyroid eye disease," which is "still active" and to "consider orbital surgery to bring eyes in (3 wall decompression)." The ophthalmologist wrote in the August 18, 2020 letter that there is an assessment of exotropia and Grave's disease and the appellant has a significant strabismus and would benefit from strabismus surgery. The ophthalmologist also wrote that the

appellant has disabling double vision that “will make most binocular visual tasks difficult if not impossible.”

At the hearing, the appellant stated that every day is like walking in a minor earthquake that never ends. In the Request for Reconsideration, the appellant wrote that the appellant’s eyes are currently the biggest problem as “it is all day, all the time.” The appellant wrote that it is hard to focus, to use both eyes at the same time, and the longer the appellant forces them together, the more it causes bad headaches. In the self report, the appellant wrote that the appellant has had concentration headaches for months at a time. The appellant wrote in the Request for Reconsideration that there is double vision more than 25 times per day, which makes the appellant dizzy and causes the appellant to fall sometimes. The appellant wrote that in the last 2 years, the appellant has had approximately 15 falls. At the hearing, the appellant stated that the back gets “all messed up” when the appellant falls and that previous injuries to the appellant’s knee and back can be aggravated by a fall.

A diagnosis of a serious medical condition or conditions does not in itself determine PWD eligibility or establish a severe impairment. Section 2(2) of the EAPWDA requires that the ministry must be satisfied that the impairment is severe before the ministry may designate an applicant as a PWD. In the reconsideration decision, the ministry described an “impairment” to mean restrictions to a person’s ability to function independently or effectively, which is a summary of the definition provided by the ministry in both the MR and the AR forms as information for the prescribed professional, where impairment is interpreted 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.” The panel finds that in assessing the severity of the impairment, the ministry is reasonable to apply this interpretation to consider the nature of the impairment and the extent of its impact on daily functioning.

The ministry considered the impacts of the appellant’s diagnosed medical conditions on daily functioning, reviewing the assessments provided in the MR and the AR. The ministry wrote that the GP reported in the MR that the appellant can walk 4 or more blocks unaided on a flat surface, climb 5 or more steps unaided, and there are no limitations with lifting or in how long the appellant can remain seated. At the hearing, the appellant stated that seeing 2, 4, or 6 of everything makes it hard to walk and the appellant needs to use a cane or a walker. In the MR, the GP indicated that the appellant requires an aid for the impairment and the appellant “wears a left knee brace and uses a walker on occasion.” The appellant stated at the hearing that the appellant puts hands on things to stabilize when walking and to function, and if the appellant lets go, there is a good chance the appellant will fall. Physically, the appellant can walk if the appellant has not fallen and injured the appellant’s back, but the appellant cannot see unless the appellant sits down and stabilizes and uses one eye. The appellant stated that because the falls are so random, the appellant has people who call every 2 hours during the day to make sure the appellant is okay.

In the reconsideration decision, the ministry considered that the GP assessed the appellant in the AR as being independent with walking indoors, walking outdoors, climbing stairs, standing, lifting and carrying and holding, all without the use of an assistive device or the assistance of another person. In the Request for Reconsideration, the appellant wrote that the appellant's walking ability depends on how much pain the appellant is in that day and, on a bad day, the appellant could not walk a block without severe pain or have to use the walker. The appellant wrote that most days the appellant is "just able" to function but the appellant has family and tools to help on the bad days probably twice a week if the appellant were to average it out. The appellant wrote that "most of the time," the appellant cannot stand for more than 5 minutes without terrible back pain which forces the appellant to sit down. The appellant wrote that the appellant can lift 50 lbs. but not repetitively and not on a bad day. The appellant also wrote that approximately 70% of the cartilage has been removed from the appellant's left knee in surgeries and the appellant has trouble with stairs. The GP's assessment of the appellant's mobility and physical ability in the AR does not include the use of the assistive devices, specifically a knee brace and a walker, that are identified by the GP in other parts of the AR and in the MR as being required by the appellant.

In the MR, the GP indicated that the appellant is periodically restricted with mobility inside and outside the home and wrote that "sometimes left knee is more severe than others," and the GP does not refer to the restrictions to mobility due to the appellant's double vision. While the ministry wrote in the reconsideration decision that the GP described the appellant's eye problem as moderate to severe but likely treatable with surgery, the GP also wrote regarding duration of the impairment that the appellant "is awaiting eye surgery but it will take a long time to get and then [the appellant] will need strabismus surgery and need a recovery period." In the additional information to the AR, the GP wrote that the appellant is awaiting eye surgery and after it is done the appellant "may be much improved overall." However, in the August 18, 2020 letter, the ophthalmologist wrote that the result of surgery is sometimes not 100% predictable and that many patients require additional surgeries over their lifetime.

Although the ministry wrote in the reconsideration decision that the appellant indicated an ability to function independently most days, except for approximately two days a week, the ministry did not consider the appellant's need for ongoing supervision due to double vision and dizziness and a resulting vulnerability to falls, which the appellant stated requires the use of a walker or other physical supports and for another person to perform safety checks with the appellant every 2 to 3 hours throughout the day.

Given the inconsistency in the GP's assessments of physical functioning without the use of assistive devices, as discussed, the panel placed significant weight on the appellant's evidence that all of his mobility and functional skills are impacted on an ongoing basis by double vision and dizziness, that the resulting falls aggravate the appellant's back and knee pain and cause "bad days" in the appellant's functioning. The panel also placed significant weight on the additional information from the ophthalmologist describing the appellant's double vision as

“disabling” and the panel finds that, in consideration of the additional evidence, the ministry was unreasonable to determine that there is insufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

Severe Mental Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided was sufficient evidence of a severe mental impairment. The ministry acknowledged that the GP diagnosed the appellant with anxiety and depression with an onset in May 2017, and the ministry also considered that the GP commented about the appellant’s health history that depression and anxiety “persist” but are “mild.”

In the self-report, the appellant wrote that depression and anxiety are conditions for which the appellant is medicated. In the Request for Reconsideration, the appellant wrote that the appellant has “shakes” and “anxiety attacks” almost every day. The appellant wrote that the GP prescribed medication and it has reduced the severity, but the appellant has bouts of compulsive crying, especially in social settings, which is embarrassing. The appellant wrote that the drug has reduced the appellant’s depression, but it is not gone. At the hearing, the appellant did not elaborate on the mental health issues or their impact to the appellant’s functioning.

The ministry considered that the GP reported in the MR that the appellant has significant deficits with cognitive and emotional functioning in the areas of language, emotional disturbance, motivation, impulse control, and attention or sustained concentration. The GP provided comments that “mild anxiety persists which affects [the appellant’s] attention.” The ministry also considered that, in assessing daily impacts to the appellant’s cognitive and emotional functioning, the GP assessed two major impacts in the areas of motivation and other neuropsychological problems, with an instruction in the AR to provide an explanation, and moderate impacts assessed in the areas of bodily functions, emotion, insight and judgment, attention/ concentration, and other emotional or mental problems, again with an instruction in the AR to provide an explanation. There were no additional comments provided by the GP.

The ministry considered that the GP reported in the MR that the appellant has no difficulties with communication and, in the AR, that the appellant has a good ability to communicate in speaking and hearing, satisfactory ability with writing, and poor ability to read. The GP noted that the appellant “cannot read easily due to current eye problem.” The ministry considered that the GP reported in the MR that the appellant is not restricted in social functioning and, in the AR, that the appellant is independent with social functioning with the exception of periodic supervision required in the areas of developing and maintaining relationships and securing assistance from others. As the GP did not add an explanation or description of the periodic supervision required, the panel finds that the ministry reasonably determined it is difficult to determine the extent of the periodic assistance needed. The ministry also considered that the GP assessed

good functioning in the appellant's immediate social network and marginal functioning in the extended social network, and the GP did not provide further comments to explain or to describe the support/supervision required to maintain the appellant in the community.

Given the GP's description of the appellant's anxiety and depression as "mild," the mostly moderate to mild impacts assessed to the appellant's cognitive and emotional functioning, as well as the lack of information to define the extent of periodic supervision required for aspects of the appellant's social functioning, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

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 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 continuously or periodically for extended periods. In this case, the GP and the specialist physicians are prescribed professionals.

In the reconsideration decision, the ministry was not satisfied that the appellant has a severe physical or mental impairment that, in the opinion of the prescribed professional, directly and significantly restricts DLA either continuously or periodically for extended periods of time. The ministry considered that the GP indicated in the MR that the appellant had not been prescribed medication that interferes with the ability to perform DLA.

The ministry reviewed the information in the MR and considered that the GP, as the prescribed professional, reported that the appellant is not restricted in performing several DLA, specifically: the personal self care DLA, the management of medications DLA, the daily shopping DLA, the use of transportation DLA, and the management of finances DLA. In the AR, the GP assessed the appellant as being independent with some of the tasks of the shopping DLA but needing periodic assistance from another person with the tasks of going to and from stores and reading prices and labels. The GP wrote that the appellant "is always in discomfort (low back and left knee)," that the family helps the appellant, and there are "no safety issues." As the GP did not describe the extent of the appellant's need for periodic assistance with these tasks, the panel finds that the ministry reasonably concluded that it is difficult to establish that the periodic assistance is required for extended periods.

In terms of personal care, the appellant stated at the hearing that the appellant has had trouble even going to the washroom as the appellant has to "fall onto the toilet" and it is "awful." With respect to the shopping DLA, the appellant stated that the grocery store is one block from the

appellant's residence and the appellant has arranged for staff there to help the appellant with shopping. The appellant described safety as being a major concern because of the appellant's vulnerability to falls and stated that because the falls are so random, the appellant has people who call every 2 hours during the day to make sure the appellant is okay.

The ministry considered that the GP reported the appellant is periodically restricted with the meal preparation DLA, the basic housework DLA, and the move about indoors and outdoors DLA. The GP wrote with respect to "periodic" that "sometimes left knee is more severe than others" and the GP did not provide further comments regarding the degree of restriction to these DLA. At the hearing, the appellant stated that if the appellant tries to chop vegetables, the appellant sees 20 fingers and the appellant risks chopping his fingers and there are family and friends that live upstairs and make sure the appellant gets meals. The appellant explained that the appellant has fallen in the kitchen, which is a dangerous place to fall, and the appellant tries to stay out of the kitchen. At the hearing, the appellant stated that the appellant struggles to do any housecleaning because of back pain and dizziness and the appellant "ends up on the floor half the time" because of a fall. The appellant stated that the appellant keeps falling and the back gets "all messed up" so the appellant uses a walker as it helps to keep the appellant stabilized. At the hearing, the appellant stated that every day "is like walking in a minor earthquake that never ends," that "seeing 2, 4, or 6 of everything makes it hard to walk," and the appellant needs to use a cane or a walker. The appellant stated that, physically, the appellant can walk if the appellant has not fallen and hurt the appellant's back, but the appellant cannot see unless the appellant sits down and stabilizes and uses one eye.

In the MR, the GP wrote that the appellant's brother and sister-in-law help with groceries and meal preparation "often" while, in the AR, the GP reported that the appellant is independent in performing all of the tasks of the personal care DLA, the basic housekeeping DLA, the meals DLA, the pay rent and bills DLA, the medications DLA, and the transportation DLA.

In the self-report, the appellant wrote that the Hyperthyroid condition has made the appellant incapable of driving, this has impacted the appellant's ability to make a living, and the appellant has not worked in almost two years. In the August 18, 2020 letter, the ophthalmologist wrote that the appellant has disabling double vision that will make most binocular visual tasks difficult if not impossible, which the ophthalmologist assumed would have an impact on the appellant's work. The panel finds that the ministry reasonably determined that employability is not taken into consideration for determining eligibility for PWD as it is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR. The ophthalmologist, as a prescribed professional, did not provide any further detail regarding the impact of the appellant's double vision on the appellant's ability to perform tasks of DLA.

In the Request for Reconsideration, the appellant wrote "most days" the appellant is "just able" to function but the appellant has family and tools to help on the bad days probably "twice a week" on average. The appellant wrote that the appellant's support group has been excellent

as they check in on the appellant constantly every 2 to 3 hours to make sure the appellant is okay. Although the appellant described the need for assistance in many tasks of DLA as well as a requirement for ongoing supervision as a result of safety concerns, this information was not confirmed in the opinion of a prescribed professional, as required by Section 2(2) of the EAPWDA.

Given the GP's assessment of independence with performing most DLA, with insufficient information regarding the extent of the need for periodic assistance for some tasks of the shopping DLA, and the lack of detail in information from the ophthalmologist regarding impacts to DLA, the panel finds that the ministry reasonably concluded 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 GP reported in the AR that the appellant receives help from family and the GP indicated that the appellant used a walker and a left knee brace as assistive devices to help compensate for impairment. As the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel finds that the ministry also reasonably concluded that, under section 2(2)(b)(ii) of the EAPWDA, it cannot be determined that the appellant requires help to perform DLA.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation pursuant to Section 2(2) of the EAPWDA, was reasonably supported by the evidence. The panel confirms the ministry's decision. The appellant's appeal, therefore, is not successful.

APPEAL NUMBER
2020-00195

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)
2020-08-25

PRINT NAME
Susanne Dahlin

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2020-08-25

PRINT NAME
Kim Read

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2020-08-25