

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

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

The ministry also found that the appellant is not in one of the prescribed classes of persons who may be eligible for PWD designation on the alternative grounds set out in section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation* ("EAPWDR"). As there was no information or argument provided for PWD designation on alternative grounds, the panel considers that matter not to be at issue in this appeal.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA) – section 2
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – sections 2 and 2.1.

PART E – SUMMARY OF FACTS

Evidence before the ministry at reconsideration

1. The appellant's PWD Designation Application received by the ministry on 26 February 2020. The Application contained:
 - A Self Report (SR) – see below.
 - A Medical Report (MR) dated 29 January 2020, completed by a general practitioner (GP) who has known the appellant 5 years and seen the appellant 2–10 times the past year.
 - An Assessor Report (AR) dated 29 January 2020, completed by the same GP.
2. The appellant's Request for Reconsideration, dated 13 July 2020.

In the MR, the GP provides the following diagnoses related to the appellant's impairment: oral cancer (March 2011) – chemo/radiation (onset 2011); alcoholism, likely related to depression (onset? → present); peripheral neuropathy secondary to chemotherapy (onset 2011); suspected chronic bronchitis from smoking (onset? → present); chronic fatigue (onset 2011).

The panel will first summarize the evidence from the MR and the AR as it relates to the PWD criteria at issue in this appeal.

Severity/health history

Physical impairment

MR:

Under Health History, the GP writes:

“[The appellant] has chronic pain and paresthesia in her feet, making her ADLs difficult, as well as a job where she has to stand. There is no relief when resting so it gets her mood low. She would like to keep working, but finds the physical discomfort limiting. She has let herself deteriorate both physically and mentally since I've known her (2015). She is thin, appears malnourished, and often smells of alcohol – which cannot be confirmed – but I suspect may be a coping mechanism for her chronic pain, fatigue, and depression. She is very severely impaired by her neuropathy at this point in her life.”

Under Additional Comments, the GP writes:

“[The appellant] is likely to require hospitalization in the upcoming years due to frailty and neuropathic pain. I understand that she works a few short hours/week to keep social but this is hard on her body and likely does more harm than good. She has a daughter who can help with some tasks/groceries but is essentially on her own and struggles to make all ends meet.”

Regarding functional skills, the GP indicates that the appellant can walk less than 1 block unaided on a flat surface, can climb 2 to 5 steps unaided, is limited to lifting 5 to 15 lbs. and has no limitations remaining seated.

The GP indicates that the appellant has not been prescribed medication and/or treatments that interfere with the ability to perform DLA.

AR:

Respecting mobility and physical ability, the GP provides the following assessments (the GP's comments in parenthesis): independent for walking indoors, walking outdoors, climbing stairs and standing ("These are done independently but in severe pain & only for short distances."); requires periodic assistance from another person for lifting and carrying and holding ("Her wasting muscle mass & occasional vertigo make these tricky.")

Mental impairment

MR:

The GP indicates that the appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance, motivation, motor activity and memory.

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

Under Additional Comments, the GP writes, "Severe depression & anxiety affecting functioning & work mainly from motivation & social anxiety perspective."

AR:

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

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

- Major impact: none.
- Moderate impact: emotion, attention/concentration, memory, and motivation.
- Minimal impact: none.
- No impact: bodily functions, consciousness, impulse control, insight and judgement, executive, motor activity, language, psychotic symptoms, other neuropsychological problems, and other emotional or mental problems.

Daily living activities

AR:

The GP provides the following assessments of the assistance the appellant requires in performing DLA:

- Personal care – independent for all tasks.
- Basic housekeeping – independent for all tasks.
- Shopping – independent for going to and from stores, reading prices and labels, making appropriate choices and paying for purchases; requiring periodic assistance from another person for carrying purchases home.
- Meals – independent for all tasks.
- Pay rent and bills – independent for all tasks

- Medications – independent for all tasks.
- Transportation – independent for all tasks.

The GP comments:

“[The appellant] does her own housekeeping and shopping because she has no other choices. She could strongly benefit from help in these areas to ensure they are done well (e.g. Cleanliness of home, enough nourishing foods). It is painful for her to complete these tasks, but also her mental health, nutrition, and sadness hold her back.”

Social functioning

The GP assesses the support/supervision required for social functioning as follows

- Making appropriate social decisions – independent.
- Developing and maintaining relationships –independent.
- Interacting appropriately with others – independent.
- Dealing with unexpected demands – independent.
- Securing assistance from others – independent.

The GP assesses the appellant's relationship with both immediate and extended social networks as “marginal functioning.”

Help provided/required

MR:

The GP indicates that the appellant does not require any prostheses or aids to compensate for impairment.

AR:

When asked about assistance provided by other people, the GP leaves the space blank.

Regarding if help is required but there is none available, the GP writes: “Help would be reasonable for chores around the home and shopping (anything to decrease time on her feet and to decrease related stressors).”

Regarding the use of assistive devices, the GP indicates that the appellant would benefit from a walker, commenting, “Walker not needed now but likely in the next 12-24 months to support painful mobility.”

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

The GP noted the following information as relevant to understanding the nature and extent of the appellant's impairment and its effects on daily living activities:

“On paper, [the appellant's condition may not come across as ‘severe’ but to see her in person over the past 5 years, it is obvious that she is failing and becoming increasingly more frail. She would benefit from any financial or physical support there is available to her, as this neuropathy, in particular, has obviously changed her life for the worst.”

Self Report

In the SR the appellant writes:

“My vertigo and neuropathy (CPIN) due to cancer treatment are affecting more and more. I broke my hip 1.5 years ago and doesn’t help. I work 8-12 hours a week which also take a toll on this. I want to work these hours because it gets me out of the apartment. I am unable to negotiate stairs or curbs without assistance. Even cracks and lines on the pavement set my vertigo off. I can only lift 7-10 lbs due to cancer treatment [and] due to muscle loss. Some hearing loss from radiation has affected me. My teeth are damaged due to radiation [and] lack of saliva glands to protect my teeth. It is very difficult to eat and swallow. I use a cane however I still cannot do stairs or curbs. In hindsight if I knew how cancer treatment would have affected me, I would have made a different choice. My quality of life, lack of energy, and my lack of income that I was so used to. I miss physical activity and need my smile back.”

Request for Reconsideration

Under Reasons, the appellant writes:

“On March 1, 2020 I fell in my apartment. My vertigo hit me, and I injured my hips, bruised 4 ribs and upon getting up I tore my LCL. My neuropathy is all the time, but my vertigo will strike at any time. I use a cane at all times for security and balance. I don’t think my doctor has noticed that I have had a cane for 2 years. I am unable to walk without it. If I have to be somewhere, I check to see what the entrance is like. Stairs without a railing I cannot do. I panic and get extreme anxiety. I cannot take public transit. I must have major dental work. With this radiation they cannot protect your teeth. My treatment for this was every day for 2.5 months. I don’t have a cell phone only a landline so if I fall it can be very difficult to call for help. Mentally, my mother died 10 years ago. I know that seems a long time except she was my best friend. I’m a private person and keep all of this to myself. I find it difficult to talk to anyone about this. [The GP] is not with me 24/7. She has never requested any information or records from my oncologist. She’s not with me always except for my prescriptions.”

The appellant attached the following information with her Request for Reconsideration:

- A note from the GP dated 25 March 2020, stating that the appellant was not well, had a fall at home and was suffering from lower back pain from the incident. The GP also stated that the appellant was “high risk” in regard to COVID-19 due to her chronic medical conditions. The GP advised that the appellant stop working.
- A note from GP dated 07 April 2020 stating that the GP was unsure when the appellant would be well enough to return to work.

Notice of Appeal

The Notice of Appeal is dated 17 June 2020. The appellant gives as Reasons:

“I do not agree with this as my doctor has not stated my hearing or eyesight problems. She has never contacted my oncologist from [a cancer clinic]. I have to use a cane even in my own apartment. I don’t communicate well in writing. Pls contact me.”

The hearing

At the hearing, in explaining why she felt the ministry's decision was unreasonable, the appellant covered much the same ground as in her SR, her Request for Reconsideration and her Notice of Appeal (see above). She emphasized that she always uses a cane, even in her apartment, and has to be constantly aware of being prone to vertigo, facts not addressed by the GP in her Application. She explained that the vertigo was caused by her 2 ½ months of daily radiation therapy in 2011 that has caused an excess of inner-ear crystals. The vertigo can happen if she turns suddenly, or bends to pick something up, or tries to climb stairs (or even a curb) without a handrail. She is in constant pain from the neuropathy in her feet, also caused by the radiation therapy, with her feet going from being numb one day to feeling like she is walking on stones the next day. Her difficulty climbing stairs means she cannot climb up on a bus to take public transit.

The appellant stated that she has not consumed alcohol for 2 years. The alcohol that her GP thinks she detects is likely from a mouthwash the appellant uses because of her dry mouth, again the result of the radiation treatment, with her saliva glands damaged and foul tasting mucous replacing the saliva.

In answer to a question, the appellant stated that she has been the GP's patient for about 5 years, seeing her 2 – 3 times a year for prescription renewals. To her knowledge, the GP has never contacted the oncologist/radiologist at the cancer clinic to obtain a better understanding of the side-effects of the radiation treatment. The appellant stated that for her PWD Application, she completed Part A and left the remaining Parts to be completed by the GP. The GP did not interview her in completing the MR and AR. The appellant phoned the GP's office to enquire about picking up the form and mailing it in. She was told it had already been sent in, so she did not have the opportunity to review it before it was submitted to the ministry.

The ministry stood by its position at reconsideration.

Admissibility of additional information

The panel finds that the information provided by the appellant in her testimony at the hearing is reasonably required for a full and fair disclosure of the matter under appeal, as it contributes to the panel's understanding of the medical conditions underlying the appellant's impairments, the severity of which is at issue in this appeal. The panel therefore admits this information as evidence pursuant to section 22(4) of *the Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry decision that determined that the appellant did not meet three of the five statutory requirements of Section 2 of the EAPWDA for designation as a person with disabilities (PWD) is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. Specifically, the ministry determined that the information provided did not establish that

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

The ministry determined that the appellant satisfied the age and 2 year duration criteria.

The following section of the EAPWDA applies to this appeal:

2 (1) In this section:

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

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

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

- (a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and
- (b) in the opinion of a prescribed professional
 - (i) directly and significantly restricts the person's ability to perform daily living activities either
 - (A) continuously, or
 - (B) periodically for extended periods, and
 - (ii) as a result of those restrictions, the person requires help to perform those activities.

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

- (a) a person who has a severe mental impairment includes a person with a mental disorder, and
- (b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires
 - (i) an assistive device,
 - (ii) the significant help or supervision of another person, or
 - (iii) the services of an assistance animal.

The following sections of the EAPWDR applies to this appeal:

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

- (a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:
 - (i) prepare own meals;
 - (ii) manage personal finances;
 - (iii) shop for personal needs;

- (iv) use public or personal transportation facilities;
 - (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
 - (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self care;
 - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.
- (2) For the purposes of the Act, "**prescribed professional**" means a person who is
- (a) authorized under an enactment to practise the profession of
 - (i) medical practitioner,
 - (ii) registered psychologist,
 - (iii) registered nurse or registered psychiatric nurse,
 - (iv) occupational therapist,
 - (v) physical therapist,
 - (vi) social worker,
 - (vii) chiropractor, or
 - (viii) nurse practitioner, or
 - (b) acting in the course of the person's employment as a school psychologist by
 - (i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or
 - (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*,
- if qualifications in psychology are a condition of such employment.

Alternative grounds for designation under section 2 of Act

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

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

Analysis

Preliminary Considerations

The designation of a person as a person with disabilities arises from the application of legislation – section 2 of the EAPWDA reproduced above. It is clear from this legislation that PWD designation is at the discretion of the minister. However, it is also clear that this discretion is limited, by requiring the minister to be “satisfied” that the applicant meets the criteria set out in section 2.

For the minister to be “satisfied” that the person’s impairment is severe and will continue for at least 2 years, the legislation requires the minister to rely primarily on the evidence provided by the medical practitioner and prescribed professional (in this case the GP) completing the MR and AR. Given these legislative requirements, the panel considers it reasonable for the ministry to expect that the material submitted by the medical practitioner / prescribed professional completing the application provides the minister with sufficient information on the nature and extent of the impacts of the person's medical conditions on daily functioning. As the legislation requires the minister to make determinations regarding the duration and degree of impairment, the degree of restrictions in the ability to perform DLA and the resulting degree of help required, it is therefore important that the MR and the AR include explanations, descriptions or examples in the spaces provided so that the minister has the information needed to make these determinations. Significant weight should also be placed on the evidence of the applicant, unless there is a legitimate reason not to do so. Such information provided by the applicant, while optional in the Application form, may be helpful in fleshing out the general picture provided by the medical practitioner/prescribed professional. The reconsideration process provides the opportunity for the prescribed professionals and applicant to clarify or add to the information provided in the original Application, and the panel hearing an appeal must consider any information provided on appeal, as long as the panel finds it admissible.

Severity of impairment

Physical impairment

The appellant’s position

The position of the appellant is that, considering that she always uses a cane, and how her mobility is limited to walking only short distance in pain and climbing stairs only with handrails, and being constantly prone to vertigo, the ministry was unreasonable in finding that she does not have a severe physical impairment.

The ministry’s position

In the reconsideration decision, the ministry found that, based on the information provided, it cannot determine that the appellant has a severe physical impairment. In reaching this conclusion, the ministry reviewed the information provided by the GP in the MR and the AR. Specifically, the ministry noted that the GP indicated that the appellant does not require any aids or prosthesis for her impairment, noting that a walker was not needed now but likely will be in the next 12-24 months to support painful mobility. At this point, the ministry stated that the appellant reported being unable to walk without a cane but explained that use of a cane to walk does not necessarily establish a severe impairment of physical functioning.

The ministry noted that in assessing the appellant’s basic functional skills in the MR, the GP indicated that the appellant is able to walk less than 1 block unaided on a flat surface, able to climb 2-5 steps unaided, able to lift 5-15 lbs. unaided (with the ministry noting “unaided” means without the assistance of another person, assistive device or assistance animal), and there is no limitation how long she is able to remain seated.

In the AR, the GP assessed the appellant's mobility and physical ability, indicating that she is independently able to manage walking indoors, walking outdoors, climbing stairs and standing. The GP noted that the appellant requires periodic assistance from another person for lifting and carrying. The minister acknowledged the need for help with lifting items more than 7-10 lbs. but stated that this does not in itself establish a severe impairment of physical functioning.

Regarding mobility and physical ability, the ministry also noted that the GP commented, "These are done independently but in severe pain and only for short distances. Her wasting muscle mass and occasional vertigo make these tricky"

The ministry also noted that in the MR the GP provided additional information she considered relevant to an understanding of the significance of the appellant's medical condition. She stated, "[The appellant] is likely to require hospitalization in the upcoming years due to frailty and neuropathic pain. I understand that she works a few short hours/week to keep social but this is hard on her body and likely does more harm than good. She has a daughter who can help with some tasks/groceries but is essentially on her own and struggles to make all ends meet."

Noting that the GP wrote that the appellant is severely impaired by her neuropathy, the ministry stated that there is limited evidence to indicate how this diagnosis results in significant restriction. While it is noted that the appellant experiences pain during mobility and her medical condition is likely to worsen in the future, neither the appellant nor her GP has indicated that she takes significantly longer or requires rest for extended periods of time after mobilizing. This makes it difficult to determine the overall level of functioning in these areas.

The ministry found the information provided in the PWD application demonstrates that the appellant experiences limitations to physical functioning due to neuropathy, chronic fatigue and frailty. However, the ministry determined that the assessments provided by the medical practitioner and the information provided in the appellant's self-reports speak to a moderate rather than severe physical impairment at this time. The ministry concluded its analysis by stating that the assessments provided by the medical practitioner do not establish that the appellant has a severe physical impairment.

Panel finding

In the MR and AR forms, the ministry defines "impairment" 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 this definition of impairment to be reasonable, given the emphasis in the legislation on restrictions and help required. Thus, as the ministry noted in its decision, a diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment – i.e. information on the nature and extent of the resulting restrictions is required to fully assess the severity of impairment.

The legislation is clear that the determination of severity of impairment is at the discretion of the minister, taking into account all the evidence. While it is understandable that the ministry would tend to rely on the information provided by the independent and professional medical

practitioner/prescribed profession completing the forms (in this case the GP), the information provided by the applicant/appellant must also be given appropriate weight. This raises questions as to whether this may not have been not the case here.

For example, in the MR, when asked “Has the applicant been prescribed any medication and/or treatment that interferes with his/her ability to perform daily living activities?”, the GP checks the “No” box. This is contrary to the appellant’s evidence that chemotherapy and 2 ½ months of daily radiation treatment in 2011 have ongoing side-effects, including her vertigo and neuropathy impairing her mobility (the DLA of moving about indoors and outdoors). This can also be inferred from the GP’s list of diagnoses: oral cancer (March 2011) – chemo/radiation” and “peripheral neuropathy secondary to chemotherapy.” Yet the ministry took the “No” answer as evidence in support of its determination that a severe impairment had not been established

Similarly, in the AR the GP did not indicate that the appellant regularly uses a cane. While the ministry noted that the appellant reported being unable to walk without a cane, and noted that use of a cane to walk does not necessarily establish a severe impairment of physical functioning, the ministry did not refer to the appellant’s more detailed statement in the Request for Reconsideration that, “I use a cane at all times for security and balance. I don’t think my doctor has noticed that I have had a cane for 2 years. I am unable to walk without it.”

In the MR, the GP assesses the appellant as being able to climb 2-5 steps unaided and in the AR assesses her as independent in climbing stairs. There is limited reference in the MR or AR to the appellant being constantly prone to vertigo (with an associated risk of falling). In the SR the appellant writes, “My vertigo and neuropathy (CPIN) due to cancer treatment are affecting [me] more and more” and “I am unable to negotiate stairs or curbs without assistance. Even cracks and lines on the pavement set my vertigo off.” (The panel recognizes that stair handrails are not assistive devices as defined in the legislation, but difficulty managing sidewalk curbs does indicate a significant level of difficulty in mobility outdoors.) In the Request for Reconsideration, the appellant writes, “On March 1, 2020 I fell in my apartment. My vertigo hit me, and I injured my hips, bruised 4 ribs and upon getting up I tore my LCL. My neuropathy is all the time, but my vertigo will strike at any time.”

The panel considers the information provided by the appellant as pointing to a serious “loss or abnormality of physiological function” with a major impact on the appellant’s mobility as a result of her cancer treatment. At the hearing the appellant emphasized the negative effects of her vertigo and neuropathy on her daily functioning.

In this case, the panel sees the ministry facing a dilemma: while being required under the legislation to rely primarily on the evidence provided by the medical practitioner, what to do when there is plausible information from the applicant/appellant that some of the former’s evidence may be seen to be incomplete, and thus unreliable? In the panel’s view, this situation likely arose due to an inadequate understanding on the part of the GP about the appellant’s condition.

Under these circumstances the panel considers it unreasonable to expect the ministry to base its decision on the possibility that one set of information better reflects the true situation than another set of information before it. The legislation is clear that the ministry must rely primarily

on the opinion of the medical practitioner who has described the impairment and confirmed that it will continue for at least 2 years. Accordingly, despite the sometimes-conflicting information provided by the appellant, the panel finds that the ministry was reasonable in determining that a severe physical impairment has not been established to its satisfaction.

Mental impairment

The appellant's position

The position of the appellant is that she has a severe mental impairment, suffering from depression, with the GP indicating deficits in cognitive and emotional function, and consequent moderate impacts to daily functioning, in 4 areas, including emotional disturbance. While the depression may have been a contributing factor to alcoholism in the past, the appellant reported she has been sober for the past 2 years.

The ministry's position

In the reconsideration decision, the ministry found that, based on the information provided, it cannot determine that the appellant has a severe mental impairment. In making this determination, the ministry reviewed the relevant sections of the MR and AR. In particular, the ministry noted:

- In the MR the GP indicated that the appellant experiences significant deficits with cognitive and emotional functioning in the following areas: memory, emotional disturbance, motivation, and motor activity.
- In the MR the GP indicated that these deficits impact cognitive and emotional functioning as follows: no major impacts; four moderate impacts in the areas of emotion, attention/concentration, memory, and motivation; no minimal impacts; and there are no impacts in the remaining areas.
- The GP noted that the appellant does not have any difficulties with communication. She noted the level of ability with speaking and reading is good and writing and hearing is satisfactory.
- Under Social Functioning in the AR, the GP indicated that the appellant is independent with all aspects of social functioning and has marginal functioning with both immediate and extended social networks. The GP does not describe any support/supervision required in order to maintain in the community nor identify any safety issues related to a mental impairment.

The ministry stated that the appellant's moderate impacts to cognitive and emotional functioning are notable. However, as she does not require assistance with activities that would typically be difficult for someone with a severe impairment of their mental functioning (e.g. social functioning, managing finances and medication, personal care and making appropriate decisions), the ministry is unable to establish that the appellant's cognitive and emotional functioning results in a severe impairment of mental functioning.

The ministry found the information provided by the GP's assessment of cognitive, emotional, and social functioning demonstrates that the appellant experiences moderate impacts. The ministry determined that the information provided does not establish that she has a severe

mental impairment.

Panel finding

The panel notes that the GP has not diagnosed a cognitive or emotional mental health condition, except for alcoholism, from which the appellant states she is in recovery for the past 2 years. Though the GP has identified 4 areas of significant deficits to cognitive and emotional functioning, and moderate impacts assessed, no major impacts to daily functioning in these 4 areas have been identified. As noted by the ministry, considering that the GP has not identified the need for any assistance with respect to activities that would be difficult for a person with a severe mental impairment, the panel finds that the ministry was reasonable in determining that the information provided did not establish a severe mental impairment.

Direct and significant restrictions in the ability to perform DLA

The appellant's position

The appellant's position is that the evidence clearly shows that she is significantly restricted by her neuropathy and vertigo in her ability to move about indoors, shop, do housework, and use public transport.

The ministry's position

In the reconsideration decision, the ministry found that there is not enough evidence to confirm that the appellant's impairment significantly restricts her ability to perform DLA continuously or periodically for extended periods. In making this determination, the ministry noted the following:

- In the AR, the GP assessed the appellant as able to manage all aspects of her DLA independently with the exception of requiring periodic assistance with carrying purchases home when shopping; the GP does not report how often she requires periodic assistance or if the assistance is for extended periods.

And the following comments by the GP:

- “[The appellant] does her own housekeeping and shopping because she has no other choices. She could strongly benefit from help in these areas to ensure they are done well (e.g. cleanliness of home, enough nourishing foods). It is painful for her to complete these tasks, but also her mental health, nutrition, and sadness hold her back.”
- Help would be reasonable for chores around the home and shopping (anything to decrease time on her feet and to decrease related stressors).” And
- “On paper, [the appellant's] condition may not come across as ‘severe’ but to see her in person over the past 5 years, it is obvious that she is failing and becoming increasingly more frail. She would benefit from any financial or physical support there is available to her, as this neuropathy, in particular, has obviously changed her life for the worst.”

The ministry acknowledged that the appellant has certain limitations resulting from pain and other stressors and requires periodic assistance with carrying heavy groceries. However, this is

not necessarily a significant restriction to her ability to shop. Further, the GP has indicated that, while painful, she is independent in her daily living activities. The information provided by the GP does not establish that a severe impairment significantly restricts DLA continuously or periodically for extended periods.

Panel finding

The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be the result of a severe impairment, a criterion not established in this appeal. The legislation – section 2(2)(b)(i) of the EAPWDA – requires the minister to assess direct and significant restrictions to DLA in consideration of the opinion of a prescribed professional, in this case the GP. This does not mean that other evidence should not be factored in as required to provide explanation of the professional evidence, but the legislative language is clear that a prescribed professional's evidence is fundamental to the ministry's determination whether it is "satisfied." And for the minister to be "satisfied," it is reasonable for the ministry to expect that a prescribed professional provides sufficient information as to the extent to which the ability to perform DLA is restricted, as assessed in terms of the nature and duration of help required or the time it takes to perform a task, in order for the ministry to determine whether the restrictions are "significant." Any information submitted by the applicant or others could be useful in adding context and detail to the picture provided by the prescribed professional.

As noted by the ministry, in the AR the GP assessed the appellant as independent for all DLA applicable to a person with a severe mental or physical impairment (including walking indoors, walking outdoors, climbing stairs and standing – the DLA of moving about indoors and outdoors) except for the shopping DLA, where the GP assessed the appellant as requiring periodic assistance from another person for carrying purchases home. However, without any information regarding the frequency of such assistance or whether it is needed for extended periods, it would be difficult for the ministry to find this a "significant" restriction to the overall shopping DLA. Regarding the two DLA applicable to a person with a severe mental impairment set out in section 2(1)(b) – (i) making decisions about personal activities, care or finances and (ii) relating to, communicating or interacting with others effectively – the GP assessed the appellant as independent in all listed areas of social functioning. Considering the overall level of independence reflected by these assessments, the panel finds that the ministry was reasonable in determining that the information provided does not establish that, in the opinion of a prescribed professional, the appellant's ability to perform DLA is significantly restricted either continuously or for extended periods.

Help required

Section 2(2)(b)(ii) of the EAPWDA requires that, in the opinion of a prescribed professional, 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.

While the appellant reported that she requires the use of a cane in moving about indoors and outdoors, this has not been confirmed by the prescribed professional. Further, neither the GP nor the appellant reported any detailed information on the nature, type, frequency or duration of assistance required from another person, or the services of an assistance animal. Because the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel finds that the ministry reasonably concluded that under section 2(2)(b)(ii) of the EAPWDA it cannot be determined that the appellant requires help to perform DLA.

Conclusion

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

APPEAL NUMBER
2020-00192

PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister
for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Richard Roberts

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020 August 31

PRINT NAME

Melissa McLean

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 August 31

PRINT NAME

Joseph Rodgers

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 August 31