

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 August 20, 2020, which held that the appellant did not meet 1 of the 5 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 following requirements were met:

- the appellant has reached 18 years of age;
- the appellant has a severe 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.

However, the ministry was not satisfied that a medical or nurse practitioner has confirmed that the appellant has an impairment that is likely to continue for at least 2 years.

Additionally, the ministry determined that it has not been demonstrated that the appellant is one of the prescribed classes of persons who may be eligible for PWD designation on alternative grounds set out in section 2.1 of the EAPWDR.

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

A ministry representative was not in attendance at the hearing. Having confirmation that the ministry was notified of the hearing, the hearing proceeded in accordance with Section 86(b) of the Employment and Assistance Regulation. With the consent of the appellant, a ministry observer was in attendance.

Information before the ministry at reconsideration

- The appellant's PWD application comprised of:
 - A Medical Report (MR) and Assessor Report (AR), completed on May 29, 2020 by a general practitioner (GP) who has been the appellant's doctor for 6 months and has seen the appellant 2 to 10 times in the past 12 months;
 - The appellant's self-report (SR) section of the PWD application, dated April 29, 2020.
- A letter dated June 11, 2020 letter from the Ministry of Public Safety and Solicitor General to the appellant advising that for medical reasons it is currently unsafe for the appellant to drive and that ICBC has been directed to immediately cancel the appellant's driver's licence.
- The appellant's August 4, 2020 Request for Reconsideration submission, which comprised:
 - A one-page handwritten explanation by the appellant as to why the requirements for PWD eligibility are met; and,
 - A 2-page history of medication taken for diabetes, anxiety, depression, and seizures.

Information and documentation provided on appeal and admissibility

- The appellant's Notice of Appeal (NOA), dated August 21, 2020.
- An October 5, 2020 letter from a specialist in Internal Medicine, Cardiology and Diabetology (the specialist).
- At the hearing, the appellant stated that he hoped the letter from the specialist would satisfy the requirements respecting duration of impairment and confirmed that he is still not allowed to drive for medical/safety reasons.

The panel admitted the information provided on appeal by the appellant, all of which directly relates to the appellant's eligibility for PWD designation, under section 22(4) of the *Employment and Assistance Act* as being information required for a full and fair disclosure of the matters related to the appeal.

Summary of Relevant Evidence

Diagnoses and Health History

Where asked to specify diagnoses related to the applicant's impairment, the GP responds:

- Diabetes Type 1 – insulin dependent (onset 2014)
- Depression (onset 2019)
- Seizure Disorder NYD (onset 2019)

Degree and Course of Impairment

In the MR, the GP did not check either the "Yes" or "No" box in response to "Is the impairment likely to continue for two years or more from today?" The GP writes: "Unknown. I anticipate improvement once his depression is under control and cause of seizure investigated." [The panel notes that the ministry read the GP's statement as "since his depression is under control and cause of seizure investigated", but finds that it states "once" rather than "since."]

In his reconsideration submission, the appellant requests that the ministry please contact the GP for more information, providing the GP's telephone number. The appellant writes that impairment is likely to continue for two or more years because there may be underlying issues as to why the appellant is having sudden onset seizures with diabetes. The appellant writes that the damage will progress and is permanent, adding that brain cell damage can never be reversed. In his NOA, the appellant writes "it is getting progressively worse day by day."

The specialist's letter states: [The appellant] "has type 1 diabetes mellitus. He is unable to produce his own insulin. This is a chronic and lifelong condition which needs ongoing management. The complications from diabetes (eye, foot and kidney problems) occur over time. The severity and rapidity of these complications are dependent upon how well the condition is treated over time. Poorly treated diabetes mellitus can result in blindness, foot amputations, and kidney failure. People with diabetes also have higher risk of heart attacks and strokes."

Physical Impairment

The GP reports:

- Has good control of diabetes with insulin, however sometimes gets hypoglycemic events which affect work.
- Hypoglycemia is presumed to be the cause of occasional seizures, but further investigation is pending.
- Can walk 4+ blocks unaided.
- Can climb 5+ steps unaided.
- Able to lift 15 to 35 lbs.
- No limitation for remaining seated.
- Walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding are managed

independently.

- No assistive devices/aids are required.
- DLA are impacted by depression causing psychomotor agitation, anhedonia and poor mood.
- Depression, DM-I and seizures NYD affecting everyday activities.
- “He doesn’t have any major concerns with his ADLs [Activities of Daily Living]. His IADL’s [Instrumental Activities of Daily Living] are affected due to his psychomotor depression.

In the SR, the appellant provides background information about Type I diabetes. The appellant states that elevated blood sugar levels often can be controlled with medication and diet, but persistent or uncontrolled high blood sugar levels may give rise to neuropathy causing numbness, burning and tingling in the extremities and other complications including cardiovascular disease, kidney problems, skin infections, visual changes, and amputations. The appellant takes insulin 4-6 times daily and 1-2 times during the night, has been diabetic for almost 23 years and reports having “many of these issues.” He has insulin shock and seizures 3-6 times a month and is lucky to have a month without an episode. His health, attention span, thoughts, behaviour, range of motion, reaction time, vision, breathing, and absorption of food are impacted. He has to be monitored every hour and cannot hold onto a job [The appellant’s former profession involved driving]. He cannot walk for long periods without resting his feet or gathering his breath, and his vision gets worse every few months. He has difficulty holding anything because his hands shake. He has a full bladder every 45 minutes to an hour and has lost the strength to do a normal job or regular household duties such as gathering laundry or carrying dishes or food.

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 requirements of 2(2) of the EAPWDA were not met because a medical or nurse practitioner has not confirmed that the appellant has a severe physical or mental impairment that is likely to continue for at least 2 years?

Additionally, was the ministry reasonable when determining that the appellant did not meet the alternative eligibility criteria of section 2.1 of the EAPWDR?

Panel Decision

Alternative Grounds for PWD Designation – section 2.1 of the EAPWDR

The panel finds no evidence or argument has been provided to establish that the appellant falls within one of the classes of persons described in paragraphs (a) through (e) of section 2.1 of the EAPWDR. Therefore, the panel concludes that the ministry reasonably determined that the appellant is not eligible for PWD designation under this section.

Eligibility for PWD Designation – section 2 of the EAPWDA

Duration of Severe Impairment

Positions of the Parties

The appellant's position is that he hopes the specialist's information respecting Type I diabetes will satisfy the legislative requirement respecting duration.

The ministry's position, as stated in the reconsideration decision, is that the 2-year duration of impairment must be confirmed by a medical or nurse practitioner and that in this case, the GP, a medical practitioner, states that expected duration is "unknown" and that he "anticipates improvement since his depression is under control and cause of seizure investigated." The ministry concludes that this information does not confirm that the appellant's impairment is likely to continue for at least 2 years and notes that the GP does not address duration of impairment elsewhere in the PWD application. The ministry acknowledges the appellant's own statement that his impairment will continue for two years or more but that the legislation requires the opinion of a medical or nurse practitioner.

Panel Analysis

Section 2(2) of the EAPWDA requires that the minister is satisfied that an applicant is either in a prescribed class of persons (which the appellant is not) or has a **severe mental impairment** or a **severe physical impairment** that in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years.

On the first page of the MR, instructions for completion state, in part: "The purpose of the Medical Report is to provide information to the ministry about the applicant's physical or mental impairments associated with diagnosed medical conditions relevant to this application for a Persons with Disabilities (PWD) designation." The definition of "impairment" in the MR is "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." While not defined in the legislation, and therefore not legally binding, the ministry's definition is in keeping with other definitions of "impairment." For example, the Merriam-Webster online dictionary defines "impairment" as "diminishment or loss of function or ability" and the Cambridge online dictionary states that medical "impairment" means "deterioration in the functioning of a body part, organ, or system that can be temporary or permanent and can result from injury or disease."

The panel considers the ministry's interpretation of "impairment" to be reasonable and its assessment of impairment on the basis of evidence of the impact on physical or mental functioning arising from a medical condition(s) to be appropriate.

Respecting mental impairment, the ministry found that a severe impairment was established but that the duration of the severe mental impairment was not confirmed as likely being for at least 2 years. Based on the GP's statement that the duration of impairment was unknown and that the GP anticipated improvement of the appellant's depression, the panel considers the ministry's conclusion based on the evidence available at reconsideration to be reasonable. On appeal, the information provided by the appellant, the specialist's letter, does not address mental impairment and therefore the panel finds that the ministry's decision regarding duration of the mental impairment was reasonably supported by the evidence.

Respecting physical impairment, the ministry found that a severe impairment was not established. The panel considers this conclusion to be reasonable based on the information available at reconsideration: the GP assessed the appellant's physical functional abilities at the high end of all listed areas and assessed independence with all listed areas of mobility and physical ability. The appellant reports having many of the physical problems experienced by Type I diabetics and that "it is getting worse day by day." However, the GP reports that the appellant's diabetes is under good control with the appellant experiencing hypoglycemic episodes "sometimes" and occasional seizures. The GP also states that diabetes affects the appellant mentally. Additionally, the GP's comments attribute restrictions in the ability to manage DLA primarily to depression, not the appellant's diabetes or seizures. The GP does report that Type I diabetes affects the appellant's work due to the appellant not being allowed to drive and at the hearing the appellant confirmed that he is still not allowed to drive for medical/safety reasons. However, PWD eligibility is not assessed on the basis of a person's ability to work: employability is not one of the defined DLA for PWD eligibility but is instead the focus of the ministry's assessment of the Persons with Persistent Multiple Barriers to Employment (PPMB) qualification.

On appeal, the specialist's letter offers no further insight respecting impairment of physical functioning due to Type 1 diabetes. Rather, the specialist confirms that the appellant has Type 1 diabetes which is a lifelong condition, facts already established on the evidence at reconsideration. The specialist goes on to describe

potential complications from diabetes generally without providing any information as to how the appellant is impacted.

Therefore, having considered all of the information, the panel finds that the ministry was reasonable when concluding that although the appellant suffers from a serious lifelong physical medical condition, Type I diabetes, a severe impairment of physical functioning resulting from that medical condition has not been established and therefore cannot be established having a duration of 2 years in the opinion of a medical practitioner.

Other requirements of section 2 EAPWDA

As the other requirements of section 2 of the EAPWDA were not in dispute, the panel is making no findings with respect to the reasonableness of the ministry's decision on these requirements.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant had not met all requirements set out under section 2(2) of the EAPWDA for designation as a PWD, was reasonably supported by the evidence. The ministry's decision is confirmed and 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,

[emphasis added] 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](#);

(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
2020-00202

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)

2020/10/13

PRINT NAME

Jan Broocke

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/10/13

PRINT NAME

Rick Bizarro

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/10/13