APPEAL NUMBER
2020-00199

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated August 11, 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

Interpretation Act, Sections 1 and 29

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 May 18, 2020, a medical report (MR) and an assessor report (AR) both dated May 29, 2020 and completed by a general practitioner (GP) who has known the appellant for 3 months and has met with the appellant 2 to 10 times in that period.

The evidence also included the appellant's Request for Reconsideration dated July 27, 2020.

Diagnoses

In the MR, the GP diagnosed the appellant with epilepsy, in the category of a disease of the nervous system and sense organs- neurological, with no date of onset provided. 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: "anxiety surrounding the transient nature of [the appellant's] seizures, has caused a reduction in cognitive functioning, leading to decreased memory, impaired concentration, lack of motivation and normal executive functioning."

Physical Impairment

In the MR and the AR, the GP reported:

- In terms of the appellant's health history, the GP wrote: "despite ongoing treatment with medications for epilepsy, the patient remains symptomatic and states [the appellant] continues to have 1 to 2 seizures a week. [The appellant] notes this causes increased fatigue."
- The appellant does not require an aid for the impairment.
- In terms of functional skills, the appellant can walk 4 or more blocks unaided on a flat surface, climb 5 or more steps unaided, remain seated for 1 to 2 hours, and it is unknown how much weight the appellant can lift.
- In the AR, the appellant is assessed as being independent with all areas of mobility and physical ability, specifically walking indoors and walking outdoors, climbing stairs, 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 did not indicate an assistive device used to help compensate for the impairment.

In the self-report, the appellant wrote:

- The appellant was diagnosed with temporal lobe epilepsy in 2018.
- The appellant is still suffering from fairly regular seizures of multiple types.
- The appellant's medications are still being worked out and the psychiatrist, neurologist, the GP and the appellant have not found the right balance yet. Any changes in medications result in a "hard time for a while." The appellant just started a new medication that takes 3 months before it is known whether it is working and new drugs always come with new side effects.
- The appellant has the following indications of uncontrolled epilepsy: occasional tonic clonic seizures, a few a year; seizures while sleeping; focal seizures almost daily and sometimes multiple times per day; extreme body pain for days after seizures (night and tonic clonic); headaches near daily; 4 to 5 migraines in a month; very unstable on feet

half of the time, or "off balance"; double vision, blurred vision lasting hours, 2 to 5 or so a week; tired everyday; and recently started having drop seizures during the day.

- The appellant experiences daily double vision, with eyes moving back and forth uncontrolled sometimes.
- The appellant experiences random nausea and vomiting.
- The appellant has very low energy. With 10 to 15 minutes of anything physical, the appellant needs at least a half hour rest.
- The appellant experiences migraine headaches after a seizure. The appellant also requires 2 to 3 days of full rest after a seizure and it is "hard to get back in normal groove after sleeping for days."
- The appellant never knows when an episode is coming on. Sometimes the appellant goes for a walk and halfway through, when far from home, the appellant gets seizure auras or the appellant's vision "is messed up."
- The appellant suffers from near whiplash neck and shoulder pain sometimes but the appellant's neck, shoulder, and back are very sore most days.

In the Request for Reconsideration, the appellant wrote:

- The appellant suffers from painful and distracting double vision on most (4 to 6) days weekly. The appellant is unable to do anything but sleep or lie with eyes closed. The appellant cannot go for a walk due to how disoriented and unstable the appellant gets. These episodes last for 2 ½ hours usually during the day and often at night as well, and periodically episodes last all day.
- On days when the appellant has had a seizure 1 to 3 a week, the appellant can only lie and sleep, and the appellant is unable to do very much for 2 to 3 days after each episode. On other days, the appellant can suffer from auras, which are tied into seizure activity. The appellant needs naps during the day very regularly even when feeling a little "better."
- The appellant suffers from at least 4 different types of seizures and the epilepsy is resistant to medications so far.
- The appellant will have more information from testing in the next couple of months.
- Epilepsy is a life-long disability that never goes away.

Mental Impairment

In the MR and the AR, the GP reported:

- In terms of the appellant's health history, the GP wrote: "despite ongoing treatment with medications for epilepsy, the patient remains symptomatic and states [the appellant] continues to have 1 to 2 seizures a week. [The appellant] notes this causes increased fatigue, impaired concentration and reduced memory, affecting her ability to communicate effectively. The transient seizure has caused distress and as a result some social isolation, frequently choosing to self isolate in [the appellant's] home and leading to a breakdown in personal relationships. A recent neurological consult… notes a possible tonic clonic seizure in April with a diagnosis of focal epilepsy. [The appellant] is awaiting an EEG and MRI. Additionally, the lack of aura regarding [the appellant's] seizures has caused frequent concerns of recurrence leading to increased anxiety and ultimately impaired concentration, frequent worries, feelings of being overwhelmed, all of

which impair [the appellant's] ability to work effectively."

- The appellant has no difficulties with communication.
- The appellant has significant deficits with cognitive and emotional functioning in the areas of consciousness (orientation and confusion emphasized by the GP), executive (planning emphasized) memory, emotional disturbance, and motivation. The GP did not provide further comments.
- In the AR, the GP indicated that the appellant has a good ability to communicate in speaking, writing and hearing, and satisfactory ability with reading.
- With respect to the section of the AR relating to daily impacts to the appellant's cognitive and emotional functioning, the GP assessed no major impacts, with moderate impacts assessed in the areas of consciousness, emotion, attention/concentration, executive, memory, and motivation. There are minimal or no impacts assessed to the remaining listed areas of functioning.
- For social functioning, the appellant requires periodic support/ supervision in all areas, specifically: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The GP did not add an explanation or description of the periodic supervision required.
- The appellant has marginal functioning in both the immediate and extended social networks. 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 wrote that the appellant requires "moderation of social relationships" by the appellant's partner.

In the self-report, the appellant wrote:

- The appellant still suffers from "fairly regular" seizures of multiple types ("pain, confusion, outbursts, days in bed"), severe anxiety and depression. The appellant's memory is unreliable, the appellant is easily confused and has a short attention span. The appellant often gets disoriented and confused and sometimes angry when that happens.
- The appellant suffers from anxiety and panic attacks.
- The appellant experiences disorientation and confusion daily and has very bad memory problems, as well as anger and social issues.
- The appellant is "extremely depressed- suicidal thoughts."
- The appellant has a hard time all days with eating and appetite ("not feeling hungry- no appetite to food").
- There is high anxiety with wondering whether the appellant will have another seizure, waking up on the floor with no memory of how the appellant got there.
- The appellant experiences "bad depression," with "low hopes of feeling better or normal" and feels "out of control" of self.
- The appellant senses problems with social cues. The appellant's self-esteem has deteriorated as the appellant "used to be outgoing and confident."
- The appellant has a hard time relating to people. The appellant becomes confused.
- The appellant has memory problems daily, short-term and long-term, and it is hard for people to understand.
- The appellant "blow(s) up in anger of very stupid things."

- The appellant has “random insomnia” and “constant guilt.”
- The appellant cries “a lot” and cannot focus on tasks at hand most days.
- The appellant has difficulty understanding orders or requests (memory and focus).

In the Request for Reconsideration, the appellant wrote:

- The “cocktail” of medications the appellant is taking is constantly changing from month to month and every day the appellant feels exhausted, disoriented, anxious, and depressed.
- The appellant has a history of major depression and this does not help.

Daily Living Activities (DLA)

In the MR and the AR, the GP reported:

- The appellant has been prescribed medications that interfere with the ability to perform DLA. The GP wrote: “notes ongoing fatigue and decreased concentration with epilepsy medications, with the duration identified as “ongoing.”
- 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 shopping DLA (going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home), 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 meals DLA, the appellant is assessed as requiring periodic assistance from another person with the tasks of meal planning, food preparation, and cooking, and being independent with the task of safe storage of food. The GP wrote that the appellant requires assistance from partner for these tasks and added that “due to ongoing fatigue, [the appellant] often requires help with meal planning/ preparation, 2 to 3 times a week.”

In the self-report, the appellant wrote:

- The appellant has 10 to 20-minute periods the appellant can physically work before needing a rest.
- The appellant is tired very easily doing daily care and household care.
- The appellant is no longer independent and often relies on family and friends for help.
- The appellant no longer has a driver's license.
- The appellant has a hard time all days with eating and appetite, not feeling hungry.
- The appellant avoids showering often because the appellant tends to get dizzy.

In the Request for Reconsideration, the appellant wrote:

- As an epileptic, it has become extremely unsafe for the appellant to work at the appellant’s previous trade as the appellant is constantly “out of it” due to the medications.
- In the last few years the appellant has tried another job but has not been able to keep up

physically and the memory problems bring setbacks.

Need for Help
The GP reported in the AR that the appellant receives help from family. The GP added that the appellant "requires help with food prep, cooking/cleaning transiently when patient has postictal sequelae from seizure." The GP did not identify any of the listed assistive devices as being routinely used to help compensate for impairment and indicated that the appellant does not have an assistance animal.

Additional information
In the Notice of Appeal dated August 18, 2020, the appellant expressed disagreement with the ministry's reconsideration decision and wrote that:

- Uncontrolled epilepsy is most definitely a severe impairment.
- There are typically 2, 3 days a week at most that the appellant does not suffer from severe double vision, nausea, or dealing with medication side effects.
- The appellant is alone most often.
- The appellant has experienced falling, smashing the appellant's neck/face, grand mal seizures while sleeping.
- The appellant will get results from MRI and EEG tests by then and can show proof.

Prior to the hearing, the appellant submitted the following additional documents:

1) Undated page 7 of 14 titled "Intellectual and Emotional Wellness Scale" and indicating a psychologist/psychiatrist referral was pending and that there were safety concerns or it was unsafe for the appellant to perform in several listed areas;
2) Certificate dated July 4, 2014 indicating the appellant's qualification in a trade in another province;
3) Letter dated January 10, 2019 in which a physician in another province indicated that the appellant has a seizure disorder that was not stabilized and, for this reason, the appellant is unable to work;
4) Letter dated May 21, 2020 to the appellant's physician in another province in which the Canada Revenue Agency indicated that more information was required for the appellant's claim for the disability tax credit. The physician's response dated June 8, 2020, included the following:
   - In response to the question about the years the physician has been the attending medical practitioner, the physician indicated "since January 10, 2017."
   - In response to the question about whether the appellant can perform daily living skills independently (e.g. perform self-care, go out into the community, make simple purchases without the assistance/supervision of another person), the physician indicated "no, [the appellant] has multiple seizures, often daily, due to [the appellant's] temporal lobe epilepsy. This causes [the appellant] to lose focus, become inattentive, forget where [the appellant] is or what [the appellant] is doing and is accompanied by increase anxiety and low mood."
   - In response to the question whether the appellant initiates and responds to social interactions appropriately, the physician indicated "no, when having seizures, [the appellant's] mood is increasingly labile. [The appellant] does poorly around other people, often responding inappropriately."

- The physician indicated that the appellant can make appropriate decision and judgements in day-to-day situations and has the capacity and insight to take medication independently.
- The physician indicated that the appellant has a severe memory impairment but did not provide any examples, as requested in the form.
- In response to the questions whether the appellant has the capacity to live independently without daily supervision and support from others, the physician indicated "no, when [the appellant's] epilepsy is under poor control, [the appellant] needs help."
- Asked to indicate the type and frequency of seizures experienced by the appellant, the physician wrote: "varies- partial seizures mostly, some nocturnal grand mal seizures. Can happen daily, waxes/ wanes."
- Asked to describe the appellant's ability to perform mental functions necessary for everyday life when not experiencing seizures, the physician responded that the appellant "is on meds but still gets seizures. Between seizures [the appellant] has increased anxiety and increased depression due to the effect of epilepsy on [the appellant's] life."
- Asked whether the appellant's ability to perform mental functions necessary for every day life is likely to improve (e.g. with medication and/or therapy), the physician responded "unsure."
- The physician reported that the appellant's impairment lasted, or is expected to last, for a continuous period of at least 12 months.

5) Pharmacy list of the appellant's medications to September 23, 2020.
6) Letter dated September 2020 in which a social worker (SW) in another province stated that:
   - The SW has been working with the appellant since January 2019 and they meet once a month to discuss current and ongoing goals, steps to achieve goals and work through any barriers.
   - The appellant disclosed a diagnosis of Temporal Lobe Epilepsy since 2018.
   - Epilepsy is a lifelong neurological disease characterized by recurrent and unpredictable seizures.
   - The appellant disclosed experiencing both generalized and focal seizures and persistent, especially generalized seizures, as well as uncontrolled seizures are associated with a high risk for Sudden Unexpected Death in Epilepsy.
   - The appellant disclosed admittance to hospital for uncontrolled seizures and various supervised Anti-Epileptic Drug ("AED") changes to attempt to control seizures. This suggests the appellant experiences refractory epilepsy, which is defined by uncontrolled seizures that have been attempted to be treated with two or more AED's.
   - The appellant has disclosed that since settling into B.C., the appellant has connected with an Epilepsy Specialist and will be admitted to the seizure investigation unit to determine more information about the epilepsy and the appellant's candidacy for surgery.
   - As the appellant's seizures continue to be persistent and severe, the appellant's ongoing care and support from a specialized medical team is indispensable
   - Epilepsy can impact the daily life of a person with epilepsy, including substantial

impairment to both physical and mental health.
- There is evidence within the literature to suggest a relationship between mental health challenges, such as anxiety, and epilepsy.
- The appellant has disclosed experiencing ongoing anxiety generally and related to epilepsy and has been working with various medical professionals to reduce anxiety.
- Associate physical challenges include, but are not limited to, injury, mobility, safety, and fine and gross motor abilities.
- The challenges can have a variety of causes such as the frequency and type of seizures, the location of seizures in the brain, anticonvulsant medication side effects, interictal discharges and age of onset.
- As it is suggested that physical, social, emotional and psychological well-being for persons with epilepsy can be considerably compromised due to epilepsy, it is in a community's best interest to provide the necessary assistance to support improving the quality of life of a person with epilepsy.
- There is a high statistical prevalence of persons with epilepsy who experience negative consequences related to employability due to their epilepsy.
- Impacts to employment include effects of stigma associated with disclosure, lack of accommodation from employer, wrongful dismissal, coping with anticonvulsant medication side effects, and missed work due to fluctuations in health needs.
- It appears the appellant experiences employment challenges that are correlated with epilepsy, which could impede success in obtaining and maintaining stable and long-term employment.
- It is the SW's recommendation that the appellant be approved for the PWD, based on evidence from ongoing work with the appellant and academic research as mentioned.

7) Letter dated October 30, 2020 in which the appellant's supervisor at the appellant's employer in another province from July 2012 to June 2014 provided a positive reference of the appellant's work skills and attitude at work.

At the hearing, the appellant's neighbour stated:
- She has known the appellant since she moved into the upstairs of a house in January 2020 where the appellant lives downstairs. In the course of close to a year, she has gotten to know the appellant.
- She works in the health field as a private health care provider and she is currently enrolled in LPN courses. She has seen the episodes that the appellant experiences where there is a change in the appellant's character to include lethargy, whether from the effects of medications or neurological causes, low energy, and taking on the appearance of someone heavily intoxicated.
- She is concerned about the appellant living alone because of the falls the appellant has experienced, which could be fatal.
- The appellant cannot make decisions when having an episode and needs someone checking in.
- She has observed the appellant's social anxiety when she takes the appellant out into the community and the appellant immediately requests to return home.
- Over the last 9 months she has seen the appellant spiraling down due to a lack of

funding and a change in doctors and circumstances. She listens to the appellant almost daily and the appellant seems depressed.

- The appellant had a lapse in medications that affects everything. The appellant experienced a fall recently where the appellant vomited and then slipped in the vomit.
- As a witness to everything that is happening with the appellant, she believes that the appellant absolutely needs help. The appellant has been turned away from jobs because of the appellant's medical condition.
- When the appellant has some really good days, the appellant appears to pay for it in the days that follow.
- The appellant has been having issues with getting medications from the doctor's office and the appellant cycles into social anxiety and then into depression.
- She drives the appellant into the community since the appellant fears taking the bus due to anxiety. She helps the appellant with picking up medications and doing grocery shopping. The appellant is independent and can do things on the appellant's own but needs emotional support for panic attacks and social anxiety. She does not physically help the appellant with any of these tasks.
- She helps the appellant with wellness checks if she has not heard from the appellant for a day or two. She calls the appellant an average of 2 to 3 times per week to make sure the appellant is okay and is functioning. She does not know what goes on during the day with the appellant as that is the appellant's business.
- The appellant's requirement for assistance has increased since she has known the appellant in the past 9 months.

At the hearing, the appellant's mother stated:

- She is grateful that the appellant's neighbour has helped the appellant over the last 9 months.
- She lives in a community about 2 ½ hours drive from the appellant. She is not involved with the appellant on a daily basis. She talks with the appellant about 3 to 4 times a week. Since the beginning of the pandemic in March, she has seen the appellant in person about 4 to 5 times.
- The appellant had two head injuries before the age of 4. After reading up about seizures, she now realizes that the appellant was likely having "absence seizures" as a child as the appellant would stare off into the distance. The appellant said nothing was mentioned at the time because the appellant thought this was a normal occurrence. Later, as an adult, the appellant experienced two more concussions.
- In the last few years, she has observed that the appellant has lost weight and the appellant tells her about the appellant's anxiety.
- When they try to go shopping together, the appellant often wants to leave.
- The appellant has lost self-confidence. The appellant has advised her that the appellant has lost both bladder and bowel control.
- The appellant has advised her that the appellant has considered suicide.
- She is very concerned with the appellant living alone with these seizures as the appellant had a head injury in July when trying to reach for something from bed at night and had a seizure.
- The appellant has advised her that the appellant experiences double vision fairly often.
- The appellant's meals are all quick-to-heat.

- The appellant is incapable of employment.
- With the pandemic and the change in the appellant's medications, she has seen a decline in the appellant's weight and a loss of an ability to focus on a particular thing more than 5 to 10 minutes at a time. The appellant has said that there has been an increase in nausea.
- When she saw the appellant's place, she was surprised that it was not tidy, but the appellant has not had any motivation.

At the hearing, the appellant's sister stated:

- The appellant was always a social person, an outdoors sporty person who was independent and was able to travel to other countries alone.
- Three and a half years ago, the appellant moved to her province and the appellant started noticing having seizures at night. The appellant got sick in bed, was shaking and sweating, and lost bowel control. It would take days for the appellant to recover from these night seizures.
- The appellant lost employment due to calling in sick so many times.
- In the Winter of 2018, the appellant experienced 3 seizures in a 24-hour period and she took the appellant to the hospital. They discovered that the appellant's memory was "gone," that the appellant had lost an entire year, forgetting significant events and people. They put the appellant on medications, took away the appellant's driver's license, and made a referral to a specialist.
- During an episode, the appellant's body awareness goes away and it looks like the appellant is intoxicated.
- They made a plan so the appellant would not be alone and to make sure the appellant was showering and eating.
- All of the appellant's seizures were at night, except for one experienced out at a store. After this, the appellant was "really off" for a couple of days and became afraid to go out for fear of losing bowel control. The appellant began fearing going to bed.
- The appellant began isolating and depression set in.
- They observed that the appellant's short-term memory was harmed and about once a week the appellant would not remember simple information.
- The appellant moved in with her during the Summer of 2019.
- The appellant was averaging a seizure once a week or a week and a half and the appellant would be "wiped" for days. The appellant would be lethargic with low strength, emotionally battered, and dragging between the bed and the couch.
- The appellant would do well for a while and would try different jobs but the appellant experienced being physically and mentally unable to do the jobs and the employer could not keep the appellant on, for an eventual mutual parting of ways.
- The appellant spent most of the time inside being very lethargic, with no body awareness, and feeling stressed around people and bothered by the brightness of sunshine.
- She gave the appellant the job of cleaning their house and this would take the appellant days to accomplish since the appellant needed a rest between each task. One task, such as vacuuming, would take the better part of a day. A task like washing dishes, that usually takes 20 minutes, would take the appellant 40 minutes since the appellant would need a break.

- The appellant would nap on the couch to be seen in case the appellant experienced a seizure.
- In November 2019, the appellant decided to move to British Columbia to be closer to their parents and the appellant's friends and closer to the programs available in B.C.
- She has not seen the appellant in a year. The appellant has reported injuries sustained during seizures like cuts, bruises and a sprained knee from the recent fall.
- The appellant's medical condition has completely changed the appellant's life. When the appellant first came to the province where she resides, the appellant made friends easily and found work easily. Now the appellant experiences social anxiety and social isolation.
- The appellant's poor memory means the appellant needs help. She has encouraged the appellant to keep a notebook.
- When considering the factors of life skills, social connections and employability, on a scale of 1 to 5, with 1 being the highest functioning and 5 being the worst, the appellant went from a score of 2 in approximately 2017 to a score of 5 more recently.

At the hearing, the appellant and the appellant's aunt, who acted as the appellant's representative, stated:

- The appellant's aunt works in social services relating to mental health and addictions and, based on what she has observed of the appellant's functioning, the appellant would not qualify for the employment program they operate.
- The appellant needs assistance to go out. The appellant essentially needs a back-up plan. The appellant was an independent, strong-willed person and they cannot rob the appellant of this. Rather, they act as a safeguard for the appellant.
- If the appellant has heavy grocery bags, the appellant needs physical help carrying the groceries.
- The appellant's baseline is a sliding scale because they cannot gauge when the appellant will have seizures. Part of the struggle is the appellant does not know when an episode will occur. For various reasons, the appellant has had difficulty seeing the neurologist and obtaining needed medications in a timely manner.
- The appellant's aunt was surprised when she saw the appellant's house in September as there was "clutter end-to-end in the kitchen," and this was not expected for the appellant. She was also 'severely' surprised by the appellant's appearance, who had a flat aspect.
- The appellant has a severe impairment as there is severe anxiety and depression.
- The appellant's health has deteriorated to the point that the appellant is a "shell" of what the appellant used to be. There has been a loss of communication skills and the appellant could not work.
- The appellant is no longer with a partner and is living alone.
- There are long bouts of depression, growing anxiety and an inability to self-motivate.
- The appellant has a fear of losing balance in the shower and avoids showering. The appellant has forgotten the usual personal hygiene routine to follow daily.
- The appellant has had panic attacks in public.
- The appellant's attention span has diminished.
- The appellant sleeps on the couch because it is closer to the floor and is less likely to cause injury if the appellant has a seizure.

- There have been gaps in getting medications from the appellant's doctor and the appellant needs someone to advocate for health issues.
- The appellant has returned from the bus stop because the appellant has forgotten which bus to go on. The appellant's anxiety triggers forgetfulness. The appellant's memory problems have increased. The appellant often forgets appointments with the doctor.
- The GP completed the reports for the PWD application not knowing the appellant for long. The appellant has not been able to share the health history to any extent with a series of short, 5-minute telephone calls with the doctor.
- The "Intellectual and Emotional Wellness Scale" page was completed around November 2019 and was part of an application made in another province for the disability tax credit.
- The letter dated January 10, 2019 from a physician in another province was around the time the appellant was admitted to hospital and is the appellant's first doctor note about not being able to work.
- The May 21, 2020 letter was provided because there was not much information from the appellant's current doctor and the appellant was able to explain to this doctor in another province more of what was going on.
- The letter from the SW was submitted because she was seeing the appellant "from day one" and the SW described what they were doing together.
- The appellant stated that the appellant was accepted for the disability tax credit in the Summer of 2020. The appellant believes an application was made in another province for the Canada Pension Plan (CPP) disability benefits program but was not sure of the status of this application as the focus has been on the provincial application for PWD.
- The appellant is unsure whether the medical records from the other province have been transferred to the doctor in British Columbia.
- The appellant does not have relatives living in the local community for support. The appellant lives in closer proximity to the appellant's mother but they are still a couple hours driving distance apart.
- The appellant has been on medications and one day to the next is always different and the appellant never feels the same. It is not getting any better.
- The appellant is involved with the Seizure Investigation Unit to see if the appellant is a candidate for brain surgery. The other option is insertion of a vagal nerve stimulator that has been described as a pacemaker for the brain.
- The appellant has felt that Epilepsy BC is not very accessible. The appellant feels let down by the system.
- The appellant is unable to drive. The appellant gets double vision so often "it feels like being wasted."
- There might be 2 days out of a period of two weeks when the appellant feels good and wants to catch up but then the exertion "destroys" the appellant afterwards with tiredness. The appellant feels there is no control and the body is failing and the appellant feels scared about so many things.
- The appellant believes that the criteria for disability was met in another province because the seizures are not controlled.
- The appellant has been researching service animals since arriving in British Columbia but everything has been shut down due to COVID as well as how suitable the appellant's home environment would be at this time to obtain a service animal. In addition, the appellant understood that the wait list for a trained service animal to be 2 to 3 years.

- The appellant feels like the appellant's life has been completely lost. It is hard to keep people around but the appellant needs people to help keep on track. The appellant is "super stressed out" about the lack of money. This is a deterrent to having a service animal since a dog is expensive to keep.

The ministry relied on the reconsideration decision as summarized at the hearing. At the hearing, the ministry clarified that:

- There is nothing in the legislation to prohibit a GP from another province from completing the MR.
- There are no concerns regarding the reliability or the credibility of the additional information provided by the appellant.

Admissibility of Additional Information

The ministry did not object to the admissibility of the additional documents submitted by the appellant. The panel admitted the oral testimony on behalf of the appellant and the listed additional documents 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, and definitions are provided in the EAPWDR, as set out in the Schedule at the end of this decision.

Eligibility under section 2.1 of the EAPWDR

Section 2.1(e) of the EAPWDA states that a person who is considered to be disabled under Section 42(2) of the CPP (Canada) is part of a class of persons and may be designated as a PWD under Section 2(2) of the EAPWDR (B.C.). The appellant believes that an application was started in another province for the federal CPP disability benefits program but did not have further information for the panel about the details or the current status of this application. In the absence of sufficient evidence or any argument respecting eligibility for PWD designation under section 2.1(e) 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 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 appellant was diagnosed by the GP with epilepsy, which is identified in the MR diagnostic codes as a neurological disorder. The ministry considered that the GP commented in the MR that "despite ongoing treatment with medications for epilepsy, the patient remains symptomatic" and "continues to have 1 to 2 seizures a week." The GP wrote that the appellant "notes this causes increased fatigue, impaired concentration and reduced memory, affecting [the appellant's] ability to communicate effectively." The GP wrote that the transient seizure has caused distress and, as a result, some social isolation, with the appellant frequently choosing to self isolate and leading to a breakdown in personal relationships. The GP reported that a recent neurological consult notes a possible tonic clonic seizure in April with a diagnosis of focal epilepsy. The GP

added that the lack of aura regarding the seizures has caused frequent concerns of recurrence leading to increased anxiety and ultimately impaired concentration, frequent worries, feelings of being overwhelmed, "all of which impair [the appellant's] ability to work effectively." Although the panel finds that the ministry reasonably considered that employability is not a factor when determining the PWD designation, there was additional evidence submitted prior to and at the hearing that the impacts identified by the GP also affect the appellant's daily cognitive, emotional and social 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 consciousness (orientation and confusion emphasized by the GP), executive (planning emphasized by the GP), memory, emotional disturbance, and motivation. The ministry wrote that the GP assessed no major impacts to the appellant's daily cognitive and emotional functioning, with moderate impacts identified in the areas of consciousness, emotion, attention/concentration, executive, memory, and motivation. In the letter dated May 21, 2020, when the physician from another province was asked to describe the appellant's ability to perform mental functions necessary for everyday life when not experiencing seizures, the physician responded that the appellant "is on meds but still gets seizures" and "between seizures [the appellant] has increased anxiety and increased depression due to the effect of epilepsy on [the appellant's] life." The physician also reported that the appellant has a severe memory impairment but did not provide any examples.

At the hearing, the appellant's sister stated that in the Winter of 2018, the appellant experienced 3 seizures in a 24-hour period and she took the appellant to the hospital. The appellant's sister stated that they discovered that the appellant's memory was "gone," that the appellant had lost an entire year, forgetting significant events and people. The appellant's sister observed that the appellant's short-term memory was harmed and about once a week the appellant could not remember simple information. The sister stated that the appellant's poor memory means the appellant needs help, and she has encouraged the appellant to keep a notebook. The appellant's aunt stated at the hearing that the appellant has returned from the bus stop because the appellant has forgotten which bus to go on. The aunt stated that the appellant's anxiety triggers forgetfulness and the appellant's memory problems have increased. Both the appellant and the aunt stated that the appellant often forgets appointments with the doctor. In the self report, the appellant wrote that the appellant has memory problems daily, short-term and long-term, and it is hard for people to understand.

The Intellectual and Emotional Wellness Scale submitted by the appellant indicated assessments of severe symptoms in the areas of consciousness, emotion, and motivation, with moderate to severe symptoms in lack of insight, intellectual function, judgment and thinking. The appellant stated at the hearing that this form was completed around November 2019 and was part of an application made in another province for the disability tax credit. In the absence of an indication of who completed this page, which is one page of a 14-page document, the panel considered this assessment as part of the appellant's self-report.

In the self report included with the PWD application, the appellant wrote that the appellant suffers from anxiety and panic attacks, experiences disorientation and confusion daily and has very bad memory problems, as well as anger and social issues. The appellant wrote that the appellant has high anxiety with wondering whether the appellant will have another seizure, waking up on the floor with no memory of how the appellant got there. The appellant wrote that the appellant cries “a lot” and cannot focus on tasks at hand most days. The appellant wrote that the appellant experiences “bad depression,” with “low hopes of feeling better or normal” and feels “out of control” of self. The appellant wrote that the appellant is “extremely depressed-suicidal thoughts” and the appellant’s mother stated at the hearing that the appellant has told her that the appellant has considered suicide.

At the hearing, the appellant’s neighbour stated she has observed the appellant’s social anxiety when she takes the appellant out into the community and the appellant immediately requests to return home. The neighbour stated that over the last 9 months she has seen the appellant spiraling down due to a lack of funding and a change in doctors and circumstances, and she listens to the appellant almost daily and the appellant seems depressed. The appellant’s mother stated at the hearing that with the pandemic and the change in the appellant’s medications, she has seen a decline in the appellant’s weight and a loss of an ability to focus on a particular thing more than 5 to 10 minutes at a time. The appellant’s aunt stated at the hearing that the appellant has severe anxiety and depression and the appellant’s health has deteriorated to the point that the appellant is a “shell” of what the appellant used to be. The appellant stated at the hearing that the appellant has had panic attacks in public and the appellant’s attention span has diminished.

The ministry considered that the GP reported in the AR that the appellant requires periodic support/supervision with all aspects of social functioning, specifically making appropriate social decisions, developing and maintaining relationships, interacting appropriately with other, dealing appropriately with unexpected demands, and securing assistance from others; however, the ministry pointed out that the GP did not include a description of the degree and duration of support/supervision required, with the exception of noting the appellant’s partner helps to moderate social functioning. In the May 21, 2020 letter, in response to the question whether the appellant initiates and responds to social interactions appropriately, the physician in another province indicated “no, when having seizures, [the appellant’s] mood is increasingly labile” and “does poorly around other people, often responding inappropriately.”

In the AR, the GP assessed marginal functioning in the appellant’s immediate and extended social networks. In the self report, the appellant wrote that the appellant senses problems with social cues, the appellant’s self-esteem has deteriorated as the appellant “used to be outgoing and confident,” and currently the appellant has a hard time relating to people. At the hearing, the appellant’s neighbour stated that the appellant cannot make decisions when having an episode and needs someone checking in. The neighbour stated that the appellant needs emotional support for panic attacks and social anxiety and she helps the appellant with wellness

checks. The neighbour stated that she calls the appellant an average of 2 to 3 times per week to make sure the appellant is okay and is functioning. The appellant's aunt stated at the hearing that the appellant needs assistance to leave home and essentially needs a back-up plan. The aunt stated the appellant was an independent, strong-willed person and they cannot rob the appellant of this; rather, they act as a safeguard for the appellant.

Given the additional evidence of a major impact to the appellant's memory, as provided by the physician in another province and the witnesses at the hearing, the many moderate impacts to other areas of cognitive and emotional functioning identified by the GP, and the periodic support/supervision provided by the appellant's neighbour an average of 2 to 3 times per week, the panel finds that the ministry's conclusion that a severe mental impairment was not established under Section 2(2) of the EAPWDA was unreasonable.

Severe Physical Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical impairment. The ministry considered the GP's comments in the health history in the MR that "despite ongoing treatment with medications for epilepsy, the patient remains symptomatic and states [the appellant] continues to have 1 to 2 seizures a week. [The appellant] notes this causes increased fatigue."

The SW in another province wrote in the September 2020 letter that the appellant disclosed admittance to hospital for uncontrolled seizures and various supervised drug changes to attempt to control seizures and this suggests the appellant experiences refractory epilepsy, which is defined by uncontrolled seizures that have been attempted to be treated with two or more anti-epileptic medications. The appellant wrote in the self report that the appellant is still suffering from fairly regular seizures of multiple types, the appellant's medications are still being worked out, and any changes in medications result in a "hard time for a while." The appellant wrote that the appellant has a few tonic clonic seizures per year, seizures while sleeping, focal seizures almost daily and sometimes multiple times per day, extreme body pain for days after seizures, headaches nearly daily, 4 to 5 migraines in a month, and the appellant is very unstable on feet or "off balance" half of the time. The appellant wrote that the appellant requires 2 to 3 days of full rest after a seizure and it is "hard to get back in normal groove after sleeping for days." The appellant wrote that the appellant has very low energy and with 10 to 15 minutes of anything physical, the appellant needs at least a half hour rest. The appellant wrote that the appellant suffers from near whiplash neck and shoulder pain sometimes but the appellant's neck, shoulder, and back are very sore most days.

In the letter dated May 21, 2020, when asked to indicate the type and frequency of seizures experienced by the appellant, the appellant's physician in another province wrote: "varies-partial seizures mostly, some nocturnal grand mal seizures" and "can happen daily, waxes/ wanes." In the Notice of Appeal, the appellant wrote that there are typically 2 to 3 days a week

at most that the appellant does not suffer from severe double vision, nausea, or dealing with medication side effects. At the hearing, the appellant stated there might be 2 days out of a period of two weeks when the appellant feels good and wants to catch up but then the exertion "destroys" the appellant afterwards with tiredness. At the hearing, the appellant's aunt stated that the appellant's baseline is a sliding scale because they cannot gauge when the appellant will have seizures and the appellant does not know when an episode will occur. The SW wrote in the September 2020 letter that the appellant has disclosed that since settling into B.C., the appellant has connected with an epilepsy specialist and will be admitted to the seizure investigation unit to determine more information about the epilepsy and the appellant's candidacy for surgery. At the hearing, the appellant stated that they are still investigating the options available to control the seizures, including surgery, and there were no further test results available for the panel at the hearing.

In the self-report, the appellant reported experiencing double vision, or blurred vision lasting 2 to 5 hours a week and, in the Request for Reconsideration, wrote that the appellant suffers from "painful and distracting" double vision on most days (4 to 6) weekly whereby the appellant is unable to do anything but sleep or lie down with eyes closed. In the reconsideration decision, the ministry wrote that the GP did not report or diagnose any visual impairments. The appellant stated at the hearing that there has not been much of an opportunity for the appellant to speak with the GP, particularly during the restrictions associated with the pandemic, to report the symptoms the appellant has been experiencing. There was no additional information from the GP provided at the hearing to clarify the symptom of blurred vision and neither the physician or the SW in another province reported this symptom or any impacts from visual impairment.

In the reconsideration decision, 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, remain seated 1 to 2 hours and it is unknown the amount of weight the appellant can lift. The ministry also 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. Neither the physician nor the SW from another province specifically addressed the appellant's physical functioning.

In the self report, the appellant wrote that the appellant never knows when an episode is coming on and sometimes the appellant goes for a walk and halfway through the appellant gets seizure auras or the appellant's vision "is messed up." In the Request for Reconsideration, the appellant wrote that the appellant cannot go for a walk due to how disoriented and unstable the appellant gets from double vision. The appellant wrote that on days when the appellant has had a seizure, at the rate of 1 to 3 a week, the appellant can only lie and sleep, and the appellant is unable to do very much for 2 to 3 days after each episode. The appellant's sister stated at the hearing that during an episode, the appellant's body awareness goes away and it looks like the

appellant is intoxicated. At the hearing, the appellant's neighbour stated that the appellant is independent and does physical tasks on the appellant's own and she does not physically help the appellant with any of these tasks.

Given the GP's assessment of independent physical functioning in the higher range of functional skills limitations, the absence of information from the GP or the physician and social worker in another province regarding double vision and the discrepancy in information regarding the frequency and physical impact from the seizures, which the appellant stated is under further investigation, the panel finds that the ministry reasonably determined that the evidence is not sufficient to establish that the appellant has a severe physical impairment 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 is the prescribed professional. Although the panel admitted information from a physician and a social worker from a province outside B.C., neither of these professionals qualify as a "prescribed professional" according to the definition in Section 2(2) of the EAPWDR for the purposes of Section 2(2) of the EAPWDA.

At the hearing there was a suggestion that a physician or a social worker from another province can be considered a "medical practitioner" or "prescribed professional" for the purposes of a PWD designation; however, it is the panel's view that only professionals licensed in B.C. are included. "[M]edical practitioner" is defined in the *Interpretation Act* as a registrant of the College of Physicians and Surgeons of British Columbia (it is similar for "nurse practitioner"). Also, a "prescribed professional" is someone authorized under an "enactment" for some professions. A review of many definitions shows that an "enactment" refers to B.C. legislation (if you read the definitions for "enactment," "Act," "Legislature," and "Legislative Assembly" in the *Interpretation Act* in that order you can see it refers to B.C. enactments specifically). The result is that only doctors licensed in B.C. are a "medical practitioner" and social workers licensed in B.C. are a "prescribed professional" for the purposes of a PWD designation.

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 AR that the appellant is independent in performing all of the tasks of several listed DLA, specifically the personal care DLA (including the tasks of dressing, grooming, bathing, feeding self, regulating diet, transfers in/out of bed and on/off chair), the basic housekeeping DLA (including laundry), the shopping DLA (going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home), 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). The GP also 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.

At the hearing, the appellant's neighbour stated that she drives the appellant into the community since the appellant fears taking the bus due to anxiety and provides emotional support for the appellant to pick up medications and do grocery shopping. In the self report, the appellant wrote that the appellant is tired very easily doing daily care and household care. The appellant wrote that showers are avoided because the appellant tends to get dizzy. The appellant's sister stated that she gave the appellant the job of cleaning their house and this would take the appellant days to accomplish since the appellant needed a rest between each task: one task, such as vacuuming, would take the better part of a day and a task like washing dishes, that usually takes 20 minutes, would take the appellant 40 minutes since the appellant would need a break. The appellant's aunt stated that the appellant's aunt was surprised when she saw the appellant's house in September as there was "clutter end-to-end in the kitchen" and the place was generally unkept. In the Request for Reconsideration, the appellant wrote about the inability to work, writing that it has become extremely unsafe for the appellant to work at the appellant's previous trade as the appellant is constantly "out of it" due to the medications.

The GP added comments in the AR that the appellant "requires help with food prep, cooking/cleaning transiently when patient has postictal sequelae from seizure." The GP did not provide further information regarding restrictions to housekeeping. The GP assessed the appellant as requiring periodic assistance from another person with the tasks of meal planning, food preparation, and cooking, and being independent with the task of safe storage of food. The GP wrote that the appellant requires assistance from the appellant's partner for these tasks and added that "due to ongoing fatigue, [the appellant] often requires help with meal planning/ preparation, 2 to 3 times a week." The appellant's aunt stated at the hearing that the appellant is no longer with a partner, and the appellant's mother stated that the appellant's meals are all "quick-to-heat."

While the physician in another province is not a prescribed professional, the panel reviewed the May 21, 2020 letter for information to supplement the information from the GP as the prescribed professional. The physician in another province responded to a question about whether the appellant can perform daily living skills independently (e.g. perform self-care, go out into the

community, make simple purchases without the assistance/supervision of another person), the physician indicated "no, [the appellant] has multiple seizures, often daily, due to [the appellant's] temporal lobe epilepsy" and "this causes [the appellant] to lose focus, become inattentive, forget where [the appellant] is or what [the appellant] is doing and is accompanied by increase anxiety and low mood." The physician indicated that the appellant can make appropriate decisions and judgements in day-to-day situations and has the capacity and insight to take medication independently. The physician did not provide further detail of the extent of the restrictions to specific DLA and whether the need for assistance is periodic or continuous, and the SW did not discuss the appellant's ability to perform DLA in the September 2020 letter. The SW wrote that it appears the appellant experiences employment challenges that are correlated with epilepsy and the panel notes that employability is not taken into consideration by the ministry 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.

Given the GP's assessment of independence with performing most DLA, and there being insufficient evidence of the degree and frequency of periodic restrictions to DLA in order to determine that the assistance is required for extended periods, 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. The appellant stated at the hearing that the appellant does not have family living in the community to provide physical assistance. The appellant stated at the hearing that investigations have been made about acquiring an assistance animal. The GP did not identify any of the listed assistive devices as being routinely used to help compensate for impairment and indicated that the appellant does not have an assistance animal. 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.

Schedule

Section 2 of the EAPWDA provides 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).

Sections 2 and 2.1 of the EAPWDR provide 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).

APPEAL NUMBER 2020-00199

Sections 1 and 29 of the *Interpretation Act* provide the following definitions:

Definitions

1 In this Act, or in an enactment: . . .

"Act" means an Act of the Legislature, whether referred to as a statute, code or by any other name, and, when referring to past legislation, includes an ordinance or proclamation made before 1871, that has the force of law;

"enactment" means an Act or a regulation or a portion of an Act or regulation; . . .

Expressions defined

29 In an enactment: . . .

"Legislative Assembly" means the Legislative Assembly of British Columbia constituted under the *Constitution Act*;

"Legislature" means the Lieutenant Governor acting by and with the advice and consent of the Legislative Assembly;

"medical practitioner" means a registrant of the College of Physicians and Surgeons of British Columbia entitled under the *Health Professions Act* to practise medicine and to use the title "medical practitioner";

"nurse practitioner" means a person who is authorized under the bylaws of the College of Registered Nurses of British Columbia to practise nursing as a nurse practitioner and to use the title "nurse practitioner"; . . .

APPEAL NUMBER 2020-00199

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) 2010-11-10

PRINT NAME	
David Handelman	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2020-11-10
PRINT NAME	
Rosalie Turcotte	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2020-11-10