APPEAL NUMBER
2020-00271

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated September 11, 2020 which found that the appellant did not meet four 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. However, the ministry was not satisfied the evidence establishes that:

- the appellant has a severe physical or mental impairment;
- in the opinion of a medical practitioner or nurse practitioner, the appellant's severe impairment is likely to continue for at least 2 years;
- 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 June 11, 2020, a medical report (MR) and an assessor report (AR) both dated July 31, 2020 and completed by a general practitioner (GP) who has known the appellant for 2 months and has met with the appellant 2 to 10 times in that period.

The evidence also included the following documents:

1) Medical Reports for Human Resources Development Canada dated May 18, 2007 and March 30, 2009;
2) Office Referral Report dated March 19, 2008;
3) Operative Report dated March 31, 2008;
4) Letters dated April 9, 2008 and April 15, 2008 from a nephrologist;
5) Office Referral Report dated April 29, 2008;
6) Consultation Report dated May 5, 2008;
7) Consultation Report dated May 13, 2008;
8) Out Patient Doctor Report dated May 23, 2008;
9) Letter dated June 4, 2008 from the appellant's family physician;
10) Letter dated June 18, 2008 from a surgeon;
11) Diagnostic Imaging Report dated July 28, 2012;
12) Consultation Report dated July 28, 2012;
13) Final Summary Report dated July 28, 2012;
14) Out-Patient Doctor Report dated July 28, 2012;
15) Microbiology Report date July 30, 2012;
16) Consultation Report dated July 30, 2012;
17) Discharge Notification dated July 31, 2012;
18) Report dated December 10, 2013;
19) Personal Medical Profile dated March 27, 2014;
20) Self-assessment regarding physical abilities and ability to perform Daily Living Activities dated July 30, 2020; and,
21) Request for Reconsideration dated August 26, 2020.

Diagnoses

In the MR, the GP diagnosed the appellant with diabetes, chronic renal failure, and depression, with no dates 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: "related to mood."

Duration

In the MR, when asked if the impairment is likely to continue for 2 years of more from the date of the report, the GP did not indicate either "yes" or "no" and wrote "unknown, depends on compliance to treatment."

Physical Impairment

In the MR and the AR, the GP reported:

- In terms of the appellant's health history, the GP wrote: "see attached self reported

documents."

- The appellant does not require an aid for the impairment.
- In terms of functional skills, the GP noted that these were "self reported" that the appellant can walk 2 to 4 blocks unaided on a flat surface, climb 5 or more steps unaided ("25 steps"), lift 7 to 16 kg (15 to 35 lbs.), and remain seated for 1 to 2 hours.
- In the AR, the appellant is assessed as being independent with climbing stairs, lifting and carrying and holding. The appellant requires periodic assistance from another person with walking indoors and walking outdoors and standing. 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 Medical Report for Human Resources Development Canada dated May 18, 2007, a physician in another province identified diabetes mellitus as one of the appellant's diagnosed medical conditions.

In the Medical Report for Human Resources Development Canada dated March 30, 2009, the physician in another province included renal insufficiency and chronic scrotal abscess/cellulitis in the appellant's diagnosed medical conditions.

In the self-report, the appellant wrote:

- The appellant was on disability in another province with all the appellant's medical reports with a physician in that province.
- The appellant cannot afford medication.
- In the undated self-assessment regarding physical abilities and ability to perform DLA, the appellant indicated an ability to walk for 15 to 20 minutes, stand for 1 hour, lift/carry 25 lbs., and occasionally climb a few steps ("20 steps") ("tired after 25 steps").
- In another section of the self-assessment, the appellant indicated that there was no ability to perform several tasks without help and that the appellant was "totally dependent" with walking 50 meters-level, going up and down stairs, and walking outdoors for 50 meters.
- The appellant experiences pain "on my wrist and lower back; had surgery on wrist."

In the Request for Reconsideration, the appellant wrote:

- The appellant has been on disability in another province since 2008 and moved to B.C. a couple of years ago.
- The appellant tried working in B.C. but could not stand too long.
- The appellant is always dizzy and bleeds every day because of boils/ abscess.
- The appellant cannot stand too long because the appellant gets tired and dizzy.
- The appellant has kidney problems and has been told there will be a need for dialysis.
- The appellant has shortness of breath and can walk about 15 minutes and then feels sweaty and dizzy.
- The appellant's eyes have broken vessels.
- The appellant had three kidney failures.
- The appellant was taking 27 pills a day and the appellant's blood pressure is always 180-190.

Mental Impairment

In the MR and the AR, the GP reported:

- In terms of the appellant's health history, the GP wrote: "see attached self reported documents."
- The appellant has difficulties with communication identified as "mood related."
- The appellant has significant deficits with cognitive and emotional functioning in the areas of executive, memory, emotional disturbance, and motivation. The GP did not provide further comments.
- In the AR, the GP indicated that the appellant has a poor ability to communicate in speaking "related to mood", and provided no assessment regarding reading, writing, and hearing.
- With respect to the section of the AR relating to daily impacts to the appellant's cognitive and emotional functioning, the GP assessed major impacts in the areas of emotion and motivation, with moderate impacts assessed in the areas of insight and judgement, attention/concentration, executive, and memory. There are minimal or no impacts assessed to the remaining listed areas of functioning.
- For social functioning, the appellant requires periodic support/ supervision in making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, and dealing appropriately with unexpected demands. The GP did not provide an assessment regarding the appellant's ability to secure 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 left this section of the AR blank.

In the Medical Report for Human Resources Development Canada dated May 18, 2007, a physician in another province identified depression as one of the appellant's diagnosed medical conditions.

In the additional self-report, the appellant reported:

- Regarding memory, the appellant is "sometimes forgetful" and with emotion/ mood the appellant has "sadness, depression, suicidal."
- The appellant indicated that the appellant has difficulty interacting with family, friends and other people.
- The appellant indicated there are no problems with communicating.
- In another section of the self-assessment, the appellant indicated regarding "communication/social cognition" that the appellant's comprehension, expression, social interaction and memory are all "minimal."

In the Request for Reconsideration, the appellant wrote that the appellant has been in a "Psycho Ward" three times in another province because of attempts to end the appellant's life due to depression.

Daily Living Activities (DLA)

In the MR and the AR, the GP reported:

- The appellant has not been prescribed medications that interfere with the ability to perform DLA.
- In the AR, the GP indicated that the appellant requires periodic assistance from another person with walking indoors and walking outdoors. The GP did not comment about the nature of the periodic assistance required.
- 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 shopping DLA (going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home), the meals DLA (meal planning, food preparation, cooking, and safe storage of food), the pay rent and bills DLA (including banking and budgeting), and the medications DLA (filling/refilling prescriptions, taking as directed, safe handling and storage).
- For basic housekeeping DLA (including laundry), the appellant requires periodic assistance from another person with both tasks.
- Regarding the transportation DLA, the appellant is independent with the tasks of getting in and out of a vehicle and using transit schedules and arranging transportation. The appellant requires periodic assistance from another person with the task of using public transit.
- The GP did not provide further comments about the type and amount of assistance required or identify any safety issues.

In the self-assessment regarding DLA dated July 30, 2020, the appellant responded that the appellant can:

- Use the telephone on own initiative.
- Shop independently for small purchases.
- Plan, prepare and serve adequate meals independently.
- Perform light daily tasks such as dishwashing, bed making.
- Do personal laundry completely/launder small items; rinse stockings, etc.
- Arrange own travel via taxi but does not otherwise use public transportation.
- Be responsible for taking medication in correct dosages at correct time.
- Manage financial matters independently, collect and keep track of income.

In another section of the self-assessment regarding DLA, the appellant indicated:

- The appellant is “totally dependent” with self-care and is unable to take food/drink, dress upper body, dress lower body, put on braces/prosthesis, wash/bathe, or perineum (at toilet).
- Regarding “sphincter’s control”, the appellant experiences occasional accidents with both bladder and bowel control.
- For “mobility/locomotion”, the appellant is “totally dependent” and is unable to transfer bed, transfer chair/wheelchair, transfer toilet, transfer tub/shower, transfer automobile, walk 50 metres- level, or walk outdoors for 50 metres.
- The appellant’s self-care is “intact” as opposed to “limited,” “helper,” or “null.”

In the Request for Reconsideration, the appellant wrote:

- The appellant tried working but could not stand too long.
- The appellant has lost many jobs due to health problems.

Need for Help

The GP reported in the AR that the appellant receives help from family. 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.

In the undated self-assessment regarding DLA, the appellant responded that no one helps the appellant with anything and the appellant does not need more help with anything.

Additional information

In the Notice of Appeal stamped received by the ministry on September 23, 2020, the appellant expressed disagreement with the ministry's reconsideration decision and wrote that the appellant cannot stand up too long.

At the hearing, the appellant stated:

- The appellant is continually coughing and can walk but has to sit down every 10 to 15 minutes. The appellant has been a smoker for decades, smoking a pack to a pack and a half of cigarettes, and finds it really hard to breathe. The appellant is down to 5 cigarettes per day since smoke really bothers the appellant's breathing. Even a little bit of smoke from cooking makes it feel like the appellant is being choked.
- The appellant gets dizzy and the doctor has said the appellant's potassium is high and the A1C, or blood sugar level, is high. The appellant's blood sugar level is "out of control."
- When the appellant does a little running, it feels like "everything is going red." The appellant starts coughing and experiences shortness of breath and it feels like the appellant is going to fall down.
- The appellant has been like this for 1 ½ years and the doctor the appellant first consulted did not give the appellant a driver's license.
- The appellant cannot work. The appellant can lift a little weight but this is hard since the appellant has no balance. The appellant gets tired and is slow.
- The appellant experiences stinging pain in the back that is like someone is poking the appellant's back with a knife.
- The appellant has boils on the skin that bleed almost every day. The appellant uses toilet paper because the appellant cannot afford gauze for the wounds and the appellant got an infection of the blood. There are boils all over the appellant's body, including on the appellant's face.
- The appellant feels like there is risk of a heart attack and does not know what to do.
- It feels like there is fluid in the appellant's lungs. The appellant's head must be elevated while sleeping, sometimes sleeping on the couch "so the fluid goes down." There is a lot of mucous in the appellant's nose.
- All of the small things add up.
- The appellant also has numbness in the appellant's feet and the appellant "can hardly

feel them."

- The appellant has high blood pressure and if the appellant gets upset, the appellant's whole face gets red. The appellant's blood pressure will not go below 192.
- The appellant has been referred to a kidney specialist but has not been able to attend any appointments. The office is too far away and the appellant does not have bus fare. The appellant "just can't" make it to the appointment. The appellant has not started dialysis.
- The appellant has been experiencing a sharp pain on the left side under the ribs and the appellant does not have a doctor to go to.
- The appellant does not want to go back to the GP who completed the reports. The appellant does not like him and believes that the doctor also does not like the appellant.
- The appellant spent $350 to get a copy of the doctors' reports from another province and the GP did not take any time to review the reports, which upset the appellant.
- The appellant is always getting fevers and always feels cold. The appellant suspects iron levels may be low despite trying to eat healthy food.
- The appellant used to be an alcoholic and the appellant's spleen was enlarged.
- The appellant is trying to adjust to healthier living but it is not helping.
- The appellant's eyesight is getting blurry.
- Sometimes the appellant wakes up during the night and cannot breathe. This makes the appellant afraid to go to sleep for fear of never waking up.
- The appellant can shower independently but gets tired.
- In 2008 the appellant was sent to a skin specialist about the boils all over the appellant's body. The specialist prescribed anti-biotics and the appellant experienced a stabbing pain in the back that was so bad the appellant was crying after taking the medications. When the appellant went to the family doctor, he threw the anti-biotics in the garbage and said they could have killed the appellant.
- The appellant has travelled back and forth from another province to B.C. to visit family but did not move to B.C. until a couple of years ago.
- The appellant was able to access medications during the period from the time of last report in another province around 2014 until the appellant received medical care in B.C.
- The appellant tried working in B.C. but it was too hard.
- The self-assessment regarding physical abilities and ability to perform DLA was completed by the appellant with the assistance of an assistant in the GP's office. The appellant acknowledged the inconsistencies between the self-assessment in some areas. The appellant explained that neither of them understood the forms and the appellant believes the GP could have assisted more with an explanation and directions.
- The appellant has taken anti-depressant medications since 2008. There have been some adjustments in type of medication as one anti-depressant made the appellant very drowsy. The appellant has not attended group therapy or counselling.
- The appellant lives in the same house as the appellant's parents but lives in a separate apartment in the house. The appellant's parents help by cooking for the appellant and sometimes helping with laundry since the appellant cannot go up and down stairs. After about 10 to 15 stairs the appellant needs to take a break. The appellant's elderly mother is in better physical condition than the appellant.
- The appellant can dress independently but has to sit down to do so.

- The appellant can stand for up to an hour.
- Even though the ministry had said the appellant could apply for both the federal CPP Disability benefit and the provincial PWD designation, the appellant decided to only pursue the PWD designation.
- The appellant wants to work but has tried and experiences shortness of breath and chest pains. The appellant has been "in and out of the hospital and they say everything is fine but it is not." The appellant is not capable of working.

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

- The requirement in the legislation for an opinion of a medical practitioner is specifically for a medical practitioner qualified to practice in B.C. and does not include a medical practitioner from another province.
- The GP in B.C. had only known the appellant for 2 months at the time of completing the MR and the AR and this may have been a barrier to understanding or describing the impacts of the appellant's impairment in detail.
- There are funds available for 'medical transportation' to cover the cost of travel to a specialist.
- If the appellant's GP makes a special request on the appellant's behalf, the cost of a broader range of medications may be covered by the province.
- The appellant does not currently have the Persons with Persistent Multiple Barriers to employment (PPMB) status with the ministry.

Admissibility of Additional Information

The panel finds that there is no additional information for which a determination of admissibility was required under Section 22(4)(b) 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. Was it reasonable for the ministry to find that the evidence does not establish that the appellant has a severe mental or physical impairment that, in the opinion of a medical or nurse practitioner, is likely to continue for at least 2 years and that DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods? Was it reasonable for the ministry to determine that, as a result of those restrictions, the appellant does not require 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 EAPWDR states that a person who is considered to be disabled under Section 42(2) of the Canada Pension Plan (CPP) (*Canada*) is part of a class of persons and may be designated by the ministry as a PWD under Section 2(2) of the EAPWDA (*B.C.*). The appellant stated at the hearing that the option was made available, but no application was made for the federal disability benefits as the appellant decided to pursue PWD designation through the provincial program. 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

Duration

Section 2(2)(a) of the EAPWDA stipulates that the ministry must be satisfied that the appellant's impairment is, in the opinion of a medical practitioner or nurse practitioner, likely to continue for at least 2 years.

Ministry's Position

In the reconsideration decision, the ministry wrote that the GP indicated in the MR that it is "unknown" whether the appellant's impairment is likely to continue for 2 years or more from the date of the report and that "it depends on compliance with treatment." Regarding the appellant's compliance with treatment, the ministry stated at the hearing that there may be options available to the appellant to reduce barriers to treatments, such as funding available for 'medical

transportation' to consult with a specialist, and a process for a special request to be made by the GP on the appellant's behalf to possibly allow the cost of a broader range of medications to be covered by the province. Based on the GP's comments in the MR, the ministry was not satisfied that the GP provided an opinion that the appellant's impairment is likely to continue for at least 2 years. At the hearing, the ministry stated that the requirement for the opinion of a medical practitioner is specifically for a medical practitioner qualified to practice in B.C. and does not include a medical practitioner from another province.

Appellant's Position

At the hearing, the appellant stated that the appellant has been impaired for 1 ½ years and the doctor the appellant first consulted did not even give the appellant a driver's license. The appellant stated $350 was spent to get a copy of the doctors' reports from another province and the GP did not take any time to review the reports, which upset the appellant. The appellant stated there is no desire to go back to the GP who completed the reports, that the appellant does not like him and believes that the GP also does not like the appellant.

On the question of the appellant's compliance with treatment, the appellant stated at the hearing that there has been compliance with prescribed anti-depressant medication since 2008, with some adjustments to deal with side effects. The appellant also stated, however, that the appellant has not consulted with a kidney specialist, although recommended as the appellant has been told there will be a need for dialysis, because the office is too far away and the appellant does not have bus fare. The appellant wrote in the self report that the appellant cannot afford medication and stated at the hearing that the appellant's blood sugar level is "out of control."

Panel's decision regarding duration

In the *Interpretation Act,* "medical practitioner" is defined as a registrant of the College of Physicians and Surgeons of British Columbia (it is similar for "nurse practitioner." The result is that only doctors licensed in B.C. are a "medical practitioner" for the purposes of a PWD designation.

Therefore, although the appellant obtained information from another province that documents medical problems from as early as May 2007 and covers the period up to March 2014, the panel finds that the opinion of the GP, or another medical or nurse practitioner qualified to practice in B.C., is required to establish that a severe impairment is likely to *continue* for at least 2 years. In this case, when asked if the impairment is likely to continue for 2 years of more from the date of the MR, the GP did not indicate either "yes" or "no" and wrote "unknown, depends on compliance to treatment."

The GP identified compliance to treatment recommendations as possibly shortening the duration of the appellant's impairment from the diagnosed medical conditions and making the

duration of the impairment "unknown" at this time. There was no update in the GP's opinion provided on the appeal. The panel finds that the ministry reasonably concluded in the reconsideration decision that there was insufficient evidence to establish that, in the opinion of the medical practitioner, the appellant's impairment is likely to continue for at least 2 years.

Severe Physical Impairment

Section 2(2) of the EAPWDA requires that the ministry must be satisfied that the impairment is severe before the ministry may designate an applicant as a PWD, allowing for the ministry to consider the totality of the evidence that may include information from medical professionals in another province. To assess whether there is a *severe* physical impairment, the ministry considers information about the nature of the impairment and the extent of its impact on daily functioning. The panel finds that the assessment of severity based on evidence of the appellant's daily physical functioning is a reasonable interpretation of the legislation.

Ministry's Position

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical impairment. The ministry acknowledged that the GP diagnosed the appellant with diabetes and chronic renal failure, with no dates of onset provided. The ministry considered the impacts of the appellant's medical conditions on daily functioning, reviewing the assessments provided in the MR, the AR and the appellant's self reports. The ministry wrote that the GP reported in the MR that the appellant can walk 2 to 4 blocks unaided on a flat surface, climb 25 steps without assistance, lift 7 to 16 kg., and remain seated 1 to 2 hours and this reported level of mobility and physical ability does not establish a severe physical impairment. The ministry also considered that the GP assessed the appellant in the AR as being independent with climbing stairs, lifting, and carrying and holding, performed without the use of an assistive device or the assistance of another person. The ministry considered that the GP assessed the appellant as requiring periodic assistance from another person for walking indoors and outdoors and for standing and wrote that the GP provided no additional comments regarding the assistance required, making it difficult for the ministry to determine whether the appellant faces significant physical restrictions in these areas.

Appellant's Position

At the hearing, the appellant stated that the appellant is continually coughing and can walk but has to sit down every 10 to 15 minutes. The appellant stated that, as a smoker for decades, the appellant now finds it really hard to breathe and even a little bit of smoke makes it feel like the appellant is being choked. The appellant also stated that it feels like there is fluid in the appellant's lungs so that the appellant's head must be elevated while sleeping "so the fluid goes down." The appellant stated that sometimes the appellant wakes up during the night and cannot breathe, making the appellant afraid to go to sleep for fear of never waking up. The appellant expressed a desire to work but stated the appellant has tried and experienced

shortness of breath and chest pains. The appellant stated the appellant has been “in and out of the hospital and they say everything is ‘fine,’ but it is not.”

In the self-assessment regarding physical abilities and ability to perform DLA, the appellant indicated an ability to walk for 15 to 20 minutes, stand for 1 hour, lift/carry 25 lbs., and occasionally climb a few steps ("20 steps") ("tired after 25 steps"). In another section of the self-assessment, the appellant indicated that the appellant was “totally dependent,” needing assistance with walking 50 meters-level, going up and down stairs, and walking outdoors for 50 meters. At the hearing, the appellant acknowledged the inconsistencies between the self-assessment in some areas and explained that neither the appellant nor the assistant in the GP’s office understood how to complete the forms. In the Request for Reconsideration, the appellant wrote that the appellant can not “stand too long” because the appellant gets tired and dizzy and clarified at the hearing that the appellant is able to stand for up to an hour. The appellant wrote in the Request for Reconsideration that the appellant has shortness of breath and can walk about 15 minutes and then feels sweaty and dizzy. At the hearing, the appellant stated that the appellant can lift “a little weight” but this is hard since the appellant has no balance and the appellant gets tired.

Panel’s decision regarding physical impairment

While no dates of onset are provided by the GP in the MR, diabetes mellitus is diagnosed by a physician in another province in May of 2007 and renal insufficiency was likewise identified in March 2009. Although not diagnosed by the GP, the Medical Report dated March 30, 2009 also listed chronic scrotal abscess/cellulitis as a diagnosed condition and the appellant stated at the hearing that there are boils on the skin all over the appellant’s body that bleed almost every day. The appellant provided information at the hearing about problems with coughing and shortness of breath due to issues with the appellant’s lungs, but the GP did not diagnose a medical condition relating to the appellant’s lungs and there was also no recent medical information from another province confirming a diagnosed condition. While the appellant stated at the hearing that the appellant has been “in and out of the hospital,” there were no further reports of medical investigation of the condition of the appellant’s lungs submitted on the appeal.

The appellant acknowledged at the hearing that there are inconsistencies between the appellant’s self-assessment in some areas. The information provided by the appellant at the hearing was more consistent with the self-assessment by the appellant of an ability to walk for 15 to 20 minutes, stand for 1 hour, lift/carry 25 lbs., and occasionally climb a few steps ("20 steps") ("tired after 25 steps"). This self-assessment is also more consistent with the GP’s assessment of the appellant’s ability to walk 2 to 4 blocks unaided on a flat surface, climb 25 steps without assistance, lift 15 to 35 lbs., and remain seated 1 to 2 hours. The panel considers that the ministry was reasonable to rely on additional comments by the GP regarding the periodic assistance the appellant requires from another person for walking indoors and outdoors and for standing, as it is otherwise difficult for the ministry to determine whether the appellant

faces significant physical restrictions in these areas. In the Request for Reconsideration, the appellant wrote that the appellant can not "stand too long" because the appellant gets tired and dizzy and clarified at the hearing that the appellant is able to stand for up to an hour. The appellant wrote in the Request for Reconsideration that the appellant has shortness of breath and can walk about 15 minutes and then feels sweaty and dizzy. The appellant did not describe a need for assistance from another person or an assistive device with walking (indoors/outdoors) or with standing.

Given the GP's assessment of independent physical functioning in the higher range of functional skills limitations and the absence of information from the GP, other medical professionals, or the appellant describing a need for assistance from another person or an assistive device, 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.

Severe Mental Impairment

To assess the severity of a mental impairment, the ministry considers the extent of any impact on daily functioning as evidenced by restrictions to cognitive, emotional and social functioning. The ministry does not only look at the diagnosis, but considers the bigger picture including whether there are restrictions that are specific to a mental impairment, namely: make decisions about personal activities, care or finances (*decision making*), and relate to, communicate or interact with others effectively (*relate effectively*). The panel finds that an assessment of severity based on cognitive and emotional functioning and restrictions to these DLA is a reasonable interpretation of the legislation.

Ministry's Position

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 depression, with no date of onset provided. The ministry considered the appellant's self report that indicated that the appellant is "sometimes forgetful" and, regarding emotion/mood, the appellant has "sadness, depression, suicidal." The ministry considered that the appellant indicated in the self assessment that there are no problems with communicating and the appellant receives no help and does not require more help with anything. The ministry wrote that the GP indicates that the appellant has difficulties with communication and does not indicate a cause but wrote "mood related." While assessing the appellant in the AR with poor ability with speaking "related to mood," the ministry pointed out that the GP did not assess the appellant's abilities in the areas of reading, writing, or hearing.

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 emotional disturbance, motivation, executive functioning and memory but pointed out that the GP indicated that the majority of areas of impact to the appellant's daily functioning is minimal to none. The ministry wrote that

the GP assessed major impacts to cognitive and emotional functioning in two areas- emotion and motivation- and moderate impacts in the areas of insight/judgement, attention/ concentration, executive, and memory. The ministry considered the significant deficits and impacts in conjunction with the report of the appellant's functioning with the DLA specific to a mental impairment and found that a severe impairment had not been established. The ministry wrote that the appellant was reported to be able to complete the majority of DLA independently, including all activities related to making decisions regarding personal activities, care, and finances.

Appellant's Position

In the Request for Reconsideration, the appellant wrote that the appellant has been in a "Psycho Ward" three times in another province because of attempts to end the appellant's life due to depression. In the additional self-report, the appellant reported regarding memory, the appellant is "sometimes forgetful" and with emotion/ mood the appellant has "sadness, depression, suicidal." The appellant indicated that the appellant has difficulty interacting with family, friends and other people but there are no problems with communicating. In another section of the self-assessment, the appellant indicated regarding "communication/social cognition" that the appellant's comprehension, expression, social interaction and memory are all "minimal."

Panel's decision regarding mental impairment

While no date of onset was provided in the MR, depression was diagnosed by a physician in another province in the Report of May 2007. At the hearing, the appellant stated that anti-depressant medications have been prescribed to the appellant since 2008. Although the appellant wrote in the Request for Reconsideration, that the appellant has been hospitalized three times in another province because of attempts to end the appellant's life due to depression, the appellant stated at the hearing that there has been no group therapy or counselling recommended. There was no further information provided on the appeal to indicate recent hospitalizations due to the appellant's depression.

The GP reported in the MR that the appellant has significant deficits with cognitive and emotional functioning in the areas of emotional disturbance, motivation, executive functioning and memory, with major impacts to cognitive and emotional functioning in two areas- emotion and motivation plus moderate impacts in four areas of insight/judgement, attention/concentration, executive, and memory. In the additional self-report, the appellant reported regarding memory, the appellant is "sometimes forgetful" and with emotion/ mood the appellant has "sadness, depression, suicidal," which appears consistent with the GP's assessment of a moderate impact to memory and a major impact to emotion.

Despite the number of areas of cognitive and emotional functioning having significant deficits or major/moderate impacts, the panel finds that the ministry was reasonable in concluding that the

information as a whole does not establish a severe impairment of functioning. Considering the two DLA set out in Section 2(1)(b) of the EAPWDR that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (relate effectively), the panel finds that the ministry reasonably concluded that there is insufficient evidence to establish that the appellant is significantly restricted in either.

Regarding the 'decision making' DLA, the GP reported in the AR that the appellant independently manages all of the decision-making components of DLA, specifically: personal care (regulating diet), shopping (making appropriate choices and paying for purchases), meals (meal planning and safe storage of food), pay rent and bills (including budgeting), medications (taking as directed and safe handling and storage) and transportation (using public transit schedules and arranging transportation). The GP reported in the AR that the appellant requires periodic support/supervision of another person with making appropriate social decisions; however, the GP did not provide an explanation or a description of the types of decisions or the nature of the support/supervision required, as evidence of significant restrictions in this area.

Regarding the DLA of 'relating effectively', the GP reported that the appellant requires periodic support/ supervision in developing and maintaining relationships and interacting appropriately with others. The GP did not add an explanation or description of the support or supervision required and did not provide an assessment regarding the appellant's ability to secure assistance from others. The GP reported that the appellant has marginal functioning in both the immediate and extended social networks and, when asked to describe the support/supervision required to maintain the appellant in the community, the GP left this section of the AR blank. In the additional self-report, the appellant indicated that the appellant has difficulty interacting with family, friends, and other people and the appellant's expression and social interaction are "minimal"; however, the appellant stated at the hearing that the appellant lives in the same house with the appellant's parents and they assist with the tasks of cooking and laundry. There was no evidence of support or supervision provided by the appellant's parents or another person for the appellant's ability to interact or communicate with others. In the MR, the GP reported that the appellant has difficulties with communication identified as "mood related" and, in the AR, that the appellant has a poor communication ability with speaking "related to mood." The GP did not provide an assessment of the appellant's communication abilities with reading, writing, or hearing. In the additional self-report, the appellant indicated that there are no problems with communicating and no one helps the appellant with anything. There was no further clarifying information regarding the appellant's ability to communicate provided on the appeal.

Given the absence of evidence of significant impacts to the appellant's cognitive and emotional functioning as well as the insufficient evidence of significant impacts to the two DLA that are specific to a mental impairment, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

Section 2(2) of the EAPWDA requires that a severe impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods, as confirmed by the opinion of a prescribed professional. The direct and significant restriction may be either continuous or periodic. If the restriction is periodic, it must be for an extended time. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the MR and, with additional details, in the AR. Therefore, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairment continuously or periodically for extended periods.

Ministry's Position

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 shopping DLA (going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home), the meals DLA (meal planning, food preparation, cooking, and safe storage of food), the pay rent and bills DLA (including banking and budgeting), and the medications DLA (filling/refilling prescriptions, taking as directed, safe handling and storage). The ministry wrote that although the GP indicated that the appellant requires the periodic assistance of another person with the tasks of basic housekeeping, laundry, and using public transit, the GP did not provide a description of the type or amount of assistance required, which made it difficult for the ministry to determine that the appellant is significantly restricted in these tasks. The ministry also wrote that the GP indicated that the appellant requires periodic assistance in mot areas of social functioning, but did not provide a description of the support/supervision required to maintain the appellant in the community, again making it difficult to determine that the appellant is significantly restricted.

Appellant's Position

At the hearing, the appellant stated that the appellant is not capable of working. The appellant wrote in the Request for Reconsideration that the appellant tried working but could not stand too long and the appellant has lost many jobs due to health problems.

The appellant also stated at the hearing that the appellant lives in a separate apartment in the same house as the appellant's parents and they help the appellant by cooking for the appellant and sometimes help with laundry since the appellant cannot go up and down stairs. The appellant stated that after climbing about 10 to 15 stairs the appellant needs to take a break. The appellant stated that the appellant can dress independently but needs to sit down to dress.

Panel's decision regarding restrictions to DLA

Although there was additional information provided by the appellant from medical professionals from another province, these professionals do not qualify as a "prescribed professional" according to the definition in Section 2(2) of the EAPWDR and for the purposes of PWD designation. In Section 2(2) of the EAPWDR, "prescribed professional" is defined as someone authorized under an "enactment" for certain listed professions. A review of the Interpretation Act 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 the listed professions (such as a medical practitioner or a social worker) licensed in B.C. are a "prescribed professional" for the purposes of a PWD designation. In this case, the GP is the prescribed professional.

The appellant's position in the Request for Reconsideration at the hearing is that the appellant is not capable of working. The panel notes that, unlike with the PPMB status, 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 DLA in section 2 of the EAPWDR.

In the self-assessment regarding DLA dated July 30, 2020, the appellant responded that the appellant can independently: shop for small purchases, plan/prepare/serve adequate meals, perform light daily tasks, do personal laundry completely/launder small items, arrange own travel via taxi (but does not otherwise use public transportation), take medication in correct dosages at correct time, and manage financial matters. In another section of the self-assessment regarding DLA, the appellant indicated that the appellant is "totally dependent" with self-care and is unable to take food/drink, dress upper body, dress lower body, put on braces/prosthesis, wash/bathe, or perineum (at toilet), and the appellant experiences occasional accidents with both bladder and bowel control. The appellant also reported that the appellant's self-care is "intact" (as opposed to "limited," "helper," or "null"). For "mobility/locomotion", the appellant indicated the appellant is "totally dependent" and is unable to transfer bed, transfer chair/wheelchair, transfer toilet, transfer tub/shower, transfer automobile, walk 50 metres- level, or walk outdoors for 50 metres. The appellant acknowledged at the hearing that the information in parts of the appellant's self-assessments was inconsistent and the panel places weight on the information from the appellant that is consistent with that of the GP.

The GP indicated in the MR that the appellant has not been prescribed medications that interfere with the ability to perform DLA. In the AR, the GP reported that the appellant is independent in performing all of the tasks of several listed DLA, specifically the personal care DLA, the shopping DLA, the meals DLA, the pay rent and bills DLA, and the medications DLA. The GP indicated that the appellant requires the periodic assistance of another person with the tasks of basic housekeeping, laundry, and using public transit, but provided no further

explanation or description of the type and amount of assistance required. The panel finds that the ministry reasonably determined that since the GP did not provide a description, it was difficult for the ministry to determine that the appellant requires periodic assistance for extended periods of time with these tasks. At the hearing, the appellant stated that the appellant's parents "sometimes help" with laundry since the appellant cannot go up and down stairs without breaks, but did not elaborate on the frequency of assistance provided with this task, or a description of assistance needed with housekeeping or using public transit.

Asked in the AR to describe the appellant's mental or physical impairments that impact the ability to manage DLA, the GP wrote: "related to mood"; however, there was little evidence of significant impacts to the two DLA- 'decision making' and 'relating effectively'- that are specific to a mental impairment, as previously discussed.

Given the GP's assessment of independence with performing almost all tasks of the listed DLA, and insufficient evidence of significant impacts to the two social functioning DLA that are specific to a mental impairment, as previously discussed, 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 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. Although there may have been some misunderstanding of the question being asked in the additional self-assessment form, as suggested by the appellant at the hearing, the appellant responded that no one helps the appellant with anything and the appellant does not need more help with anything.

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).

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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"; . . .

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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) 2021-01-08

PRINT NAME	
Meghan Wallace	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2021-01-08
PRINT NAME	
Linda Smerychynski	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2021-01-08