

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated December 1, 2020 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that the impairment is likely to continue for at least two years. However, the ministry was not satisfied the evidence establishes that:

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

The ministry also determined that the appellant is not in any of the classes of persons set out in section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation* who may be eligible for PWD designation on alternative grounds.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 2 and 2.1

PART E – SUMMARY OF FACTS

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the appellant's information dated September 10, 2020, a medical report (MR) and an assessor report (AR) both dated September 10, 2020 and completed by a general practitioner (GP) who has known the appellant for 2 years and has met with the appellant 11 or more times in that period.

The evidence also included the following documents:

- 1) Second copy of the appellant's information and self-report dated February 15, 2019;
- 2) 3 pages of a 4-page MRI Imaging Report dated July 15, 2019;
- 3) Request for Reconsideration dated July 27, 2020.

Diagnoses

In the MR, the GP diagnosed the appellant with degenerative disc disease (DDD) of the lumbar spine, osteoarthritis (OA) of the right shoulder, OA of the left hip, and OA of the cervical vertebrae, with onset 15 years ago. 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 that the appellant "is unable to walk, stand, or sit for more than 20 minutes without pain," "cannot lift any weight greater than 25 lbs.," "cannot initiate or maintain sleep due to pain," and "is irritable due to pain."

Physical Impairment

In the MR and the AR, the GP reported:

- In terms of the appellant's health history, the GP wrote that the appellant "has presented with history of chronic severe generalized joint pain," "pain has been localized at the cervical vertebrae, the lumbar and the hip joint," and the appellant also "has history of chronic severe right shoulder pain." The appellant "is unable to function due to these chronic pain" and "there is also history of difficulty to sleep due to the presenting pain."
- The appellant does not require an aid for the impairment.
- In terms of functional skills, the appellant can walk less than 1 block unaided on a flat surface, climb 2 to 5 steps unaided, remain seated less than 1 hour (note: "20 minutes"), and cannot lift any weight.
- In the AR, the appellant is assessed as taking significantly longer than typical with all areas of mobility and physical ability, specifically walking indoors (note: "can't walk more than 100 metres") and walking outdoors ("can't walk more than 100 metres"), climbing stairs ("can't climb more than 5 steps without pain"), standing ("can't stand more than 20 minutes"), and with lifting ("can't lift more than 25 lbs.") and carrying and holding ("can't lift more than 25 lbs.").
- 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 MRI Imaging Report dated July 19, 2019, the physician wrote:

- There is an impression of rotator cuff tears as described;
- MRI of the cervical spine provides an impression of multi-level DDD and facet joint arthropathy with various degrees of associated spinal canal and neural foraminal narrowing as described. There is no evidence of cord compression or myelopathy;

- MRI of the lumbar spine provides an impression of multi-level DDD and facet joint arthropathy with various degrees of associated spinal canal and neural foraminal narrowing as described.

In the second copy of the appellant's information and self-report dated February 15, 2019, the appellant wrote:

- The appellant has a heart condition for the last six years, having had two heart attacks.
- Since the heart attacks, the appellant has become progressively weaker, with every effort causing an instant drain of energy. The appellant sweats profusely and becomes dizzy and disoriented.
- The appellant has also been suffering for years of un-diagnosed problems with the appellant's neck, right shoulder, arms, hands and fingers, and left hip.
- The appellant can no longer lift anything heavy and most physical activity produces extreme chest pain and shortness of breath.
- The appellant cannot walk far without several rests.
- The appellant is hearing impaired and wears two hearing aids, which are unpredictable in noisy conditions and with radio frequency waves interferences.
- The appellant has tried to go back to work several times, however, due to the heart/chest pain, sweating, and dizziness, the appellant could not keep a job long.
- Since the appellant could no longer work, the appellant moved and became homeless and malnourished, depending on the goodwill of others for food and housing.

Mental Impairment

In the MR and the AR, the GP reported:

- In terms of the appellant's health history, the GP wrote that the appellant has a history of fights with traumatic injuries to the head.
- The appellant has no difficulties with communication.
- The appellant has no significant deficits with cognitive and emotional functioning.
- In the AR, the GP indicated that the appellant has a good ability to communicate in all areas, specifically speaking, 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 no impacts to any of the listed areas.
- For social functioning, the appellant is independent 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 appellant has good functioning in both the immediate and extended social networks.
- Asked to describe the support/supervision required to maintain the appellant in the community, the GP indicated that this is "N/A [not applicable]" to the appellant.

In the second copy of the appellant's information and self-report dated February 15, 2019, the appellant wrote:

- The loss of co-workers, friends, and a purpose in life has caused the appellant to become seriously depressed and even considered suicide at times.
- The appellant has one dependant child and is "stressed out to the maximum." The

situation they are living in is “intolerable” and, with the constant stress, the appellant has lost hope.

- The appellant suffers with the shame of having “lost most everything” and no longer being able to work and take care of self and the appellant’s child.

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 takes significantly longer than typical with walking indoors and walking outdoors, with a note “can’t walk more than 100 metres.”
- The appellant is independent in performing all of the tasks of some of the listed DLA, specifically the meals DLA (including the tasks of 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 the personal care DLA, the appellant takes significantly longer than typical with the tasks of dressing, grooming, and bathing, and is independent with the tasks of toileting, feeding self, regulating diet, transfers in/out of bed and on/off chair. The GP did not provide any description of how much longer it takes the appellant.
- Regarding the basic housekeeping DLA, the appellant does laundry independently and takes significantly longer than typical with basic housekeeping. The GP did not provide any description of how much longer it takes the appellant.
- For the shopping DLA, the appellant takes significantly longer than typical with the tasks of going to and from stores and carrying purchases home, and is independent with reading prices and labels, making appropriate choices, and paying for purchases. The GP did not provide any description of how much longer it takes the appellant.
- For additional comments, the GP wrote that the appellant’s “major limitations are physical due to pain in [the appellant’s] shoulder, lower back, and hip.”
- Regarding the transportation DLA, the appellant takes significantly longer than typical with the tasks of getting in and out of a vehicle and using public transit and is independent with using transit schedules and arranging transportation. The GP did not provide any description of how much longer it takes the appellant.

In the second copy of the appellant’s information and self-report dated February 15, 2019, the appellant wrote:

- The appellant has tried to go back to work several times; however, due to the heart/chest pain, sweating, and dizziness, the appellant could not keep a job long.
- Since the appellant could no longer work, the appellant moved and became homeless and malnourished, depending on the goodwill of others for food and housing.

Need for Help

The GP reported in the AR that the appellant receives help from family. The GP indicated that assistive devices and an assistance animal are “not applicable” to the appellant.

Additional information

In the Notice of Appeal stamped received by the Tribunal on December 21, 2020, the appellant expressed disagreement with the ministry's reconsideration decision.

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

- 1) Consultation Report dated April 9, 2020 in which a surgeon wrote:
 - The GP's note indicated complaining of severe neck, shoulder and lumbar pains.
 - Having reviewed the imaging studies at that stage, the appellant "has minor degenerative changes which are age appropriate with regards to the rotator cuff."
 - "The most recent note lists a myriad of symptoms and what certainly indicates the probability of chronic pain issues. In this setting, the likelihood of me being able to change any of this appreciably given the minor changes that are present on the MRI scan, is limited."
- 2) Letter dated July 2, 2020 in which a specialist in cardiology and internal medicine wrote that:
 - The appellant has a history of self-reported heart attacks but these were not confirmed by any objective investigations or reports that the specialist received.
 - The appellant performed poorly on stress testing "but predominantly because of leg complaints."
 - The appellant's complaints at the time of doing exercises are predominantly fatigue and pain in the back and hip.
 - The appellant states that at times there is an experience of nausea, shortness of breath and discomfort in the chest and "these additional complaints are not consistent with all [the appellant's] episodes."
 - The consistent factors seem to be related by limiting musculoskeletal problems.
 - The impression is that the appellant has limiting symptoms of fatigue and back pain and complains of dyspnea and chest pain on occasion with exertion.
 - The appellant had relief with the first trial of a nitroglycerin patch and further testing is pending.
- 3) Imaging Report dated July 12, 2020 for MRI Shoulder W/O Contrast Right with an impression of rotator cuff tears as described;
- 4) Imaging Report dated July 12, 2020 for MRI of the cervical spine with an impression of multi-level degenerative disc disease and facet joint arthropathy with various degrees of associated spinal canal and neural foraminal narrowing as described. There is no evidence of cord compression or myelopathy;
- 5) Imaging Report dated July 12, 2020 for MRI of the lumbar spine with an impression of multi-level degenerative disc disease and facet joint arthropathy with various degrees of associated spinal canal and neural foraminal narrowing as described.
- 6) Imaging Report dated November 23, 2020 for US Extremity Non-Vascular Right with an impression of "small reducible fat-containing left inguinal hernia";
- 7) Imaging Report dated November 27, 2020 of Bone Scan Whole Body, including CT Hip Left and Right and CT Cervical Spine, with an impression of:
 - No evidence of metastatic disease.
 - No acute left hip abnormality. There are underlying OA [osteoarthritis] changes as described.
 - Multi-level degenerative disc disease and facet joint arthropathy along the cervical

spine without significant associated spinal canal stenosis. There are various degrees of associated foraminal stenosis as described.

- Facet joint uptake is most prominent at right C2-C5 level.
- Scattered degenerative changes elsewhere as described;

8) Letter dated December 9, 2020 in which the GP who completed the MR and the AR wrote:

- The appellant has a history of chronic right shoulder pain, chronic upper and lower back pain, and bilateral hip pain.
- The appellant also has a history of shortness of breath worse with exertion.
- The appellant has been reviewed by respective specialist and recommended investigations have been done.
- The appellant also has poor hearing.
- In the GP's opinion, the appellant is not fit to work due to the constant pain and cardiac symptoms which the appellant presents with.

At the hearing, the appellant stated:

- As far as going through the appellant's day, the appellant can get up and do some cooking but cannot stay on the appellant's feet for too long. The appellant cooks easy meals and needs to take breaks.
- The appellant gets tired so easily and has been trying to find out what is going on.
- The appellant cannot walk that far and cannot do what the appellant used to be able to do.
- The appellant cannot pull things like before. After about 15 feet or so, the appellant gets an "anxiety attack" and needs to calm down. This is a scary experience for the appellant.
- The appellant sees others working and feels upset because the appellant "can't do things like that anymore." The appellant feels useless.
- The appellant's heart won't let the appellant do anything. The appellant still tried to go to work.
- The appellant does not know why the body is doing this, especially the hip. It feels like "everything came crashing down" on the appellant.
- The appellant gets dizzy spells where the appellant has to "jump around" to get the heart "back going properly" and the appellant feels stupid doing this.
- The appellant's education is not good, especially with following up on stuff. The appellant "can't read that good" and there are some words the appellant does not know.
- The appellant takes breaks when doing housekeeping since it is hard to bend up and down because of the appellant's back. It takes the appellant at least 3 to 4 times longer to do the housekeeping.
- Anything that affects the spine is hard because the appellant cannot bend due to the disc disease.
- The appellant has disc disease halfway up the back and does not want to end up in a wheelchair.
- The appellant has pain, especially in the neck, since the arthritis "blew up." The appellant's neck and back really bother the appellant and the GP says the appellant has to live with the pain.

- When the appellant got the letter from the ministry advising that there had been a denial of the PWD application, the appellant “got the run-around.” The appellant went to the ministry and was told to see the GP for more information. Then the GP told the appellant to find out from the ministry what information they wanted. The appellant did not have an advocate to assist with getting the information needed.
- The appellant had been having trouble with the heart and called in sick for work. The boss came to the appellant’s residence to drive the appellant to work. By lunch time, the appellant collapsed and the boss took the appellant straight to the hospital. The doctor at the hospital said the appellant could not work because of heart problems. The appellant is not sure if there was a claim through the Workers’ Compensation Board.
- The appellant took a test that the cardiologist set up. As soon as they raised the elevation on the treadmill, the appellant’s hip “started acting up” and the appellant was not able to complete the test. The appellant is still waiting for the cardiologist to schedule another test using some different exercises.
- The appellant can walk up to 100 metres and can stand for up to 20 minutes.
- The appellant can lift up to 25 lbs. but cannot carry this amount of weight very far. The appellant starts to get anxiety and the appellant’s heart starts acting up.
- The appellant can sit for up to 20 minutes but then it feels like the spine is “jamming” with “bone on bone.” The appellant’s left leg often goes numb and this “has been going on for years.”

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

- The appellant is not expected to work as the appellant has the status as a Person With Persistent Multiple Barriers to employment (PPMB); however, employability is not one of the criteria for the PWD designation.
- For a person who qualifies for the federal CPP Disability benefits, there is a special process to also qualify for the provincial PWD designation that only involves completion of a 2-page form. This is a simpler process and it is easier to qualify for the PWD designation if the person has already been accepted for the CPP Disability benefits.

Admissibility of Additional Information

The ministry did not object to the admissibility of the additional documents submitted by the appellant. The panel admitted the appellant’s oral testimony 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*.

The panel considered both parties’ arguments in Part F- Reasons for Panel Decision, below.

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 not, 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.). In the absence of evidence or any argument respecting eligibility for PWD designation under section 2.1(e) of the EAPWDR or another part of Section 2.1, 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

To be eligible for PWD designation, Section 2(2) of the EAPWDA requires that several criteria are met, including that the ministry must be satisfied that the appellant has a severe mental or physical impairment. Although "severe" is not defined in the legislation, the ministry's view is that the diagnosis of a serious medical condition does not, on its own, establish a severe impairment of mental or physical functioning.

Severe Mental Impairment

To assess the severity of a mental impairment, the ministry considers the diagnosis as well as the extent of any impact on daily functioning as evidenced by limitations or restrictions to cognitive, emotional, and social functioning. This analysis by the ministry may also include consideration of the appellant's functioning with the two DLA specific to a mental impairment, as set out in Section 2(1)(b) of the EAPWDR, or the ability to make decisions and to interact with others effectively. The panel finds that the ministry's assessment of severity based on cognitive, emotional, and social functioning and restrictions to the DLA specific to a mental impairment is a reasonable interpretation of the legislation.

Appellant's argument- mental impairment

The appellant's focus was on a physical impairment rather than a mental impairment. At the hearing, the appellant stated that the appellant feels useless because the appellant's heart "won't let" the appellant do anything, the appellant cannot work, and it feels like "everything came crashing down" on the appellant. The appellant described experiencing "anxiety attacks" when the heart causes problems. The appellant stated that not having a good education, the appellant "can't read that good" and there are some words the appellant does not know. In the self-report, the appellant wrote that the loss of co-workers, friends, and a purpose in life has caused the appellant to become "seriously depressed" and the appellant "even considered suicide at times." The appellant wrote that being "stressed out to the maximum," the situation the appellant and a dependant child are living in is "intolerable" and, with the constant stress, the appellant has lost hope.

Ministry's argument- mental impairment

In the reconsideration decision, the ministry considered that although the GP indicated in the MR that the appellant had traumatic injuries to the head and the appellant reported experiencing depression and stress, the GP did not diagnose a mental health disorder. The ministry wrote that the GP reported in the MR that the appellant does not experience significant deficits and there are no impacts to areas of cognitive and emotional functioning. The ministry wrote that while the appellant noted hearing impairment, the GP reported that the appellant does not have difficulties with communication and that the appellant's level of ability with speaking, reading, writing and hearing are good. The ministry wrote that the GP reported that the appellant is independent in all areas of social functioning and does not require support or supervision to be maintained in the community.

Panel's decision- mental impairment

In the reconsideration decision, the ministry was not satisfied that the information provided was sufficient evidence of a severe mental impairment. The panel finds that the ministry's consideration that the GP did not diagnose a mental disorder or a traumatic brain injury in the MR despite having referred to a history of traumatic injuries to the head was reasonable. The appellant stressed the impact of the loss of employment to a sense of well-being, that the "loss of purpose in life" has caused the appellant to become seriously depressed and suicidal at times. There was no further information provided on the appeal regarding investigation of a possible mental health diagnosis. Further, the GP reported that the appellant does not have significant deficits and there are no impacts to the various listed areas of cognitive and emotional functioning.

The GP assessed the appellant as independent in all areas of social functioning, including making appropriate social decisions and interacting appropriately with others, with good functioning in both immediate and extended social networks. While the appellant wrote in the

self report that the appellant is hearing impaired and wears two hearing aids and stated at the hearing that the appellant cannot read well, the GP assessed the appellant with no difficulties with communication and a good ability to communicate in all areas, including reading and hearing. In the letter dated December 9, 2020, the GP who completed the MR and the AR confirmed that the appellant has poor hearing without elaborating how this impacts the appellant's daily social functioning.

Given the absence of a mental health diagnosis and a lack of evidence from the GP of significant impacts to the appellant's cognitive, emotional, and social functioning, including insufficient evidence of impacts to the two DLA specific to a mental impairment, the panel finds that the ministry's conclusion that a severe mental impairment was not established under Section 2(2) of the EAPWDA was reasonable.

Severe Physical Impairment

To assess whether the appellant has a severe physical impairment, the ministry considers information on the degree of restrictions to physical functioning. The panel finds that the assessment of severity based on daily physical functioning is a reasonable interpretation of the legislation.

Appellant's argument- physical impairment

At the hearing, the appellant stated that the appellant has been trying to find out what is going on with the appellant's body as the appellant tires easily, has problems with the heart, pain in the back and hip, and numbness in a leg. On appeal, the appellant provided letters from the GP and a cardiologist, a consultation from a surgeon, as well as several medical imaging reports from investigations of the shoulder, extremity non-vascular, cervical and lumbar spine, and hip. The appellant stated that the GP says here is nothing that can be done and the appellant has to live with the pain. The appellant stated that the appellant cannot walk that far, cannot pull things like before, and that anything that affects the spine is hard because the appellant cannot bend due to the disc disease. In the self-report, the appellant wrote that the appellant has had a heart condition for the last six years, having had two heart attacks, and the appellant has become progressively weaker. The appellant wrote of no longer being able to lift anything heavy and that most physical activity produces extreme chest pain and shortness of breath. The appellant wrote that the appellant cannot walk far without several rests.

Ministry's argument- physical impairment

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical impairment. The ministry reviewed the assessment by the GP and the information from the appellant in the self-report and argued that this level of physical functioning speaks to a moderate rather than a severe physical impairment. The ministry acknowledged that the GP diagnosed the appellant with DDD of the lumbar spine, OA of the

right shoulder, the left hip, and the cervical vertebrae, and pointed out that the GP did not diagnose a heart condition giving rise to a physical impairment. The ministry wrote that the GP reported that the appellant does not require any aid of prosthesis for the impairment.

The ministry highlighted discrepancies in the GP's assessment of physical functioning as set out in the MR and in the AR and wrote that these inconsistencies make it difficult to determine whether the appellant is significantly restricted. The ministry wrote that the GP indicated in the MR that the appellant is unable to lift; however, in the AR the GP reported that the appellant cannot lift and carry more than 25 lbs. and in the self-report the appellant wrote that the appellant cannot lift anything "heavy." The ministry wrote that the GP indicated in the MR that the appellant is able to walk less than 1 block unaided on a flat surface and reported in the AR that the appellant is unable to walk "more than 20 minutes without pain" and "cannot walk more than 100 metres" indoors and outdoors, indicating that the appellant has the capacity to mobilize independently to some degree. The ministry also wrote that the GP indicated all aspects of the appellant's mobility and physical ability take significantly longer than typical but the GP did not describe how much longer it takes the appellant to allow the ministry to determine if this represents a significant restriction to the appellant's overall level of physical functioning. The ministry argued at the hearing that employability is not one of the criteria for the PWD designation.

Panel's decision- physical impairment

In the MR, the GP diagnosed the appellant with DDD of the lumbar spine, OA of the right shoulder, the left hip, and the cervical vertebrae, and did not diagnose a heart condition or a disease of the circulatory system. Although the appellant wrote in the self-report that the appellant has had two heart attacks and the appellant has become progressively weaker, the cardiologist wrote in the letter dated July 2, 2020 that the appellant has a history of self-reported heart attacks but these were not confirmed by any objective investigations or reports that the specialist received. The cardiologist wrote that the consistent factors seem to be related by limiting musculoskeletal problems, the appellant's complaints at the time of doing exercises are predominantly fatigue and pain in the back and hip, there was some relief with the first trial of a nitroglycerin patch, and further testing is pending. At the hearing, the appellant clarified that the second test was to be modified due to the appellant's problems with using an elevated treadmill and this has not yet been scheduled. The GP provided additional information in a letter dated December 9, 2020 that the appellant has a "history of shortness of breath worse with exertion" and is "not fit to work due to the constant pain and cardiac symptoms." Although the appellant stated at the hearing that the appellant experienced a heart attack at work and was seen by a doctor at the hospital, there were no medical reports of this incident provided on the appeal. The panel finds that the ministry reasonably determined that there was no definitive diagnosis of a heart condition.

In the most recent Imaging Report dated November 27, 2020 of a Bone Scan of the Whole

Body, including CT Hip Left and Right and CT Cervical Spine, the conclusions included that there was no acute left hip abnormality with underlying OA changes, multi-level DDD and facet joint arthropathy along the cervical spine without significant associated spinal canal stenosis and various degrees of associated foraminal stenosis, facet joint uptake most prominent at right C2-C5 level, and scattered degenerative changes elsewhere as described. The various medical imaging reports provided by the appellant, dated July 12, November 23 and November 27, 2020, did not provide an assessment of the appellant's physical functioning.

In the Consultation Report dated April 9, 2020, a surgeon wrote that the appellant "has minor degenerative changes which are age appropriate with regards to the rotator cuff," and "(t)he most recent note lists a myriad of symptoms and what certainly indicates the probability of chronic pain issues" and "(i)n this setting, the likelihood of me being able to change any of this appreciably given the minor changes that are present on the MRI scan, is limited." At the hearing, the appellant stated that the GP told the appellant that it is a matter of living with the pain as there is not much else that can be done.

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, as well as the information from the appellant. The ministry highlighted discrepancies in the GP's assessment of physical functioning as set out in the MR and in the AR and wrote that these inconsistencies make it difficult to determine whether the appellant is significantly restricted. The GP provided additional information in a letter dated December 9, 2020 and wrote that the appellant has a history of chronic right shoulder pain, chronic upper and lower back pain, and bilateral hip pain and in the GP's opinion, the appellant is "not fit to work due to constant pain and cardiac symptoms." The panel finds that employability is not a criterion in section 2(2) of the EAPWDA, and the GP did not provide clarification of the previous assessments of the appellant's physical functioning.

At the hearing, the appellant stated that the appellant can walk up to 100 metres, can stand for up to 20 minutes, and can lift up to 25 lbs. but cannot carry this amount of weight very far since the appellant "starts to get anxiety" and the appellant's heart "starts acting up." The appellant stated that the appellant can sit for up to 20 minutes but then it feels like the spine is "jamming" with "bone on bone." In the self-report, the appellant also wrote that the appellant can "no longer lift anything heavy" and the appellant "cannot walk far without several rests." The panel finds that the ministry reasonably determined that the consistent information indicates that the appellant has the capacity to mobilize independently, without the assistance of another person or the use of an assistive device, to some degree.

The ministry also wrote that the GP indicated all aspects of the appellant's mobility and physical ability take significantly longer than typical but the GP did not describe how much longer it takes the appellant. The panel finds that the ministry reasonably concluded that this detail is needed to allow the ministry to determine if this represents a significant restriction to the appellant's

overall level of physical functioning. In the letter dated December 9, 2020, the GP did not elaborate as to the amount of additional time it takes the appellant with aspects of mobility and physical ability.

Given the absence of a definitive diagnosis of a heart condition, the GP's assessment of independent physical functioning in the moderate range of functional skills limitations, and the absence of clarifying information from the GP of how much longer it takes the appellant with all areas of mobility and physical ability, 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, which can be the appellant's doctor or one of the professionals listed such as a social worker or an occupational therapist.

The term "directly" means that the severe impairment must cause or result in restrictions to activities. The direct restriction must also be "significant." This means that the restriction has a large impact on the person's ability to perform activities.

The direct and significant restriction may be either continuous or periodic. If the restriction is periodic, it must be for an extended period of time. The ministry views an extended period of time to mean occurring frequently or for longer periods of time; for example, the activity is restricted most days of the week, or for the whole day on the days that the person cannot perform the activity. The panel views the ministry's interpretation to be reasonable and, therefore, where the evidence indicates that a restriction arises periodically it is appropriate for the ministry to require information on the duration and frequency of the restriction as well as details about the help or support that is needed.

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.

Appellant's argument- DLA

In the self-report, the appellant wrote that the appellant has tried to go back to work several times but due to the heart/chest pain, sweating, and dizziness, the appellant could not keep a job long. At the hearing, the appellant also emphasized an inability to work primarily due to physical limitations. The appellant also stated that the appellant takes 3 to 4 times longer to do housekeeping since it is hard to bend up and down because of the appellant's back. The appellant stated that the appellant can do some cooking but cannot stay on the appellant's feet

for too long so cooks easy meals and needs to take breaks.

Ministry's argument- DLA

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 that the appellant has not been prescribed medication or treatment that interferes with the appellant's ability to perform DLA. The ministry also wrote that the GP reported that the appellant is able to independently manage all aspects of DLA with the exception of taking significantly longer than typical with some tasks. The ministry argued that the GP did not describe how much longer it takes the appellant to complete these tasks and the ministry is unable to determine that there are significant restrictions to the appellant's ability to perform DLA.

Panel's decision- DLA

The GP, as the prescribed professional, reported in the AR that the appellant is independent in performing all of the tasks of the meals DLA, the pay rent and bills DLA, and the medications DLA. Although the appellant described difficulty with preparing and cooking meals, the GP reported in the AR that the appellant is independent with the tasks of cooking and food preparation. The GP also assessed independence with most tasks of the personal care DLA and the shopping DLA. For the tasks of dressing, grooming, bathing, basic housekeeping, going to and from stores, carrying purchases home, getting in and out of a vehicle, and using public transit, the GP indicated it takes the appellant significantly longer than typical without describing how much longer it takes the appellant. The GP provided additional comments, that the appellant's "major limitations are physical due to pain in [the appellant's] shoulder, lower back, and hip."

At the hearing, the appellant provided clarification regarding the task of housekeeping, stating that it takes the appellant 3 to 4 times longer due to the difficulty with bending and having to take breaks. There was no further clarification by the appellant regarding how long the other tasks of DLA take the appellant. The additional documents provided on appeal, including the letter from the cardiologist, the consultation by the surgeon, and the medical imaging reports, did not provide information regarding the appellant's ability to perform DLA. In the December 9, 2020 letter, the GP wrote an opinion that the appellant is not fit to work due to the constant pain and cardiac symptoms with which the appellant presents. The panel finds that employability is not listed among the prescribed DLA in Section 2 of the EAPWDR.

Given the emphasis by the GP and the appellant on the impact of the appellant's impairment on employability and the GP's assessment of independence with performing most DLA, along with an absence of clarification regarding how long it takes the appellant with some tasks, 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 require an assistance animal. At the hearing, the appellant did not describe a need for assistance with DLA. 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
2020-00280

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)
2021-01-14

PRINT NAME
Donald Stedeford

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2021-01-14

PRINT NAME
Jennifer Armstrong

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2021-01-14