

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated December 7, 2020, in which the ministry found the appellant was not eligible for designation as a Person with Disabilities ("PWD") under section 2 of the *Employment and Assistance for Persons with Disabilities Act* ("EAPWDA"). The ministry found the appellant met the requirements for age, severe impairment, restrictions to daily living activities, and need for help, but was not satisfied that a medical practitioner had confirmed the impairment is likely to continue for at least 2 years.

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

**PART D – RELEVANT LEGISLATION**

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

*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), section 2

**PART E – SUMMARY OF FACTS**

The evidence and documentation before the minister at the reconsideration consisted of:

- information from the ministry’s record of decision indicating that a complete PWD application was received by the ministry on October 28, 2020. The ministry sent a letter to the appellant on July 20, 2020, advising that the PWD application was missing some information and asking the appellant to re-submit the application once complete. The ministry noted that Part C1 of the application - *Degree and Course of Impairment* had not been filled out. A medical practitioner provided the missing information and the ministry denied the application on October 29, 2020. On November 25, 2020, the appellant submitted a Request for Reconsideration (“RFR”). On December 7, 2020, the ministry completed the review of the RFR.
- the RFR signed by the appellant on November 24, 2020. In a hand-written submission, the appellant explains how anxiety and depression have a “crippling” impact on their daily life. The appellant reports dealing with anxiety and depression since childhood but two years ago the appellant was a victim of extreme abuse “which changed me in ways that will affect me for the rest of my life.”
- the appellant’s PWD application comprised of:
  - the *Applicant Information* (self-report - “SR”) dated July 8, 2020.
  - a *Medical Report* (“MR”) dated April 4, 2020, completed by the appellant’s general practitioner (“doctor”) who indicates they saw the appellant 2 to 10 times in the past 12 months;
  - an *Assessor Report* (“AR”) dated June 3, 2020, completed by a Registered clinical counsellor (“counsellor”) who has known the appellant for 2 months and has seen the appellant once in the past 12 months for “private counselling.”
  - an additional AR (“AR-2”) dated September 18, 2020, completed by the doctor who states they have known the appellant since February 2020 and saw the appellant 11 or more times in the past 12 months for “in office counselling, periodic follow up”, and “pharmacology.”
- the ministry’s PWD *Decision Summary* with attached letter, dated October 29, 2020. In the original decision the ministry found that the appellant met only the age criterion for PWD designation. The ministry said it was not satisfied the information in the application confirmed a severe impairment that was expected to continue for 2 or more years; that significantly restricted daily living activities (“DLA”), and that resulted in a need for significant help with DLA.

*Summary of relevant evidence from the application:*

*Diagnosis*

In the MR (section A), the appellant is diagnosed with Generalized anxiety disorder with panic attacks. The doctor states the appellant has had the condition for approximately 2 years. Under *Health History* (section B), the doctor indicates the appellant has been prescribed medications to treat the condition.

*Degree and course of impairment*

In section C of the MR, the doctor is asked to indicate whether the applicant’s impairment is likely to continue for 2 years or more. The doctor did not check the box for *yes* or *no*. The doctor wrote, “unpredictable course. It depends on the response to treatment.” The doctor left *Additional Comments* (section F) blank.

*Additional submissions*

With the consent of both parties, the appeal proceeded as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act* (“EAA”). Subsequent to the reconsideration decision neither party filed any new evidence requiring an admissibility determination under section 22(4) of the EAA. The appellant filed a *Notice of Appeal* with a hand-written statement that the panel accepts as argument. In an email to the Tribunal, the ministry stated that the reconsideration summary is the ministry’s submission on appeal.

**PART F – REASONS FOR PANEL DECISION**

The issue on appeal is whether the ministry's decision to deny the appellant PWD designation is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. Specifically, was the ministry reasonable in finding that the eligibility criterion for duration of impairment in subsection 2(2)(a) of the EAPWDA was not met?

The ministry based the reconsideration decision on the following legislation:

**EAPWDA**

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person 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).

**EAPWDR**

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).

### *Analysis*

On reconsideration, the ministry accepted that the appellant met all of the requirements for PWD designation except the duration criterion set out in subsection 2(2)(a) of the EAPWDA. The ministry was satisfied the appellant met the age requirement and has a severe mental impairment that, in the opinion of a prescribed professional, significantly restricts the ability to perform DLA and, as a result of those restrictions, requires significant help to perform DLA. Therefore, 4 criteria under section 2 of the EAPWDA are not at issue in this appeal.

### *Impairment likely to continue for at least 2 years*

The ministry submits the criterion for duration was not met based on the information from the doctor. The ministry argues the doctor did not indicate whether the impairment is likely to continue for 2 years or more but only narrated “unpredictable course”; “depends on response to treatment.” The ministry found that the information provided “cannot establish your application meets the requirement for PWD designation.”

In the appeal submission, the appellant argues their disability “is going to last more than 5 years.” In the RFR submission, the appellant argues anxiety and depression will “affect me for the rest of my life” due to the abuse suffered 2 years ago.

### *Legislative requirement*

The legislation requires all of the criteria in section 2 of the EAPWDA to be met to be eligible for designation as a PWD. Subsection 2(2)(a) requires a medical practitioner or nurse practitioner to confirm that the applicant’s impairment is likely to continue for at least two more years.

The legislation does not specify the starting point for the assessment of the 2-year period but in section C1 of the MR, the medical practitioner is asked to indicate whether the impairment is likely to continue for 2 years or more “from today.” The doctor signed the MR on April 1, 2020. Accordingly, in the circumstances of the appellant, the ministry requires the doctor to indicate the impairment will likely persist until March 31, 2022 or beyond.

### *Evidence for duration of impairment*

In section A of the MR, the doctor indicates how long the appellant’s conditions have existed, but in section C1 - *Degree and Course of impairment*, the doctor did not check *yes* or *no* when asked if the impairment is likely to continue for at least 2 more years. The doctor’s comments (“unpredictable course. It depends on the response to treatment”) suggest the appellant will be re-assessed after receiving treatment but no time frame for re-assessment was given.

In the MR and AR-2, the doctor indicates the appellant is taking medications for the impairment and receives “in office counselling” and “periodic follow up” but no details on when the treatment started or what the response has been so far were described. In the AR completed by the counsellor, a single counselling session was reported but there was no information on whether the counselling would continue.

### *Panel’s decision*

The panel finds that the ministry reasonably determined the appellant’s impairment did not meet the legislative requirement for duration of impairment. While the appellant has had *Generalized anxiety disorder with panic attacks* since at least 2018, the legislative test under subsection 2(2)(a) of the EAPWDA is forward looking and requires a medical practitioner to confirm that the impairment is likely to persist for at least 2 more years.

The doctor did not provide an opinion on whether the appellant’s mental impairment is likely to continue for at least 2 more years but indicated uncertainty about how long the condition will last based on the appellant’s response to treatment. The doctor indicates seeing the appellant for “periodic follow up” but did not give a time line on when the response to medications and counselling would be assessed.

The appellant argued the condition will “last more than 5 years” and affect them for the rest of their life but unfortunately, the doctor did not confirm the appellant’s view of the duration. The reconsideration and appeal processes gave the appellant the chance to obtain additional information from a medical practitioner but no new information from the doctor was submitted. The panel is sympathetic to the appellant’s situation but finds that the ministry reasonably determined the criterion for duration of impairment in subsection 2(2)(a) of the EAPWDA was not met because of the doctor’s stated uncertainty about how long the condition will last.

#### *Conclusion*

Considering the information in its entirety, the panel finds that the ministry’s reconsideration decision that found the appellant was not eligible for PWD designation was reasonably supported by the evidence, and was a reasonable application of the legislation. The EAPWDA requires all of the legislative criteria to be met but the evidence indicates the appellant met 4 of the 5 criteria. The panel confirms the ministry’s decision. The appellant is not successful on appeal.

**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

Margaret Koren

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021-02-04

PRINT NAME

Robert Kelly

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021-02-04

PRINT NAME

David Kendrick

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021-02-04