

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated January 7, 2021, which held that the appellant did not meet 1 of the 5 statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the following requirements were met:

- the appellant has reached 18 years of age;
- the appellant has a severe physical impairment;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of those restrictions, in the opinion of a prescribed professional, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

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

The ministry also found that the appellant is not in 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), sections 2 and 2.1

PART E – SUMMARY OF FACTS

A ministry observer was in attendance with the consent of the appellant.

Information before the ministry at reconsideration

- The appellant's PWD application comprised of:
 - A Medical Report (MR) completed by the appellant's general practitioner (GP) since December 2019;
 - An Assessor Report (AR) completed by a social worker who has known the appellant for 3 months.
 - The appellant chose not to complete the self-report (SR) section of the PWD application.
- October 28, 2020 Oncology Clinic Report respecting the chemotherapy treatment.
- September 17, 2020 letter respecting a radiation oncology consultation (conducted by telephone).
- The appellant's Request for Reconsideration dated December 21, 2020, which includes the appellant's reasons for requesting reconsideration.

Information and documentation provided on appeal and admissibility

- The appellant's Notice of Appeal (NOA), dated January 9, 2021.
- At the hearing, the appellant, the appellant's son and an advocate (the SW who completed the AR) described limitations to the appellant's physical functioning arising from the surgery and other treatments (described below). The appellant also explained that her oncologist does not sign papers for his patients and therefore, the appellant had to rely on the GP, who has only seen the appellant once and therefore isn't qualified to provide information about the appellant. The advocate stated that the GP's lack of information about the appellant is demonstrated by the GP's references to the AR throughout the MR. [Note: the GP did not complete the DLA section of the MR and wrote "See assessor's report"]
- The ministry reviewed the reasons for denial but did not provide additional evidence at the hearing. The ministry stated that, unfortunately, the fact that the GP did not know the appellant well does not impact the ministry's decision and suggested that the oncologist or other medical/nurse practitioner may be more willing to sign a brief note, rather than complete the PWD application.

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

Summary of Relevant Evidence

Diagnoses and Health History

Where asked to specify diagnoses related to the applicant's impairment, the GP responds: Breast cancer – chemotherapy. The appellant underwent surgery in June 2020 and began chemotherapy in August which was to be followed by radiation treatment commencing approximately 6 weeks after the chemotherapy treatment concludes.

The GP reports that chemotherapy has caused fatigue and insomnia that interferes with the appellant's ability to perform DLA.

The oncology clinic report identifies mild neuropathy in the appellant's feet, significant fatigue and difficulty sleeping arising from the chemotherapy treatment. The radiation consultation indicates that the appellant reports significant nausea and being quite fatigued due to the chemotherapy.

The SW indicates that breast conserving surgery and axillary lymph node dissection and chemotherapy are the impairments that impact the appellant's ability to manage DLA. The SW also indicates that weakness due to chemotherapy results in the need for continuous assistance with walking outdoors and climbing stairs and that the appellant is "currently too weak" to leave home and is completely dependent on family members for almost all ADL's [activities of daily living] and for transportation to and from medical appointments.

In the Request for Reconsideration, the appellant reports that "My treatments have left me with many health issues, many of which effect my life and my ability to take care of myself." The appellant describes experiencing dizzy spells, extreme leg pain, especially the knees, weakness, deformity of fingernails, and permanent tooth damage (brittle, causing pain). Even though chemotherapy has been completed, new symptoms and reactions arise. The appellant's condition now causes her to fatigue easily, yet she has difficulty sleeping. She is unable to walk more than 10 feet due to weakness and fatigue and is unable to use her left arm where the lymph nodes were removed. The next treatments are radiation, which will introduce new health concerns, followed by hormone treatments that can continue for 6 months to forever – "I can't imagine what reactions will arise from this."

In the NOA, the appellant writes "I am unable to work; require 24/7 caregiving for all ADL's. My prognosis is unknown at this time. My physical disabilities prevent me from working and having any quality of life."

At the hearing, the appellant confirmed the information she previously provided, adding that her arm mobility continues to be affected and that her left arm swells up if she doesn't use it. The appellant's son confirmed that he continues to be a full-time caregiver, providing assistance with pretty much all DLA, and noted that the appellant is unable to drive. The advocate stated that the appellant will most likely not be able to work again due to the life-long physical damage caused by the surgery and other treatments: the appellant has always been gainfully employed but full recovery will not happen.

Degree and Course of Impairment

In the MR, the GP checked the “No” box in response to “Is the impairment likely to continue for two years or more from today?” No additional commentary was provided.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. That is, was the ministry reasonable when determining that the requirements of 2(2) of the EAPWDA were not met because a medical or nurse practitioner has not confirmed that the appellant has a severe physical impairment that is likely to continue for at least 2 years?

Panel Decision

Eligibility for PWD Designation – section 2 of the EAPWDA

Duration of Severe Impairment

Positions of the Parties

The appellant's position is that due to the physical impacts of the cancer treatments she is unable to work and requires 24/7 caregiving for all ADL's. As her prognosis is uncertain, she doesn't know how long the treatments will continue. The appellant also argues that the GP did not have sufficient knowledge of the appellant, and has not seen the appellant since completing the MR, in order to adequately assess duration of impairment.

The ministry notes that in the MR the GP indicated that the appellant's impairment is not likely to continue for two years and that no further information regarding duration is provided in the PWD application or at reconsideration. Based on the available information, the ministry concludes that the legislative requirement that a medical or nurse practitioner confirm that the appellant's impairment is likely to continue for at least 2 years.

Panel Analysis

Section 2(2) of the EAPWDA requires that the minister is satisfied that an applicant has a severe mental impairment or a severe physical impairment that **in the opinion of a medical practitioner or nurse practitioner** is likely to continue for at least 2 years.

The information provided by the medical practitioners, SW and the appellant respecting the impact on the appellant's physical functioning due to the cancer treatments is compelling, and was considered sufficient by the ministry to meet all other requirements for PWD designation. However, the information does not include confirmation by a medical or nurse practitioner that the appellant's impairment is likely to continue for at least 2 years. To the contrary, the GP indicates that impairment is not likely to continue for 2 years. No additional information respecting duration of impairment is provided by the GP. At the hearing, the SW stated that the appellant's impairments are life-long; however, the social worker is not a medical or nurse practitioner. While the supplemental information provided about the appellant's chemotherapy and radiation treatments is from

medical practitioners, it does not address the likely duration of the impacts arising from the treatments. The panel acknowledges the appellant's concerns about the GP's lack of knowledge of the appellant and the difficulty she has had obtaining additional medical information from the oncologist but the legislation expressly requires confirmation of duration of impairment by a nurse or medical practitioner.

Therefore, while sympathetic to the appellant's circumstances, based on the available information, the panel finds that the ministry was reasonable when concluding that a medical or nurse practitioner has not confirmed that the appellant's severe physical impairment is likely to continue for at least 2 years.

Other requirements of section 2 EAPWDA

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

Conclusion

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

Relevant Legislation

EAPWDA

2 (1) In this section:

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

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

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

(a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years,

[emphasis added] and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

EAPWDR

Definitions for Act

2 (1) For the purposes of the Act and this regulation, "**daily living activities**",

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

- (iii) shop for personal needs;
- (iv) use public or personal transportation facilities;
- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self-care;
- (viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

- (i) make decisions about personal activities, care or finances;
- (ii) relate to, communicate or interact with others effectively.

(2) For the purposes of the Act, "**prescribed professional**" means a person who is

(a) authorized under an enactment to practise the profession of

- (i) medical practitioner,
- (ii) registered psychologist,
- (iii) registered nurse or registered psychiatric nurse,
- (iv) occupational therapist,
- (v) physical therapist,
- (vi) social worker,
- (vii) chiropractor, or
- (viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

- (i) an authority, as that term is defined in section 1 (1) of the [Independent School Act](#), or
- (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the [School Act](#),

if qualifications in psychology are a condition of such employment.

(3) The definition of "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2 (2) [*persons with disabilities*] of the Act:

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive

community living support under the [Community Living Authority Act](#);

(d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the [Community Living Authority Act](#) to assist that family in caring for the person;

(e) a person who is considered to be disabled under section 42 (2) of the [Canada Pension Plan](#) (Canada).

APPEAL NUMBER
2021-00016

PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister
for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Jane Nielsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/2/9

PRINT NAME

Sarah Bijl

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/2/9

PRINT NAME

Wendy Marten

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/2/9