

### **PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD) dated February 16, 2021 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* (EAPWDA) for designation as a person with disabilities (PWD). While the Ministry found that the Appellant met the age requirement and had an impairment which was likely to continue for at least two years, it was not satisfied that 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 found that the Appellant is 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) and the Appellant did not appeal the decision on this basis. 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**

EAPWDA, Section 2

EAPWDR, Section 2

*Employment and Assistance Act* (EAA), Section 22(4)

The relevant legislation is provided in Schedule A.

## **PART E – SUMMARY OF FACTS**

The evidence before the Ministry at the time of the RD included the PWD Application comprised of the applicant information and self report (SR) completed by the Appellant on December 17, 2020, a Medical Report (MR) dated December 20, 2020 and completed by the Appellant's General Practitioner (GP) who has known the Appellant since June 20, 2016 and who has seen the Appellant 2 - 10 times in the past year, and an Assessor Report (AR) dated December 28, 2020, also completed by the GP.

The evidence also included:

- An unsigned and undated Request for Reconsideration form (RFR) submitted to the Ministry by the Appellant on February 9, 2021, which included:
  - Six pages of Appellant's handwritten reasons for their request for reconsideration;
  - Three pages of Appellant's "clarification comments" relating to the MR and the AR;
  - Appellant's comments on an annotated copy of the Ministry's original decision;
  - Eight pages describing Appellant's difficulties with DLA;
  - November 4, 2020 Urologist's report;
  - Appellant's comments and edits to the annotated copy of the original MR;
  - Seventeen pages of Appellant's comments relating to the original AR; and,
  - Appellant's comments and changes made by the Appellant to the annotated copy of the original AR;
- June 2, 2020 Neurologist report;
- Seven May 13, 2020 Rheumatologist reports dated between March 15, 2017 and May 13, 2020;
- Two Orthopaedic Surgeon reports dated September 25, 2014 and September 14, 2015;
- Three Urologist reports dated between April 27, 2020 and November 4, 2020; and,
- Seven Cardiologist reports dated between April 18, 2017 and October 27, 2020.

### ***Diagnoses***

In the MR, the GP diagnosed the Appellant with Fibromyalgia with a date of onset of 2013, Polyarthralgia with a date of onset of 2017, Central Pain Syndrome with a date of onset of 2013, Degenerative Disk Disease of the Lumbar Spine with a date of onset of 2016, and Mechanical Chronic Back Pain with a date of onset of 2013.

### ***Physical Impairment***

In the MR, under Health History, the GP states that the Appellant has chronic pain affecting different areas of their upper back, lower back, legs, hands and feet, weakness in their arms and hands, tightness, widespread stiffness and sensitivity, paroxysmal sharp pain throughout their legs and back, a chronic jabbing sensation, intermittent headaches between their eyes, aching in their crotch area, bilateral knee pain with the sensation of locking and clicking, and that the Appellant's impairments affect most DLA (specifying exercise and recreational activities, housework and maintenance, shopping,

cooking, and carrying purchases home). In addition, the GP states that limitations in climbing stairs, prolonged standing and lifting were reported by the Appellant. With respect to functional skills, the GP reports that (*with comments in parentheses*) the Appellant can walk 1 - 2 blocks unaided on a flat surface (*after one block ... increases pain*), climb 2 – 5 steps unaided, lift 2 - 7kg (*arms and hands pain*), and can remain seated for less than one hour (*needs frequently to change position*). In the section of the MR where the prescribed professional is asked to provide any additional information that might be considered relevant in understanding the significance of the Appellant's medical condition and the nature of their impairment, the GP has written "*All relevant information regarding main condition and specialist consultation reports are attached*", referring to the 20 specialists' reports that were appended to the AR.

In the section of the AR where the assessor is asked to indicate the assistance required related to impairments that directly restrict the applicant's management of mobility and physical abilities, the GP indicates that the Appellant is independent in walking indoors but takes significantly longer than normal in walking outdoors (*needs frequent stops to rest*), standing (*5 to 10 minutes, needs to sit down*), climbing stairs (*2 to 5 stairs, has to hold railing*), lifting (*3 to 5 lbs.*), and carrying and holding. Where asked for further comment, the GP has written "*Chronic baseline pain worse with prolonged sitting, standing, lifting*".

Where asked to describe their disability in the SR, the Appellant writes "*I have extreme (Fibromyalgia) muscle nerve pain and ache for several years. For the past 5 plus years it has progressed considerably with pain magnified more noticeably over the last three years. Severe headaches with pain in neck, shoulders, back, chest, waist, buttocks, groin, arms/wrists, hands, fingers, thighs, hips, knees, legs, calves, ankles, feet and toes. I feel fatigue all the time, no strength and energy. I have excessive daily sweating, stress, anxiety and depression increases the intensity of my fibromyalgia muscle nerve pain*". The Appellant provides further detailed explanations, identifying the various parts of the body where they experience the pain, the persistency of the pain (in most cases it is described as continuous) and, in each case, how it manifests itself (e.g. cramps, throbbing, aches).

The twenty specialist reports attached to the GP's MR all confirm aspects of the GP's diagnoses and identify some of the Appellant's symptoms but do not address restrictions in the Appellant's ability to perform DLA or need for help.

### ***Mental Impairment***

The GP does not identify any significant deficits with cognitive and emotional function in the MR.

In the section of the AR where the assessor is asked to indicate the level of ability to communicate, the GP indicates that the Appellant's abilities are good with respect to speaking, reading and hearing and satisfactory with regard to writing, adding "*pain in thumb (when) writing*". In the section of the AR where the assessor is asked to indicate to what degree the applicant's mental impairment restricts or impacts functioning, the GP has indicated a minimal impact on memory, and no impact on all of the other listed functions (bodily functions, consciousness, emotion, impulse control, insight and judgment, attention/concentration, executive functioning, motivation, motor activity, language, psychotic symptoms, other neuropsychological problems, and other emotional or mental problems). With respect to social functioning, the GP indicates that the Appellant is independent in all listed activities (making appropriate social decisions, ability to develop and maintain relationships, appropriate interaction with others, dealing

appropriately with unexpected demands and ability to secure assistance from others). The GP also indicates that the Appellant has good functioning with their immediate social network and extended social networks and provides no comments in the space provided regarding help required.

In the SR, the Appellant writes that they are forgetful (*go to a store and forget what I was going to buy ... write everything down to remember*).

### **Restrictions in the Ability to Perform DLA**

In the MR, the GP indicates that the Appellant has not been prescribed any medications or treatments that interfere with their ability to perform DLA. The GP indicates that the Appellant is periodically restricted in personal self care, meal preparation and daily shopping, and continuously restricted in basic housekeeping and mobility outside the home, providing the additional comment "*mainly chronic pain, unable to stand too long, lifting, walking – same affecting housekeeping, self care, meal preparation*". Where asked to provide any additional information that might be considered relevant in understanding the impact of the Appellant's medical condition on daily functioning, the GP has not commented (other than referring to the attached specialist consultation reports as mentioned previously).

In the AR, the GP states that the Appellant is independent with respect to some DLA tasks, with the following exceptions: the personal care activities of dressing, bathing, toileting and transfers in and out of bed and chairs, basic housekeeping, carrying purchases home, food preparation and cooking, and getting in and out of a vehicle. For all DLA tasks for which the Appellant is not independent, the GP indicates that the Appellant takes significantly longer with dressing (*pain in back, hands, and lower back*), bathing (*using rails*), transfers in and out of bed (*needs to roll out – stiffness and pain*), transfers on and off chair (*difficulty with low chair*), laundry (*due to pain and hand weakness*), basic housekeeping (*frequent breaks*), carrying purchases home (*lifting and carrying ... due to chronic pain and stiffness in arms and lower back – limited lifting, limited standing*), food preparation and cooking (*needs to have breaks and rest on account of pain ... takes 3 to 4 times longer than average*), and getting in and out of a vehicle (*due to stiffness and lower back pain*).

In the section of the SR where the applicant is asked how their disability affects their life and their ability to take care of themselves, the Appellant describes detailed and significant impacts with regard to all DLA including difficulties with sleeping, sitting, getting out of bed in the morning, getting dressed and undressed, personal hygiene, going up and down stairs, walking, driving, standing in line and carrying heavy items while shopping, housekeeping and meal preparation.

### **Need for Help**

In the MR the GP indicates that the Appellant does not require prostheses or aids for their impairment, except that they "*occasionally use (a) walker when in stores*" and that they use a shower railing and raised toilet.

In the AR, the GP indicates that the Appellant lives with their elderly mother. In the section of the AR that asks who provides the help required for DLA, the GP has written "*none*" and "*at present no assistance (with DLA provided by other people) required*". Where asked what assistance is provided using assistive devices, the GP has ticked walker (*infrequent use*), toileting aids (*raised toilet*), and

bathing aids (*grab bars, handicap shower*). The GP also states that the Appellant does not have an assistance animal.

In the SR, the Appellant writes that they find it difficult to get up from the floor without using a chair, sofa or walker, that they use handicap grab bars and shower gates in the shower, a higher (raised) toilet, a walker when necessary, and a handrail going up and down stairs.

### ***Additional Information Submitted after Reconsideration***

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based on all admissible evidence.

In the Notice of Appeal (NOA), the Appellant states that they disagree with the Ministry's RD, adding that they feel they qualify for the PWD designation based on their physical disabilities and specific diagnoses. In an accompanying letter the Appellant stated that they "*have extreme (Fibromyalgia) muscle nerve pain/back pain for several years which has progressed considerably with pain magnified more noticeably over the last three years*". The Appellant also writes that they have been diagnosed with a list of ailments corresponding to the ones diagnosed by the GP in the MR, and concluding "*I would like to add with Covid-19 it has been impossible to see pain specialists at this time*" and indicating that they last saw the Rheumatologist in March 2020 and spoke to him on the phone in May 2020, and that they last saw the Neurologist via videoconference in June 2020.

### ***Appellant Submission***

The Appellant provided an 8 page submission for their written hearing comprising:

- The standard Release of Information form;
- A three page document published by the Arthritis Society explaining what fibromyalgia is, its symptoms, how it's diagnosed, risk factors and treatment;
- A three page email sent by the Appellant to the Employment and Assistance Tribunal on March 2, 2021 (the March 2 Submission); and,
- A one page document published by the UCLA Spine Center explaining what fibromyalgia is, its symptoms, diagnosis and treatment.

In the March 2 Submission, the Appellant provides background information including their concerns with sharing personal and private documents and the challenges they have faced in seeking appointments with specialists during the Covid-19 pandemic "*for treatment and additional current medical documentation*".

The Appellant writes that it is reassuring to know that the BC Government has recognized, understands and has accepted persons with diseases of the musculoskeletal system and connective tissues, and

provides corresponding specific diagnostic codes listed in Section 2A (Diagnoses) of the MR. The Appellant goes on to say that they *“made an assumption that all Diagnostic Codes listed on page 8 of 24 is an approved category under (the) Employment and Assistance for Persons with Disabilities Act, Section 2 & 2.1.”*

The Appellant summarizes their impairments as diagnosed by the GP in the MR and provides a link to online documents about fibromyalgia available on the UCLA Spine Center and Arthritis Society websites.

The Appellant then makes specific comments in response to arguments presented in the RD. Regarding severity of physical impairment, the Appellant explains that their Fibromyalgia has progressed over the past few years and describes their symptoms and impact on their ability to perform DLA as outlined in the SR and summarized above. With respect to need for help, the Appellant writes *“I am like everyone you reach out for help from Family or Friends or hire a plumber, electrician and house repairs. As reference to my application, I am not wheelchair bound, not a quadriplegic or using ceiling lifts, having (my Regional Health Authority) over four times a day assisting me with showers or transfers and not needing an assistance animal. These questions pertain to applicants that (need a) tremendous amount of support from (a Regional Health Authority) or animal assistance etc. My problems are fibromyalgia coupled with polyarthralgia, central pain syndrome, degenerative disk disease lumbar spine and mechanical chronic back pain all of which add to my daily pain”*.

The Appellant closes by making additional comments regarding the Ministry’s practice of using “generic forms” for all diagnostic codes, arguing that it’s very hard for all applicants to complete the application forms because the forms *“do not fit every person’s case or situation exactly”*.

The Appellant states that in their RD they provided a significant amount of detailed information about the challenges they face in performing DLA, adding *“I did not know I need to go back to my doctor to talk about it. I really do not want to bother my doctor out (of) respect over this when he has other patients need his time.”*

The Panel considered the written information in the NOA and the Appellant’s written submission to be either argument or a restatement of information provided before reconsideration.

## **PART F – REASONS FOR PANEL DECISION**

The issue under appeal is whether the Ministry's RD, which found that the Appellant is not eligible for designation as a PWD, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant. Was it reasonable for the Ministry to determine that the evidence does not establish that the Appellant has a severe mental or physical impairment and that the Appellant's DLA are not, 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 any direct and significant restrictions, it could not be determined that the Appellant requires the help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA?

### **ANALYSIS**

#### **Severity of Impairment**

Neither the terms "*impairment*" nor "*severe*" are defined in the EAPWDA. The Cambridge Dictionary defines "*impairment*" in the medical context to be "*a medical condition which results in restrictions to a person's ability to function independently or effectively*" and defines "*severe*" as "*causing very great pain, difficulty, worry, damage, etc.; very serious*". "*Impairment*" is defined in the MR and the AR sections of the PWD application form to be "*a loss or abnormality of psychological, anatomical, or physiological structure or function causing a restriction in the ability to function independently, appropriately or for a reasonable duration*". While the term is not defined in the legislation, the Panel finds that the Ministry's definition of "*impairment*" as set out in the MR and the AR is a reasonable definition of the term for the purpose of partially assessing an applicant's eligibility for the PWD designation.

A diagnosis of a severe impairment does not in itself determine PWD eligibility. Section 2(2) of the EAPWDA requires that in determining whether a person may be designated as a PWD, the Ministry must be satisfied that the individual has a severe physical or mental impairment with two additional characteristics: in the opinion of a prescribed professional it must both be likely to continue for at least two years [EAPWDA 2(2)(a)] and it must directly and significantly restrict a person's ability to perform DLA continuously or periodically for extended periods, resulting in the need for the person to require an assistive device, significant help or supervision, or an assistance animal in performing those activities [EAPWDA 2(2)(b)]. Therefore, in determining PWD eligibility, after assessing the severity of an impairment, the Ministry must consider how long the severe impairment is likely to last and the degree to which the ability to perform DLA is restricted and assistance in performing DLA is required. In making its determination the Ministry must consider all the relevant evidence, including that of the Appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a prescribed professional – in this case the GP.

#### **Physical Functioning**

The Ministry's position is that the assessments provided by the Appellant's GP do not establish that the Appellant has a severe physical impairment because, while the information provided in their PWD application demonstrates that they experience limitations in physical functioning due to chronic pain,

fatigue and weakness in arms and hands, the assessments provided by the GP and the information provided in the Appellant's SR speak to a moderate rather than severe physical impairment.

The Appellant's position is that their Fibromyalgia causes muscle and nerve aches and pain and that, while they have experienced the severe pain for several years, over the past 5 plus years it has progressed considerably, with the pain magnified noticeably over the last three years.

#### *Panel Decision*

The Panel notes that the GP, a prescribed professional, has confirmed in the MR that the Appellant experiences "*chronic pain*" in many parts of their body, experiencing in various specified body parts "*widespread stiffness and sensitivity*", "*sharp pain*", "*paroxysmal sharp pain*" and "*jabbing sensations*".

The GP also writes in the AR that the Appellant "*needs frequent stops to rest*" when walking outdoors, and needs to sit down every 5 to 10 minutes when standing, adding that the Appellant experiences "*baseline pain*" which is worse with prolonged sitting, standing, lifting. The Panel notes that the GP's handwriting in this part of the AR has been mis-read by the Ministry in its RD, where it quotes the GP as having written "*back pain*" rather than "*baseline pain*". The GP does not provide any explanation as to what is meant by baseline pain.

In its RD, the Ministry writes "*(The Appellant's GP) does not describe how much longer than typical it takes (the Appellant) to manage walking outdoors, climbing stairs, lifting, carry and holding as requested in the PWD application making it difficult to determine if it represents a significant restriction to (the Appellant's) overall level of physical functioning.*" The Panel notes that the legislation makes no mention of the amount of increased time it takes to manage physical activities as a prescribed metric to measure and assess an applicant's overall level of physical functioning. While the time taken to manage physical activities or perform specific DLA tasks might be helpful in assessing the degree or severity of a particular physical or mental impairment, the legislation relies on the overall assessments of prescribed professionals, and to a lesser degree on the applicant's self-assessment, to determine an impairment's severity, with or without a measurement of the time taken to perform particular activities. The Panel finds that both the Appellant and the prescribed professional (in this case the Appellant's GP) have described what would reasonably be considered significant restrictions to the Appellant's physical functioning.

Based on all the available evidence, the Panel finds that the Ministry was not reasonable in finding that the information provided does not establish that the Appellant has a severe physical impairment.

#### **Mental Functioning**

The Ministry's position is that the information provided does not establish that the Appellant has a severe mental impairment.

The Appellant has not argued that they have a mental impairment.

#### *Panel Decision*

Based on all the available evidence, the Panel finds that the Ministry reasonably determined that the information provided does not establish that the Appellant has a severe mental impairment.



### **Restrictions in the Ability to Perform DLA**

The Ministry's position is that, considering the Appellant's medical history, it is reasonable to expect that they would encounter some restrictions in their ability to perform DLA, but that there is not enough evidence to confirm that the Appellant's impairment significantly restricts their ability to perform DLA continuously or periodically for extended periods, at least in part because the additional information that the Appellant provided with their RFR has not been confirmed by a medical practitioner or prescribed professional.

The Appellant's position is that they have significant restriction in performing virtually all DLA, that they have provided a significant amount of detailed information with their RFR about the challenges they face in performing DLA, and that they did not realize that they were required to have the additional information confirmed by their GP, adding that they "*do not want to bother (their GP) when he has other patients (that) need his time*".

#### *Panel Decision*

DLA are defined in Section 2(1) of the EAPWDR and are also listed in the MR and, with additional details, in the AR. Section 2(2)(b) of the EAPWDA requires that the Ministry be satisfied that a prescribed professional has provided an opinion that an applicant's severe impairment directly and significantly restricts their DLA, continuously or periodically for extended periods. Section 2(2)(a) of the EAPWDR defines "prescribed professional" to include a medical practitioner. Therefore, the GP is considered a prescribed professional for the purpose of providing opinions regarding the nature of the Appellant's impairment and its impact on the performance of DLA. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. There is also a component related to time or duration - the direct and significant restriction must be either continuous or periodic. If periodic, it must be for extended periods. In the MR and the AR, prescribed professionals are instructed to check marked boxes and to provide additional explanations; for example, a description of the type and amount of assistance required and the frequency and duration of periodic restrictions.

In its RD, the Ministry states that it "*relies on the medical opinion and expertise from (the Appellant's) medical practitioner to determine that (the Appellant's) impairment significantly restricts (their) ability to perform DLA either continuously or periodically for extended periods*". The Panel acknowledges the Ministry's contention that the legislation requires that the Ministry base its decision on the opinion of a prescribed professional. The Panel notes that, in the MR and AR, the GP confirms many of the DLA restrictions that Appellant identifies in their SR and RFR. For example, in the MR the GP states that the Appellant is periodically directly restricted (by "*chronic pain*") in performing personal self care, meal preparation, and daily shopping DLA, and that they are continuously directly restricted in performing basic housekeeping and mobility outside the home DLA. In the AR, the GP provides some additional information, indicating that it takes the Appellant significantly longer with several personal care DLA (dressing, bathing, transferring in and out of chairs and bed), all basic housekeeping DLA, carrying purchases home, food preparation and cooking, and transferring in and out of a vehicle. The GP also provides additional explanations and comments regarding many of these restrictions ("*takes 3 – 4 times*

*longer*”, “*due to stiffness and back pain*”, “*due to chronic pain and stiffness*”, “*due to pain and hand weakness*”, “*due to pain*”, “*stiffness and pain*”, “*pain in hands, back and lower back*”).

Based on all the available evidence, the Panel finds that the Ministry was not reasonable in determining that there is not enough evidence from a prescribed professional to confirm that the Appellant’s impairment significantly restricts their ability to perform DLA continuously or periodically for extended periods.

### **Help with DLA**

The Ministry’s position is that, because it has not been established that DLA are significantly restricted either continuously or periodically for extended periods, “*it cannot be determined that significant help is required from other persons*”. In addition, the Ministry identified discrepancies between the evidence submitted by the Appellant and the GP regarding frequency of use of a walker and whether the Appellant required the periodic help of other people.

The Appellant’s position is that, while they can function without the help of another person or an assistance animal, they require several assistive devices including a handicap grab bars and shower gates for the shower, a higher (raised) toilet, a walker, and a handrail going up and down stairs.

### ***Panel Decision***

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires 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 one or more DLA.

The Panel notes that the Ministry has listed 21 different assistive devices in Part D of the AR, and that the GP has ticked the following boxes: walker, toileting aids and bathing aids (the GP has also provided additional commentary). The Panel further notes that EAPWDA Section (3) requires that an applicant for the PWD designation must demonstrate that they require **one** of the following aids to perform DLA: an assistive device, the significant help or supervision of another person, **or** the services of an assistance animal. In this case, the prescribed professional has identified several assistive devices that the Appellant requires to perform DLA.

Based on all the available evidence, the Panel finds that the Ministry was not reasonable in finding that it could not conclude that the Appellant requires help to perform DLA, noting also that the assistance of another person is not necessarily required.

**Conclusion**

Having reviewed and considered all of the evidence and relevant legislation, the Panel finds that the Ministry's RD, which determined that the Appellant was not eligible for the PWD designation under Section 2 of the EAPWDA, was not reasonably supported by the evidence and was not a reasonable application of the EAPWDA in the circumstances of the Appellant, and therefore rescinds the decision. The Appellant's appeal, therefore, is successful.

## SCHEDULE A - LEGISLATION

The criteria for being designated as a PWD are set out in Section 2 of the EAPWDA 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).

The EAPWDR provides 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 ...

The EAA provides as follows:

**Panels of the tribunal to conduct appeals**

22(4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

APPEAL NUMBER  
2021-00047

**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

Simon Clews

SIGNATURE OF CHAIR

DATE(YEAR/MONTH/DAY)  
2021/03/30

PRINT NAME

David Handelman

SIGNATURE OF MEMBER

DATE(YEAR/MONTH/DAY)  
2021/03/30

PRINT NAME

Carla Tibbo

SIGNATURE OF MEMBER

DATE(YEAR/MONTH/DAY)  
2021/03/30