

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated January 12, 2021, 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 that the appellant met the age and duration requirements but was not satisfied that:

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

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 section 2
Employment and Assistance for Persons with Disabilities Regulation section 2

PART E – SUMMARY OF FACTS

The evidence before the ministry at reconsideration included:

- The appellant's PWD Application comprised of the appellant's self report ("SR"), a medical report ("MR") completed by the appellant's family physician ("the GP") and an assessor report ("AR") completed by the appellant's GP;
- Request for Reconsideration (RFR) submitted by the appellant on December 29, 2020 citing as the reason for requesting a reconsideration:
 - They cannot work a job that requires a schedule as they are afraid of a seizure happening at work.
 - They have medical records that state they are on daily meds and need supervision.
- Ministry's PWD Designation Summary dated December 2, 2020;
- Clinic Reports dated October 21, 2016, December 2, 2016, December 6, 2016, April 12, 2017, January 16, 2017, October 11, 2017, and December 19, 2019 outlining the appellant's examinations and medical condition.

PWD Application

Diagnosis

The GP notes that the appellant suffers from epilepsy since October 2016, anxiety/PTSD since December 2015 and acquired brain injury since September 2015. The physician writes that the disorder is permanent and with counselling the appellant may experience less anxiety symptoms.

Physical Impairment

In the SR, the appellant reported:

- The epilepsy was caused by an abusive ex-spouse who strangled her and put her into a coma for three days.
- She has a crippling PTSD disorder and sometimes cannot get out of bed.
- She is on medication but still experiences seizures and had a seizure while at work at her last job.

In the MR, Part B Health History, the GP wrote the appellant was diagnosed with epilepsy by a neurologist in October 2016.

In the MR, Part C Degree and Course of Impairment, the GP assessed the appellant's functional skills as:

- Able to walk 4+ blocks unaided on a flat surface
- Able to climb 5+ stairs unaided
- Able to lift without limitation
- Able to sit without limitation

In the AR, Part B, the GP wrote in response to what impairments impact the appellant's ability to manage DLA: "epilepsy, acquired brain injury, post traumatic mood/anxiety disorder". The GP indicated the appellant was independent in the abilities of walking indoors/outdoors, climbing stairs, standing, lifting and carrying/holding.

Mental Impairment

In the SR, the appellant reported that she has memory issues, both short and long term.

In the MR, Part B Health History, the GP wrote as a result of the impairment the appellant is unable to hold jobs requiring minimal skills, has poor executive functioning, struggles with managing her own affairs and planning for the future.

In the MR, Part C Degree and Course of Impairment, the GP indicated there were no difficulties with communication and checked the following areas where deficits are evident:

- Executive (planning, organizing, sequencing, calculations, judgements)
- Memory (ability to learn and recall information)

- Emotional disturbance (depression, anxiety)
- Attention or sustained concentration

In the AR, Part B, the GP answered in response to the appellant's level of ability to communicate: "good" for speaking and hearing and "satisfactory" for reading and writing. In response to the impacts on the appellant's daily cognitive and emotional functioning, the GP noted:

- No impact: motor activity, language, other (visual/spatial problem; psychomotor problems; learning disabilities, etc), no other emotional or mental problems (hostility)
- Minimal impact: consciousness; impulse control; insight and judgement; attention/concentration; memory; psychotic symptoms
- Moderate impact: bodily functions (sleep disturbance); emotion; executive; motivation
- No Major impacts indicated

Restrictions in the Ability to perform DLA

In the MR, the GP reported that the appellant is unable to operate a vehicle or plan for the future and is dependent on family for assistance with housing and managing her affairs.

In the MR, Part E, the GP did not answer the question "Does the impairment directly restrict the appellant's ability to perform DLA?" but did indicate the following restrictions individually:

- Yes, periodically for: meal preparation; basic housework; daily shopping; and management of finances
- No for: personal care; management of medications; mobility inside and outside the home; use of transportation
- Yes, continuously for social functioning

In the comments, the GP wrote as explanation for periodic and social functioning "the appellant's symptoms, with respect to anxiety, wax/wane". The GP further commented with regards to the degree of restriction "the restrictions are mild, the appellant can usually perform these activities".

In the AR, Part C, the GP noted that the appellant is independent with: dressing; grooming; bathing; toileting; feeding self; transfers in/out of bed and on/off chair; reading prices and labels; carrying purchases home; food preparation; cooking; safe storage of food; medications; transportation (getting in/out of vehicle; using public transit and public transportation); interacts appropriately with others and able to secure assistance from others. The GP indicated the appellant has marginal functioning with regards to how the mental impairment impacts the appellant's relationship with her immediate and extended social networks.

Need for Help

In the MR, the GP did not respond to the question "What assistance does your patient need with DLA?" however as a final comment the GP wrote "prior to last month the appellant had never sought counselling for her emotional concerns and the prognosis is therefore a bit unclear in terms of this aspect of her limitations".

In the AR, Part C, the GP indicated the appellant required periodic assistance from another person with: regulating diet; laundry; basic housekeeping; going to/from stores; making appropriate choices; paying for purchases; meal planning; banking; budgeting; paying rent/bills; making appropriate social decisions; ability to develop and maintain relationships; and ability to deal appropriately with unexpected demands. The GP commented that the appellant "makes poor dietary choices/depends on family" and "makes impulsive choices, poor long-term financial planning". The GP noted the appellant is dependent on family for support, financially and emotionally and did not indicate any need for assistive devices or an assistive animal.

Additional Information Submitted after Reconsideration

On the Notice of Appeal form (NOA) dated March 5, 2021 the appellant wrote there is no city transit where they live and they feel sick from meds many days.

At the hearing, the appellant emphasized that because she had several seizures while at work, which resulted in her waking up in the hospital, she is no longer able to work. She has had her driver's license taken away and there

is no public transit where she lives. She commented that there is only one taxi that is not available all the time, so she is not able to work because she would have to walk home and if a seizure was to happen while walking in winter she may not be found until morning. The appellant explained she is now living with her adult son because she does not feel safe to live on her own, in case she falls and injures herself. The appellant stated she sometimes only knows she has had a seizure because she has a sore tongue or jaw. She is now tracking the frequency of the seizures for her neurologist, which seems to be every two weeks. The appellant stated she cares for herself 100% and enjoys cooking and caring for plants, being out with nature and spending time with her family as her way of helping herself with managing PTSD. The appellant explained that she did go see a therapist a few times, but has chosen to try to heal through family, plants and nature. The appellant recently obtained a letter from her GP explaining she is unable to wear a mask because of her PTSD, however the stores still insist she wear one so she doesn't go into the stores which means her family does all the shopping.

At the hearing the ministry reviewed the decision summary and explained that although there are many pages from the medical clinic and the PWD application confirming the appellant's medical condition, the GP did not say anything specific about how the impairment affects her daily life. There was not enough information provided to confirm the severity of the impairment, or the frequency of the seizures. The GP indicated the appellant required help with daily living activities periodically but did not indicate how much help is needed or when it is needed.

Admissibility of Additional Information

The panel accepted the appellant's NOA statement and oral testimony as evidence under section 22(4) of the Employment and Assistance Act, which allows for the admission of evidence reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry reasonably determined that the appellant was ineligible for designation as a PWD. The ministry determined that the appellant did not meet all the required criteria for PWD designation set out in the Employment and Assistance for Persons with Disabilities Act, Section 2. Specifically, the ministry determined that the information provided did not establish that:

- the appellant has a severe impairment;
- the appellant's 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.

(See Appendix A for Relevant Legislation)

Analysis

Severe mental or physical impairment

To be eligible for PWD designation, the legislation requires several criteria to be met including the minister being satisfied that the applicant has a severe mental or physical impairment. The ministry found the appellant was not eligible for PWD because not all of the five criteria were met. 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*”. A diagnosis of a severe impairment does not in itself determine PWD eligibility.

In the appellant’s circumstance, the ministry found that she had met the age criteria and that she had a medical condition that is likely to continue for at least two years however they do not consider her impairment to be severe or that it affects her ability to manage her DLA directly and significantly. The panel agrees that the age and duration requirements of the legislation have been met and will consider the remaining requirements by reviewing each of them individually.

Mental Impairment

To assess the severity of a mental impairment, the ministry considers the extent of any impact on daily functioning as evidenced by limitations/restrictions with mental functions and emotion. The ministry does not only look at the diagnosis or a medical practitioner’s comment that the condition is “severe” but considers the bigger picture including whether there are restrictions to DLA requiring mental/social functioning and whether significant help is required to manage DLA. The panel finds that an assessment of severity based on mental and social functioning and restrictions to DLA is a reasonable interpretation of the legislation.

The appellant’s position is that because of her seizures and PTSD she is not able to work or go shopping and that she lives with her family because she needs their assistance and support.

The ministry’s position is that the information provided by the GP demonstrates the appellant periodically experiences PTSD symptoms, however, there is not enough information provided to establish that the appellant’s mental impairment is severe.

Panel Decision

Section 2(2) of the legislation requires evidence of a severe impairment. The information from the appellant is that she has seizures about every two weeks so needs to live with her family for their emotional support and to go shopping for her. The panel notes in the MR that the GP wrote that the appellant’s seizure disorder is permanent but with counselling she may have less anxiety issues. At the hearing, the appellant stated that she did go see a therapist a few times but has chosen to self-help herself by enjoying cooking, caring for plants, enjoying nature and her family. The only assistance the appellant indicated she required was for shopping, but other than that indicated she is able to care for herself. The GP also noted the appellant had some restrictions that cause a moderate impact

on her cognitive and emotional functioning in the areas of sleep disturbance, anxiety, executive thinking, motivation, such that the appellant required periodic assistance with some DLA's, however he commented that the symptoms wax and wane, that the restrictions are mild, and that she can usually perform these activities.

The panel finds the ministry reasonably concluded the evidence as a whole does not show a severe impairment of cognitive, emotional, and social functioning. Accordingly, the ministry was reasonable in applying the legislation to find that a severe mental impairment under section 2(2) of the EAPWDA was not established on the evidence.

Physical Impairment

To assess whether the applicant has a severe physical impairment, the ministry considers information on the degree of restrictions to physical functioning, restrictions to DLA involving movement, and whether the applicant requires significant help or any assistive devices to manage DLA. The panel finds that the assessment of severity based on daily physical functioning is a reasonable interpretation of the legislation.

The appellant's position is that she is no longer able to work or drive because she has seizures and suffers from PTSD. The appellant indicated she is capable of cooking and cleaning and caring for herself.

The ministry's position is that the assessments provided by the GP do not establish that the appellant has a severe physical impairment that affects her daily living activities.

Panel Decision

In the MR, the GP assessed the appellant's mobility and physical abilities and indicated that the appellant is independently able to walk unaided and climb stairs, and has no limitations with lifting, carrying/holding or remaining seated. The GP also confirmed the appellant does not require any prostheses or aids for her impairment. The panel finds that the ministry reasonably determined the requirement for a severe physical impairment under section 2(2) of the EAPWDA was not met.

Direct and Significant Restrictions in the ability to perform DLA

Subsection 2(2)(b)(i) of the EAPWDA requires the ministry to be satisfied that, in the opinion of a prescribed professional, a severe impairment directly and significantly restricts a person's ability to perform DLA either continuously, or periodically for extended periods. This means that restrictions to DLA must be confirmed by the appellant's doctor or one of the practitioners named in the legislation such as a psychologist or 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 being unable to do DLA without a lot of help or support will have a large impact on the person's life.

Finally, there is a time or duration factor: the restriction may be either continuous or periodic under the legislation. Continuous means that the activity must generally be restricted all the time. The ministry views a periodic restriction as significant when it occurs 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 do the activity without help or support.

The panel views the ministry's interpretation of the legislation as reasonable. Accordingly, where the evidence indicates that a restriction arises periodically as with the appellant's seizures and PTSD, 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. With that information, the ministry can assess whether the legislative requirement is met.

DLA are defined in section 2(1) of the EAPWDR and are also listed in the MR, with additional details in the AR. Therefore, the doctor or other practitioner completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the applicant's impairments either continuously or periodically for extended periods and to provide additional details.

The appellant's position is that she is able to cook and clean for herself and she cannot do her shopping because of not being able to drive to the store. The appellant stated she is not able to wear a mask due to her PTSD, so the current restrictions at the stores means someone must shop for her.

The ministry's position is that the assessments provided by the GP are indicative of a moderate level of restriction and there is not enough evidence to confirm that the impairment significantly restricts DLA continuously or

periodically for extended periods.

Panel Decision

The panel notes in the MR that the GP indicated the appellant is independent with her personal care, cooking and meal preparation, taking medications and using public transportation, but needs periodic assistance with housekeeping and shopping, and banking/budgeting. The GP commented that the appellant makes impulsive choices, has poor long-term financial planning and often mismanages funds. The GP also noted the appellant requires periodic assistance in making appropriate social decisions or dealing appropriately with unexpected demands and commented that the appellant is dependent on her family for financial and emotional support.

The panel notes that although the GP indicated periodic support was required, there is no evidence as to the frequency or duration the assistance is required. The panel also notes the appellant does not require continuous assistance from another person for any DLA, nor is there any evidence that it takes the appellant significantly longer than typical to manage DLA's. The appellant argues she is no longer able to work due to her impairment, however, the panel finds the legislative language, in particular the DLA that are included in the legislation, does not include the ability to work when assessing PWD eligibility. The panel has considered the evidence from the doctor and the appellant in its entirety and finds the ministry was reasonable to determine the appellant's impairment does not directly and significantly restrict her ability to perform DLA either continuously, or periodically for extended periods as required under subsection 2(2)(b)(i) of the EAPWDA.

Help with DLA

Panel Decision

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.

As the panel found that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel also finds that the ministry reasonably concluded that it cannot be determined that the appellant requires help to perform DLA as required by section 2(2)(b)(ii) of the EAPWDA.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was reasonably supported by the evidence, and therefore confirms the decision. The appellant is not successful on appeal.

APPENDIX A
RELEVANT LEGISLATION

EAPWDA

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.

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.

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
2021-00052

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

Janet Ward

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021 March 27

PRINT NAME

David Kendrick

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021 March 27

PRINT NAME

Jean Lorenz

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021 March 27