

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated March 8, 2021, which determined that the appellant did not meet three of the statutory requirements of section 2 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that the appellant's impairment was likely to continue for at least 2 years. However, the ministry was not satisfied that:

- the appellant had a severe physical or mental impairment,
- that the appellant's mental or physical impairment, in the opinion of a prescribed professional, directly and significantly restricted daily living activities (DLA) either continuously or periodically for extended periods, and,
- that as a result of those restrictions, in the opinion of a prescribed professional, the appellant required help to perform DLA.

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), section 2

PART E – SUMMARY OF FACTS

Evidence before the ministry at reconsideration consisted of the following:

- A Request for Reconsideration signed by the appellant and dated March 1, 2021 in which the appellant stated the following:
“My original doctor Dr. A was my doctor through my stroke and surgery and was helping through my rehabilitation and was aware of my mental and physical conditions. He left the practise and I was given Dr. S [REDACTED] as my substitute doctor I’ve only had three visits with Dr. S [REDACTED] one in his office and three on my phone for prescription renewals he has no idea of my mental and physical condition. Since the stroke on the request of Dr A that I would find a safe and quiet place to walk to help in my ability to scan my damaged field of vision, to exercise my damaged vision by a technique of scanning back and forth in an out of my peripheral blind spot. It is about three blocks level ground no stairs no traffic and hardly any pedestrians. I have great difficulty with stairs I have a hard time going down stairs it requires me to look down which then pulls my damaged peripheral vision down so when I step down I don’t see the step below I feel the handrail but I don’t see my arm which creates great anxiety so I go out of my way to avoid stairs. I do have limitations to my duration due to the amount of scanning my eyes and the stress of scanning it impairs my duration and my ability to focus properly so I must rest my eyes to relieve my stress. I have difficulty lifting while walking it makes me look down which then again pulls my right damaged peripheral vision and then it throws my balance off causing me to be unsteady on my feet. I do have great difficulty shopping I have a hard time when I go into the grocery store or shopping store I’m unable to see the full layout of the store and unable to scan mainly because of too many people to scan and people coming in and out of my blindspot which creates anxiety that ramps up which causes me to leave and not be able to shop there however there is a corner store across the street from my house that I can see the full layout of the store and significantly less people. I am suffering with the fact that my eyesight will never be the same it causes me great anxiety and stress and depression which really impacts my quality of life for me and my son, I’m sending pictures of my field of vision so I hope you can see the damage that I have to live with everyday.”
- The appellant’s PWD application which contained:
 - A Medical Report (MR) dated January 5, 2021 completed by the appellant’s general practitioner (GP) who has known the appellant for less than 1 year and seen the appellant 2 to 10 times in the past 12 months. The GP notes *“I am covering for his regular Family Doctor.”*
 - An Assessor Report dated January 5, 2021 completed by the appellant’s GP.
 - A Self Report completed by the appellant.

Notice of Appeal

The notice of appeal was signed by the appellant and dated March 21, 2021 in which the following was provided under reasons:

“Due to my stroke it’s left me with damage to my vision and my mental health and physical abilities. I find it unlikely myself to recover which leaves me a difficulty in getting a job.”

Admissibility

The appellant provided no information after the date of reconsideration apart from the Notice of Appeal which contained no new information. The panel finds no basis to require an admissibility ruling under section 22(4) of the Employment and Assistance Act.

Summary of the Evidence

- The SR contains the following statement from the appellant:
“On June 20, 2018 I suffered a stroke, which significantly affected my peripheral vision in my right eye. It also affected my sense of balance and also left me with really bad ringing in my ears. Which its made it hard for me to sleep since my stroke. Since the stroke it’s been really hard and ive been fighting through depression and anxiety attacks on which has affected the quality of life for me and my son.”
- The MR completed by the GP diagnoses the appellant with right homonymous hemianopia due to CPCA CVA with a date of onset of June 2018. In describing the severity of the medical conditions relevant to the appellant’s impairment, the GP notes:
“As per the last neuro-ophthalmology assessment dated April 23, 2019, binocular vision field testing shows GVF95(114e) – 105 (V4e) intact horizontal visual field. Patient has adapted to the visual field loss with compensatory right face field and with frequent saccadic checks to the right. In simple language, the

appellant has loss of visual field on right side due to stroke that happened in June 2018. This has impacted his occupational abilities and personal life resulting in stress and anxiety. Left carotid endarterectomy performed in Jan 2019 for severe internal carotid artery stenosis.”

The GP confirms:

- there have been no medications prescribed that would interfere with ability to perform daily living activities (DLA) and requires no aids for the impairment.
- The impairment is likely to continue for two years or more.
- Functional skills assessment concludes the appellant can walk 4+ blocks unaided, climb 5+ steps unaided, has no limitations on remaining seated, has no difficulties with communication and has no significant deficits with cognitive and emotional function
- The GP confirms the impairment does directly restrict the appellant’s ability to perform DLA with activities restricted in daily shopping (continuous), mobility inside and outside the house (periodic) and use of transportation (continuous). No restrictions were assessed for personal self care, management of medications and finances as well as social functioning. The GP notes that: ‘Patient needs to be extra careful about right visual space orientation in activities’, and ‘Appellant underwent OT rehab for driving’.
- The GP left blank the section covering needed assistance by the appellant with DLA.

The AR was completed by the GP who notes the appellant lives with family and notes:

- that the appellant’s mental or physical impairments that impact ability to manage DLA are: “Difficulties with mobility in unfamiliar places due to partial field of vision on right side. “
- The assessor indicates all aspects of communication as good.
- Assessment of mobility and physical ability indicates appellant is independent in climbing stairs, standing, lifting and carrying and holding while walking indoors and outdoors takes significantly longer. GP notes: “needs to be extra careful”, and “may require extra time as compensatory head movements are accommodated”.
- Section for an identified mental impairment or brain injury has been left blank.
- Assessment of DLA indicate the appellant is independent in all areas of DLA except shopping (going to and from stores) with the comment: “needs to be extra careful about right space.” The GP also states: “ Patient has partial visual loss and hence needs to take extra care before moving.”
- Under Assistance provided to the applicant, the GP leaves most areas as blank but confirms the appellant does not have an assistance animal.
- The GP adds that: “Right homonymous hemianopia due to stroke in 2018”.

Hearing

The panel conducted a teleconference hearing on April 12, 2021. Attending the hearing were the panel, the appellant, a ministry representative and a ministry observer who attended with the consent of the appellant. At the hearing the appellant stated that this has been a situation where the original doctor who the appellant had consulted with had left and the replacement has not met the appellant’s expectations. The appellant feels that this is a severe situation in that it is must be dealt with every day and worked around. The appellant is happy to have recovered sufficiently to get a driver’s license back but that it is difficult to see more progress being achieved. It is difficult for the appellant to understand why the prescribed categories for PWD were not met by the situation the appellant faces.

The ministry reviewed the reconsideration decision to present the ministry case for the appellant being declined for PWD status.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry reconsideration decision which denied the appellant's request for PWD designation because the appellant did not meet three of the statutory requirements of section 2 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) for PWD designation was reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

Ministry Position

The ministry reconsideration decision confirms denial of PWD status because the appellant fails to meet all of the five requirements that all must be met for such a designation as imposed by the legislation in section 2(2) and (3) of the EAPWDA. Specifically, while acknowledging the appellant meets the age and duration requirements, the decision concludes the appellant fails to meet the remaining three requirements :

- the appellant does not have a severe mental or physical impairment.
- the impairment does not significantly restrict ability to perform DLA.
- the appellant does not require the significant help or assistance to perform DLA restricted by the impairment.

Additionally, the ministry indicates the appellant fails to meet the alternate grounds for designation set out in EAPWDR, section 2.1 of being one of the prescribed classes of persons which includes:

- a person who is enrolled in Plan P (palliative care).
- A person who has at any time determined to be eligible for At Home Program payments.
- A person who has been determined at any time to be eligible by Community Living BC for community living support.
- A person who is considered disabled under section 42(2) of the Canadian Pension Plan Act.

The ministry decision contained the following assessment of the evidence in the application to arrive at its conclusions:

- In considering severity of the impairment, the ministry noted the information in the SR, MR and AR of the PWD application. The ministry is unable to confirm a severe degree of impairment to physical functioning although acknowledging the appellant has experienced difficulties as a result of the stroke. Specifically, the ministry points to the assessment of the GP who indicates:
 - The GP reports field of vision loss on the right side due to the stroke in 2018 impacting occupational abilities and personal life with stress and anxiety.
 - However, the GP has not prescribed any medication that would interfere with DLA. The assessment of the MR reveals few restrictions in terms of functional abilities and does not support an assessment of a severe degree of impairment.
 - In terms of Mental Functioning, the ministry suggests the appellant does not have a severe mental impairment. The ministry notes here the GP indicates there are no significant deficits with the appellant's cognitive and emotional functions and no impacts to the appellant's daily cognitive and emotional functioning were identified in the AR.
 - In determining the information does not establish that the impairment directly and significantly restricts DLA continuously or periodically for extended periods, the ministry notes the MR indicates the appellant has continuous restrictions in the areas of daily shopping and transportation but that the degree, frequency and duration of the restriction were not reported, making it difficult to establish that this is a significant restriction particularly in light of the report on functional skills. The ministry then points to the SA where the appellant talks of being required to shop at a convenience store closer to the appellant's house as an indication that there is not a severe restriction in the ability to shop. Further, the fact that the appellant undertook occupational therapy rehabilitation for driving suggests there is not a severe restriction here.
 - The ministry points to the AR, where the GP has found the appellant to be independent in almost all areas. The GP cautions the appellant must take extra care in walking indoors and outdoors and extra time to accommodate compensatory head movements. The ministry suggests this is not indicative of a severe restriction.
 - In terms of help required with DLA, the ministry points out that the GP indicates the appellant does not require help from another person, device or animal for DLA. As well, as it has not been established that there are meaningful restrictions on DLA, it cannot be determined that significant help is required from other persons or a device.

The Appellant's Position

The appellant reports in written submissions that, following a stroke in 2018, the peripheral vision in the right eye has been significantly affected creating problems with balance; left a bad ringing in the ears; created problems in sleeping; made it difficult to shop and caused difficulty with stairs. The appellant also feels these issues have affected employability and the appellant has suffered from depression and anxiety attacks.

Panel Analysis and Decision

The panel has no doubt that the appellant still suffers from the adverse effects of a stroke in 2018 which are real and persistent. However, there is a specific legislative framework that must be applied in considering a PWD application. The person seeking PWD status must either be in a prescribed class of persons or be a person who is 18 years of age or older and has a severe mental or physical impairment that:

- In the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, **and**,
- in the opinion of a prescribed professional:
 - directly and significantly restricts the person's ability to perform DLA either continuously or periodically for extended periods, **and**, as a result of those restrictions, the person requires help to perform those activities with an assistive device, the significant help or supervision of another person or an assistance animal.
 - DLA means activities such as prepare own meals, manage personal finances, shop for personal needs, use public or personal transportation facilities, perform housework, move about indoors and outdoors, perform personal hygiene and self-care. For persons with a severe mental impairment is added to make decisions about personal activities, care or finances and relate to, communicate or interact with others effectively.

The panel confirms that the question of whether the appellant is in a class of prescribed persons is not an issue in this appeal. As well, the panel agrees that the appellant is at least 18 years of age and has an impairment likely to persist for at least two years (confirmed by the MR). These are two of the requirements for designation of PWD based on a severe mental or physical impairment.

Severe Impairment

The ministry reconsideration decision describes impairment as a loss or abnormality of psychological, anatomical or physiological structure or function causing a restriction in the ability to function independently, effectively or appropriately, or for a reasonable duration. The panel agrees this is a reasonable definition of the term impairment for the ministry to use as a part of their determination of the appellant's eligibility for PWD. The legislation requires the ministry to find there is a severe impairment that in addition has the other characteristics of having a significant impact on DLA and assistance required that carries the objective opinion of a prescribed professional.

The panel notes the GP diagnoses a loss of vision in the right field affecting occupational abilities and personal life resulting in stress and anxiety, which to the appellant, is severe. The panel agrees with the ministry view that impact upon occupational activities is not considered in assessing PWD status. The panel agrees that the impairment is real and persisting; however it is difficult to consider the impairment rising to the level of being severe as required by the legislation in view of the GP's assessment in the MR and AR. The MR shows little or no impact to the appellant functional skills. The appellant can walk 4+ blocks unaided, climb 5+ steps, has no limitation on remaining seated, has no difficulties with communication and no significant deficits with cognitive or emotional functions. The panel concludes that the ministry reconsideration decision that there is insufficient evidence of a severe mental or physical impairment was reasonable based on the evidence of the GP assessment.

Daily Living Activities

In the MR, the GP reports that areas where impairment restricts DLA include daily shopping, mobility inside and outside the home and use of transportation. Areas where there are no impacts, or impacts are unknown, include personal self-care, meal preparation, management of medications, basic housework, management of finances and social functioning. The restrictions on indoors and outdoors mobility are considered periodic and the cautionary notes of the GP are not suggestive to the panel of a significant restriction. Daily shopping restrictions are continuous. However, the self-report of the appellant suggests the restriction is to shop close to home in a smaller store, which the panel feels is not indicative of a significant restriction where the appellant has little or no independence. Use of transportation is considered by the GP to be a continuous restriction. The panel notes the appellant has undergone occupational training for driving and has a license and vehicle, which the panel feels confirms the ministry's view that the restriction may be continuous but does not rise to the level of a significant

restriction where the appellant has little or no independence.

In the panel's assessment of the reasonableness of the ministry decision that the application does not meet the legislated test for significant impacts on DLA, the panel considers the GP's view to be the only significant objective evidence available. The panel views the GP assessment as not having found that the impairment resulted in significant restrictions on DLA notwithstanding there were areas where impacts were noted. The evidence indicates to the panel that the areas of impact, both periodic and continuous, were not significant in restricting the appellant's independence and there were a number of areas where restrictions were not indicated. Therefore, the panel concludes the ministry reconsideration decision that the requirement of the legislation in respect of the appellant's impairment significantly restricting DLA is not met was reasonable.

Assistance Required

The panel notes the GP reports the appellant does not require help from another person, assistive device, or assistance animal. The ministry also points out that, as it has not been established that DLA have been significantly restricted, it cannot be determined that assistance is required from others or a device. The panel concurs and concludes the ministry reconsideration decision was reasonable.

The panel thus agrees with the ministry determination that the appellant failed to meet three of the legislated conditions for PWD designation:

- the appellant does not have a severe mental or physical impairment.
- the impairment does not significantly restrict ability to perform DLA.
- the appellant does not require significant help or assistance to perform DLA restricted by the impairment.

Conclusion

The panel confirms the ministry reconsideration decision as it was a reasonable application of the legislation in the appellant's circumstances. The appellant is not successful upon appeal.

Employment and Assistance for Persons with Disabilities Act

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).

Employment and Assistance for Persons with Disabilities Regulation

Daily living activities

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.

APPEAL NUMBER
2021-00063

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

Keith Lacroix

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/04/13

PRINT NAME

Glenn Prior

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/04/13

PRINT NAME

Jan Broocke

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/04/13