

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated March 10, 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* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that the impairment is likely to continue for at least two years. However, the ministry was not satisfied 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 determined that the appellant is not in any of the classes of persons set out in section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation* who may be eligible for PWD designation on alternative grounds.

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

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the appellant's information dated January 20, 2021 and self report date December 3, 2020, a medical report (MR) and an assessor report (AR) both dated January 15, 2021 and completed by a general practitioner (GP) who has known the appellant since June 2012 and has met with the appellant 2 to 10 times in the past 12 months.

The evidence also included the following documents:

- 1) Imaging Report dated April 22, 2016 for the cervical spine and right elbow;
- 2) Imaging Report dated July 7, 2017 for an X-Ray of the lumbar spine, both knees, cervical spine and both hips;
- 3) Imaging Report dated November 21, 2019 for an X-Ray of the right elbow;
- 4) Letter dated February 12, 2021 from the GP;
- 5) Request for Reconsideration dated February 23, 2021.

Diagnoses

In the MR, the GP diagnosed the appellant with arthritis, hypertension, GERD [Gastroesophageal Reflux Disease], severe anxiety, and chronic pain. Asked to describe the appellant's mental or physical impairments that impact the ability to manage daily living activities (DLA), the GP wrote in the AR that the appellant has "severe anxiety, joint/muscle pain."

Physical Impairment

In the MR and the AR, the GP reported:

- In terms of the appellant's health history, the GP wrote that the appellant's arthritis makes it "hard to ambulate, hands hurt, body ROM [range of motion] limited" and "chronic painful joints" and "needs mobility aids more and more." The appellant's hypertension is "hard to control, especially when stressors come on." For the GERD, the appellant "needs prescription-strength meds, hard to digest food."
- The appellant requires an aid for the impairment, specifically a walker and orthotics.
- In terms of functional skills, the appellant can walk 1 to 2 blocks unaided on a flat surface, climb 5 or more steps unaided, lift 2 to 7 kg. (5 to 15 lbs.) and remain seated less than 1 hour. The GP noted this functional skill level is "on bad days."
- In the AR, the appellant is assessed as requiring periodic assistance from another person with all areas of mobility and physical ability, specifically walking indoors, climbing stairs, standing, lifting and carrying and holding. For walking outdoors, the appellant requires periodic assistance from another person and uses an assistive device and takes significantly longer than typical (note: "uses a walker, always").
- In the section of the AR relating to assistance provided, the GP indicated a cane (note: "rarely") and a walker ("most") and orthotics. For equipment required but not currently used, the GP wrote: "will need a motorized wheelchair, has a walker."

In the Imaging Report dated April 22, 2016, the physician wrote:

- The impression for the cervical spine is "moderately severe mid/lower cervical degenerative disc disease and somewhat bizarre sclerotic old wedging of the C4, 5 and 6 vertebral bodies and also mid/upper cervical facet joint disease."

- For the right elbow, the impression is “old injury of the radial head and neck and secondary degenerative changes of the right elbow joint.”

In the Imaging Report dated July 7, 2017, the physician wrote:

- For the cervical spine that there is “straightening of the cervical spine,” “moderate intervertebral disc height loss at C4-5, C5-6 and C6-7,” and “at all these levels, there are small anterior osteophytes,” and “multilevel facet arthropathy.” As well, “vertebral body heights are maintained” and “on the right, there is moderate neural foraminal narrowing at C4-5, C5-6 and C6-7; on the left, there is moderate neural foraminal narrowing at C4-5, C5-6 and C6-7.”
- Regarding the bilateral knees, “there has been bilateral tricompartmental reconstruction” and “...there is no evidence of loosening or migration.”
- For the bilateral hips, “no bone or joint abnormality is identified.”
- Regarding the lumbar spine, “there is minimal curvature” and “...severe intervertebral disc height loss at L1-2, L2-3, and L3-4,” “moderate intervertebral disc height loss at L4-5 and at L5-S1,” and “multilevel facet arthropathy, which is most likely narrowing neural foramina.”

In the Imaging Report dated November 21, 2019 for an X-Ray of the right elbow:

- “Normal alignment is maintained,” there is “no joint effusion,” and “there is moderate humeral olecranon joint space loss.”
- There is “a well-corticated 1.1 cm bony excrescence arising from the posterosuperior aspect of the olecranon, which may represent an osteophyte or a healed fracture.”

In the letter dated February 12, 2021, the GP wrote that the appellant’s disabilities will last 2 or more years, “is permanent.”

In the self-report, the appellant wrote:

- The appellant has osteo-arthritis in hands, knees and elbows for at least 15 years and hypertension and GI [Gastrointestinal] issues approximately 10 [years] and the appellant is on 2 different prescriptions.
- The appellant has difficulty walking outside the house, even with orthotics and surgery to replace both knees in 2010 and 2012. The appellant’s knees go their own/wrong way, which puts the appellant at risk of falling and requires use of a walker.
- The appellant cannot lift or carry even a light load more than a few feet and only inside.
- The appellant needs to go slowly up any stairs or a hill and needs to hold on to a handrail to avoid falling.
- The appellant is always exhausted and has no energy and does not feel up to doing anything. The appellant cannot stand too long, not more than 10 minutes even on a good day.

In the Request for Reconsideration, the GP wrote that the appellant is “quite disabled” and endorsed the appellant’s statement that:

- The appellant had both knees replaced, in 2010 and 2012. The left knee has been giving the appellant some problems, “has gone to the left a few times” and the appellant used the walker [to stabilize].

- The appellant tries to walk every day outside with the walker, depending on the weather.
- The appellant has not tried to walk without the walker and guessed for the question about distance walked unaided on a flat surface. It is “habit” for the appellant to use the walker.
- The appellant does not do stairs either but, if the appellant has to climb stairs, would just grab the railing, which was another question that the appellant guessed at.
- The appellant only lifts groceries so guessed at how much the appellant can lift.
- The appellant cannot sit for long because of the hypertension and stomach problems and food digestion especially after eating.
- The appellant experiences bad days but it is always different from week to week and day by day. It is hard to pinpoint some things.
- The appellant needs orthotics after the knee operations for proper foot and back alignment.
- With both knees being replaced so long ago, the appellant says that the impairment will likely continue for more than 2 years.

Mental Impairment

In the MR and the AR, the GP reported:

- In terms of the appellant’s health history, the GP wrote that the appellant’s anxiety is “severe, panic attacks often; stress makes it hard to make good decisions, heart has full palpitations at times, needs [medication].”
- The appellant has no difficulties with communication.
- The appellant has significant deficits with cognitive and emotional functioning in the areas of consciousness, executive, memory, emotional disturbance, motivation, and attention or sustained concentration. The GP did not provide further comments.
- In the AR, the GP indicated that the appellant has a good ability to communicate in speaking and hearing, and satisfactory ability with reading and writing.
- With respect to the section of the AR relating to daily impacts to the appellant’s cognitive and emotional functioning, the GP assessed a major impact to emotion, and moderate impacts in the areas of attention/concentration and executive. There were minimal impacts assessed to consciousness, impulse control, insight and judgment, memory and motivation.
- For social functioning, the appellant requires periodic support/supervision in the areas of making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, and securing assistance from others. The appellant requires continuous support/supervision with dealing appropriately with unexpected demands and the GP wrote: “under stress, ‘falls apart.’”
- The appellant has good functioning in the immediate social network and marginal functioning in the extended social networks.
- Asked to describe the support/supervision required to maintain the appellant in the community, the GP left this section unanswered.

In the self-report, the appellant wrote:

- Everyone calls the appellant a “worry-wart” because of severe anxiety. It affects the appellant’s heart rate and blood pressure and the appellant often feels overwhelmed, pacing and trying to figure out what to do especially during unexpected events.

- The anxiety causes chronic insomnia and a need to take [medication] to get to sleep.
- During the day, the appellant over-stresses about how to accomplish basic daily tasks.
- When dealing with stressful events, such as a family crisis, the appellant's anxiety and depression are so bad the appellant cannot function. The appellant will try to lie down for a couple of hours but it does not help.
- The appellant's dishes and household chores pile up for days and the appellant procrastinates about doing even simple things like bringing in the monthly welfare stub.
- The appellant loses track and forgets everything, getting nothing done but stressing about needing to get things done.
- The appellant is a "loner" and "shy" and avoids social interaction with the exception of interaction with a neighbour who helps the appellant with reminders.

In the Request for Reconsideration, the GP wrote that the appellant is "quite disabled" and endorsed the appellant's statement that:

- The appellant experiences bad days but it is always different from week to week and day by day. It is hard to pinpoint some things.
- The appellant has anxiety problems and takes medication if the appellant feels it is "bad enough."
- The appellant forgets a lot and is confused at some things at times.
- The appellant's motivation is poor, being tired a lot.
- A lot of stress in the appellant's life makes the appellant confused and forgetful.

Daily Living Activities (DLA)

In the MR and the AR, the GP reported:

- The appellant has been prescribed medications ("lifelong") that interfere with the ability to perform DLA by causing drowsiness.
- In the AR, the GP indicated that the appellant requires periodic assistance from another person with walking indoors. For walking outdoors, the appellant requires periodic assistance from another person and uses an assistive device ("uses a walker, always") and takes significantly longer than typical.
- The appellant is independent in performing all of the tasks of some of the listed DLA, specifically the personal care DLA (the tasks of dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed, and transfers on/off chair), the basic housekeeping DLA (including the tasks of basic housekeeping, with a note "walker," and laundry), the meals DLA (including the tasks of meal planning, food preparation, cooking, and safe storage of food), the pay rent and bills DLA (including banking and budgeting), and the medications DLA (filling/refilling prescriptions, taking as directed, safe handling and storage).
- For the shopping DLA, the appellant is independent with the tasks of reading prices and labels, paying for purchases, and carrying purchases home (note: "needs walker or friend"), and is independent and uses an assistive device (note: "always needs a walker") with going to and from stores, and periodic assistance from another person with making appropriate choices.
- Regarding the transportation DLA, the appellant is independent with the task of getting in and out of a vehicle and requires periodic assistance from another person with the tasks of using public transit (note: "needs a walker") and using transit schedules and arranging

transportation.

In the self report, the appellant wrote:

- The appellant can tie a small grocery bag to the walker, but the appellant cannot lift or carry even a light load more than a few feet (and only inside the appellant's house). The appellant relies on a friend/neighbour who takes the appellant shopping and carries purchases or groceries to the appellant's porch.
- The appellant avoids line-ups and needs a seat to take the bus. The appellant cannot sit for longer than 10 minutes due to GI pain so needs a lift for longer trips.
- Fatigue, pain and low motivation affect the appellant's ability to prepare or cook food and often takes "the easy way out," having a sandwich instead of trying to make a meal.
- The pain is worse in the appellant's left hand and elbow and really slows the appellant down. When the appellant does laundry or cleaning/dusting, the appellant has to "take it real slow and do only little bits at a time, resting for 5 minutes every ten minutes or so."
- The appellant will "over-stress" about how to accomplish basic daily tasks such as how to get to the bank in the rain and is often reluctant to leave the house, even to obtain necessities. The appellant frequently goes without when it is "too difficult" or risky on the body to venture out.
- When dealing with stressful events, the appellant's anxiety and depression "get so bad" that the appellant "can't even function." The appellant will try to lie down for a couple of hours but it does not help. The dishes and household chores pile up for days as the appellant procrastinates about doing even simple things. The appellant loses track and forgets everything, getting nothing done but stressing about needing to get things done.
- The appellant is "a loner" and "shy," avoiding social interactions with the exception of the appellant's neighbour who helps with reminders and gives a lift to the welfare office or the pharmacy to refill prescriptions.

In the Request for Reconsideration, the GP wrote that the appellant is "quite disabled" and endorsed the appellant's statement that:

- The appellant only lifts groceries so guessed at how much weight the appellant can lift.
- The appellant experiences bad days but it is always different from week to week and day by day. It is hard to pinpoint some things.
- The appellant has to go to the food bank because of money. The appellant goes to the bus with the walker and ties material bags to the walker. The appellant fills the bags and takes the bus home.
- The appellant's family helps with groceries "here and there" where able and brings the appellant's groceries to the patio.

Need for Help

The GP reported in the AR that the appellant receives help from family, friends and community service agencies. For help required but none is available, the GP wrote that the appellant goes to the food bank and is registered at the rent bank. The GP indicated that the appellant uses a cane ("rarely"), a walker ("most") and orthotics as assistive devices. For equipment required but not currently being used, the GP wrote that the appellant "will need a motorized wheelchair, has a walker."

Additional information

In the Notice of Appeal dated April 6, 2021, the appellant expressed disagreement with the ministry's reconsideration decision.

Prior to the hearing, the appellant submitted a statement in which the appellant wrote:

- The GP stated that the appellant's impairment is going to last more than 2 years and is permanent.
- The appellant's knees are replaced with plastic and metal and, after years go by, they "wear and tear." There was no guarantee provided to the appellant for how long they would last.
- The appellant goes to the food bank because the appellant has to eat. It is very hard on the appellant but the appellant has to do it. The appellant's walker has a seat on it so the appellant can rest when needed.
- The appellant's family helps with groceries, when able.
- The appellant's housework does not always get done when needed as the appellant has bad arthritis in the hands.
- The appellant is not eating properly because the appellant takes "the easy way out" and just makes a sandwich instead of a proper cooked meal.
- The appellant does not go anywhere without the walker. The appellant does not know how many blocks the appellant can walk unaided as the appellant will not try.
- The appellant also does not do stairs unaided. If the appellant has to climb stairs, the appellant holds onto the railing.
- The appellant does not know how much weight the appellant can lift. At the foodbank, the material bags are tied to the appellant's walker so the appellant does not have to lift them.
- The appellant's medication can cause drowsiness if one is trying to sleep and lying down, but the appellant has high anxiety and the medication just calms the appellant. The medication is not "a sleeping pill," it is a "calm down pill" for people with anxiety.
- The appellant is an honest person and tries to say how it is. All the appellant's money goes to rent, which includes heat, hot water, cablevision, so the appellant must go to the food bank to eat.

At the hearing, the appellant stated:

- The appellant relies on the written statements provided in the self report, the Request for Reconsideration, and the statement on appeal.
- It is really hard to say how often the appellant experiences "bad" days. The appellant has a family member who is homeless and the appellant experiences "lots of stress" sometimes 4 or 5 days in one week and sometimes 1 or 2 days in a week.
- Asked about the frequency, the appellant would say that it is often more than once a week that the appellant goes through bad stress. The appellant takes medication that helps the appellant calm down.
- The appellant uses a walker any day the appellant goes out. The appellant is glad to have the walker or the appellant would not go out.
- The appellant does not use the walker in the appellant's suite. When the appellant walks

around the suite, the appellant will put “hands up” in case the appellant “goes down.”

- The appellant was with the GP when the PWD application forms were completed. The GP asked the appellant questions and did not ask the appellant to demonstrate any of the activities, such as walking, and the appellant was not required to film anything.
- Considering the GP’s assessment in the MR of deficits with cognitive and emotional functioning, the appellant agreed that confusion as part of “consciousness” would affect the appellant’s DLA. The appellant experiences anxiety and stress and does not think properly and gets “all anxious.”
- The appellant tries not to take the medication too often, with concerns of becoming addicted, but it helps to calm the appellant and the appellant feels better.
- The appellant agreed that a deficit with “motivation” results in the appellant losing interest in doing DLA.
- When the appellant referred to the “welfare stub,” this is the stub for income assistance received from the ministry.
- The appellant explained the need to go to the food bank due to the appellant’s rent consuming most of the monthly amount, which is reduced by the amount of CPP received. There are other expenses that the appellant has not been able to meet such as insurance for a car that broke down.
- The appellant registered with the “rent bank” for if the appellant one time cannot make rent. They will loan the money for rent with no interest and the money only has to be paid back at \$15 to \$20 per month.
- Asked how the PWD designation will improve life, the appellant said that it will provide money and food and encouragement, that the appellant would “feel better.”
- The appellant does not know how the appellant would walk without a walker and will not try. For climbing stairs, the appellant would have to hold onto the railing.
- The appellant does not know why the GP indicated that the appellant can climb more than 5 steps unaided or walk 1 to 2 blocks unaided on a “bad day.”
- The appellant experiences lack of energy and arthritis in hands so the appellant does not eat properly. The appellant does not know why the GP indicated that the appellant manages the meals DLA completely independently and that it does not take the appellant significantly longer than typical.
- The appellant did not ask for further information from the GP since the appellant had not read the materials thoroughly and was not aware of some of the responses given by the GP. The appellant did not realize there was a need to “go deeper.”

The ministry relied on the reconsideration decision as summarized at the hearing. At the hearing, the ministry clarified that:

- Although the appellant’s written statement submitted on the appeal supports the appellant’s position, in the ministry’s opinion the information provided is not sufficient to change the conclusions in the ministry’s reconsideration decision.
- The ministry does not consider railings on stairs as an “assistive device,” as defined in the legislation.
- An applicant for the PWD designation must be in receipt of income assistance and is, therefore, already a client of the ministry.
- The ministry places weight on the medical information from the GP. Some physicians will speak in great detail regarding the appellant’s limitations with lifting, for example, and

explain how much the appellant can lift and how often. In the appellant's case, the information does not speak to an inability to lift. There is not enough information.

- There is often more information in PWD applications regarding restrictions to the DLA. In the appellant's case, there is no narrative and the GP has assessed the appellant with adequate functioning and as independent in performing most tasks of DLA. Looking at the information overall, there is no overarching impediment to the appellant performing DLA.
- If the appellant is not successful on the appeal, the appellant can apply again for the PWD designation and provide more information from the GP or other medical professionals to support the appellant's information and to explain more about the appellant's impairment.

Admissibility of Additional Information

The ministry did not object to the admissibility of the additional statement by the appellant submitted on the appeal. The panel admitted the appellant's oral testimony and the appellant's written statement as relating to the ministry's denial of PWD designation and, therefore, as being reasonably required for a full and fair disclosure of all matters related to the decision under appeal pursuant to Section 22(4) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for PWD designation, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the evidence does not establish that the appellant has a severe mental or physical impairment and that DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, it could not be determined that, as a result of those 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 criteria for being designated as a PWD are set out in Section 2 of the EAPWDA, and definitions are provided in the EAPWDR, as set out in the Schedule at the end of this decision.

Eligibility under section 2.1 of the EAPWDR

Section 2.1(e) of the EAPWDR states that a person who is considered to be disabled under Section 42(2) of the CPP (Canada) is part of a class of persons and may be designated as a PWD under Section 2(2) of the EAPWDA (B.C.). Although the appellant stated at the hearing that CPP is deducted from the appellant's income assistance amount, the appellant did not argue that the appellant is considered to be disabled under CPP (Canada) and there was no evidence presented in support. In the absence of evidence or any argument respecting eligibility for PWD designation under section 2.1(e) of the EAPWDR or another part of Section 2.1, the panel finds that the ministry reasonably determined that it has not been established that the appellant falls within the prescribed classes of persons under that section. The panel's discussion below is limited to eligibility for PWD designation under section 2 of the EAPWDA and section 2 of the EAPWDR.

Eligibility under section 2 of the EAPWDA

To be eligible for PWD designation, Section 2(2) of the EAPWDA requires that several criteria are met, including that the ministry must be satisfied that the appellant has a severe mental or physical impairment. Although "severe" is not defined in the legislation, the ministry's view is that the diagnosis of a serious medical condition does not, on its own, establish a severe *impairment* of mental or physical functioning, and the panel finds this interpretation to be reasonable.

Severe Mental Impairment

To assess the severity of a mental impairment, the ministry considers the diagnosis as well as the extent of any impact on daily functioning as evidenced by limitations or restrictions to cognitive, emotional, and social functioning. This analysis by the ministry may also include consideration of the appellant's functioning with the two DLA specific to a mental impairment, as

set out in Section 2(1)(b) of the EAPWDR, or the ability to make decisions (“decision-making DLA) and to interact with others effectively (“relate effectively DLA”). The panel finds that the ministry’s assessment of severity based on cognitive, emotional, and social functioning and restrictions to the DLA specific to a mental impairment is a reasonable interpretation of the legislation.

Ministry’s argument- mental impairment

In the reconsideration decision, the ministry acknowledged that the GP indicated in the MR that the appellant has “severe anxiety” and several significant deficits to aspects of cognitive and emotional functioning. The ministry considered that the GP reported in the AR that there was only one major impact to the appellant’s daily cognitive and emotional functioning, as well as two moderate impacts. The ministry wrote that the GP reported that the appellant requires continuous support and supervision in one area of social functioning and periodic support and supervision in the remaining four areas. The ministry considered that the GP does not describe the degree and duration of periodic support/supervision required, as requested in the PWD application, to allow the ministry to determine the extent of the restriction and does not report a need for support or supervision for the appellant to be maintained in the community. The ministry also considered restrictions to the DLA specific to a mental impairment, namely the ability to make decisions and to interact with others effectively, and wrote that the GP reported that the appellant is independent in making decisions about personal activities, care or finances, such as the tasks of regulating diet, meal planning, safe handling and storage of medications, and budgeting and the appellant does not have difficulties with communication.

Appellant’s argument- mental impairment

At the hearing, the appellant stated that the appellant relies on the written statements provided in the self report, the Request for Reconsideration, and the statement on appeal, and the appellant also added some oral testimony. In the written statement submitted on the appeal, the appellant wrote that the appellant has “high anxiety” and the appellant takes medication that calms the appellant. In the Request for Reconsideration, the GP wrote that the appellant is “quite disabled” and endorsed the appellant’s statement that the appellant experiences bad days but it is always different from week to week and day by day and it is hard to pinpoint. The appellant wrote that the appellant has “anxiety problems” and can take medication if the appellant feels it is “bad enough.”

At the hearing, the appellant stated that it is really hard to say how often the appellant experiences “bad” days, but the appellant experiences “lots of stress” sometimes 4 or 5 days in one week and sometimes 1 or 2 days in a week. The appellant stated at the hearing that it is often more than once a week that the appellant goes through bad stress and the appellant takes medication that helps the appellant calm down. The appellant stated that the appellant tries not to take the medication too often, with concerns of becoming addicted, but it helps to calm the

appellant. In the self report, the appellant wrote that when dealing with stressful events, such as a family crisis, the appellant's anxiety and depression are so bad the appellant cannot function, and the appellant will try to lie down for a couple of hours but it does not help.

The appellant wrote in the self report that the appellant loses track and forgets everything, such as where the welfare stub got put, getting nothing done but stressing about needing to get things done. The appellant wrote that the appellant is "a loner" and "shy" and avoids social interaction with the exception of interaction with a neighbour who helps the appellant with reminders. In the Request for Reconsideration, the appellant wrote that the appellant forgets "a lot" and is confused at some things when under stress, and the appellant's motivation is poor, being tired "a lot."

Panel's majority decision- mental impairment

In the reconsideration decision, the ministry was not satisfied that the information provided was sufficient evidence of a severe mental impairment. The majority of the panel finds that the ministry was reasonable in concluding that although the GP indicated in the MR that the appellant has "severe anxiety," the extent of impacts on daily functioning as evidenced by limitations or restrictions to cognitive, emotional, and social functioning did not establish a severe mental impairment.

While several significant deficits were identified by the GP in the MR to aspects of cognitive and emotional functioning, when considering the impact to the appellant's daily functioning, the GP reported in the AR there is one major impact in the area of emotion. The GP wrote in the MR that the appellant has "panic attacks often" and the appellant needs medication. At the hearing, the appellant stated that it is often more than once a week that the appellant goes through "bad stress" and the appellant takes medication that helps the appellant calm down. In the Request for Reconsideration, the appellant wrote that the appellant takes medication if the anxiety problems are "bad enough" and the appellant added at the hearing that there is a reluctance to take medication due to the risk of addiction but the medication is effective to calm the appellant. In the self report, the appellant wrote that when dealing with stressful events, such as a family crisis, the appellant's anxiety and depression are so bad the appellant "cannot function," and while this information is consistent with the GP assessment of a major impact in the area of emotion (e.g. excessive or inappropriate anxiety; depression, etc.), the panel majority finds that the information regarding the extent of impacts to the appellant's functioning during these episodes of stress was inconsistent.

In the self report, the appellant explained functioning during the bouts of anxiety as "over-stressing" about how to accomplish basic daily tasks, the "dishes and household chores pile up for days" and the appellant procrastinates and loses track and "forgets everything," getting "nothing done." The panel majority finds that the ministry reasonably considered the assessment by the GP, as the prescribed professional, that the appellant independently

performs most household tasks, such as basic housekeeping and laundry, meal planning, and paying rent and bills, with no requirement for assistance or supervision from another person and without these tasks taking the appellant significantly longer than typical.

In the MR, the GP indicated a significant deficit in the areas of attention/concentration and executive and, in the AR, reported these deficits have a 'moderate' impact on the appellant's daily cognitive and emotional functioning. In the MR, the GP reported significant deficits in the areas of consciousness (including confusion), memory and motivation and, in the AR, reported that these deficits have a 'minimal' impact on the appellant's daily cognitive and emotional functioning. In the Request for Reconsideration, the GP endorsed the appellant's statement that the appellant forgets "a lot" and is confused at some things "at times," and the appellant's motivation is poor, being tired "a lot." At the hearing, the appellant agreed that confusion as part of "consciousness" would affect the appellant's DLA and the appellant stated that the appellant experiences anxiety and stress and does not think properly and gets "all anxious." The appellant also agreed at the hearing that a deficit with "motivation" results in the appellant losing interest in doing DLA. In the Request for Reconsideration endorsed by the GP, there was no further explanation or description of the extent of impacts to consciousness, memory and motivation or an indication that the GP considered the impact to the appellant's daily functioning as more than 'minimal,' as the GP reported in the AR.

For social functioning, the ministry reviewed the GP's assessment in the AR that the appellant requires periodic support/supervision in the areas of making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, and securing assistance from others, and noted that the GP did not provide further explanation or description "of the degree and duration of support/supervision required" as requested in the AR. In the MR, the GP noted that stress makes it "hard" for the appellant to make good decisions and did not provide further comment regarding the need for support or supervision. The GP also reported in the MR that the appellant has no difficulties with communication and, in the AR, that the appellant has good functioning in the immediate social network and marginal functioning in the extended social network. In the self report, the appellant wrote that the appellant is a "loner" and "shy" and avoids social interaction, with the exception of interaction with a neighbour who helps the appellant with reminders. There was no further information provided on the appeal regarding the degree or duration of support or supervision required by the appellant with these areas of social functioning. The ministry also reviewed the GP's assessment that the appellant requires continuous support/supervision with dealing appropriately with unexpected demands and the GP wrote that "under stress, 'falls apart.'" The panel majority finds that the ministry reasonable considered that, when asked in the AR to describe the support or supervision required to maintain the appellant in the community, the GP did not provide a response.

In the reconsideration decision, the ministry also reviewed the GP's assessments of the appellant's functioning with the two DLA specific to a mental impairment, as set out in Section 2(1)(b) of the EAPWDR, specifically the ability to make decisions ("decision-making DLA") and

the ability to interact with others effectively (“interact effectively DLA”). The panel majority finds that the ministry reasonably concluded that there is insufficient evidence to establish that the appellant is significantly restricted in either DLA specific to a mental impairment, as discussed in the ‘Restrictions in the ability to perform DLA’ section below,

Given the insufficient evidence of significant impacts to the appellant’s cognitive, emotional, and social functioning, including insufficient consistent information regarding the extent of impacts to the appellant’s functioning during episodes of stress, the panel majority finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Severe Physical Impairment

To assess whether the appellant has a severe physical impairment, the ministry considers information on the degree of restrictions to physical functioning. The panel finds that the assessment of severity based on daily physical functioning is a reasonable interpretation of the legislation.

‘Ministry’s argument- physical impairment

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical impairment. The ministry reviewed the assessment by the GP and the information from the appellant in the self report and argued that this level of physical functioning speaks to a moderate rather than a severe physical impairment. The ministry acknowledged that the GP diagnosed the appellant with arthritis, hypertension, GERD, and chronic pain and the GP reported that the appellant requires a walker and orthotics for the impairment.

The ministry considered the GP’s assessment of physical functioning as set out in the MR that the appellant is able to walk 1 to 2 blocks unaided on a flat surface, climb 5 or more steps unaided, lift 5 to 15 lbs. and remain seated less than 1 hour. The GP added that this level of physical functioning is “on bad days.” In the AR, the appellant is assessed by the GP as requiring periodic assistance from another person with all areas of mobility and physical ability, specifically walking indoors, climbing stairs, standing, lifting and carrying and holding. For walking outdoors, the appellant requires periodic assistance from another person and uses an assistive device and takes significantly longer than typical (note: “uses a walker, always”). The ministry wrote that for the periodic assistance required, the GP did not provide information about the frequency and duration for the ministry to determine if this represents a significant restriction to the appellant’s overall level of functioning.

The ministry reviewed the medical imaging reports provided by the appellant with the PWD application and the ministry wrote that they do not speak to the limitations/restrictions in the appellant’s ability to perform DLA, or the help that is required with DLA. The ministry wrote that

the information demonstrated that the appellant experiences limitations to physical functioning due to chronic pain from arthritis; however, the evidence was insufficient to support a finding of a severe physical impairment.

Appellant's argument- physical impairment

At the hearing, the appellant stated that the appellant relies on the written statements provided in the self report, the Request for Reconsideration, and the statement on appeal, and the appellant also added some oral testimony. In the written statement submitted on appeal, the appellant wrote that the appellant's knees are replaced with plastic and metal and, after years go by, they "wear and tear." The appellant wrote that the appellant does not go anywhere without the walker and does not know how many blocks the appellant can walk unaided as the appellant will not try. At the hearing, the appellant stated that the appellant does not use the walker in the appellant's suite and, when the appellant walks around the suite, the appellant will put "hands up" in case the appellant "goes down." The appellant also does not do stairs unaided and, if the appellant has to climb stairs, the appellant holds onto the railing. The appellant wrote in the written statement that the appellant does not know how much weight the appellant can lift since, at the foodbank, the material bags are tied to the appellant's walker so the appellant does not have to lift them. In the Request for Reconsideration endorsed by the GP the appellant wrote the appellant cannot sit for long because of the hypertension and stomach problems. In the self report, the appellant wrote that the appellant is always exhausted and has no energy and the appellant cannot stand too long, "not more than 10 minutes even on a good day."

Panel's majority decision- physical impairment

In the MR, the GP diagnosed the appellant with arthritis, hypertension, GERD, and chronic pain and commented regarding the appellant's health history that the appellant's arthritis makes it "hard to ambulate, hands hurt, body ROM limited" and "chronic painful joints" and "needs mobility aids more and more." Although the ministry wrote that the GP noted that the appellant's hypertension is "hard to control, especially when stressors come on" and the appellant "needs prescription-strength meds" to treat GERD, the ministry wrote that the impacts to physical functioning described are primarily related to arthritis and chronic pain.

With the PWD application, the appellant provided Medical Imaging Reports from April 2016, July 2017 and November 2019 describing "moderately severe mid/lower cervical degenerative disc disease," "bilateral tricompartmental reconstruction" of bilateral knees with "no evidence of loosening or migration," and for the bilateral hips there is "no bone or joint abnormality" identified, there is severe to moderate "intervertebral disc height loss" in the lumbar spine, and for the appellant's right elbow "normal alignment is maintained" and there is "no joint effusion," and "moderate humeral olecranon joint space loss." These reports confirm the diagnosis of arthritis in the appellant's cervical and lumbar spine and the reconstruction of the appellant's

knees, with “no evidence of loosening or migration”; however, the panel majority finds that the ministry reasonably concluded that the Medical Imaging Reports do not provide an assessment of the appellant’s physical functioning.

In terms of physical functioning, the ministry considered the GP’s assessment as set out in the MR that the appellant is able to walk 1 to 2 blocks unaided on a flat surface, climb 5 or more steps unaided, lift 5 to 15 lbs. and remain seated less than 1 hour. The GP added that this level of functioning is on the appellant’s “bad days” and thereby suggested that the appellant’s physical functioning is higher on “good” days. At the hearing, the appellant stated that the appellant does not know why the GP assessed the appellant’s functional skills at a moderate to high level. The appellant stated that the appellant was with the GP when the PWD application forms were completed and the GP asked the appellant questions.

At the hearing, the appellant stated that the appellant does not know how the appellant would walk outdoors without a walker and will not try. For walking outdoors, the GP indicated in the AR that the appellant requires periodic assistance from another person and also uses an assistive device and takes significantly longer than typical, with the GP noting that the appellant “uses a walker, always.” The GP’s information in the AR and from the appellant regarding outdoor mobility is inconsistent with the GP’s assessment in the MR that the appellant can walk 1 to 2 blocks unaided on a flat surface, since “unaided” is defined in the MR to mean “without the assistance of another person, assistive device or assistance animal.” The appellant stated at the hearing that the appellant does not use the walker in the appellant’s suite and puts “hands up” in case the appellant was to fall. The GP assessed the appellant in the AR as requiring periodic assistance from another person with walking indoors. In the Request for Reconsideration endorsed by the GP, the appellant wrote that the appellant experiences bad days “but it’s always different from week to week and day by day” and it is “hard to pinpoint,” and the panel majority finds that the GP did not describe the appellant’s physical functioning on a “bad day” that differs from the assessment of functional skills as set out in the MR.

In the self report, the appellant wrote that the appellant needs to go slowly up any stairs or a hill and needs to hold on to a handrail to avoid falling. The appellant wrote in the Request for Reconsideration that the appellant does not “do stairs” but, if the appellant has to climb stairs, would “just grab the railing.” The dissenting opinion is that the GP endorsed the appellant’s information in the Request for Reconsideration and, therefore, the appellant is unable to climb any stairs “unaided,” or without the use of a railing. “Unaided” is defined in the MR to mean “without the assistance of another person, assistive device or assistance animal,” and the panel majority finds that the ministry’s opinion that a railing is not an “assistive device” is reasonable. Section 2(1) of the EAPWDA defines “assistive device” as “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.” Therefore, the panel majority finds that the GP’s endorsement in the Request for Reconsideration confirmed that the appellant is able to climb 5 or more steps unaided, or without the use of an assistive device.

Given the GP's assessment of physical functioning in the moderate to high range of functional skills limitations, with the exception of outdoor mobility, and the absence of consistent information regarding periodic restrictions to aspects of mobility and physical ability, the panel finds that the ministry reasonably determined that the evidence is not sufficient to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

Section 2(2) of the EAPWDA requires that a severe impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods, as confirmed by the opinion of a prescribed professional, which can be the appellant's doctor or one of the professionals listed such as a social worker or an 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 the restriction has a large impact on the person's ability to perform activities.

The direct and significant restriction may be either continuous or periodic. If the restriction is periodic, it must be for an extended period of time. The ministry views an extended period of time to mean occurring 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 perform the activity. The panel views the ministry's interpretation to be reasonable and, therefore, where the evidence indicates that a restriction arises periodically 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.

DLA are defined in Section 2(1) of the EAPWDR and are also listed in the MR and, with additional details, in the AR. Therefore, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairment continuously or periodically for extended periods.

Ministry's argument- DLA

In the reconsideration decision, the ministry was not satisfied that the appellant has a severe physical or mental impairment that, in the opinion of the prescribed professional, directly and significantly restricts DLA either continuously or periodically for extended periods of time. The ministry considered that the GP indicated that the appellant has been prescribed medication that causes drowsiness and interferes with the appellant's ability to perform DLA. The ministry also wrote that the GP reported that the appellant is able to independently manage most aspects of DLA, with the exception of requiring a walker when going to and from stores, carrying purchases home, and using public transport. The ministry wrote that although the GP indicated that the appellant requires periodic assistance from another person with the tasks of making appropriate choices when shopping, using public transit, and using transit schedules and

arranging transportation, the information from the GP did not establish that the assistance is required periodically for extended periods of time. At the hearing, the ministry stated that there is no narrative provided by the GP, who has assessed the appellant as independent in performing most tasks of DLA and, looking at the information overall, there is no overarching impediment to the appellant performing DLA.

Appellant's argument- DLA

In the statement provided on appeal, the appellant wrote that the appellant's medication can cause drowsiness if one is trying to sleep, but the appellant has "high anxiety," and the medication just calms the appellant. The appellant wrote that the appellant's family helps with groceries, when able, and the appellant's housework does not always get done when needed as the appellant has "bad arthritis" in the hands. In the self report, the appellant wrote that the pain is worse in the appellant left hand and elbow and really slows the appellant down so that when the appellant does laundry or cleaning/dusting, the appellant has to "take it real slow and do only little bits at a time, resting for 5 minutes every ten minutes or so." The appellant wrote in the statement on appeal that the appellant is not eating properly because the appellant takes "the easy way out" and just makes a sandwich instead of a proper cooked meal. In the Request for Reconsideration, the GP wrote that the appellant is "quite disabled" and endorsed the appellant's statement that the appellant "only lift[s] groceries" so guessed at how much weight the appellant can lift. In the self report, the appellant wrote that the appellant can tie a small grocery bag to the walker, but the appellant cannot lift or carry even a light load more than a few feet. The appellant wrote in the Request for Reconsideration that the appellant's family helps with groceries "here and there" where able and brings the appellant's groceries to the patio. In the Request for Reconsideration, the appellant wrote that the appellant experiences bad days but it is always different from week to week and day by day.

In the self report, the appellant wrote that the appellant will "over-stress" about how to accomplish basic daily tasks such as how to get to the bank in the rain and is often reluctant to leave the house, even to obtain necessities. The appellant wrote that when dealing with stressful events, the appellant's anxiety and depression "get so bad" that the appellant "can't even function" and the appellant will try to lie down for a couple of hours but it does not help. The appellant wrote that household chores pile up for days as the appellant procrastinates about doing even simple things, the appellant loses track and forgets everything, getting nothing done. The appellant wrote that a neighbour helps with reminders and gives the appellant a lift to the welfare office or the pharmacy to refill prescriptions. At the hearing the appellant stated it is often more than once a week that the appellant goes through bad stress.

Panel's majority decision- DLA

The GP, as the prescribed professional, reported in the AR that the appellant is independent in performing all of the tasks of most DLA, specifically the personal care DLA, the basic

housekeeping DLA, the meals DLA, the pay rent and bills DLA, and the medications DLA. The appellant wrote that the appellant's housework does not always get done when needed as the appellant has "bad arthritis" in the hands and the appellant has to "take it real slow and do only little bits at a time, resting for 5 minutes every ten minutes or so" when doing laundry or cleaning/dusting, and "the household chores pile up for days"; however, this is not consistent with the information of the GP as the prescribed professional. The panel majority finds that the ministry reasonably considered the GP's report that the appellant is independent with basic housekeeping and laundry and these tasks do not take the appellant significantly longer than typical. Although the appellant described difficulty with preparing and cooking meals, the GP reported in the AR that the appellant is independent with the tasks of cooking and food preparation. The appellant wrote in the self report that the appellant will "over-stress" about how to accomplish basic daily tasks such as how to get to the bank in the rain and is often reluctant to leave the house, even to obtain necessities, and a neighbour helps with reminders and gives the appellant a lift to the pharmacy to refill prescriptions. The panel majority finds that the ministry reasonably relied on the GP's report that the appellant is independently able to perform the tasks of banking, budgeting, paying bills, as well as filling/refilling prescriptions.

The ministry also reviewed the GP's report that the appellant requires a walker when going to and from stores, carrying purchases home, and using public transport, and there is a need for periodic assistance from another person with the tasks of making appropriate choices when shopping, using public transit, and using transit schedules and arranging transportation, with no further comments provided by the GP in the AR. In the Request for Reconsideration, the GP wrote that the appellant is "quite disabled" and endorsed the appellant's statement that the appellant goes to the bus with the walker when attending the food bank and ties material bags to the walker, fills the bags, and takes the bus home. The GP endorsed the appellant's statement that the appellant's family helps with groceries "here and there" where able and brings the appellant's groceries to the patio as well as the statement that the appellant experiences bad days but it is always different from week to week and day by day. Asked about the frequency of "bad" days at the hearing, the appellant stated that it is often more than once a week that the appellant goes through "bad stress" and the appellant takes medication that helps the appellant calm down. As there was no further information about how long the appellant's functioning is impacted during episodes of stress, the panel majority finds that the ministry was reasonable to conclude that there was insufficient information from a prescribed professional to establish that the periodic restrictions to some tasks of DLA are for extended periods of time.

Considering the two DLA set out in Section 2(1)(b) of the EAPWDR that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (relate effectively), the majority of the panel finds that the ministry reasonably concluded that there is insufficient evidence to establish that the appellant is significantly restricted in either.

Regarding the 'decision making' DLA, the ministry considered that the GP reported in the AR

that the appellant independently manages most of the decision-making components of DLA, specifically: personal care (regulating diet), shopping (paying for purchases), meals (meal planning and safe storage of food), pay rent and bills (including budgeting), and medications (taking as directed and safe handling and storage). The GP reported in the AR that the appellant requires periodic assistance from another person with the tasks of making appropriate choices when shopping and using transit schedules and arranging transportation, as well as periodic support/supervision of another person with making appropriate social decisions; however, the GP did not provide an explanation or description or additional comments to establish the degree and duration of the periodic assistance or support/supervision required to show significant restrictions in this DLA. There was no further information provided from the GP on the appeal to elaborate on the extent of restrictions to these decision-making tasks.

Regarding the DLA of 'relating effectively', the GP reported that the appellant requires periodic support/ supervision in developing and maintaining relationships and interacting appropriately with others and the GP did not add an explanation or description of the support or supervision required to allow the ministry to determine the extent of the restriction. The GP reported that the appellant has good functioning in the immediate social network and marginal functioning in the extended social network and, when asked to describe the support/supervision required to maintain the appellant in the community, the GP did not provide a response. In the MR, the GP reported that the appellant has no difficulties with communication and, in the AR, that the appellant has a good communication ability with speaking and hearing and satisfactory abilities with reading and writing.

Given the GP's assessment of independence with performing most DLA, and insufficient information regarding the duration of the need for periodic assistance from another person with some tasks of DLA to allow the ministry to determine that the periodic restrictions are for extended periods of time, the panel majority finds that the ministry reasonably concluded that the evidence is insufficient to show that the appellant's overall ability to perform DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

In the reconsideration decision, the ministry held that, as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required. 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.

The GP reported in the AR that the appellant receives help from family, friends and community service agencies and the appellant uses a cane (“rarely”), a walker (“most”) and orthotics as assistive devices. As the panel majority found the ministry reasonably determined that direct and significant restrictions in the appellant’s ability to perform DLA have not been established, the panel majority finds that the ministry also reasonably concluded that, under section 2(2)(b)(ii) of the EAPWDA, it cannot be determined that the appellant requires help to perform DLA.

Conclusion of panel majority

The panel majority finds that the ministry’s reconsideration decision, which determined that the appellant was not eligible for PWD designation pursuant to Section 2(2) of the EAPWDA, was reasonably supported by the evidence. The panel confirms the ministry’s decision. The appellant’s appeal, therefore, is not successful.

Dissenting Reasons

In the reconsideration decision, dated March 10, 2021, the ministry was satisfied that the information provided establishes that the appellant met two of the five criteria: namely the age of the appellant is over 18, and that the impairment would likely continue for at least two years. The ministry was not satisfied that the following criteria were met, namely: a severe physical impairment and/or a severe mental impairment existed, the impairment does not significantly restrict daily living activities (DLA), and the appellant does not require significant assistance from others to perform DLAs.

Severe physical and/or severe mental impairment

The Medical Report dated January 15, 2021 was completed by the appellant’s physician and reports the appellant suffers from arthritis which limits the use of hands, hypertension, GERD (gastroesophageal reflux disease) requiring prescription medication, severe anxiety requiring ATIVAN, and chronic pain.

The MR states: “Anxiety – severe panic attacks often, stress makes it hard to make good decisions, heart has full palpitations at times, needs ATIVAN”.

In section D-6 of the Medical Report, the physician notes the appellant experiences significant deficits with cognitive and emotional functioning in the following areas:

- Emotional disturbance
- Consciousness
- Executive
- Motivation
- Memory
- Attention or sustained concentration

The physician also stated in handwriting in a letter by the appellant to the ministry dated February 8, 2021 that "I fully agree with (appellant's name) statement. (The appellant) is quite disabled." The definition of 'quite': to the utmost or most absolute extent or degree; absolutely; completely.

The panel member finds the ministry was unreasonable in its assessment that a severe impairment did not exist.

The impairment does not significantly restrict daily living activities

The appellant stated that both the physician and the appellant completed the sections which required a check in boxes about functional skills and daily living activities, whereby the appellant made guesses as to ability. The appellant was not asked by the physician to demonstrate any of the skills.

Restrictions in the Ability to Perform Daily Living Activities Section 2(2)(b)(i) of the EAPWDA requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether or not it is satisfied that the legislative criteria are met is dependent upon the evidence from prescribed professionals. 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. Finally, there is a component related to time or duration -the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended periods. Inherently, any analysis of periodicity must also include consideration of how frequently the activity is restricted. All other things being equal, a restriction that only arises once a year is less likely to be significant than one that occurs several times a week.

The ministry states in its reconsideration decision: "However, the frequency and duration of these periods, and how much longer it takes you to manage are not described in order to determine if they represent a significant restriction to your overall level of physical functioning. For example, a restriction that only arises once a month is less likely to be significant than one which occurs several times a week."

The ministry representative confirmed at the hearing that the reconsideration decision places more weight on the MR and AR completed by a physician over that of a self-report from the appellant. The ministry representative stated that the MR and AR, dated January 15, 2021 provided little to no narrative or description. The ministry representative also confirmed that fully completed MRs and ARs by physicians are not the norm.

The letter from the appellant dated February 8, 2021, however does provide a narrative and description of how the physical and mental impairments affect DLAs and was fully supported by

the physician, as evidenced by the physician's stamp, handwriting and signature. In this letter, the appellant states inability to walk without a walker, inability to climb stairs, can lift groceries but cannot carry groceries, constant fatigue, cannot sit for long periods (MR states less than one hour), and often forgetful and confused. The restriction to carry out these daily living activities is very frequent.

The ministry accepted the physician's opinion that the appellant has significant deficits with cognitive and emotional function in the areas of consciousness, executive, memory, emotional disturbance, motivation and attention or sustained concentration. So long as the opinion of the prescribed professional meets the criteria in s.2 of the EAPWDA, the evidence of the applicant/appellant may also be taken into account in a determination of the severity of the impairment and the nature and extent of the help required. Where, for example, the appellant's evidence is contradicted by the physician's report, or raises medical conditions that are not identified in the physician's report, it may be reasonable to place little weight on that evidence. However, where an appellant's statement is descriptive of medical conditions and symptoms set out by a prescribed professional in the MR and AR, and that statement provides information about the severity of an appellant's condition and the severity of the restrictions on ability to perform DLA, it is not reasonable for the ministry to place little weight on that evidence only because the details are not repeated in the physician's report. That determination has been upheld by the court to be "unreasonable". See *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2009 BCSC 1461 at para 64).

For this reason, this panel member finds the ministry unreasonable in their decision regarding the significant impact of the impairment in daily living activities as the ministry did not place sufficient weight on the appellant's self-report which was confirmed by the physician.

Significant assistance from others to perform daily living activities

The appellant stated assistance is needed but rarely available. As a result, activities such as, but not limited to, housekeeping and cooking only get done when the appellant has the energy to do so. Currently the appellant has only a son to rely upon and this son is dealing with the challenges of homelessness.

For the above reasons, this panel member finds the ministry's reconsideration decision dated March 10, 2021 to be unreasonable.

Schedule

Section 2 of the EAPWDA provides 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).

Sections 2 and 2.1 of the EAPWDR provide 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, 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
2021-0072

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

S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021-04-26

PRINT NAME

David Kendrick

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021-04-26

PRINT NAME

Diane O'Connor- dissenting

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021-04-26