

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated April 15, 2021 that denied the appellant designation as a person with disabilities (PWD) under section 2 of the *Employment and Assistance for Persons with Disabilities Act*. The ministry found that the appellant met the requirements of having reached 18 years of age and having a medical practitioner confirm that the appellant's impairment is likely to continue for at least 2 years, but was not satisfied that:

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

The ministry also found that the appellant is not in one of the prescribed classes of persons who may be eligible for PWD designation on the alternative grounds set out in section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation* ("EAPWDR"). As there was no information or argument provided for PWD designation on alternative grounds, the panel considers that matter not to be at issue in this appeal.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 2

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 2 and 2.1

PART E – SUMMARY OF FACTS

Information before the ministry at reconsideration

- The appellant's PWD application, comprised of:
 - A Medical Report (MR) and Assessor Report (AR), completed on November 22, 2020 by the appellant's general practitioner (GP) of 4 months who saw the appellant 2-10 times in the twelve months preceding completion of the MR.
 - A Self-report (SR) completed by the appellant on November 22, 2020.
- 2-page Diagnostic Assessment Interview (undated).
- The appellant's April 6, 2021 Request for Reconsideration, which included:
 - 1) April 4, 2021 letter from the GP.
 - 2) April 4, 2021 1-page Medical History Summary provided by the GP.

Information provided on appeal and admissibility

The appellant's Notice of Appeal dated April 21, 2021 in which the appellant describes his reasons for appeal as "need to speak with tribunal in person."

At the hearing, the appellant provided information about his physical functioning, details of which are set out below in the Summary of Relevant Evidence. The appellant also expressed frustration that the ministry had not contacted the GP, when both the appellant and the GP had asked the ministry to do if more information was needed.

At the hearing, the ministry stated that all information, including that provided at reconsideration, was considered. The ministry depends on medical professionals and applicants to provide information, noting that the ministry may or may not reach out to GP and that past personal experience is that physicians are unavailable. The ministry explained that all applicants can reapply for PWD designation with updated information. The ministry did not introduce new evidence.

The panel admitted the appellant's information respecting his medical conditions and functioning under section 22(4) of the *Employment and Assistance Act* was information reasonably required for full and fair disclosure of the matters at issue.

The positions of both parties are set out in Part F of this decision.

Summary of relevant evidence

Diagnoses and Health History

In the MR, the GP provides the following diagnoses, commenting “Pervasive, severe, persistent.”

- Post-traumatic stress disorder (PTSD)
- Obsessive compulsive disorder (OCD)
- Major depressive disorder
- Cyclothymic disorder
- Possible bipolar disorder

The GP also writes that the appellant has a complex set of psychiatric symptoms – this is going to take some time and some considerable consultative expertise to sort out.

The letter provided by the GP at reconsideration stated that the appellant has a severe mood disorder limiting his functional ability.

The Medical History Summary identifies the current problem list: Hemoptysis, COPD, fatty liver, hyperlipidemia, tobacco dependence, mood disorder, and depression (severe functional limitation). Prescribed medications and a consultation with a physician regarding “cough, bloody sputum” are also listed.

Physical Impairment

In the MR, the GP reports that the appellant does not require any aids or prostheses for his impairment, is able to walk 4+ blocks unaided on a flat surface and climb 5+ steps unaided. There are no limitations respecting the amount of weight the appellant can lift or the time for which the appellant can remain seated.

In the AR, the GP reports that walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding are managed independently. No commentary is provided.

The appellant’s SR is limited to information respecting his mental health.

In his reconsideration submission, the appellant states that he has GURD stomach disease, non-alcoholic fatty liver disease, and advanced COPD which causes dizziness and constant fatigue.

At the hearing, the appellant stated that he first saw the GP after experiencing abdominal pain and coughing. A lot has happened and life has changed so much over the 8 months since the PWD Application was completed, a period during which the appellant has been in and out of doctors’ offices and undergoing tests, including weekly telephone appointments with the GP. His

lungs and liver are malfunctioning, which the appellant described as terminal diseases. He coughs up blood, now has a respiratory specialist and has undergone recent tests, but has no results yet. Radiology testing has not explained why his lungs are bleeding, with the appellant stating that he worked around many toxic substances. He also has stomach disease, IBS and an overactive immune system. Searching for the reason why his organs are failing continues. He is not a lung or liver transplant candidate. He needs small snacks through the day due to his liver function, is on the long track to quitting smoking, though he doesn't smoke much. His medical conditions are consistently affecting his life and daily living; for example, it is hard to go to a grocery store with a mask when you can barely breathe and while he can walk 4+ blocks, he will cough up blood.

The appellant explained that the GP's report is 110% accurate but that the appellant was "generous" in describing the effects on his functioning; that is, he had downplayed the effects. The appellant stated that the boxes [in the MNS Application] indicating normal functioning should now be ticked "horrible" or "extreme" as none are normal anymore. The appellant stated that he was told by the GP that the GP would not provide more letters and that the ministry would have to call the GP who would be happy to provide additional information about changes that have occurred.

Mental Impairment

In the MR, the GP reports:

- A significant deficit in 2 of 11 specified areas of cognitive and emotional function – emotional disturbance and attention or sustained concentration. No additional commentary is provided.
- There are no difficulties with communication (in the AR, the appellant's speaking, reading, writing, and hearing abilities are assessed as good).

In the AR, where asked to indicate no impact, minimal impact, moderate impact, or major impact on daily functioning for 14 listed areas of cognitive and emotional functioning (examples included in the AR are italicized), the GP reports:

- Major impact for emotion, attention/concentration, motivation and other emotional or mental problems.
- Moderate impact for impulse control, insight and judgement, executive, and psychotic symptoms.
- Minimal impact for memory.
- No impact for remaining areas.

Stating that his findings are based entirely on an interview of the appellant, the GP provides the following information about the appellant:

- Scores in the severe range for both PHQ-9 [Patient Health Questionnaire] and GAD7 [Generalized Anxiety Disorder] questionnaires.
- Mood is one of constant sadness. Depressed mood results in apathy, lethargy, hopelessness lasting for months or even years at a time.
- Has had periods of symptoms consistent with hypomania, including rapid thinking and

speaking, grandiose delusions, and promiscuity.

- Self-describes as “odd” and “unusual” but nevertheless gets along well; describes himself as having high intelligence.
- No history of substance use disorder.
- Finding other people very annoying, making him very irritable and angry, he felt he had to quit his job.
- Sleep disturbance every night.
- Very little interest or pleasure.
- Daily sense of guilt and self-recrimination respecting the death of a parent, irrational thoughts that it was his fault
- Poor appetite with a penchant for junk food.
- Easily angered and resentful towards family members who the appellant feels failed to protect him from abuse. Suffers PTSD, flashbacks to past physical assaults by a family member, and events witnessed during past service.
- Has trouble controlling worrying, which can escalate to panic levels several times daily.
- Anxiety disorder extends to excessive fear of germs and obsessive and ritualistic checking, counting and excessive tidying and putting things in order.
- Multiple life stressors have left him very traumatized. Despite these, he has coped very well and been quite successful in life. However, over the years, he has had increasing difficulty and has only recently come forward seeking help.

The appellant’s responses in the Diagnostic Assessment Interview, with 1 being “worst” and 10 being “best,” include:

- “1” for sadness, sleep, interest/pleasure in life, psychomotor retardation (dragged out feeling), anger/frustration, and anxiety;
- “3” for guilt;
- “8” for energy level;
- “10” for concentration;
- “5” for appetite; and,
- “5” for suicidal thoughts and “8” for suicidal intent. No history of suicide attempts.

Additional information included in this assessment is described above by the GP.

In the SR, the appellant writes:

- Crushing anxiety and depression have made his life hell.
- He hasn’t had more than 2 hours of sleep in a cycle his whole life.
- He suffers from PTSD.
- He has lost everything that matters in life, including relationships with friends and family.
- He suffered severe physical abuse by a family member.
- Anxiety/OCD causes insomnia which results in chronic fatigue and affects his diet and causes irregularity to consistency of bodily functions.
- Anxiety makes life very difficult due to his compulsive nature – he cannot leave things unfinished/perfectionist which has caused employment trouble for most of his life. Working with others is very hard as most people do not like to work with people like the

appellant.

- He is no longer able to function normally.
- He is applying for PWD because his ability to work and maintain employment has become impossible.
- Because of the medication for mental health conditions, he cannot operate machines or any other equipment.
- He can barely stand to go outside any more as COVID has put his anxiety through the roof and he can't stand to be around people anymore. It was a challenge before, but his mental health has declined so far that he had to ask his doctor for help. Seeking help has been very difficult.

DLA

In the MR, the GP indicates:

- Personal self-care, meal preparation, management of medications, basic housework, daily shopping, mobility inside and outside the home, use of transportation, and management of finances are not restricted.
- Social functioning is restricted. The GP does not indicate if the restriction is periodic or continuous. Assistance required is "n/a."

Where asked if the appellant has been prescribed medications or treatments that interfere with the ability to perform DLA, the GP responds no, commenting that the appellant has just started psychiatric medications for the first time in his life.

In the AR, the GP provides no response where asked to indicate the mental or physical impairments that impact the appellant's ability to manage DLA and reports:

- All listed tasks of personal care, basic housekeeping, shopping, meals, pay rent and bills, medications, and transportation are managed independently, with no tasks requiring any assistance or taking significantly longer to perform.
- Respecting social functioning, the GP did not respond where asked to indicate if the appellant is independent or requires periodic or continuous support/supervision from another person with:
 - appropriate social decisions
 - develop and maintain relationships
 - interact appropriately with others
 - deal appropriately with unexpected demands require periodic support/supervision.
- The appellant has marginal functioning with his immediate social network and good functioning with extended social networks.
- Support/supervision required to help maintain the appellant in the community is "a long intense period of psychotherapy." The appellant needs a qualified clinical counselor.

Need for Help

The GP indicates that assistance needed with DLA is "n/a" and reports that the appellant needs intense psychotherapy.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. That is, was the ministry reasonable when determining that the appellant is not a person described in section 2.1 of the EAPWDR and that the requirements of section 2(2) of the EAPWDA were not met because:

- a severe physical or mental impairment was not established;
- the appellant's DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and
- as a result of those restrictions, in the opinion of a prescribed professional, the appellant does not require an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA?

Panel Decision

Eligibility for PWD designation under section 2 of the EAPWDA

Physical Impairment

Positions of the Parties

At the hearing, the appellant stated that stomach, lung and liver disease consistently affects his life and daily living, A lot has happened since the GP completed the PWD Application and all of the boxes the GP ticked to indicate normal functioning should now be ticked "horrible" or "extreme."

The ministry's position is that the GP's assessment that no aids or prostheses are required and that there are no physical functional skill limitations, with all aspects of mobility and physical ability being managed independently by the appellant, does not establish a severe physical impairment.

Panel Analysis

Section 2 of the EAPWDA requires that the minister "is satisfied" that a person has a severe physical or mental impairment, giving the minister discretion when making the determination. When exercising this discretion, the legislation's requirement for information from a medical or

nurse practitioner (and other prescribed professionals) makes it clear that the fundamental basis for assessing PWD eligibility is information from one or more prescribed professionals. The panel also notes that the legislation does not identify employability or financial constraints as considerations when determining PWD eligibility.

The panel finds that although the GP references a number of physical medical conditions in the Medical History Summary, the GP does not identify any resulting impacts on the appellant's physical functioning. In the MR and AR, no physical medical diagnoses are provided and no restrictions in the appellant's ability to function physically are identified. The panel acknowledges the information provided by the appellant at the hearing respecting multiple serious physical medical conditions but finds the ministry's conclusion reasonable given the absence of any description of physical limitations by the GP.

In conclusion, based on the above analysis, the panel finds the ministry reasonable when concluding that the information does not establish a severe physical impairment.

Mental Impairment

Positions of the Parties

The appellant's position is that he is unable to function normally due to his anxiety/OCD, PTSD and depression. He suffers from insomnia, has lost everything that matters, is unable to work, and can barely stand to go outside and be around people.

Noting the GP's assessment of a complex set of psychiatric symptoms, significant deficits with emotional disturbance and attention or sustained concentration, and major and moderate impacts on aspects of cognitive and emotional functioning, the ministry finds that the GP's information demonstrates that the appellant experiences constant sadness, sleep disturbance and anxiety. However, the ministry finds that the information respecting the restriction with social functioning is incomplete and that the level of independence in managing activities typically difficult for someone who experiences significant restrictions to mental functioning is not indicative of severe mental impairment. In particular, the ministry notes independence with making decisions about personal activities, care and finances and with relating to, communicating and interacting with others effectively. In reaching this conclusion, the ministry notes that employability is not considered when assessing PWD eligibility. At the hearing, the ministry explained that when commentary is provided, such as the GP's comment that the appellant's mental conditions are pervasive, severe, persistent, it will consider whether that information is supported by other information. In this case, the GP indicated that there were either no or unknown restrictions with DLA and described the need for assistance as "n/a" which is not consistent with a severe mental impairment.

Panel Analysis

The appellant is diagnosed with multiple mental health conditions, PTSD, OCD, major depressive disorder, cyclothymic disorder, and possible bipolar disorder, which the GP

describes as pervasive, severe and persistent and as presenting a complex set of psychiatric symptoms. As summarized by the GP, the appellant's Diagnostic Assessment Interview indicates scores in the severe range for both anxiety and depression, and the GP reports a major impact in 4 of the 14 aspects of cognitive and emotional functioning listed in the AR. In the letter submitted at reconsideration, the GP writes that the appellant "has a severe mood disorder limiting his functional ability" with no further description of the limitations.

However, despite describing some of the appellant's mental health conditions as severe, in the MR the GP reports that with the exception of "social functioning", the appellant's impairment does not directly restrict his ability to perform DLA. The lack of restrictions is confirmed by the GP in the AR with the appellant assessed as independently managing all listed tasks for the DLA that relate to both physical and mental impairment (mobility and physical ability, personal care, basic housekeeping, shopping, meals, pay rent and bills, medications and transportation). The panel notes that in the MR, the GP indicates that the appellant's ability to manage finances is unknown, but there is no explanation and, as noted, all aspects of pay rent and bills were assessed in the AR as being managed independently.

The legislation sets out two additional DLA that relate only to mental impairment: (i) make decisions about personal activities, care or finances and (ii) relate to, communicate or interact with others effectively.

As noted above, the GP indicates that all listed tasks of the DLA relating to both physical and mental impairment are managed independently, including tasks related to decision-making about personal activities, care or finances, such as regulating diet, making appropriate shopping choices, meal planning, budgeting, safe handling or storage of food, and using transit schedules/arranging transportation.

Respecting the appellant's ability to relate to, communicate or interact with others effectively, in the MR, the GP reports that social functioning is restricted without identifying, as requested, the restriction as either continuous or periodic. The GP reports that the appellant has good communication abilities and good functioning with extended social networks. Functioning with the appellant's immediate social network is marginal, rather than good, and the appellant also reports the loss of close relationships due to his mental impairment. In the AR, where the GP is asked for information respecting the appellant's ability to develop and maintain relationships and interact appropriately with others, including what, if any, support/supervision is required, no response is provided, though the GP indicates that a long intense period of psychotherapy is required to help maintain the appellant in the community.

Based on the above analysis, the panel finds that while the information establishes some impairment of the appellant's functioning with immediate social networks, given the GP's assessment of good functioning with extended social networks and no restrictions with decision-making or any other DLA, the ministry was reasonable when concluding that a severe mental impairment is not established.

Restrictions in the ability to perform DLA

Positions of the Parties

The appellant's position is that he cannot work or function normally due to his physical and mental impairments.

Noting that it relies on the medical opinion and expertise of the GP when assessing DLA restrictions, the ministry states that it is reasonable to expect that the appellant would encounter some restrictions in the ability to perform DLA and require assistance as a result. However, the information provided is insufficient to establish direct and significant restrictions with DLA continuously or periodically.

Panel Analysis

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 it is satisfied, 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.

DLA are defined in section 2(1) of the EAPWDR and are listed in both the MR and the AR sections of the PWD application with the opportunity for the prescribed professional to check marked boxes and provide additional narrative. The DLA defined in the legislation do not include the ability to work.

In this case, the GP is the only prescribed professional who has provided information respecting the appellant's ability to perform DLA. As described in detail under *Mental Impairment*, the GP indicates that, with the exception of some limitations respecting the appellant's social functioning with immediate social networks, all DLA are managed independently, without any assistance and without taking significantly longer to perform. In his subsequent letter, the GP reports that severe mood disorder limits the appellant's functional ability, but no explanation is provided to indicate what, if any, DLA are impacted or whether functional ability refers to other aspects of functioning such as employment. The panel also notes that the GP provides no information respecting impacts from the appellant's physical medical conditions relating to DLA or any other aspect of functioning.

Based on the GP's assessment of the appellant's ability to manage DLA, the panel finds that the ministry was reasonable in concluding that direct and significant restrictions in the ability to manage DLA either continuously or periodically for extended periods were not established.

Help to perform DLA

Section 2(2)(b)(ii) of the EAPWDA requires that, *as a result of direct and significant restrictions in the ability to perform DLA*, a person requires help to perform those activities. 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 DLA.

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

Conclusion

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

Relevant Legislation

EAPWDA

2 (1) In this section:

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

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

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

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

- (a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and
- (b) in the opinion of a prescribed professional
 - (i) directly and significantly restricts the person's ability to perform daily living activities either
 - (A) continuously, or
 - (B) periodically for extended periods, and
 - (ii) as a result of those restrictions, the person requires help to perform those activities.

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

- (a) a person who has a severe mental impairment includes a person with a mental disorder, and
- (b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires
 - (i) an assistive device,
 - (ii) the significant help or supervision of another person, or
 - (iii) the services of an assistance animal.

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

EAPWDR

Definitions for Act

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

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

- (i) prepare own meals;
- (ii) manage personal finances;
- (iii) shop for personal needs;
- (iv) use public or personal transportation facilities;
- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self-care;
- (viii) manage personal medication, and

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

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

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

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

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

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

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

if qualifications in psychology are a condition of such employment.

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
2021-0090

PART G – ORDER

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

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

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

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

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

and

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

PART H – SIGNATURES

PRINT NAME

Jane Nielsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/05/19

PRINT NAME

Jeremy Scott

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/05/19

PRINT NAME

Joseph Rodgers

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/05/19