

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

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD) dated April 19, 2021, which found that the Appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) for designation as a person with disabilities (PWD). While the Ministry found that the Appellant met the age requirement and had an impairment which was likely to continue for at least two years, it was not satisfied that the evidence establishes that:

- The Appellant has a severe physical or mental impairment;
- The Appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- As a result of these restrictions, the Appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

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

### **PART D – RELEVANT LEGISLATION**

EAPWDA, Section 2

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

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

The relevant legislation is provided in Schedule A.

## **PART E – SUMMARY OF FACTS**

The evidence before the Ministry at the time of the RD included the PWD Application comprised of the applicant information and self report (SR) completed by the Appellant on January 21, 2021, including a Medical Report (MR) dated December 21, 2020 and completed by the Appellant's General Practitioner (GP) who has known the Appellant for two years and who has seen the Appellant 2 - 10 times in the past year, and an Assessor Report (AR) dated December 21, 2020, also completed by the GP.

The evidence also included:

- A Request for Reconsideration form (RFR), signed by the Appellant on April 8, 2021, in which the Appellant states that:
  - He has had an ongoing back injury since March 31, 2018, which cause him daily struggles affecting everyone who helps him with his DLA;
  - The pain and limitations involved with his injury cause him to be unable to complete everyday tasks;
  - He can't lift his children, play with them, or complete tasks such as shopping, laundry or going for family walks;
  - He must rely on a family member to drive him to wherever he must go because he is unable to walk without the support of a stroller or walking stick: and,
  - His impairment affects the quality of his family members' lives because he would be unable to perform DLA without their assistance.

### ***Diagnoses***

In the MR, the GP diagnosed the Appellant with lower back pain with a date of onset of March 2018 and post-concussion symptoms from a head injury with a date of onset of January 2010.

### ***Physical Impairment***

In the MR, under Health History the GP states that the Appellant has constant back pain which radiates down the left leg and which affects his walking to the extent that he can only walk 2 blocks and he has a weakness in his leg when walking downhill. With respect to other functional skills, the GP reports that the Appellant can climb more than five steps unaided, lift 2 - 7 kg, and can remain seated for less than one hour. The GP has not made any comments in the section of the MR where the prescribed professional is asked to provide any additional information that might be considered relevant in understanding the significance of the Appellant's medical condition and the nature of their impairment.

In the section of the AR where the assessor is asked to indicate the assistance required related to impairments that directly restrict the applicant's management of mobility and physical abilities, the GP indicates that the Appellant is independent with walking indoors and outdoors, standing, climbing stairs,

lifting, and carrying and holding, and does not indicate that the Appellant has any impairments in any of those activities. The GP has not provided any comments in the space provided.

In the RFR, the Appellant writes that he spent almost 2 years seeing doctors, specialists and therapists referred through WCB and that his injury has had a large impact on his and his family's lives because he is unable to participate in any activities outside the home, which is a 15 stair climb above street level. He also states that he can't perform DLA without the assistance of his partner and his in-laws, who live downstairs. He includes a February 27, 2020 letter from WCB (the February 27 Letter) indicating a decision to provide a monthly award of 8.70% or \$154.77, which was to be paid as a lump sum amount.

In the SR, the Appellant states that:

- He is not able to lift his children up or take family walks of more than 2 blocks;
- He has chronic back pain resulting from a 2018 injury to the L4 and L5 discs which affects everyday tasks and results in shooting pain down his legs and loss of feeling in his left leg. Following this injury, he went through Workers' Compensation Board (WCB) rehab, saw several specialists in his home community and in another community in BC and attended a pain management program through WCB;
- He is unable to bend or twist to put on socks, and if clothes fall on the floor, he is unable to pick them up. On many occasions through the month he is unable to get out of the shower, and he is unable to help with basic housekeeping because it causes a great deal of shooting pain in his back and pain and weakness in his legs; and,
- When he gets out of bed the pain causes him to have to sit for 20 to 30 minutes, then stand for 20 minutes, over and over. This causes more pain to spread over his back and through his legs and restricts him from being able to stand, causing the pain to worsen.

### ***Mental Impairment***

In the section of the MR where the prescribed professional is asked if there are any significant deficits with cognitive and emotional function, the GP has ticked "yes" for the areas of memory, perceptual psychomotor and attention and sustained concentration. The GP has not provided any comments in the space provided. In the section of the MR where the prescribed professional is asked if there are difficulties with communication, the GP has ticked "yes", indicating that the cause is cognitive, and adding the comment "*He suffered a TBI (Traumatic Brain Injury). He fell at work in 2010*". In the section of the AR where the assessor is asked to indicate the level of ability to communicate, the GP indicates that the Appellant's abilities are satisfactory in all areas (writing, speaking, reading ability and hearing), adding the comment "*he has difficulty reading (especially) on computer screens*". In the section of the AR where the assessor is asked to indicate to what degree the applicant's mental impairment restricts or impacts functioning, the GP has indicated a moderate impact on consciousness, attention/concentration and memory and no impact on any of the other listed functions (bodily functions, emotion, impulse control, insight and judgment, executive functioning, motivation, motor activity, language, psychotic symptoms, other neuropsychological problems, and other emotional or mental problems). With respect to social functioning, the GP indicates that the Appellant is independent in all listed areas (making

appropriate social decisions, ability to develop and maintain relationships, appropriate interaction with others, dealing appropriately with unexpected demands and ability to secure assistance from others). The GP makes no other comments or explanations in the spaces provided.

In the SR, the Appellant says that he suffered a brain injury that causes migraines, memory loss and difficulty focusing and concentrating. Periodically through the week he experiences loss of vision leading up to his migraines, which are caused by high-pitched noises, bright lights and computer screens.

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

In the MR, the GP indicates that the Appellant has not been prescribed any medications or treatments that interfere with his ability to perform DLA. The GP has not completed the section of the MR where the prescribed professional is asked to provide any additional information that might be considered relevant in understanding the impact of the Appellant's medical condition on daily functioning.

In the AR, the GP states that the Appellant is independent with respect to all tasks for the DLA of personal care (dressing, grooming, bathing, toileting, feeding self, regulation of diet and transfer in and out of a bed or chair). Regarding basic housekeeping, the GP indicates that the Appellant requires continuous assistance from another person, adding the comment "*Partner does laundry and housekeeping*". With regard to shopping the GP indicates that the Appellant is independent in reading prices and labels, making appropriate choices and paying for purchases, but needs periodic assistance from another person going to and from stores and continuous assistance with carrying purchases home ("*Partner carries groceries*"). No explanation or description of the type of assistance required is noted in the space provided. Regarding meals, the GP indicates that the Appellant needs continuous assistance from his partner in preparing meals and cooking but is independent in safe storage of food, paying rent and bills, and taking and storing medications. The GP also indicates that the Appellant takes significantly longer than normal to get in and out of a vehicle or in taking public transit.

In the section of the AR where the assessor is asked what the applicants mental or physical impairments are that impact his ability to manage DLA the GP has written "*concussion, lower back pain*".

In the SR the Appellant states that he needs help with shopping and the laundry and that he has extreme difficulty getting out of bed.

### ***Need for Help***

In the MR, the GP indicates that the Appellant does not require any prostheses or aids for his impairment.

In the section of the AR that asks who provides the help required for DLA the GP has ticked "Family" and has not made any comments in the space provided. The GP has struck a line through the sections of the AR where the assessor is asked what assistance is provided using various specific assistive devices, where asked to provide details of any equipment or devices used by the applicant, and where asked to identify any equipment or devices that are required but not currently being used. The GP also states that the Appellant does not have an assistance animal.

In the RFR, the Appellant states that he is unable to walk without the support of a stroller or walking stick.

***Additional Information Submitted after Reconsideration***

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

In the Notice of Appeal (NOA), the Appellant writes “*This disability affects me physically as well as monetarily. My fiancée does almost all daily tasks as I physically am unable*”.

On May 11, 2021, the Appellant provided a submission (the May 11 Submission) comprising a one page medical report containing lumbar spine exam results from an examination of the Appellant conducted on June 7, 2018 and an undated single-page from a WCB injury claim form.

On May 18, 2021, the Appellant provided a submission (the May 18 Submission) which comprised a one page email from the Appellant’s partner describing the Appellant’s family’s living arrangements, the Appellant’s physical limitations and their impact on his ability to undertake certain physical activities, the impact of the Appellant’s physical impairments on both his ability to perform DLA and on the Appellant’s partner’s physical health, and restrictions the Appellant’s impairments had made on the partner’s ability to work outside the home.

The Ministry did not object to the admittance of any of the new evidence.

The Panel considered the written information in the NOA to be argument. The Panel considered the new written evidence in the May 11 Submission (the lumbar spine exam results and the WCB injury claim form) and the new written evidence in the May 18 Submission concerning the number and age of the Appellant’s children, the impact of the Appellant’s impairments on the Appellant’s partner (having to perform all of the household DLA, and her inability to work outside the home) to be new evidence that is reasonably required for a full and fair disclosure of all matters relating to the decision under appeal. Therefore, the Panel admitted the additional information in accordance with Section 22(4) of the EAA.

At the hearing, the Appellant said that after his injury he went through testing and an assessment. These assessments were made by three different specialists at a community health services provider in his home community and with a spine specialist surgeon in a larger community a few hours drive from the Appellant’s home, where he was prescribed a pain management plan. While the pain management plan didn’t help a lot, he was able to gain some useful techniques for managing the pain and understanding how his DLA were impacted by his pain. In response to a question from the Panel regarding a comment made by the doctor who completed the WCB injury claim form in the May 11 Submission (“*Surgery for discectomy is pending*”), the Appellant explained that a specialist had told him that because too much time had passed since the injury to his back, surgery would cause more damage and he was given a steroid injection instead.

The Appellant provided several examples of how his physical impairment affected his DLA. He stated that he *“has issues going to the store”*. He explained that he lives on the second story of a building that is 16 steps up from the ground floor and does not have an elevator, which makes it very difficult to get up and down the stairs, and that he can't climb them without assistance. He said that he must use his daughter's stroller for support when walking outside and that he can't perform DLA without the help of his partner. He gave the example of taking a shower, explaining that he requires his partner's assistance in getting in and out of the shower as he is unable to step over the edge of the bathtub.

In response to a question from the Panel, the Appellant said that the WCB award of \$154.77 per month referred to in the February 27 Letter related to his back injury and was converted to a lumpsum amount of \$38,000 by calculating the number of months from the injury to his retirement age, and that he received it as a single payment. In response to another question from the Panel the Appellant stated that he did not seek WCB compensation following his head injury in 2010 because he was in a coma following the accident and doesn't remember a lot. He also said that he did not appeal the 2020 WCB award decision. He stated that WCB had indicated to him that they would support retraining, but the Appellant explained that the retraining would include training on the use of computers, and that he was unable to work using a computer because of his migraines. He also said that he had tried to find work, but his previous employer told him that because of his back injury if he returned to work and reinjured his back at work it would be a liability.

In response to another question from the Panel, the Appellant provided more information about his mental impairment, stating that he suffers from migraines as a result of his 2010 brain injury, and that there are multiple days when he feels the start of a headache coming on and within minutes the impact of bright light means that he is unable to go outside and the pain is worse whenever there is noise (*“it gets loud with the kids”*). He also stated that the tremors from the migraines *“cause my eyes to shake back and forth for some time”*.

At the hearing, the Ministry relied on its RD, explaining that it had taken into consideration the prescribed professional's information in the MR and the AR, and citing some examples of questions that were not answered in the reports, where explanations or descriptions were omitted and where the evidence presented was contradictory. For example, in Part C of the AR the GP has indicated that the Appellant requires continuous assistance with basic housekeeping and carrying purchases home and periodic assistance with going to and from stores but has not completed the section of the AR where the GP is asked to include a description of the amount and type of assistance required. The Ministry also pointed out that the GP has indicated in the AR that the Appellant is independent in walking both indoors and outdoors and has not explained or specified in the space provided that any assistive devices are required. The Ministry also explained that neither a stroller nor a walking stick met the definition of an “assistive device” as set out in Section 2 of the EAPWDA. In addition, the Ministry referred to the May 11 Submission, and explained that the information in the medical report and the WCB injury claim form did not provide any information about the Appellant's abilities to perform DLA or any assistance he might require.

Regarding the May 18 Submission and referring specifically to challenges created by the Appellant's impairments in caring for their children, the Appellant's partner's physical health and restrictions the Appellant's impairments had made on the partner's ability to work outside the home, the Ministry stated

that caring for children or the impact on an applicant's spouse's physical health are not assessed or taken into consideration in a PWD application.

With respect to impacts on the Appellant's ability to work, the Ministry also explained that the PWD designation did not consider employability but that the Appellant might also consider applying for a persons with persistent multiple barriers (PPMB) designation.

## PART F – REASONS FOR PANEL DECISION

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

### ANALYSIS

#### Severity of Impairment

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

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

#### Physical Functioning

The Ministry's position is that it is difficult to establish that the Appellant is significantly restricted in mobility and physical ability because the GP has not confirmed that he is restricted in standing or climbing stairs, and that, while the information provided in the PWD application demonstrates that he experiences some limitations in how far he can walk or how long he can remain seated, the assessments



provided by the GP and the information provided in the RFR represents a moderate rather than severe physical impairment.

The Appellant's position is that the chronic back pain resulting from his 2018 injury affects everyday tasks and results in a shooting pain down his legs and a loss of feeling in his left leg, and that the pain causes him to have to sit for 20 to 30 minutes, then stand for 20 minutes, over and over. This causes more pain to his back and legs which restricts him from being able to stand or climb stairs without assistance.

#### *Panel Decision*

As noted above, the fundamental source of information in support of a PWD application is the evidence from a prescribed professional, in this case the GP. The Panel notes that the GP reports in the AR that all aspects of mobility and physical ability (walking indoors and outdoors, standing, climbing stairs, lifting, and carrying and holding) are managed independently by the Appellant. Even though space is provided on the form for further explanation and commentary, none is provided. In contrast to this, in the corresponding section of the MR, the GP identifies some limitations in the Appellant's ability to walk unaided on a flat surface and lift objects. In the AR, the GP describes restrictions in basic housekeeping and carrying purchases home as being continuous, without describing or explaining the type and amount of assistance required in the space provided on the form. In addition, the GP describes the Appellant's ability to go to and from stores as being periodically restricted, without describing how often the restriction occurs or how long it lasts.

While the Appellant consistently describes his physical impairments as significant, the Panel finds that the level of severity of those impairments is not supported by the information provided by the GP in the MR and the AR.

Based on the lack of detailed explanation and the inconsistent information provided by the prescribed professional, the Panel finds that the Ministry reasonably determined that the information provided does not establish that the Appellant has a severe physical impairment.

#### **Mental Functioning**

The Ministry's position is that, although the Appellant's PWD application indicates that he has some deficits in his cognitive and emotional functioning, the assessments provided by the GP indicate that he is primarily independent in areas of personal activities, care, and finances, and can communicate and interact with others effectively. As a result, the Ministry concludes that the information provided does not establish that the Appellant has a severe mental impairment.

The Appellant's position is that his 2010 brain injury can result in migraines, which come on when he hears high-pitched noises, sees bright lights or uses computer screens, and when they occur, he suffers memory loss and has difficulty focusing and concentrating.

#### *Panel Decision*

The Panel notes that the GP states in the MR that the Appellant has difficulties with cognitive defects resulting from a TBI the Appellant suffered in 2010. Although the legislation contains no formalized

criteria to define what constitutes mild, moderate or severe cognitive deficits, prescribed professionals are required to indicate in the MR and the AR the severity of any mental impairments by assessing the number of skill areas affected by the deficit, the severity of the deficits in psychological processes, and the degree of impairment in skill areas. In the AR the GP indicated that the Appellant's TBI caused a "moderate" impact on consciousness, attention/concentration and memory.

The Panel further notes that in the health history section of the MR the GP does not indicate any mental impairments that represented a severe medical condition relevant to his impairment, and that the Appellant has a satisfactory ability to communicate (noting only that he has difficulty reading, especially on a computer screen). In addition, the GP indicates in the AR that the Appellant is independent in all aspects of social functioning. The Panel also notes that the Appellant does not attribute any DLA restrictions to his mental functioning, including his periodic migraines.

In addition, the Panel finds that the Ministry reasonably concluded that the GP's assessments in the MR and AR indicate that the Appellant is independent with the DLA that would typically be difficult for someone who experiences significant restrictions to mental functioning, such as making decisions about personal activities, care, or finances, as well as relating to communicating, or interacting with others effectively.

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

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

The Ministry's position is that some of the information regarding DLA impacts provided by the GP in the MR and the AR is either incomplete, internally inconsistent, or at odds with information provided by the Appellant, and as a result the information provided by the GP, who is the Appellant's prescribed professional, does not establish that a severe impairment that significantly restricts DLA either continuously or periodically for extended periods.

The Appellant's position is that the pain and limitations resulting from his 2018 back injury make him unable to complete the DLAs of shopping and basic housekeeping, and he must rely on family members to drive him to wherever he must go because he is unable to walk without the support of a stroller or walking stick.

### ***Panel Decision***

DLA are defined in Section 2(1) of the EAPWDR and are also listed in the MR and, with additional details, in the AR. Section 2(2)(b) of the EAPWDA requires that the Ministry be satisfied that a prescribed professional has provided an opinion that an applicant's severe impairment directly and significantly restricts their DLA, continuously or periodically for extended periods. Section 2(2)(a) of the EAPWDR defines "prescribed professional" to include a medical practitioner. Therefore, the GP is considered a prescribed professional for the purpose of providing opinions regarding the nature of the Appellant's impairment and its impact on the performance of DLA. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. There is also a component related to time or duration: the direct and significant restriction

must be either continuous or periodic. If periodic, it must be for extended periods. In the MR and the AR, prescribed professionals are instructed to check marked boxes and to provide additional explanations; for example, a description of the type and amount of assistance required and the frequency and duration of periodic restrictions.

The Panel notes that the GP indicates in the AR that the Appellant is independent with many DLA, and for the few DLA where the Appellant requires periodic or continuous assistance, no information about the type and amount of assistance required or any additional commentary is provided. While the information provided by the Appellant relating to DLA for which he is restricted corresponds with the information provided by the GP (except for difficulties experienced by the Appellant in getting in and out of the shower), the Panel finds that the Ministry was reasonable in finding that it is difficult for the Ministry to determine that DLA impacts represent a significant restriction to his overall level of physical functioning because the information provided by the prescribed professional in the MR and the AR is incomplete.

Based on the available evidence, the Panel finds that the Ministry reasonably determined that the information provided does not establish that the Appellant is directly and significantly restricted in his ability to perform DLA either continuously or periodically for extended periods.

### **Help with DLA**

The Ministry's position is that it cannot be determined that significant help is required from other persons or assistive devices because it not been established that DLA are significantly restricted either continuously or periodically for extended periods.

The Appellant's position is that he must rely on his partner to help him in and out of the shower and he is unable to walk without the support of a stroller or walking stick.

### ***Panel Decision***

The Panel notes that the GP struck out the sections of the AR where the assessor is asked to identify what equipment or devices the applicant routinely uses to help compensate for his impairment and finds that the Ministry reasonably determined that a stroller is not an assistive device based on the definition of "assistive device" in Section 2 of the EAPWDR.

The Panel also notes that Section 2(2)(b)(ii) of the EAPWDA requires that, to satisfy the requirements of a PWD designation, a person must need help *as a result of direct and significant restrictions* in the ability to perform DLA. 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 to perform one or more DLA.

Having found that the Ministry was reasonable in concluding that this precondition was not met, the Panel also finds that the Ministry reasonably concluded that it cannot be determined that the Appellant requires help to perform "those activities" because of direct and significant restrictions with DLA as required by section 2(2)(b)(ii) of the EAPWDA.

Given all the available evidence, the Panel finds that the Ministry reasonably determined that it could not conclude that significant help is required from other persons or a device because it has not been demonstrated that DLA are significantly restricted.

**Conclusion**

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

## SCHEDULE A - LEGISLATION

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

### Persons with disabilities

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

(a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

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

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

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

The EAPWDR provides as follows:

### Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
  - (vi) move about indoors and outdoors;
  - (vii) perform personal hygiene and self care;
  - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
  - (ii) relate to, communicate or interact with others effectively.

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

- (a) authorized under an enactment to practise the profession of
  - (i) medical practitioner,
  - (ii) registered psychologist,
  - (iii) registered nurse or registered psychiatric nurse,
  - (iv) occupational therapist,
  - (v) physical therapist,
  - (vi) social worker,
  - (vii) chiropractor, or
  - (viii) nurse practitioner ...

The EAA provides as follows:

**Panels of the tribunal to conduct appeals**

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

APPEAL NUMBER  
2021-0094

**PART G – ORDER**

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

THE PANEL       CONFIRMS THE MINISTRY DECISION       RESCINDS THE MINISTRY DECISION

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

**LEGISLATIVE AUTHORITY FOR THE DECISION:**

*Employment and Assistance Act*

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

and

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

**PART H – SIGNATURES**

PRINT NAME

Simon Clews

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/05/26

PRINT NAME

Sameer Kajani

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/05/26

PRINT NAME

Rosalie Turcotte

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/05/26