

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 7, 2021, which held that the appellant did not meet 3 of the 5 statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) for designation as a person with disabilities (PWD). The ministry was satisfied that the appellant met the age and duration requirements but 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 those restrictions, the appellant requires an assistive device, the significant help or supervision of another person or the services of an assistance animal to perform DLA.

PART D – RELEVANT LEGISLATION

EAPWDA, section 2

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

PART E – SUMMARY OF FACTS

On August 12, 2020, the ministry received the appellant's PWD application comprised of a Medical Report (MR) and an Assessor Report (AR) completed by the appellant's general practitioner (the "Physician") on July 23, 2020, and the appellant's self-report (SR) dated July 23, 2020. The appellant required assistance completing the SR due to difficulty writing because of right hand pain.

The appellant's PWD application also included the following:

- MRI incomplete exam report dated October 31, 2019, indicating no definite abnormality identified but the study was incomplete as images were somewhat downgraded by motion
- Consult reports from a neurologist dated October 22 and November 18, 2019, January 14, February 11, March 16, and July 6, 2020, regarding assessment and updates regarding the appellant's right ulnar neuropathy
- Nerve Conduction Study and Electromyography Reports October 2019 and February 2020
- MRI brachial plexus report dated January 9, 2020, indicating degenerative changes in the mid cervical spine

The appellant's request for PWD designation was denied on September 22, 2020. On February 19, 2021, the appellant was informed of the decision.

The appellant submitted a request for reconsideration form (RFR) dated March 24, 2021. With the RFR the appellant provided a letter from the Physician dated March 22, 2021 (the "Letter"), clarifying the information provided in the MR. The Letter indicates that tasks requiring lifting, carrying, holding with two hands take 2 times longer, and that DLA restrictions are constant and have persisted since the appellant's injury in 2019. The Letter indicates that restrictions on personal care are continuous and take twice as long as previous. Meal preparation and cleaning up require assistance from neighbors who help every 2-3 days.

On April 7, 2021, the ministry completed its review.

Summary of relevant evidence

Diagnoses

In the MR, the Physician indicates that the appellant has been diagnosed with right traumatic ulnar neuropathy, depression/mood disorder not otherwise specified and insomnia, date of onset June 2019. The Physician also indicates that the appellant was diagnosed with chronic lymphocytic leukemia ("CLL"), date of onset unknown. The Physician indicates that the appellant has been a patient since 2009 and has been seen 2-10 times in the past 12 months. In the AR, the Physician indicates that the appellant has severe right ulnar neuropathy with loss of hand function, chronic pain, and subsequent depression/social isolation.

The neurologist consult dated January 14, 2020, indicates that the MRI January 9, 2020, found that the appellant has degenerative changes in the mid cervical spine most prominent at C5-6 where there is moderate canal stenosis with moderate foraminal stenosis present at C4-5 and C5-6. The neurologist indicates that the MRI report indicated that the appellant's brachial plexus was intact with no mass, neuroma, or edema.

Physical Impairment

In the MR for Functional Skills, the Physician indicates that the appellant can walk 4+ blocks unaided, can climb 5+ stairs unaided, is limited to 5 to 15 pounds with lifting, and has no limitations with remaining seated.

In the AR, the Physician indicates that the appellant is independent with walking indoors, walking outdoors, climbing stairs, and standing. The appellant takes significantly longer with lifting (uses left hand) and carrying.

In the SR, the appellant indicates constant pain all day, being half paralyzed in right arm (right hand dominant), numbness from hands/fingers to elbow, and loss of muscle mass in hands. The SR indicates that the appellant's disability impacts sleep significantly, and the appellant is unable to work as a builder or enjoy previous activities such as skiing or cycling.

The neurologist consult dated November 18, 2019, indicates that the appellant fell off a ladder with right arm outstretched in early August 2019 with an incomplete MRI on October 31, 2019. The neurologist noted that the appellant's four knuckles and fourth and fifth digits in the left hand were numb and that gabapentin made the appellant groggy. The neurologist indicates that the appellant had some atrophy and mild weakness in the hand. The neurologist requested a further MRI.

The neurologist consult dated January 14, 2020, indicates that the appellant has good proximal muscle bulk and strength of the right arm but some wasting of dorsal hand abductors and hand muscles.

The neurologist consult report dated February 11, 2020, indicates that the appellant was having difficulties with sleep due to a burning discomfort, and was taking gabapentin. The neurologist indicated that the nerve conduction study reported a localizable lesion in the forearm at the point of the appellant's impact and injury from August 2019. The neurologist recommended regular use of gabapentin and requested an ultrasound.

The neurologist consult report dated March 16, 2020, indicates that the ultrasound March 10, 2020, was normal with no neuroma or scar tissue evident. The neurologist indicates that the appellant had ongoing pain in the forearm and significant difficulty with sleeping, often waking at 2:30 or 3:00 am and lying in bed until it is time to get up. The neurologist indicates that the appellant is likely to be left with ongoing pain, numbness, and weakness but could not predict the timeline or degree of any recovery that may be achieved.

The neurologist consult report dated July 6, 2020, indicates that the appellant reported worsening paresthesia up the arm into the shoulder which results in a muscle knot at the base of the right side of the appellant's neck, extending upwards to the head, resulting in a headache, lasting 5 to 10 seconds, but occurring six or seven times a day. The neurologist indicates that the appellant had been off work for 11 months and could not afford physiotherapy. The neurologist noted ongoing muscle wasting and give way strength in almost all muscle groups of the hand and forearm due to pain. The neurologist notes that the appellant did not like taking gabapentin during the day as it caused drowsiness. The neurologist recommended a trial of Lyrica, Cymbalta, or antidepressants such as amitriptyline or nortriptyline.

Mental Impairment

In the MR, the Physician indicates that the appellant has significant deficits with memory, emotional disturbance, motivation and attention or sustained concentration. The Physician indicates that the appellant does not have difficulties with communication.

In the Health History portion of the MR, the Physician indicates that the appellant has developed unspecified mood disorder due to pain, loss of function, and decreased motivation/hope.

In the AR, the Physician indicates that the appellant's ability to communicate with speaking, reading, and hearing are good. The Physician indicates that the appellant's ability with writing is poor due to right hand difficulty.

For Section B, question 4 Cognitive and Emotional Functioning the Physician indicates that the appellant has moderate impact to consciousness, emotion, impulse control, attention/concentration, executive, memory, and motor activity. The Physician indicates there is no impact to bodily functions, insight and judgment, language, psychotic symptoms, other neuropsychological problems or other emotional or mental problems. For the area of motivation, the Physician indicates impact being moderate to major.

The SR indicates that the appellant's disability affects ability to socialize and the loss of function "makes me depressed" and depression makes organization difficult. The SR indicates that the prescribed medicine makes the appellant tired during the day.

In the consult reports dated March 16 and July 6, 2020, the neurologist indicates that the appellant appeared very fatigued and frustrated.

DLA

In the MR, the Physician indicates that the appellant has been prescribed gabapentin and although it helps somewhat with pain, it is sedating and slows mental function. In the MR the Physician indicates that the appellant is periodically restricted with DLA of meal preparation, and basic housework (symptoms worsen with activity, easily overloaded). The Physician indicates that the appellant is restricted with shopping but did not indicate if the restriction was continuous or periodic. The Physician indicates that the appellant's self-care requires periodic assistance or takes 50% longer.

The Physician indicates that the appellant's social functioning is restricted, commenting that the appellant is isolated as a result of depression and chronic pain.

In the AR, the Physician indicates that the appellant is independent with all aspects of DLA of personal care, paying rent and bills, medications, and transportation. The Physician indicates that the appellant requires period assistance with basic housekeeping and laundry. With respect to shopping, the appellant is independent with reading prices and labels, making appropriate choices and paying for purchase, but requires periodic assistance from another person with going to and from stores and takes significantly longer carrying purchases home, explaining that the appellant uses the left extremity. With respect to meals, the appellant is independent with meal planning and safe storage of food but requires periodic assistance from another person with food preparation and cooking.

The Physician comments that the appellant has a right-hand deficit, and is significantly limited with self-care, as it takes longer and causes pain. The Physician notes that the appellant has always worked as a builder and is now unable, with increasing poverty as a result.

The Physician indicates that the appellant is independent with all aspects of social functioning but has marginal functioning with immediate social network and very disrupted functioning with extended social networks, noting that the appellant is not motivated to socialize due to chronic pain.

The SR indicates that the appellant is unable to complete housekeeping, getting help from friends.

In the Letter, the Physician indicates that tasks requiring lifting, carrying, and holding with two hands takes two times longer. The Physician indicates that restrictions on personal care are continuous and take twice as long as previous. Meal preparation and cleaning up require assistance from neighbours who help every two to three days. Social functioning restrictions are consistent, and the appellant is mostly isolated apart from some friends who assist at the appellant's home. The Physician indicates that the appellant has no family in close proximity.

Need for Help

In the MR, the Physician indicates that the appellant does not require prosthesis or aids for the appellant's impairment. The Physician indicates that the appellant receives assistance from friends and neighbours with basic housework, laundry, and meal preparation.

In the AR, the Physician indicates that the appellant gets weekly assistance with housework from friends. The Physician does not indicate that the appellant uses any assistive devices and does not have an Assistance Animal.

The neurologist consult report dated July 6, 2020 recommended that the Physician make a referral to a chronic pain clinic as the appellant may benefit from a multidisciplinary approach.

Additional information provided

On April 19, 2021, the tribunal received the appellant's Notice of Appeal dated April 18, 2021 (the "NOA"). The NOA indicates that the appellant would "...like the opportunity to tell you people to your faces, just how disgusted I am with you, this process and your heartless decision".

The hearing initially commenced as a video-conference hearing but as the appellant had computer difficulties the hearing was switched to a tele-conference with the consent of all parties.

At the hearing the appellant reported that the injury to right hand occurred after falling while [REDACTED] and now the appellant has limited right hand function due to pain, with numbness initially in fingers but now in the entire hand. The appellant states that sleep is disturbed as sleeping on either side compresses the nerve causing increased pain and frequent waking. The appellant reports dropping pots of food and that care is required in picking up any items to avoid dropping them. The appellant receives assistance from friends and neighbors with some cooking. The appellant is able to do laundry but requires help folding sheets.

The appellant reports prior work in construction and as a heavy equipment operator but is now unable to work which has also impacted the appellant's mood. The appellant reports that "I'm

not much fun to be around". Riding a bicycle is okay because the appellant can rest the appellant's arms on the handlebars, or the right arm can hang by the appellant's side. The appellant reported being independent with personal care, but friends help with cooking and laundry.

At the hearing, the Physician stated that the appellant has right hand dominant ulnar neuropathy including right carpal tunnel syndrome and lives in chronic pain with little use of the affected extremity, with shooting pain and constant numbness into the right pinky finger. The Physician confirmed that the information in the Letter clarifies the information previously provided in the MR and the AR and reports that tasks requiring lifting, carrying, and holding with two hands takes two times longer than before the appellant's injury. The Physician stated that the appellant has some depression/adjustment disorder and insomnia because of sleep disruption from pain. The Physician stated that they live in a small town, and he sees the appellant riding his bicycle around town. The Physician stated that the appellant is unable to work in construction due to the appellant's disability.

The Physician stated that the appellant has trialed gabapentin but was not sure if the appellant had trialed duloxetine yet or not. The Physician stated that the appellant has been referred to a chronic pain clinic and referred to a plastic surgeon for consideration of an ulnar nerve release, although the Physician could not opine on how much the procedure might help.

Admissibility of New Information

The ministry representative did not object to the admissibility of the new information.

The panel has admitted the oral testimony of the appellant and the Physician as it is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the new information relates to the appellant's diagnosis, prognosis, mental impairment, DLA, and help needed.

The information in the NOA was accepted as argument.

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. In particular, was the ministry reasonable when concluding it was not satisfied that

- a severe physical or mental impairment was established;
- the appellant's DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and
- as a result of those restrictions, in the opinion of a prescribed professional, the appellant requires help, as it is defined in the legislation, to perform DLA?

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.

(3) The definition of "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

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).

Panel Decision

The legislation provides that the determination of severity of an impairment is at the discretion of the minister, considering all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed professional respecting the nature of the impairment and its impact on daily functioning. While the legislation does not define "impairment", the MR and AR define "impairment" as a *"loss or abnormality of psychological, anatomical or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration."* While this is not a legislative definition, 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 assessing an applicant's eligibility for the PWD designation.

A diagnosis of a severe impairment does not in itself determine PWD eligibility. When considering the evidence provided respecting the severity of impairment, the ministry must exercise its decision-making discretion reasonably by weighing and assessing all the relevant evidence and 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 Physician.

Severe Physical Impairment

The ministry's position is that the functional skills reported by the Physician in the MR and the assessment of mobility and physical ability in the AR, or the additional information provided by the Physician, are not indicative of a severe physical impairment.

The ministry's position is that while the Physician indicates that the appellant has a significant loss of dexterity and strength (grip) due to right traumatic ulnar neuropathy requiring assistance with housekeeping or DLA taking much longer, the information provided indicates a moderate, rather than severe degree of physical impairment.

The reconsideration decision notes that in the AR, the Physician reports that the appellant is independent in walking indoors/outdoors, climbing stairs and standing. The AR indicates that the appellant takes significantly longer to lift, carry and hold, and uses left hand to complete these tasks, which take two times longer. The ministry's position is that taking two times longer does not confirm a significant restriction or severe degree of impairment. The ministry acknowledges that the appellant has experienced a change in function as a result of the right

traumatic ulnar neuropathy but was not satisfied that the information provided establishes a severe physical impairment.

The appellant's position is that the right traumatic ulnar neuropathy is a severe physical impairment that causes chronic pain and numbness with limitations to DLA and inability to work.

The panel finds that the ministry reasonably determined that the information provided does not establish that the appellant has a severe physical impairment as required by section 2(2) of the EAPWDA. The information from the Physician in the MR, AR, the Letter, and the oral testimony confirm that the appellant has pain and limitations from the right ulnar neuropathy. However, the MR indicates that the appellant is able to walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, has no limitations with remaining seated and can lift 5 to 15 pounds. The AR indicates that the appellant is independent with walking indoors, walking outdoors, climbing stairs, and standing, and takes significantly longer with lifting (uses left hand) and carrying and holding.

The appellant reports that the right ulnar neuropathy impacts the ability to do some cooking and holding some items and lives with pain and numbness in the right hand which is consistent with the information in the MR and the AR. The Letter states that with respect to severity of impairment, tasks requiring lifting, carrying, holding with two hands take 2 times longer than before the appellant's injury. The Physician's oral testimony indicates great care and support for the appellant as a patient, and confirms that tasks requiring lifting, carrying, holding with two hands take 2 times longer. However, the panel finds that the ministry reasonably determined that taking two times longer to complete some tasks such as lifting, carrying and holding does not confirm a significant restriction or severe degree of impairment.

The panel notes that the neurologist consult report dated March 16, 2020, indicates that the appellant had ongoing pain in forearm and significant difficulty with sleeping, often waking at 2:30 or 3:00 am and lying in bed until it is time to get up. The neurologist indicates that the appellant is likely to be left with ongoing pain, numbness, and weakness but could not predict the timeline or degree of any recovery that may be achieved.

The neurologist consult report dated July 6, 2020, indicates that the appellant reported worsening paresthesia up the arm into the shoulder which results in a muscle knot at the base of the right side of the appellant's neck, extending upwards to the head, resulting in a headache, lasting 5 to 10 seconds, but occurring six or seven times a day. The neurologist indicates that the appellant had been off work for 11 months and could not afford physiotherapy. The neurologist noted ongoing muscle wasting and give way strength in the hand and forearm due to pain. The neurologist recommended that the Physician make a referral to a chronic pain clinic as the appellant may benefit from a multidisciplinary approach.

While the neurologist consults confirm that the appellant has ongoing, chronic pain, paresthesia, difficulty sleeping, the neurologist does not provide any assessment of the appellant's functional skills, mobility or physical mobility or indicate the degree of restrictions.

While the appellant, Physician, and the neurologist report that the appellant had not been able to work, and the Physician reports that the appellant is not able to return to construction work, employability is not a criterion for PWD designation. Given the lack of information from the neurologist regarding the appellant's functional skills and considering the appellant's evidence of independence with DLA of personal care, the panel finds that the ministry reasonably

concluded that the information provided does not establish that the appellant has a severe physical impairment.

Severe Mental Impairment

The ministry's position is that while the Physician reports that the appellant has developed an unspecified mood disorder as a result of pain and loss of function, with decreased motivation/hope and social isolation, the information provided does not demonstrate a severe impairment of the appellant's mental functioning. The reconsideration decision notes that the MR indicates that the appellant experiences significant deficits with cognitive and emotional functioning in the area of memory, emotional disturbance, motivation, and attention/sustained concentration. The AR indicates moderate impacts to the areas of consciousness, emotion, impulse control, attention/concentration, executive, memory, and motor activity. A moderate to major impact was noted regarding motivation.

The reconsideration decision notes that the appellant is independent in all DLA related to making decisions regarding personal activities, care, and finances, as well as social functioning, and independent in most DLA, or takes two times longer to complete. The ministry notes that the appellant receives assistance from neighbours for meal preparation and cleaning every 2-3 days. However, the ministry's position is that when all the evidence is considered, the degree of restriction does not confirm a severe mental impairment.

The ministry also notes that while the appellant has poor writing ability due to the right-hand injury, the MR indicates that the appellant has no difficulty with communication or daily functioning regarding language. The ministry's position is that while the appellant's life is impacted as a result of chronic pain and subsequent mood disorder, the information provided does not confirm that the appellant is severely impaired in mental functioning.

The appellant's position is that the information provided confirms that the appellant has a severe mental impairment. The appellant reports that the chronic pain and limitations from the right ulnar neuropathy accompanied by sleep disruption has caused increasing frustration, low motivation, hopelessness, and decreased mood.

The panel finds that the ministry reasonably determined that the information provided does not demonstrate a severe mental impairment as required by section 2(2) of the EAPWDA.

While the Physician indicates in the MR that the appellant has significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance, motivation and attention/sustained concentration, the AR indicates that the only area with moderate to major impact is motivation, and the other areas are either moderate impact or no impact. In the Letter, the Physician indicates that restrictions on the appellant's social functioning are consistent and that the appellant is mostly isolated apart from friends who assist at the appellant's home. However, the AR indicates that the appellant is independent with making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.

At the hearing, the Physician indicated that the appellant's medication does cause some drowsiness, and lack of sleep impacts the appellant's mood leading to some

depression/adjustment disorder, but there was no further information indicating the severity of the appellant's mental impairment had increased from moderate to severe.

The panel notes that the consult report of the neurologist dated July 6, 2020, indicates that the appellant did not like taking gabapentin during the day as it caused drowsiness. The neurologist recommended a trial of Lyrica, Cymbalta, or antidepressants such as amitriptyline or nortriptyline. The consult report also indicates that the appellant appeared fatigued and frustrated, but the neurologist does not provide any other information to assist in assessing the severity of the appellant's mental impairment.

While the evidence of the Physician indicates that the appellant suffers from emotional disturbance, and has difficulties with memory, motivation and attention or sustained concentration, the Physician does not indicate that the appellant has any difficulties making decisions about personal activities/social decisions, medications, finances, or interacting with others. In addition, there is no major impact or significant degree on impairment to any of the assessed skill areas. Based on all 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

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. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

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. DLA, as defined in the legislation, do not include the ability to work.

The ministry's position is that the information provided is not sufficient to confirm that the appellant has a severe impairment that significantly restricts ability to perform DLA continuously or periodically for extended periods, so the legislative criteria has not been met. The ministry notes that in the MR, the Physician reports that the appellant has periodic/unspecified restrictions in personal self-care, meal preparation, basic housework, and daily shopping and that "...symptoms worsen with activity, easily overloaded". The reconsideration decision also indicates that the information in the Letter indicated that the restrictions to DLA are constant and have persisted since the appellant's injury in 2019. The Physician also indicated that the

appellant's self-care requires periodic assistance or takes 50% longer, but the ministry's position is that taking 2 times longer to complete an activity does not confirm a significant restriction.

The reconsideration decision also notes that in the MR the Physician reports that the appellant is restricted in social functioning (isolated as a result of depression/chronic pain) but in the AR, the Physician indicates that the appellant is not reported to require any support/supervision in any aspect of DLA for social functioning. While the appellant is reported to have very disrupted functioning within extended networks, the appellant is able to maintain marginal functioning in the appellant's immediate social network.

The appellant's position is that the information provided establishes that a severe physical and/or mental impairment directly and significantly restricts the appellant's DLA continuously or periodically for extended periods. The appellant's position is that chronic pain from the hand injury make it difficult to cook, carry, lift or hold items such as pots, and the appellant relies on friends and neighbours for assistance with cleaning, cooking, and folding laundry. The appellant also states that "*I keep to myself*", "*I'm not much fun to be around*", and the mental impairment affects the appellant's ability to socialize.

The panel finds that the ministry reasonably determined that the information provided does not indicate that the appellant's impairment significantly restricts ability to perform DLA continuously or periodically for extended periods.

The information provided by the Physician in the MR indicates that DLA of personal self-care, meal preparation, basic housework, daily shopping, and social functioning are restricted. Meal preparation and basic housework having periodic restrictions, with self-care taking 50% longer. In the AR, the Physician indicates that the appellant is independent with all aspects of DLA of personal care, paying rent and bills, medications, and transportation. The Physician indicates that the appellant requires period assistance with basic housekeeping and laundry. With respect to shopping, the appellant is independent with reading prices and labels, making appropriate choices and paying for purchases, but requires periodic assistance from another person with going to and from stores and takes significantly longer carrying purchases home, explaining that the appellant uses left extremity. With respect to meals, the appellant is independent with meal planning and safe storage of food but requires periodic assistance from another person with food preparation and cooking.

In the Letter the Physician clarifies that with respect to DLA, restrictions are constant, restrictions on personal care are continuous and take twice as long as previous. Meal preparation and cleaning up require assistance from neighbors who help every 2-3 days. Restrictions on social functioning are consistent and the appellant is mostly isolated apart from friends who assist at the appellant's home. At the hearing, the Physician confirmed that the Letter was meant to clarify and expand on the information provided in the MR and the AR, based on self-reports from the appellant.

The panel notes that the information provided regarding DLA of personal self-care is not consistent. In the MR, the Physician indicates that personal self-care requires periodic assistance or takes 50% longer. In the AR, DLA of personal care are reported to be independent. In the Letter and oral testimony, the Physician indicates an intent to clarify the information in the MR and the AR reporting that restrictions on personal care are continuous. However, this information is not consistent with the appellant's own evidence as the appellant indicated ability to perform personal care independently. As the information from the appellant is more consistent with the information originally provided in the AR, the panel finds that the

information when considered together makes it difficult for the ministry to determine the level of restriction with respect to DLA of personal care.

While the evidence confirms that the appellant has some periodic restrictions with basic housework, the assistance provided is minimal to moderate, ranging from every 2-3 days to weekly.

The AR indicates that the appellant is independent with all aspects of DLA of social functioning. While the AR indicates that the appellant has very disrupted functioning with extended social networks, the immediate social network has marginal functioning.

The information provided demonstrates that the appellant experiences some limitations resulting in need for periodic assistance, but as the evidence indicates that most DLA are performed independently, the panel finds that the ministry has reasonably determined that the information provided does not confirm that the appellant has a severe impairment that significantly restricts ability to perform DLA continuously or periodically for extended periods. In particular, the restrictions to personal care are inconsistent as between the information provided by the Physician and the appellant given that the appellant reports independence with personal care. The information regarding shopping indicates that going to and from stores requires periodic assistance from another person, but there is no information about the amount or type of assistance required. The impact of restriction to shopping is not clear, particularly considering that the appellant is reported to be independent with DLA of transportation. For food preparation and cooking, the Physician indicates that the appellant receives periodic assistance from another person (every 2-3 days). The panel finds that the ministry reasonably concluded that the evidence does not confirm that restrictions are periodically for extended periods.

The panel finds that the ministry reasonably determined that based on the information provided, the appellant did not meet the legislative criteria.

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.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that help is required.

The appellant's position is that help is required with DLA because of a severe physical impairment with loss of function and limitations due to right ulnar neuropathy.

In the MR, the Physician indicates that the appellant does not require prosthesis or aids for the appellant's impairment.

In the AR, the Physician indicates that the help required for DLA is provided by friends or neighbours. The Physician does not indicate that the appellant uses any assistive devices and does not have an Assistance Animal.

The Letter indicates that the appellant receives assistance from neighbors who help every 2-3 days with meal preparation and cleaning up. The consult report of the neurologist dated July 6,

2020, indicated that the appellant may benefit from assessment at a multidisciplinary pain clinic and requested the Physician to make that referral. At the hearing, the Physician also indicated that the appellant is awaiting further assessment from a surgeon and referral to a chronic pain clinic.

While the information provided indicates that the appellant receives periodic assistance from friends or neighbors with some meal preparation, housework and folding laundry, and would benefit from assessment by a multidisciplinary pain clinic, confirmation of 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 reasonable in determining that the appellant does not have a severe physical or mental impairment, and that the appellant's DLA are not directly and significantly restricted either continuously or periodically for extended periods in which case it cannot be determined that the appellant requires significant help with DLA.

As the reconsideration decision is reasonably supported by the evidence and is a reasonable application of the applicable enactment, the panel therefore confirms the decision. The appellant is not successful on appeal.

APPEAL NUMBER
2021-0077

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

Helene Walford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/06/24

PRINT NAME

Linda Pierre

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/06/24

PRINT NAME

John Pickford

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/06/25