

**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 June 23, 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 April 21, 2021 by the appellant’s general practitioner (GP) of 5 years who reports that the appellant is a lifelong patient of the clinic and that the GP saw the appellant 11 or more times in the preceding twelve months.
  - A Self-report (SR) completed by the appellant on April 26, 2021.
  
- The appellant’s June 9, 2021 Request for Reconsideration, to which the appellant attached:
  - A June 14, 2021 letter from a mental health authority worker who reports that the appellant has been meeting with mental health weekly since March 2021. The author does not identify her professional designation or qualifications.

**Information provided on appeal and admissibility**

The appellant’s Notice of Appeal dated June 25, 2021 in which the appellant writes “I don’t believe my doctor mentioned my mental struggles. My counsellor faxed a letter of support. I am medicated for anxiety, depression and OCD [obsessive compulsive disorder].”

Prior to the hearing, the appellant submitted a July 1, 2021 letter from the GP which the GP states is offered “to demonstrate [the appellant’s] medical services requirements.”

At the hearing, the appellant described her health conditions and their impact on her functioning.

At the hearing, the ministry provided a summary of the reconsideration decision. The ministry did not introduce new evidence. The ministry’s submissions respecting the new information are included in the ministry’s position in Part F of this decision.

The panel admitted the appellant’s information provided by the appellant at the hearing and the information in the letter, all of which directly related to the appellant’s 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. Details of the new information are set out below under Summary of relevant evidence.

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 diagnoses:

- Hemophilia Type I Von Willebrand Disease (VWD)
- Primary Generalized Epilepsy
- Iron Deficiency Anemia

The GP also writes:

- VWD is the most impactful functional limitation as menstrual cycles render the appellant unable to leave home due to excessive bleeding.
- General treatments are not effective.
- Not responsive to oral iron, receives intravenous (IV) iron therapy “q 1-6 months” and regular blood work.
- Last seizure was circa 2013.
- Requires medication before surgery or child delivery.
- Would need ER therapy and transport if injured/bleeding or would hemorrhage to death.
- The appellant is compliant with treatment, caring for a small child as a single parent and currently needs financial support.

In the subsequent letter, the GP reports that the appellant has had 49 visits in the past year; has had 7 IV iron infusions in the past 18 months. The GP confirms the diagnosis of VWD, with heavy menstrual blood loss, adding that the appellant has depression and dysfunctional obsessive-compulsive traits. Additional commentary includes:

*“In my opinion, she is not high functioning and due to her requirement for medical interventions and current major depressive disorder, she would be best suited for PWD coverage for at least 2 years.”*

*“[The appellant] is doing her best, taking medication, attending counseling, attending frequent laboratory appointments, attending iron infusion appointments, and taking hormonal medications.”*

*“She is not currently fit to work. She is lacking stability, in her mental health, and requires time to accept therapy. She deserves to have the opportunity to afford her medication and travel to her her (sic) medical appointments for at least 2 years.”*

The GP also writes that the appellant is a single parent and that her child has had multiple medical specialist appointments as well, which have slowed down as of Spring 2021.

At the hearing, the appellant stated that things were manageable in the past, but not now with her mental health conditions. She described leaving an abusive marriage and that she is doing her best with her child now that she is on her own; the former spouse was the primary source of income and does not assist in caring for the child. Family, including the appellant's mom, who helps a lot, assists the appellant, including with childcare.

### Physical Impairment

In the MR, the GP reports that the appellant does not require any aids or prostheses for her impairment, though assistive devices had been required for a past injury, with the appellant described as "mobile now." The appellant can walk 4+ blocks unaided on a flat surface and climb 5+ steps unaided. Limitations respecting the amount of weight the appellant can lift or the time for which the appellant can remain seated are unknown and depend on monthly bleeding.

In the AR, the GP reports that walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding are managed independently, commenting that when bleeding monthly the appellant is not able to sustain out of home activities.

In the SR, the appellant describes her disability as VWD disease and on and off low iron. The blood disorder makes it almost impossible to leave home during her cycle, which lasts from 7-20 days. During a cycle, the appellant loses clots of blood, can "barely mom", and is in the washroom every 10-15 minutes. Low iron also makes the appellant super tired. Blood thickeners sometimes help, but iron infusions here and there are still required. Even a papercut results in bleeding for about 30 minutes.

At the hearing, when asked if the GP's assessment of physical functioning in the PWD application was accurate, the appellant responded that it was, noting that when bleeding, walking is limited to about 10 minutes, before needing to use a washroom. The appellant stated that she bleeds for 7-14 days monthly, and sometimes hemorrhages requiring an iron infusion. She loses clots and can't leave the house during menses. She needs monthly blood work. She bled for 14 days during her last cycle and required an iron infusion; it takes about a week for her iron levels to go up following infusion.

### Mental Impairment

In the MR, the GP reports:

- It is unknown if there are any significant deficits with cognitive and emotional function.
- 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, the GP reports:

- Minimal impact for bodily functions, consciousness, and emotion.

- No impact is reported for all other areas.

The appellant's SR does not address mental impairment.

In her reconsideration submission, the appellant writes that the GP did not mention struggles with OCD, depression and anxiety, triggered even more by a recent separation, and that the appellant has been seeing a counsellor, whom the appellant previously saw when in high school, for a couple of months.

The letter from the counsellor states that the appellant is a single parent who is the primary parent, though she does have some supports in the community. The counsellor writes that the appellant:

- Struggles with depression/anxiety and OCD concerns, which combined with the health issues, have taken a toll on her ability to function daily.
- Struggles with fatigue and very low motivation; when combined with anxiety, client will isolate at home.
- Struggles with self-defeating thoughts which combined with OCD behaviours leaves her feeling overwhelmed.
- Has started taking anti-depressants but it will take time to tell if the medication is effective.

At the hearing, the appellant stated that she has been seeing counsellors for two years, starting with a counsellor to whom the GP referred the appellant and currently the counsellor who submitted the letter to the ministry. The anti-depressant first prescribed by the GP caused nausea; she is doing better with her OCD, which she has had for ten years, on the current anti-depressant, but is not "really better" as there is no difference with her depression. As an example, the appellant stated that it is a struggle to check the mail every day. To get thrown into a job right now would make her condition worse.

### DLA

In the MR, the GP indicates:

- Personal self-care, management of medications, mobility inside the home, management of finances, and social functioning are not restricted by the appellant's impairment.
- Meal preparation, basic housework, daily shopping, mobility outside the home, and use of transportation are restricted periodically – "periodic during two issues 1) menstruation due to excessive bleeding; 2) iron deficiency anemia causes physical fatigue, shortness of breath"
- Where asked to explain impacts on social functioning, the GP responds "n/a."
- Assistance needed with DLA is help from her mom during menses, if injured with a cut or trauma, or when severely anemic.

Where asked if the appellant has been prescribed medications or treatments that interfere with the ability to perform DLA, the GP responds that medication is required pre surgery and pre child delivery.

In the AR, where asked to indicate the mental or physical impairments that impact the appellant's ability to manage DLA, the GP states, "when bleeding daily activities are limited due to amount of bleeding" and reports:

- All listed tasks of personal care, basic housekeeping, pay rent and bills, medications, and transportation are managed independently.
- When bleeding, the appellant is unable to manage the shopping tasks of going to and from stores, paying for purchases, and carrying purchases home, and requires periodic assistance from another person.
- If bleeding monthly, the appellant may need periodic assistance with the meal tasks of food preparation and cooking.
- Respecting social functioning, the appellant is independent with all listed areas:
  - appropriate social decisions
  - develop and maintain relationships
  - interact appropriately with others
  - deal appropriately with unexpected demands require periodic support/supervision.
- The appellant has good functioning with immediate and extended social networks.
- "[The appellant] is a high functioning cognitive individual who is unable to function on an average of once a month or if iron deficiency is untreated her energy level will be low, she will be short of breath."

*Need for Help*

The GP indicates that assistance needed with DLA is provided by family and health authority professionals. The appellant would need to call 911 after work hours during the week and 24/7 on weekends to receive treatments including DDAVP and transfusion due to life-threatening risk of hemorrhage.

**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 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*

The appellant's position is that she is unable to leave home when bleeding and requires assistance when her iron levels are low.

The ministry's position is that the information does not establish a severe physical impairment. In particular, the ministry finds that the GP does not indicate how or how frequently "monthly bleeding" affects the appellant's ability to lift or remain seated and that it is unclear how the medical conditions directly impact mobility and physical functioning. Additionally, the appellant is reported as able to walk 4 or more blocks and climb 5 or more steps unaided and is independent in all listed mobility and physical functioning activities.

*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 appellant is diagnosed with VWD and iron deficiency anemia which impact her physical functioning. The GP also diagnoses epilepsy; however, the last seizure occurred around 2013, and neither the GP nor the appellant describe any resulting limitations on functioning.

Respecting the GP's assessment of physical functioning, which the appellant stated is accurate, the GP reports that the appellant can walk 4+ blocks and climb 5+ steps and that all aspects of physical mobility and ability, including walking indoors and outdoors, are managed independently without an assistive device, though the appellant cannot sustain out of home activities during menses. The GP also indicates that the ability to lift and remain seated depends on monthly bleeding, identifying the impact as unknown. The GP's letter does not describe physical functioning and, except for noting that the appellant struggles with fatigue, the counsellor does not discuss physical functioning. The GP and the appellant state that the appellant is unable to leave home during menses, but the appellant also stated that she had been managing prior to the onset of her relatively recent mental health conditions which have left the appellant unable to work. Additionally, in the AR, when assessing the appellant's ability to manage specific physical DLA tasks, almost all are reported to be independently managed with no assistance required at any time.

While acknowledging the difficulties the appellant faces due to her physical medical conditions, given the physical functional assessments by the GP, the panel finds the ministry was 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 she struggles with OCD, depression, and anxiety, and that while there is a bit of improvement with the OCD, medication has not improved her depression and her condition would worsen if she had to work.

The ministry's position is that the information does not establish a severe mental impairment. The ministry acknowledges the description of OCD, depression and anxiety by the appellant and the counsellor but notes that the legislation requires that medical conditions be "in the opinion of a medical practitioner or nurse practitioner." As the GP did not diagnose these medical conditions the ministry is unable to establish the severity of impairment. Additionally, the GP did not identify significant deficits to cognitive and emotional functioning. Although minimal impacts on daily cognitive and emotional functioning are reported for bodily functions, consciousness and emotion, no other impacts are reported. Also, good communication abilities are reported and all DLA tasks related to making decisions regarding personal activities, care, and finances as well as social functioning are managed independently. At the hearing, the



ministry stated that the GP's letter does not provide information respecting the impact of the appellant's mental impairment on the ability to manage DLA and that while the GP states that the appellant is unfit to work, employability not a consideration.

### *Panel Analysis*

The panel notes that while there were no diagnoses of mental health conditions by the GP at reconsideration, confirmation of OCD, anxiety and depression are provided by the GP in the subsequent letter and, as clarified by the appellant at the hearing, the GP had prescribed anti-depressants for the appellant prior to completing the PWD application. In the PWD application, the GP describes the appellant as "high functioning cognitive" but in the subsequent letter states that the appellant is not high functioning and would be best suited to PWD coverage for at least 2 years due to the appellant's requirements for medical interventions and current major depressive disorder. However, the GP does not explain this significant change, less than two months after completing the PWD application, nor does the GP provide additional information about impacts on daily cognitive, emotional and social functioning, stating only that the appellant is not currently fit to work. In the absence of additional information from the GP, the panel must rely on the information in the PWD application – that there are a few areas of minor impact on daily cognitive and emotional functioning, good communication abilities, no identified difficulties with decision-making, good social functioning, and no identified impacts from mental impairment on any of the listed DLA tasks. The counsellor reports that combined with health issues, which the panel understands to be the appellant's physical conditions (VWD and anemia), depression, anxiety and OCD concerns have taken a toll on the appellant's ability to function daily; she will isolate at home, struggles with self-defeating thoughts and feels overwhelmed. The appellant reports that anti-depressant medication is not helping with her depression and describes how even checking for the mail is a struggle.

While the panel acknowledges that the appellant is dealing with both physical and mental health issues, the panel finds that the most comprehensive information respecting emotional, cognitive and social functioning is that provided by the GP in the PWD application, as described above. The panel finds that this information is not reflective of a severe mental impairment and that accordingly, the ministry was reasonable in 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 she is reliant on family members during menses and when her iron levels are being restored following IV treatment.

Noting that it relies on the medical opinion and expertise of the GP (and any other prescribed professional who has provided information) when assessing DLA restrictions, the ministry concludes that the GP's information does not establish direct and significant restrictions with DLA continuously or periodically for extended periods. The ministry notes the DLA identified in the MR as being periodically restricted, the specific DLA tasks listed in the AR for which periodic

assistance is required, and the GPs comments relating these limitations to monthly bleeding or when experiencing iron deficiency . However, the ministry finds no information from the GP establishing the length of time in a month that the restrictions occur or a description of the type of assistance or the nature or duration of the restrictions, making it difficult to determine if the appellant is significantly restricted periodically for extended periods. The ministry also notes that social functioning is not restricted.

### *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; the counsellor did not indicate that she has professional qualifications so that her report would meet the requirement of being the opinion of a prescribed professional as defined in the Regulation. The GP's letter does not address the appellant's ability to perform the DLA listed in Regulation, only stating that the appellant is not fit to work. In the MR, the GP identifies periodic restrictions with meal preparation, basic housework, daily shopping, mobility outside the home, and use of transportation during menstruation and when experiencing iron deficiency anemia. The GP does not provide additional commentary regarding the degree of restriction where asked to do so and describes the assistance needed as help from another person, the appellant's mom. In the AR, when assessing physical ability and mobility, the GP reports that the appellant independently manages all aspects, but that when bleeding the appellant cannot sustain activities out of the home. The GP does not explain what is meant by sustaining activities, a term that the panel finds is open to broad interpretation. Additionally, in the AR, where DLA are broken down into specific tasks, the GP reports that the appellant is unable to manage the physical tasks of shopping during menses and that assistance "may" be required with the physical tasks of meals. For all other DLA tasks, physical and cognitive, the appellant is reported to manage independently, with no assistance at any time. Both the appellant and the GP state that the appellant is currently not able to work, but as the ministry notes, employability is not a legislated criterion for determining PWD eligibility. While the panel has no reason to doubt the appellant's statements regarding the duration of her menstrual cycles, and the GP has clearly identified the need for periodic help from another person during menses or when anemic, the panel finds that the available information from the GP describing the assistance does not establish the restrictions as significant. While multiple DLA are indicated in the MR as being periodically restricted, only one, shopping, is identified as

always requiring assistance during menses, which is reasonably considered as establishing a significant restriction for that one DLA.

Based on the GP's assessment of the appellant's need for minimal assistance with 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.

In reaching its decision, the panel sympathizes with the difficulties the appellant is currently experiencing, and notes the information respecting the appellant's inability to currently work due to the combined effects of the appellant's mental and physical conditions. The appellant may wish to contact the ministry to discuss Persons with Persistent Multiple Barriers to Employment (PPMB) qualification.

**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  
2021-0135

**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)

2021/07/14

PRINT NAME

Joseph Rodgers

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/07/14

PRINT NAME

Donald Storch

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/07/14