

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated August 24, 2021, in which the ministry found the appellant was not eligible for designation as a Person with Disabilities ("PWD") under section 2 of the *Employment and Assistance for Persons with Disabilities Act* ("EAPWDA"). The ministry found that the appellant met the age and duration requirements 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 was 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"). 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

The ministry based the reconsideration decision on the following legislation:

Employment and Assistance for Persons with Disabilities Act - EAPWDA - section 2

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - section 2

The full text is available in the Schedule after the decision.

Part E – Summary of Facts

The evidence and documentation before the minister at the reconsideration consisted of:

1. Information from the ministry's record of decision indicating that the PWD application was received on June 24, 2021 and denied on June 25, 2021. On July 26, 2021, the appellant submitted a *Request for Reconsideration* ("RFR"). The ministry granted the appellant's request for an extension until August 24, 2021 to provide additional information. The ministry notes that it contacted the appellant's advocate by voicemail to remind them of the deadline. On August 24, 2021, the ministry completed the reconsideration decision with no new information received.
2. An RFR signed by the appellant on July 26, 2021, with a request for an extension from the advocate stating that the appellant was waiting for medical evidence from her doctor. The advocate also submitted a *Consent to Disclosure of Information* for the appellant's family member.
3. The PWD application comprised of:
 - the *Applicant Information* (self-report - "SR") signed by the appellant with the box checked indicating, *I choose not to complete this self-report*.
 - a *Medical Report* ("MR") dated February 23, 2021, signed by an oncologist ("Dr. A.") who has known the appellant for 2 months and has seen the appellant 2-10 times in the past 12 months; and an
 - *Assessor Report* ("AR") dated March 20, 2021, completed by the appellant's family doctor ("Dr. B.") who has known the appellant since April 2020 and has seen the appellant 11 or more times in the past 12 months. Dr. B. indicates they based the assessment on an office interview with the appellant and file/chart information.
4. A letter from the ministry dated January 25, 2021, with attached *Denial Decision Summary* advising that the appellant did not meet all of the criteria for PWD designation.
5. The appellant's medical reports/records from the BC Cancer Agency:
 - A *Medical Imaging Report* – pelvic exam dated September 28, 2020, indicating an endometrial malignancy. The appellant requires an urgent referral to gynecology.
 - A *Progress Note* from Dr. A. dated February 24, 2021, regarding treatment for chemotherapy-related side effects. The appellant had a good response to treatment for flushing and other side effects and tolerated the chemotherapy infusion well at a slower rate.
 - A *Treatment Note* from Dr. A. dated February 22, 2021, indicating a diagnosis of uterine cancer and treatment with chemotherapy. The appellant experienced side effects from chemotherapy that included chest and back pain (resolved with medication and a slower chemotherapy infusion). The appellant experienced neuropathy in her feet "which is constant but has not affected her mobility." The appellant also developed arthralgia ("arthritis") as a side effect from one of her medications.
 - Several laboratory reports from February 2021 describing various hematology ("blood test") results.
 - A *Progress Note* from an oncologist dated February 3, 2021, describing the appellant's allergic reaction to a chemotherapy agent that was resolved with medication.
 - A *Treatment Note* from Dr. A. dated February 1, 2021, indicating that first-line chemotherapy was started in January 2021 for the appellant's uterine cancer diagnosis. Dr. A. indicates "hepatic metastases" (cancer that has spread to the appellant's liver). Dr. A. states that the appellant tolerated chemotherapy "relatively well" but experienced "severe pain in her legs" for 3 days and a subsequent "mild burning and tingling sensation in her feet." Dr. A. states that "this has not impacted [the appellant's] mobility."

The appellant was prescribed medication to help prevent leg pain and was asked to monitor neuropathy (tingling/ burning sensations) as this can worsen with subsequent chemotherapy treatment. The appellant

has decreased abdominal pain and distension but experienced some weight loss due to a reduced appetite caused by nausea and vomiting. The appellant will be referred to a dietitian because of the weight loss. The appellant will receive a second cycle of chemotherapy on February 3, 2021. Dr. A. states they are pleased with the improvement in the appellant's tumor marker to date.

- A *Progress Note* from an oncologist ("Dr. C.") dated December 19, 2020. Dr. C. states they met the appellant for the first time on November 27, 2020 for a new diagnosis of uterine cancer that was confirmed through a biopsy. Dr. C. indicates the appellant was scheduled for staging surgery but requires a PET scan to evaluate for metastatic disease (the spread of cancer to other parts of the body). If the appellant tests positive for metastatic disease she will be referred to oncology on an urgent basis. Dr. C. states that it is unlikely that treatment will begin with surgery as it may be best to initiate chemotherapy treatment.
- *Medical Imaging Reports* – chest x-rays dated December 30, 2020 and November 27, 2020, indicating no remarkable lung symptoms or pneumonia.
- A *Consultation* report from Dr. A. dated December 30, 2020 indicating a uterine cancer diagnosis including a large pelvic mass and "hepatic cirrhosis metastases" (spread of cancer to the appellant's liver) confirmed by a PET scan and other tests. The appellant has been referred to oncology for urgent assessment of systemic therapy (chemotherapy treatment). Test results indicated "rapidly progressing disease" and Dr. C., who had previously assessed the appellant, recommended a re-referral to surgery dependent on a good response after the appellant completes 6 cycles of chemotherapy.

Dr. A. states that the appellant has been complaining of abdominal pain and other abdominal symptoms as well as mild swelling in her legs and a mild dry cough. The appellant's "energy has been low but she remains independent with all of her activities of daily living." The appellant "currently lives alone and is independent."

Dr. A. states that the appellant is not a candidate for upfront surgery based on the extent of her disease. Dr. A. recommends treatment with 6 cycles of chemotherapy given intravenously every 3 weeks. If the appellant has an excellent response to chemotherapy based on imaging findings and tumor marker, surgery may be considered. Otherwise, the appellant will remain on chemotherapy in a palliative setting. The appellant has consented to chemotherapy despite her anxiety around treatment.

- A *Progress Note* from Dr. C. dated December 24, 2020. Dr. C. states that the appellant was initially seen on November 20, 2020 for a biopsy that confirmed uterine cancer. A PET scan on December 22, 2020 showed that the cancer has spread to multiple pelvic/abdominal sites as well as the appellant's liver. Dr. C. states that the appellant has Stage 4 endometrial cancer and chemotherapy will be the first line treatment as primary surgery is not indicated at this time.
- A PET scan *Diagnostic Report* dated December 22, 2020, indicating malignant tissue within the appellant's uterus as well as other indicators of cancer including metastases. No worrisome spread of cancer to the appellant's lungs or bones was identified.
- A *Medical Imaging Report* – chest/pelvis contrast dated December 11, 2020, indicating findings consistent with peritoneal carcinoma.
- A *Consultation* report from Dr. C.'s resident student dated November 27, 2020. The appellant was referred for a work-up that included an ultrasound and a biopsy subsequent to symptoms of post-menopausal bleeding that occurred in August and September 2020. The appellant was well prior to then and had no remarkable health history. As the result of the work-up a high-grade uterine carcinoma was discovered. Surgery was proposed but would depend on the results of a PET scan to evaluate for metastatic disease.
- A BC Cancer Agency *Tumor Registry Report* dated October 27, 2020 confirming a diagnosis of carcinoma from the results of an endometrial biopsy.

Summary of relevant evidence from the application:

Diagnoses

In the MR, the appellant is diagnosed with metastatic endometrial cancer (onset December 2020). In section B - *Health History*, Dr. A. states, "see consultation note from December 30, 2020." Under *Degree and Course of Impairment*, Dr. A. states that the appellant's cancer is "likely incurable" and requires ongoing treatment.

Functional skills

Medical Report

In Section D, Dr. A. indicates the appellant can walk 2-4 blocks unaided on a flat surface and climb 5 or more steps unaided. The appellant has no limitations with *Lifting* or *Remain seated*, and no difficulties with communication.

For question D-6, the Dr. A. checked Yes, the appellant has significant deficits with cognitive and emotional function. Of the 12 areas listed, Dr. A. checked *Other* and wrote "chemo brain." The section for comments was left blank.

Under *Additional Comments* (Section F), Dr. A. states, "no activity limitation now although this may change if/when cancer progresses."

Assessor Report

Under Section B-2, *Ability to Communicate*, Dr. B. indicates a *good* ability for the 4 areas listed: *Speaking*, *Reading*, *Writing*, and *Hearing*.

Under section B-3, *Mobility and Physical Ability*, Dr. B. marked the appellant *independent* with 1 of the 6 areas listed: *Standing*. The appellant takes significantly longer than typical in 3 areas: *Walking indoors*, *Walking outdoors*, and *Climbing stairs* (comment, "due to her cancer and chemotherapy, has lethargy"). The appellant needs *periodic assistance from another person* for 2 areas: *Lifting*, and *Carrying/holding* (comment, "family assists with these activities").

In section B-4, *Cognitive and Emotional Functioning*, the doctor is asked to indicate what impacts the appellant's impairments have on various cognitive and emotional functions. For the 14 areas listed, Dr. B. indicates:

- *No impact* for 7 areas: *Consciousness*, *Impulse control*, *Motor activity*, *Language*, *Psychotic symptoms*, *Other neuro-psychological problems*, and *Other emotional or mental problems*;
- *Minimal impact* for 2 areas: *Insight and judgment*, and *Executive*;
- *Moderate impact* for 5 areas: *Bodily functions*, *Emotion*, *Attention/concentration*, *Memory*, and *Motivation*;
- *Major impact*: [no areas were checked].

Daily Living Activities

Medical Report

Dr. A. did not check mark *yes* or *no* when asked if the appellant is prescribed medications or treatments that interfere with the ability to perform DLA but comments, "currently receiving chemotherapy" (for 6 months).

In Section E - *Daily Living Activities*, Dr. A. checked *no*, the impairment does not restrict the appellant's ability to perform DLA. The doctor did not provide any check marks or comments for the specific DLA listed on the form.

Assessor Report

In Section B1 - *Mental or Physical Impairment*, Dr. B. states that the appellant's ability to manage DLA is impacted by "both physical limitations due to her lethargy with her metastatic malignancy. Also stress/depression related to the whole process."

In Section C - *Daily Living Activities*, Dr. B. indicates the following restrictions for all areas of the 8 DLA listed:

- **Personal Care:** The appellant takes *significantly longer than typical* for all 8 areas: *Dressing, Grooming, Bathing, Toileting, Feeding self, Regulating diet, Transfers (bed), and Transfers (chair)*. Dr. B. comments, "due to her cancer and the effects of chemotherapy, it affects her activities and mobility, physically tired and slow."
- **Basic Housekeeping:** The appellant needs *periodic assistance from another person* for both areas: *Laundry and Basic Housekeeping* (comment, "family will carry out those tasks").
- **Shopping:** The appellant needs *periodic assistance from another person* for all areas: *Going to and from stores, Reading prices and labels, Making appropriate choices, Paying for purchases, and Carrying purchases home* (comment, "as she is unable to do so due to lethargy").

Under *Additional comments* for these DLA, Dr. B. states, "diagnosed with metastatic neoplasm, currently under chemotherapy. It is not a curable condition."

- **Meals:** The appellant needs *periodic assistance from another person* for all areas: *Meal planning, Food preparation, Cooking, and Safe storage of food* (comment, "due to her lethargy and weakness").
- **Pay Rent and Bills:** The appellant needs *periodic assistance from another person* for all areas: *Banking, Budgeting, and Pay rent and bills* (comment, "affects all her modality").
- **Medications:** The appellant needs *periodic assistance from another person* for all areas: *Filling/refilling prescriptions, Taking as directed, and Safe handling and storage* (comment, "dependent on others").
- **Transportation:** The appellant takes *significantly longer than typical* for 1 area: *Getting in and out of a vehicle* (comment, "due to her lethargy"). The appellant requires continuous assistance from another person for 2 areas: *Using public transit, and Using transit schedules and arranging transportation* [no comment was provided for these areas].

Additional comments for these DLA (*including the type and amount of assistance required*) was left blank.

- **Social Functioning:** The appellant needs *periodic support/supervision* with all areas: *Appropriate social decisions, Able to develop and maintain relationships, Interacts appropriately with others, Able to deal appropriately with unexpected demands, and Able to secure assistance from others* (comment, "because of her condition of malignancy and the effects of chemotherapy on her daily activities and performance").

Dr. B. checked that the appellant has *very disrupted functioning* with her immediate and extended social networks and needs "daily help and support" to be maintained in the community. The doctor did not note any safety issues.

In Part E - *Additional Information*, Dr. B. states that the appellant's cancer is not curable and indicates that she has lethargy and weakness from the current chemotherapy and also experiences daily abdominal pain. Dr. B. states that "the above affects [the appellant's] daily life more than 90% of the time."

Need for help

Medical Report

Under *Health History* (Part B-4), Dr. A. marked *no*, the appellant does not need any prostheses or aids for the impairment. In Part E-1 (*Daily Living Activities*), the doctor did not fill in the section on what assistance is needed. As noted earlier, Dr. A. checked that DLA are not restricted by the appellant's impairment.

Assessor Report

In the AR, Dr. B. indicates the appellant lives with family and they assist the appellant with DLA. Dr. B. did not fill in the section of the form on *Assistance provided through the use of Assistive Devices*. Dr. B. checked *No*, the appellant does not have an assistance animal.

Additional submissions

With the consent of both parties, the appeal proceeded as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act* ("EAA"). Subsequent to the reconsideration decision neither party submitted any new evidence requiring an admissibility determination in accordance with section 22(4) of the EAA. The appellant filed a *Notice of Appeal* with a brief hand-written statement that the panel accepts as argument. In an email to the Tribunal, the ministry states that the reconsideration summary is the ministry's submission on appeal.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision that found the appellant ineligible for PWD designation was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. The panel's role is to determine whether the ministry was reasonable in finding that the following eligibility criteria in section 2 of the EAPWDA were not met:

- 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 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.

Analysis

Severe mental or physical impairment

To be eligible for PWD designation, the legislation (EAPWDA section 2) requires several criteria to be met including the minister being satisfied that the applicant has a severe mental or physical impairment. The ministry found the appellant was not eligible for PWD because not all of the five criteria were met. "Severe" is not defined in the legislation but in the ministry's view, the diagnosis of a serious medical condition does not in itself establish a severe impairment of mental or physical functioning. The PWD medical reports ask for information on functional skills and abilities and the panel finds that the ministry's assessment of severity based on daily function is a reasonable interpretation of the legislation.

Mental and physical impairment - specific considerations

To assess the severity of a mental impairment, the ministry considers the extent of any impact on daily functioning as evidenced by limitations/restrictions with mental functions and emotion. The ministry does not only look at the diagnosis or a medical practitioner's comment that the condition is "severe" but considers functional abilities and whether there are restrictions to DLA requiring mental/social functioning including any safety issues. The panel finds that an assessment of severity based on cognitive, emotional, and social functioning is a reasonable interpretation of the legislation.

To assess whether the applicant has a severe physical impairment, the ministry considers information on the degree of restrictions to physical functioning and whether the applicant requires significant help or any assistive devices to manage physical tasks. The panel finds that the assessment of severity based on daily physical functioning is a reasonable interpretation of the legislation.

Arguments

Appellant

In the *Notice of Appeal*, the appellant provided a brief statement arguing that "the information on file supports a severe impairment." The Tribunal communicated the process for providing submissions for the written hearing but no further argument or evidence was received from the appellant. In July 2021, the advocate asked for an extension of time to provide additional information for the reconsideration as the appellant was "waiting on medical evidence from her doctor." No additional evidence was submitted despite a voicemail from the ministry reminding the advocate of the deadline. The appeal is therefore based on the information in the record which includes medical evidence for the period September 28, 2020 to March 20, 2021.

Ministry

The ministry argues that the information in the application and patient medical records did not establish a severe mental or physical impairment. The ministry acknowledges that the appellant has a serious medical condition

requiring chemotherapy and has symptoms of lethargy, abdominal pain, and weight loss as well as leg/foot pain and arthritis. However, the ministry argues that the most recent information from Dr. A. (February 22, 2021 *Treatment Note*) indicates the appellant's mobility is not impacted.

While Dr. B. says that lethargy and other side effects of chemotherapy impact the appellant's daily life more than 90% of the time, the ministry argues there was no information on how much slower the appellant is with walking and other physical functions or the extent of periodic help required and therefore, a severe impairment was not established on the evidence.

Regarding mental functioning, the ministry argues that the information in the PWD application indicates a "mild-moderate mental impairment" (rather than a severe impairment) because the appellant's "chemo brain" and anxiety/depression about her situation have no major impacts on her cognitive and emotional functioning (AR). Although moderate impacts were reported in the AR, the ministry argues that the amount of daily help required and provided for mental-social functioning was unclear.

Panel's decision - mental impairment

Section 2(2) of the legislation requires evidence of a severe impairment. In the MR, Dr. A. checked that the appellant has significant deficits with cognitive and emotional function but the only detail they gave was the comment, "chemo brain." In the AR, Dr. B. indicates a moderate impact for several cognitive and emotional functions including *Attention/ concentration, Memory, and Motivation*. However, *Executive function*, which the panel would expect to be significantly impacted by the lethargy and brain fog caused by chemotherapy, was assessed as *minimal* impact.

Furthermore, Dr. B. indicates the appellant's incurable cancer diagnosis had only a *moderate impact* on *Emotion* and as the ministry notes, no *major impact* was reported for any area and the appellant needs only periodic help/support with cognitive and social functioning. Based on the information as a whole, the panel finds there was insufficient evidence of a severe impairment of mental functioning and the ministry was reasonable to find that a *severe* mental impairment under section 2(2) of the EAPWDA was not established on the evidence.

Panel's decision - physical impairment

The panel finds that the ministry's decision for physical impairment, (no *severe* impairment), was reasonably supported by the evidence. The appellant is diagnosed with incurable cancer and is undergoing 6 cycles of chemotherapy, but Dr. A. (who completed the MR) indicates a high level of ability on the rating scale for *Walking* (the appellant can walk 2-4 blocks unaided) and no limitations with other physical functions including *Lifting* despite the appellant's abdominal pain and arthritis. In the BC Cancer Agency medical reports from February 2021, Dr. A. indicates that chemotherapy side effects are largely managed with medications and a slower infusion, and the appellant's mobility is not impacted despite "constant" foot pain and neuropathy (burning/tingling sensations).

In the AR, Dr. B. indicates restrictions for most physical functions in that the appellant takes *significantly longer than typical* with *Walking* and *Climbing stairs* (due to lethargy). The appellant also needs *periodic assistance* from her family with *Lifting* and *Carrying/holding*. As the ministry notes, neither Dr. A. nor Dr. B. indicate the appellant uses an assistive device. Further, there was no information from Dr. B. on how slow the appellant is with walking and stairs, or how often she needs assistance with lifting and carrying despite her daily functioning being impacted more than 90% of the time. The ministry argued that without this information, a severe impairment was not established on the evidence.

The panel accepts the ministry's position as reasonable and also gives more weight to Dr. A.'s information as there are several medical reports/letters from Dr. A. in the record with consistent information indicating no impact for mobility. While Dr. B. has known the appellant for a year and has seen her more than 11 times in that period, the only report that was submitted for Dr. B. is the AR. While the AR is the most recent report in the record (March 2021), the panel finds the ministry reasonably determined that the information as a whole did not establish a severe impairment of physical functioning and the requirement for a severe impairment under section 2(2) of the EAPWDA was not met.

Restrictions in the ability to perform daily living activities

Subsection 2(2)(b)(i) of the EAPWDA requires the ministry to be satisfied that, in the opinion of a prescribed professional, a severe impairment directly and significantly restricts a person's ability to perform DLA either continuously, or periodically for extended periods. This means that restrictions to DLA must be confirmed by the appellant's doctor or one of the practitioners named in the legislation such as a psychologist or occupational therapist.

The term "directly" means that the severe impairment must cause or result in restrictions to activities. The direct restriction must also be significant. This means that taking a long time to do daily activities and not being able to do DLA without a lot of help or support or will have a large impact on the person's life.

Finally, there is a time or duration factor: the restriction may be either *continuous* or *periodic* under the legislation. Continuous means that the activity must generally be restricted all the time. The ministry views a periodic restriction as significant when it occurs frequently or for longer periods of time; for example, the person cannot do the activity without help or support on most days of the week.

The panel views the ministry's interpretation of the legislation as reasonable. Accordingly, where the evidence indicates that DLA take significantly longer than typical, as with *Personal Care*, and *Transportation* (AR), it is reasonable for the ministry to require information on how long it takes the appellant to get dressed, bathe/shower, arrange transportation, etc. to determine whether the restriction is significant.

Arguments - DLA

The appellant argues the information from her doctors demonstrates a severe impairment and relied on the information from Dr. A. and Dr. B. regarding restrictions to DLA. The ministry argues that despite Dr. B.'s information on continuous restrictions with *Transportation* and the appellant's condition/treatment impacting her daily life more than 90% of the time, the PWD application did not demonstrate a significant overall restriction because there was not enough detail about the extent of help required.

Panel's decision - restrictions to Daily Living Activities

The panel finds the ministry was reasonable in concluding there was insufficient evidence to confirm that DLA are significantly restricted either continuously or periodically for extended periods. Dr. B. said that the appellant's daily life is impacted by lethargy, and other symptoms as well as by the stress of her diagnosis more than 90% of the time but did not indicate how much longer activities take or why the appellant needs only periodic assistance with most given the degree that her life is impacted.

Dr. B. comments that the appellant is dependent on family for housekeeping, shopping, and managing medications and needs "daily help and support" with *Social Functioning*, but at the same time checked that the appellant needs periodic assistance/ support with these DLA. As the ministry notes, Dr. B. did not clearly explain how frequently the appellant needs help or support from her family to meet the requirement that periodic restrictions arise frequently or continue for extended periods of time.

In addition, no restrictions to DLA were reported in the MR which was completed a month prior to the AR (February 23, 2021) and also during the course of chemotherapy treatment. At the end of December 2020 (*Consultation*), Dr. A. stated that the appellant "remains independent with all of her activities of daily living" despite low energy, abdominal pain, and other symptoms.

It is unfortunate that no updated information was provided for the reconsideration or appeal because Dr. A. also indicates in the MR that while the appellant has no activity limitation, that could change if/when the cancer progresses. Dr. B. (AR) emphasized that the appellant's cancer as incurable and the BC Cancer Agency records indicate the appellant would receive palliative treatment if the chemotherapy which was expected to be given for 6 months (up until July 2021) did not produce an excellent response based on imaging findings and tumor marker. The panel is very sympathetic to the appellant's circumstances but is not authorized to obtain additional medical information or speculate on how the appellant is doing now.

The panel has considered the evidence from the doctors in its entirety and finds the ministry's decision that DLA were not significantly restricted either continuously or for extended periods of time was reasonably supported by the evidence. In the MR, Dr. A. does not indicate any restrictions to DLA and in the AR, Dr. B. indicates the appellant needs periodic assistance with most DLA but does not offer a consistent explanation about the frequency of duration of the help the appellant receives from her family. The panel therefore finds that the ministry reasonably determined that the evidence from prescribed professionals (Dr. A. and Dr. B.) did not confirm significant restrictions to DLA under subsection 2(2)(b)(i) of the EAPWDA.

Help to perform daily living activities

Subsection 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.

Arguments

The appellant relies on the information from her doctors to explain the assistance she requires. The ministry argues that because DLA are not significantly restricted, it could not be determined that significant help is required.

Panel's decision - help with Daily Living Activities

Dr. A. (MR) indicates the appellant manages DLA independently while Dr. B. (AR) indicates the appellant needs periodic assistance from family with most DLA. Neither doctor indicates the appellant needs an assistive device to manage any mobility/cognitive impairment from cancer or chemotherapy side effects.

Under the legislation, confirmation of direct and significant restrictions to DLA is a precondition for needing help to perform DLA. The panel found that the ministry's determination that significant restrictions to DLA were not established by the information provided was reasonable because the frequency and duration of assistance with most DLA was not consistently described. On review of the evidence from the doctors, the panel finds the ministry's conclusion that the criteria for help under subsection 2(2)(b)(ii) of the EAPWDA were not met was a reasonable application of the legislation.

Conclusion

The panel considered the information in its entirety and finds that the ministry's reconsideration decision that found the appellant ineligible for PWD designation was reasonably supported by the evidence. The legislation requires all of the criteria to be met. The ministry was reasonable in finding that only two criteria (age, and duration of impairment) were met because there was insufficient information in the record to confirm a severe impairment that significantly restricts DLA continuously or for extended periods. The panel finds that the ministry reasonably applied the legislative requirements to the information provided. The panel confirms the reconsideration decision. The appellant is not successful on appeal.

Schedule – 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 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).

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,

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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)

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

Part H – Signatures

Print Name

Margaret Koren

Signature of Chair

Date (Year/Month/Day)

2021/10/22

Print Name

Cherri Fitzsimmons

Signature of Member

Date (Year/Month/Day)

2021/10/22

Print Name

Kim Read

Signature of Member

Date (Year/Month/Day)

2021/10/22