

### **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 November 22, 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* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age and duration requirements, but was not satisfied that:

- the appellant has a severe physical and/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.

In addition, the ministry found that it had not been demonstrated that the appellant is one of the prescribed classes of persons who may be eligible for PWD designation on alternative grounds. As no information or argument provided for PWD designation on alternative grounds, the panel considers that matter not to be an 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), section 2

**Part E – Summary of Facts*****Evidence at Reconsideration***

- The appellant's PWD application comprised of a Medical Report (MR) [dated Jun 21, 2021], and Assessor Report (AR) [dated June 20, 2021], which were completed by the appellant's General Practitioner (the physician), who had known the appellant for 22 years and seen her 2-10 times in the past 12 months prior to completing the PWD application. The approaches and sources used to conduct the MR and AR were office interview with the appellant, and file/chart information.
- The PWD application also included the appellant's Self-Report (SR) signed and dated September 5, 2021, which was left blank.
- Psychological Assessment dated November 8, 2017. This was a vocational assessment to explore training and employment options considering the appellant's disability. It describes the appellant's condition and intellectual limitations. An assessment was done of her ability to complete tasks and it was concluded that she has limited memory and needs supervision when learning tasks. She was diagnosed with mild intellectual disability and general anxiety disorder (GAD). Potential jobs for the appellant included: stock clerk, farm worker, house painter, cook, baker, cosmetologists, family service worker, social worker, counsellor, arbitrator, special education program director, religious education director, dean of students and community program director.
- A picture of the appellant's hands.
- Request for Reconsideration (RFR), signed and dated November 1, 2021, which included:
  1. The PWD application also included the appellant's Self-Report (SR) signed and dated November 1, 2021. In it the appellant described difficulty managing life with lower-than-average intellectual ability, anxiety, and psoriasis/eczema. She described that her inability to manage day-to-day household chores was due to the pain in her hands and feet from her medical condition.

***Diagnoses***

In the original MR, the physician diagnosed the appellant with mild intellectual disability (onset 1980), Major Depression (onset 1997), Asthma (onset 1979), Skin disorder [psoriasis/eczema] (onset 1977), and Anxiety disorder (onset 1997).

***Health History***

In the original MR, the physician stated, in part, the following about the appellant:

- Her diagnosis compromises her ability to comprehend and retain new information.
- Patient struggles to understand verbal material.
- Patient experiences frequent debilitating depression and anxiety since age 23. The anxiety and depression are exacerbated by frequent social stressors.
- She experiences frequent labile moods.
- Patient's manual dexterity is compromised due to severe psoriasis and eczema. Her fine motor skills are difficult to perform.
- Patient experiences frequent exacerbations of asthma which have required aggressive medical therapy with steroids and antibiotics and multiple ER visits.
- Patient experiences severe generalized anxiety and depressive symptoms which

compromises her ability to multitask and compromises her social interactions and decision making.

### ***Physical Impairment***

In the original MR, the physician indicated the following about the appellant:

- Can walk 1-2 blocks unaided, can climb 5+ steps unaided, can lift 5-15 lbs and can remain seated less than 1 hour.

In the AR, the physician indicated the following about the appellant:

- “Physically unable to use hands to perform general household duties”.
- Walking indoors/outdoors, climbing stairs, standing, lifting, and carrying/holding are performed independently.

In the SR, the appellant stated that her hands crack when she moves them, and her feet get so bad that walking is painful.

### ***Mental Impairment***

In the original MR, the physician and indicated the following:

- Difficulties with communication in ‘cognitive’ and commented “mild intellectual impairment makes communication difficult”.
- Significant deficits with cognitive and emotional function in the areas of consciousness, language, memory, perceptual psychomotor, emotional, impulse control, and attention/sustained concentration.

In the original AR, the physician indicated the following about the appellant:

- Speaking is satisfactory (comment: “difficulty understanding and pronouncing words”), reading (comment: “difficulty comprehending”) and writing (comment: “hand/eye coordination”) are poor, and hearing is good.
- With cognitive and emotional functioning: major impacts were in memory; moderate impacts in the areas of emotion, attention/concentration, executive, language and other; and all other listed areas are indicated as minimal or no impacts.
- All tasks under ‘pay rent/bills’, ‘medications’ and ‘social functioning’ are performed independently with her immediate social network having marginal functioning and extended social network having good functioning.

In the SR, the appellant stated the following:

- Anxiety makes her nervous and makes relationships difficult.
- She cannot understand legal or medical information due to limited cognition.
- She needs help completing documents for court and childcare.
- She needs help understanding finances and paying day-to-day bills.
- She had modified classes in school and repeated several grades. She completed a school leaving certificate and has no post-secondary education.

### ***Daily Living Activities***

In the original MR, the physician indicated the following about the appellant:

- No medications that interfere with the ability to perform DLA have been prescribed.

In the original AR, the physician indicated the following about the appellant:

- All tasks under 'personal care', 'meals', 'pay rent/bills', 'medications', 'transportation' and 'social functioning' are performed independently.
- All tasks under 'basic housekeeping' (laundry and basic housekeeping) require periodic assistance. There is no explanation or details provided by the physician.
- Under 'shopping' the tasks of 'reading prices and labels' (comment: "has trouble") and 'carrying purchases home' (comment: "can be difficult") require periodic assistance.

In the SR, the appellant stated the following:

- She needs help completing day to day household tasks because the psoriasis is so bad. Her hands crack when she moves them, and her feet get so bad that walking is painful.

### ***Help***

In the original MR, the physician indicated the following about the appellant:

- Requires no prostheses or aids for the impairment.

In the AR, the physician indicated the following about the appellant:

- Help is provided by family. There is no comment to explain or describe the help the appellant receives.
- No assistive devices or assistance animals are used by the appellant.

In the SR, the appellant stated that she needs help completing day-to-day household tasks and paper work such as court documents.

### ***Evidence on Appeal***

The Notice of Appeal, signed and dated November 1, 2021, was left blank.

### ***Evidence at the Hearing***

At the hearing, the appellant's witness stated, in part, the following:

- Everyday is a struggle for the appellant but she hides it well.
- Completing multi-step tasks such as completing court papers, emails, baking, and putting together furniture are too complex for her.
- She struggles with things that are typical for others.
- She receives helps from members of her church, the pastor, and friends whom she considers family.
- Helps comes in the form of emotional support, providing food, transportation, shopping, cleaning, and other household tasks.
- She completed a course on budgeting from a community agency and does well in this area.

At the hearing, the appellant, in part, stated the following:

- The psychological assessment in 2017 came about because she was looking for new employment opportunities, but her intellectual disability has been an obstacle. She did not know where to turn and feels trapped.

- She was supposed to 'roll-into' permanent disability at age 18 but her parents refused.
- Her child also has learning disabilities, but she cannot help with schoolwork.
- She struggles with the day-to-day because she cannot understand and gets overwhelmed.
- She has problems with processing especially when things are lengthy and cannot cope.
- The physician does not see her day-to-day at home and does not have an accurate picture of the impacts of her conditions.
- She cannot figure out complex procedures which are normal for others.
- She gets help from her friend to pay rent/bills.
- She can administer medications and use transit but if there is a change in the route she cannot cope.
- Completing the PWD application was overwhelming. Logging on to MS Teams was also overwhelming and she started to cry. When she experiences anxiety to this point, she struggles to cope for the rest of the day.

At the hearing, the ministry relied on its reconsideration decision and stated that the 2017 psychological assessment was given little weight because it is a vocational assessment and is 4 years old.

**Part F – Reasons for Panel Decision**

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a PWD, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the evidence does not establish that the appellant has a severe mental or physical impairment, that her DLA are not, in the opinion of a prescribed professional, directly, and significantly restricted either continuously or periodically for extended periods. Also, it could not be determined that the appellant requires the significant help or supervision of another person because of those restrictions.

**Panel Decision****Severe Impairment**

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical or mental impairment. Determining a severe physical or mental impairment requires weighing the evidence provided against the nature of the impairment and its reported functional skill limitations. A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. An "impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively. To assess the severity of an impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning.

The panel finds that employability is not a consideration for eligibility for PWD designation because employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

**Physical Impairment**

The appellant argued that her psoriasis and eczema are painful and prevent her from being able to move her hands or walk, which prevents her from completing her DLA.

The ministry argued that based on the information provided in the PWD application, a severe impairment of the appellant's physical functioning has not been established.

In its reconsideration decision, the ministry noted that the physician indicated that the appellant's manual dexterity is compromised due to severe psoriasis and eczema, fine motor skills are difficult to perform, and she experience frequent exacerbations of asthma which require aggressive medical therapy with steroids and antibiotics. The ministry also noted that the physician indicated that the appellant can walk 1-2 blocks unaided, climb 5 steps unaided, lift 5-15lbs and remains seated for less than 1 hour. The ministry argued that in the AR, physician indicated that walking indoor/outdoor, climbing stairs, standing, lifting, and carrying/holding are performed independently. The ministry concluded that with no significant restrictions or limitations to the appellant's mobility and physical abilities, a severe physical impairment cannot be established.

The panel finds that the ministry reasonably concluded that the

information provided by physician regarding the appellant's physical functioning does not support a finding of a severe physical impairment. Though the appellant has some limitations that the physician indicated, overall mobility and physical ability is indicated as independent. The panel also notes that the information provided at appeal does not confirm a physical impairment.

Given the overall assessments of the appellant's functional ability, and mobility and physical ability in the PWD application and the lack of any additional information provided at appeal from a prescribed professional, the panel finds that the ministry was reasonable in its determination that the evidence does not support a finding that the appellant suffers from a severe physical impairment and that the legislative criteria outlined in Section 2(2) of the EAPWDA have not been met.

### *Mental Impairment*

The appellant argued that she suffers from debilitating anxiety, depression, and an intellectual disability, which limits her ability to learn new skills, communicate, process information and she is often left overwhelmed and unable to cope with life.

The ministry's argued that based on the information provided in the PWD application and RFR, a severe impairment of mental functioning has not been established.

In making its reconsideration decision, the ministry noted that the appellant's diagnosed condition of mild intellectual disability and the complications it presents for the appellant. The ministry noted that the appellant suffers from debilitating depression and anxiety, which is exacerbated by frequent social stressors, and compromises her ability to multitask, interact socially and make decisions. The ministry also noted the impacts to communication (including speaking, hearing, writing, and reading), and cognitive and emotional impacts as indicated by the physician in the MR and AR. The ministry also noted that tasks which required decision making such as personal care and finances are performed independently. The ministry concluded that the deficits, impacts and difficulty with communication in conjunction with the appellant's DLA do not support the finding of a severe mental impairment.

At the hearing the ministry indicated that the psychological assessment was conducted for vocational purposes and is from 2017. Therefore, little weight was placed it. The panel notes that the physician indicated that the appellant's impairment is permanent. The panel is satisfied that the psychological assessment from 2017 regarding a condition that cannot improve is relevant information. Similarly, though the intended purpose of the 2017 psychological assessment was to determine suitability for work, the panel finds it contains information that is relevant in this case. In particular, the psychologist confirmed the diagnosis of mild intellectual disability and GAD. Furthermore, the psychologist confirmed much about the appellant's condition including but not limited to limited memory, extremely low verbal comprehension, extremely low auditory working memory, extremely low processing and easily overwhelmed by tasks of daily living. The panel finds that though the psychological assessment was intended for vocational purposes, it contains information that is relevant to this appeal and the appellant's circumstances.

Furthermore, the panel notes that the ministry mentions the physician's narrative provided in the MR. But did not provide a sufficient analysis of this information or its relevance to the information provided by check mark boxes in the MR or AR.

Though there is a discrepancy in the information between the cognitive and emotional functioning in the MR and AR, the ministry only mentioned this discrepancy at the hearing and did not indicate that it weighed this information against the information provided by the appellant in the SR or RFR.

The panel finds that ministry failed to demonstrate that it considered the information as a whole when making its determination regarding mental impairment. Therefore, the panel finds that the ministry was not reasonable in its determination that the evidence does not support a finding that the appellant suffers from a severe mental impairment and that the legislative criteria outlined in Section 2(2) of the EAPWDA.

#### *Restrictions in the ability to perform DLA*

Section 2(2)(b)(1) 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. 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 appellant argued that due to her intellectual disability, anxiety, and psoriasis, she struggles to complete her DLA independently. She argued that she struggles to manage life and feels that she is trapped.

The ministry argued that it is not satisfied that the information provided establishes that an impairment directly and significantly restrict DLA continuously or periodically for extended periods.



The ministry noted that in the AR, which was signed by the physician, indicated that the appellant independently performs the majority of her DLA. Of those tasks that required periodic assistance (such as basic housekeeping, laundry, reading prices/labels, and carrying purchases home) the physician did not indicate the type, frequency or duration of the assistance required. Without such information, it is difficult for the ministry to conclude that there is a direct and significant restriction to DLA. The ministry noted that the appellant did provide information about how her DLA are restricted. However, the ministry noted that this information was not confirmed by the physician. The panel finds that the legislation is very clear that any restriction to DLA must be in the opinion of a prescribed professional. The panel also finds that though the physician indicated that the appellant has difficulty with dexterity, fine motor movement and that the appellant is “physically unable to use hands to perform general household chores”, in the AR, this limitation did not translate into his assessment of the appellant’s ability to perform her DLA.

The panel considered the assessment by the physician in the PWD application of independence with almost all of the DLA, the lack of information regarding the causal link between a physical or mental impairment and a restriction to perform some DLA either continuously or periodically for extended periods, and that insufficient additional or supporting information was provided from a prescribed professional at appeal to support the appellant’s position. The panel finds that the evidence provided by the physician does not describe or indicate that a severe impairment restricts the appellant’s ability to perform DLA either continuously or periodically for extended periods.

Given the evidence as a whole, the panel finds that the ministry reasonably concluded that the evidence does not establish that an impairment significantly restricts DLA continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

#### 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 appellant argued that she needs help completing day to day household tasks because the psoriasis is so bad.

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

The panel notes that, AR, the physician indicated that assistance is required from family. However, it was not indicated what assistance is provided, how often or for how long.

Given that confirmation of direct and significant restrictions with DLA is a precondition of the need for help criterion and because 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 is a reasonable application of the applicable enactment, and therefore confirms the decision. The appellant is not successful on appeal.

### **Legislation**

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

#### **Persons with disabilities**

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the

purposes of this Act if the minister is satisfied that the person is in a prescribed class of persons or that the person

has a severe mental or physical impairment that

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

- (i) an assistive device,
- (ii) the significant help or supervision of another person, or
- (iii) the services of an assistance animal.

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

The EAPWDR provides as follows:

### **Definitions for Act**

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

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

activities:

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

(vi) move about indoors and outdoors;

- (vii) perform personal hygiene and self care;
- (viii) manage personal medication, and

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

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

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

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

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

2021-0231

**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

Neena Keram

Signature of Chair

Date (Year/Month/Day)

2021/12/17

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2021/12/17

Print Name

David Handelman

Signature of Member

Date (Year/Month/Day)

2021/12/17