Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated November 19, 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 requirement but was not satisfied that:

• the appellant has a severe mental or physical impairment;

• the impairment, in the opinion of a medical practitioner or nurse practitioner; is likely to continue for at least 2 years;

• the 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 submitted on September 7, 2021 and denied on September 22, 2021. On October 21, 2021, the appellant submitted a *Request for Reconsideration* ("RFR") with an extension request to November 19, 2021 to submit additional information. On November 19, 2021, the ministry received additional information and completed the review of the RFR.

2. An RFR signed by the appellant on October 21, 2021, with a request for an extension because the appeal package was lost in the mail. On November 19, 2021, the appellant submitted a new RFR with a hand-written statement and 3 letters from a rheumatologist dated November 8, 2021, October 18, 2021, and October 22, 2020.

3. The PWD application comprised of:

- the *Applicant Information* (self-report - "SR") signed by the appellant on July 14, 2021, with a hand-written submission.
- a *Medical Report* ("MR") dated July 21, 2021, signed by a general practitioner ("Dr. A") who has known the appellant for 6 years and has seen the appellant 11 or more times in the past 12 months; and an
- *Assessor Report* ("AR") dated August 11, 2021, also completed by Dr. A who says they based the assessment on an office interview with the appellant.

4. A letter from the ministry dated September 22, 2021, with attached *Denial Decision Summary* advising that the appellant did not meet all of the criteria for PWD designation.

Summary of relevant evidence from the application and RFR:

Diagnoses

In the MR, the appellant was diagnosed with Crohn’s colitis (onset May 2017) and inflammatory arthritis (onset May 2019). Section B - *Health History,* and Section C - *Degree and Course of Impairment* were left blank. In Section F - *Additional Comments*, Dr. A explained that the appellant had a reaction to the medication for Crohn’s which made his inflammatory arthritis worse.

In the AR, Dr. A indicated the appellant is receiving opiate replacement therapy for illicit drug use.

In the SR, the appellant said his disabilities include rheumatoid arthritis, Crohn’s disease, Barrett’s esophagus, cirrhosis of the liver, gall stones, sleep apnea, migraines, drug induced lupus, visual impairment, and addiction to opioids.

In the RFR, the appellant explained that when Crohn’s was diagnosed in 2017, he was placed on a medication (Humira), but after being on the treatment for a year and a half, he noticed that it had significantly increased his inflammatory arthritis. The appellant said he stopped taking the medication a year ago and the only medications he takes now are Suboxone for opioid addiction, and Ibuprofen which he has been advised to stop taking as a result of liver damage. The appellant reported 2 “near fatal overdoses” from opioid addiction. The appellant said he is currently undergoing tests and blood work and is waiting for an appointment with a new gastroenterologist.

The letters from the rheumatologist confirmed the appellant’s inflammatory arthritis, history of Crohn’s disease, and medication for opioid addiction. The rheumatologist also reported a non-specific skin condition (the appellant is waiting to see a dermatologist, obstructive sleep apnea (the appellant is awaiting CPAP therapy), significant cirrhosis of the liver, and occasional migraine headaches. The rheumatologist indicated that the appellant may have lupus arthritis

which is seen in approximately 1% of patients who were taking Humira. The rheumatologist described the appellant's vision, hearing, and appetite as good. The appellant has some shortness of breath with exertion and no numbness of the extremities.

Functional skills

Medical Report

In Section D, Dr. A indicates the appellant can walk less than 1 block unaided on a flat surface and climb 5 or more steps unaided. The appellant is able to lift 15-35 lbs. and remain seated for 1-2 hours. The appellant has no difficulties with communication.

For question D-6, the Dr. A. checked *no*, the appellant does not have any significant deficits with cognitive and emotional function.

Under *Additional Comments* (Section F), Dr. A stated, "patient had a reaction to the medication for his Crohn's which made his inflammatory arthritis worse."

Assessor Report

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

Under section B-3, *Mobility and Physical Ability*, Dr. A indicated restrictions for all 6 areas listed:

- *Walking* indoors: uses an assistive device: comment, "cane indoors"
- *Walking outdoors*: comment, "unable."
- *Climbing stairs*: Requires continuous assistance from another person, and needs an assistive device: comment, "cane and railing"
- *Standing*: comment, "cane, maximum of 2-3 minutes"
- *Lifting*: comment, "maximum 10-15 lbs."

- *Carrying and holding*: comment, “unable”, “gets groceries delivered”

Under *Comments*, Dr. A wrote that the appellant is “very limited in ability to do things, uses the stairs once per day due to difficulty doing so.” For *Additional Information* (section E), the doctor said the appellant described “marked mobility difficulties die to inflammatory arthritis.”

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. A. indicated *no impact*, except for 1 area:

- *Bodily functions (toileting, poor hygiene)*: *moderate impact*

<u>Self-reports</u>

The appellant described pain in his hands, knees, and feet due to arthritis. The pain never goes away but moves from joint to joint leaving the appellant with limited mobility, some days he is unable to walk even half a block. The appellant described not being able to sleep due to pain combined with sleep apnea which leave him tired all day. The appellant said that Crohn’s is also a “major impediment leaving me with abdominal pains throughout the day.” The appellant said that his vision is still impaired from multiple cataract surgeries as well as migraines.

In the submission with the RFR, the appellant said he has had no relief from arthritis pain even despite stopping the Humira medication. The appellant describes swollen hands in the morning which makes activities difficult, and going up and down stairs is a “day by day thing.”

<u>Letters from rheumatologist</u>

October 18, 2021

The rheumatologist reported that the appellant elected to stop taking Humira a year ago due to inflammatory arthritis but has not had a flare up of his Crohn's disease despite some cramping in the morning.

The appellant's joint symptoms have not improved and he is currently having problems with pain in the elbows, wrists, knees, and feet including "occasional swelling particularly in the knee areas." The appellant reported 20 minutes of morning stiffness.

The rheumatologist said that the appellant sleeps reasonably well despite sleep apnea and morning fatigue. The appellant experiences some dryness of his eyes but no photo-sensitivity. The appellant is doing some limited walking but no formal exercise program. The appellant is doing well with Crohn's symptoms at the present time but needs follow up with gastroenterology, as well as dermatology for a rash.

October 22, 2020

The rheumatologist reported that the appellant had some increasing small and large joint inflammation due to inflammatory arthritis and recently had some abdominal cramps from Crohn's disease that were relieved by bowel movements.

The appellant's sleep was described as poor and accompanied by morning fatigue. Functionally, the appellant "is quite limited in the morning as well as the day because of the joints." On examination, the appellant was reported to be in "severe distress" with active

inflammation across his wrists, hands, and knees. The appellant's blood work showed mild anemia.

The appellant did quite well on Humira initially but at the present time had some gastrointestinal ("GI") complaints as well as a flare of inflammatory arthritis. The appellant was prescribed a steroid medication for 2 weeks for at least some short-term control of his inflammatory joint symptoms.

November 8, 2021

The rheumatologist said the appellant's bowel symptoms are better, with cramps in the morning which are much better after bowel evacuation. The appellant's most significant joint problem is left knee pain and swelling with lesser complaints for his ankles, toes, and hands. The appellant experiences 45-60 minutes of morning stiffness.

The rheumatologist said the appellant sleeps well despite sleep apnea which causes morning fatigue. Walking is limited to half a block, mainly because of the appellant's knee pain which also makes stairs a challenge. The appellant is not attending a gym or doing an exercise program.

On examination, the rheumatologist said the appellant experiences "mild distress," has "pretty good range [of motion] in his shoulders, elbows, and wrists, and not a lot of inflammation in the small joints of his hands. The appellant's hip range of motion "is reasonable." The appellant's knees have swelling more on the left side with knee pain. There is also some pain the ankle, and minimal forefoot pain.

The rheumatologist has referred the appellant for updated blood work, and x-rays/radiographs of the lumbar spine, "SI joints", and knees. The appellant may need to go back on medication for his Crohn's symptoms as he had a good response in the past to Humira despite positive

indicators of arthritis (“ANA and ENA”).

Daily Living Activities

<u>Medical Report</u>

Dr. A checked *no*, the appellant has not been prescribed medications or treatments that interfere with the ability to perform DLA.

In Section E - *Daily Living Activities*, Dr. A checked yes, the impairment restricts the appellant’s ability to perform DLA. The doctor provided check marks and comments for 3 DLA that are restricted:

- *Personal self care*; periodic restriction, comment, “limits showering to every 3 days due to difficulty in shower (numb leg).”
- *Basic housework*: periodic restriction.
- *Mobility outside the home*: continuous restriction, comment, “only goes up and down 12 steps at home once per day.”

Dr. A indicated no restrictions for the following DLA

- Meal preparation
- Management of medications
- Daily shopping
- Mobility inside the home
- Use of transportation
- Management of finances
- Social functioning

Although transportation was marked as independent, Dr. A commented that the appellant “can only use a taxi for transportation, unable to stand at bus stop or on bus.”

Assessor Report

In Section B1 - *Mental or Physical Impairment*, Dr. A wrote that the appellant “struggles with personal care, difficulty putting on socks, pain to stand in shower, only able to shower once per month, not able to walk outside more than half a block.”

In Section C - *Daily Living Activities*, Dr. A indicated the following restrictions for 6 of the 8 DLA listed, in that these DLA take significantly longer than typical to perform:

- ***Personal Care***: The appellant is restricted with 5 of the 8 activities listed:

  - *Dressing*: comment, “takes 10-15 minutes to dress”
  - *Bathing*: comment, “only does this 1-2 times per month, pain standing”
  - *Toileting*: comment, “difficulty wiping due to joint pain”
  - *Transfers (bed)*: comment, “takes longer to get out, 5 minutes, sore”
  - *Transfers (chair)*: comment, “takes longer, takes time to get moving.”

The appellant was assessed as independent with *Grooming*, *Feeding self*, and *Regulating diet*.

- ***Basic Housekeeping***: The appellant is continuously restricted with both areas:
  - *Laundry*: comment, “unable”
  - *Basic Housekeeping:* comment, “continuous assistance [from partner].”

- ***Shopping***: The appellant needs continuous assistance for 2 areas:

  - *Going to and from stores*: comment, “unable”
  - *Carrying purchases* home: comment, “unable”

The appellant was assessed as independent with 3 areas of *Shopping*: *Reading prices and labels*, *Making appropriate choices*, and *Paying for purchases*.

Under *Additional comments* for these DLA, Dr. A stated, “patient struggles to put garbage/recycling out once per week. Does not go to grocery store due to joint pain and difficulties walking and standing. All delivery of items. Takes inordinate amount of time to bathe and dress due to prolonged stiffness.”

- ***Meals***: The appellant needs continuous assistance *from another person* for 1 area:

  - *Cooking*: comment, “unable, limited to pre-packaged processed meals.”

The appellant was assessed as independent with 3 areas of *Meals*: *Meal planning*, *Food preparation*, and *Safe storage of food*.

- ***Transportation***: The appellant needs continuous assistance with 1 area:

  - *Using public* transit: comment, “unable, cannot stand or walk to bus stops.”

The appellant was assessed as independent with 2 areas of *Transportation*: Getting *in and out of a vehicle*, and *Using transit schedules and arranging transportation.*

Under *Additional comments* for these DLA, Dr. A wrote, “no safety issues.”

In Part E - *Additional Information*, Dr. A stated that the appellant describes mobility difficulties due to inflammatory arthritis which impairs DLA.

- ***Social Functioning***: The appellant needs *periodic support/supervision* with 1 area:
  - *Appropriate social decisions*: comment, “has had episodic indiscretions of illicit drug use, 2 relapses in the past 2 years. Back on opiate replacement therapy.”

When asked to describe the support/supervision required to maintain the appellant in the community, Dr. A wrote, “stable cognition, able to get out of addictive behaviour.”

The appellant was assessed as independent with the remaining areas of *Social functioning*: *Able to develop and maintain relationships*, *Interacts appropriately with others*, *Able to deal appropriately with unexpected demands*, and *Able to secure assistance from others*.

Dr. A checked that the appellant has *good functioning* with his immediate and extended social networks. No safety issues were identified.

The appellant was assessed as independent with all areas of 2 DLA:

- ***Pay Rent and Bills***: The appellant is independent with *Banking*, *Budgeting*, and *Pay rent and bills*.

- ***Medications***: The appellant is independent with *Filling/refilling prescriptions*, *Taking as directed*, and *Safe handling and storage*.

Letters from rheumatologist

October 18, 2021

The rheumatologist reported that the appellant was independent with personal care and active around the house

November 8, 2021

The rheumatologist described the appellant as independent with personal care although he has difficulty tying his shoes. The rheumatologist wrote that the appellant is doing some cooking and housework, and was last employed in 2018.

Self-reports

In the SR, and submission for the reconsideration, the appellant described difficulties with personal care (toileting) and said that he avoids going to the toilet because his hands are so cramped and swollen, especially in the mornings. The appellant also said that taking out the garbage is a "day to day thing."

Need for help

Information from the MR and AR

In the MR under *Health History* (Section 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 noted the appellant's "occasional use of a cane" for DLA.

In the AR, Dr. A indicated the appellant lives with family who provide continuous assistance with housekeeping. Dr. A noted that the appellant uses a cane indoors, and while climbing stairs and standing.

In section D - *Assistance provided through the use of Assistive Devices*, Dr. A checked *cane*, comment: “cane for stairs twice per day, occasionally walking at home, always used outside home.”

Dr. A checked *no,* the appellant does not have an assistance animal.

Additional submissions

Subsequent to the reconsideration decision the appellant filed a *Notice of Appeal* with a brief type-written statement in which he states that his mobility is limited and unpredictable and he has difficulty with personal care (showering, dressing, and toileting) due to severe pain most days.

At the hearing, the appellant elaborated on his impairments stating that:

- he has difficulty reading the reconsideration decision due to cataract surgeries, he had 4 surgeries because some of them failed and he is unable to read small print;
- his condition fluctuates but “good days are few and far between” and he feels constant pain;
- he has memory problems that are either related to sleep apnea or opioid addiction, he can speak and understand things but 2 overdoses left him with memory issues;
- he has difficulty taking the garbage out and has to use the cane;
- he could lift 10 lbs. on a “good day” but not on a daily basis;
- he can’t sit for prolonged periods, or move about freely most days without the cane;
- he doesn’t go out unless he has to for medical appointments and he tries to go in the afternoon when his pain and stiffness is a bit better. He cannot use public transit due to restrictions with walking and standing, and

even taking a taxi is uncomfortable because of arthritis.
- It used to take 15 minutes to get in and out of the shower, but now it takes him 45 minutes.

Admissibility of oral evidence

The ministry did not raise any objections to the appellant's testimony. The panel admits the oral submissions under section 22(4) of the *Employment and Assistance Act* as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The panel finds that the appellant's testimony is relevant to the appeal because it provides an additional self-report with further detail and updated information on restrictions and daily functioning.

The ministry relied on the reconsideration record and did not submit any new evidence at the hearing. Both parties stated their arguments which the panel will consider in Part F - Reasons.

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 impairment, in the opinion of a medical practitioner or nurse practitioner; is likely to continue for at least 2 years;

• the 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.

Analysis

Impairment likely to continue for at least 2 years

Arguments

In his RFR submission the appellant argued that he doesn't think he "will ever be fully functional" given his numerous conditions and symptoms. The appellant explained that when he got the PWD medical forms back from Dr. A he didn't know that the doctor had skipped over the question in the MR that asks how long the impairment is expected to last.

The ministry argued that Dr. A did not provide any information on the expected duration of the impairment and therefore the legislative

requirement was not met.

Legislative requirement

The legislation requires all the criteria in section 2 of the EAPWDA to be met, to be eligible for designation as a PWD. Section 2(2)(a) requires a medical practitioner or nurse practitioner to confirm that the applicant's impairment is likely to continue for at least 2 more years.

The legislation does not specify the starting point for the assessment of the 2-year period but in section C-1 of the MR, the medical practitioner is asked to indicate whether the impairment is likely to continue for 2 years or more "from today." The doctor signed the MR on July 21, 2021. The legislative test is forward-looking and in the circumstances of the appellant, the appellant's impairment should persist until July 2023 or beyond to meet the legislative requirement.

Panel's decision - duration of impairment

The panel finds that the ministry was reasonable to conclude that a medical practitioner did not confirm that the appellant's impairments will continue for at least 2 more years. In section C-1 of the MR, Dr A did not check *yes* or *no* in response to the question of whether the impairment is likely to continue for 2 years or more. In addition, Dr. A did not provide any comments on the expected duration of the impairment in either the MR and AR or any information about the duration of treatment that would support a longer lasting impairment.

The letters from the rheumatologist indicated the appellant's Crohn's symptoms stabilized with medication but there was a subsequent flare up of GI symptoms as well as arthritis that developed as a side effect of the medication. Despite additional information about the appellant's conditions, the rheumatologist did not confirm the expected duration of any of the appellant's diagnoses.

The panel therefore finds that the ministry's decision on the duration requirement was reasonably supported but the evidence. The ministry's application of the legislation, section 2(2)(a) of the EAPWDA, was reasonable in the circumstances of the appellant.

Severe mental or physical impairment

Arguments

Appellant

The appellant argued that he has severe pain and mobility problems "most days" which basically leave him housebound as it is very difficult to walk even a short distance or climb stairs. The appellant argued the "reality is that he cannot move around most days without a cane." The appellant said that even though his symptoms may not be constant, the pain is always there.

The appellant acknowledged the ministry's point that the ability to work is not a factor for PWD eligibility but maintained that he would "be happy to work and go out and do things" if he wasn't hampered by his impairments.
The appellant focused on his physical impairment from Crohn's disease and rheumatoid arthritis but also reported a mental impairment in the form of "memory issues" that were still being assessed, as well as communication difficulties (reading) due to reduced vision from cataract surgeries. The appellant said he didn't know why Dr. A didn't explain the impact of 2 "near fatal overdoses."

In response to questions at the hearing, the appellant said he made it clear to Dr. A that he doesn't go out, and he doesn't know why the doctor didn't describe his condition thoroughly in the PWD application. The appellant explained that he dropped off the PWD medical reports and Dr. A filled them out with him over the phone but Dr. A "may have

felt put upon" to fill out the forms.

The appellant said he got additional letters from the rheumatologist to explain his other conditions since Dr. A only mentioned the Crohn's disease and arthritis. The appellant hoped that the ministry would give more weight to the information from the rheumatologist but acknowledged that he usually saw the rheumatologist on a "good day" or in the afternoon when he felt well enough to go to the appointment.

Ministry

The ministry argued that the information from Dr. A was not clear enough to establish a severe impairment of physical functioning because although the appellant was restricted to walking less than 1 block (MR), most physical functions were adequate (able to lift 15-35 lbs. and remain seated 1-2 hours) and there was conflicting information between the MR and AR regarding the appellant's ability to mobilize inside the home, and climb stairs (unaided in the MR versus needing a cane in the AR).

Further, the ministry noted that the most recent information from the rheumatologist indicated the appellant was experiencing only "mild distress" and had a good range of motion despite swelling and pain in the left knee but minimal pain in other areas. The ministry argued that the information from Dr. A, and the rheumatologist was more in keeping with a moderate (rather than a severe) physical impairment.

Regarding mental functioning, the ministry noted that Dr. A did not diagnose a mental impairment or report any deficits with cognitive and emotional functioning except for a moderate impact for bodily functions, specifically toileting and hygiene. The ministry noted that the appellant's ability to communicate was also assessed as good. The ministry argued that a moderate impact in only one area, with no significant deficits across all other cognitive and emotional functions, could not establish a severe mental impairment.

Legislative requirement

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.

Panel's decision - mental impairment

The panel has considered the evidence as a whole and finds that the ministry was reasonable to conclude the appellant does not have a severe mental impairment. None of the medical reports or letters diagnosed a mental impairment. In the MR, no significant deficits with cognitive and emotional function were reported. In the AR, Dr. A indicated a moderate impact for only one area, *bodily functions*, despite the appellant also describing problems with poor sleep, communication (reading), and memory.

The rheumatologist's most recent letters (October and November 2021) indicated the appellant was sleeping well despite sleep apnea and morning fatigue. Neither Dr. A nor the rheumatologist indicated any issues with memory due to either sleep apnea or drug overdoses. The evidence from both the appellant and the rheumatologist was that sleep apnea was still under investigation because the appellant was waiting to have CPAP treatment approved. The panel therefore finds that the ministry reasonably determined that a *severe* mental impairment under section 2(2) of the EAPWDA was not established on the evidence.

Panel's decision - physical impairment

When the panel considered the evidence, it found a wide disparity between the impairment as described by the appellant, and the impairment documented by Dr. A. Given this disparity, it is reasonable that the ministry would rely primarily on the information provided by the doctor which indicated less severe functional restrictions with the exception of walking. In the MR, the appellant's ability to walk was restricted to less than 1 block unaided (one half block outside). In the AR, Dr. A reported that the appellant always uses a cane outside. The recent letters from the rheumatologist confirmed that the appellant can walk only half a block outdoors due to knee pain. It was therefore established on the evidence that the appellant has significant limitations with walking outdoors.

However, the panel finds that the ministry's determination of a moderate (rather than severe) physical impairment was reasonably supported by the evidence of restrictions and limitations as a whole. As the ministry noted, the appellant's ability to walk indoors was not as clearly described. In the MR, mobility inside the home was not restricted despite occasional use of a cane for indoor walking (noted in both the MR and AR). The rheumatologist's letters indicated a widely fluctuating level of morning stiffness due to inflammatory arthritis (lasting 45-60 minutes in
November 2021 versus 20 minutes in October 2021). It was unclear from the evidence how often the greater degree of restriction occurs and to what extent it impacts indoor mobility.

In addition, the evidence regarding stairs had discrepancies across reports. In the MR, the appellant could climb 5 or more steps unaided (the lowest degree of restriction on the rating scale) and go up and down 12 steps at home. In the AR, which was completed 3 weeks after the MR, stairs were restricted to once a day "due to difficulty doing so" and the appellant uses a "cane and railing" for stairs "twice a day" despite not needing any assistive device in the MR. Dr. A did not provide an explanation for the greater degree of restriction reported in the AR.

The most recent letter from the rheumatologist stated that "stairs are a challenge" for the appellant because of knee pain but looking at the evidence as whole, including the rheumatologist's recent comments regarding the appellant's "mild distress," good range of motion, and minimal pain and inflammation in several areas (hands, ankles and forefoot), the panel finds the ministry was reasonable to conclude that the overall degree of restriction was unclear. The appellant argued that "most days are not good" but a large number of "bad days" was not confirmed by the doctor or the rheumatologist.

The evidence indicated that the appellant's greatest source of restriction

is knee pain which limited his ability to walk outdoors. Other physical functions were not as severely or consistently restricted across the medical reports and letters. The appellant's self-reported "severe restrictions" with lifting and remaining seated were not supported by the information from his doctors. In both the MR and AR, the appellant was able to lift a moderate weight (15-35 lbs. - MR, and 10-15 lbs. - AR despite being unable to carry items such as groceries. The panel therefore finds that the ministry reasonably determined that a severe physical impairment under section 2(2) of the EAPWDA was not established on the evidence.

Restrictions to daily living activities

Arguments

The appellant argued that personal care causes him "severe trouble" including pain with showering, dressing, and toileting. The appellant said he avoids going to the toilet due to cramping and swelling in his hands. The appellant described the fluctuating nature of his restrictions and said that taking out the garbage is a "day by day thing" depending on the severity of his pain. At the hearing, the appellant reported that he is unable to read small print due to cataract surgeries; he always has to have groceries delivered, and even taking a taxi is uncomfortable for him.

The ministry argued there was not enough evidence from prescribed professionals (Dr. A and the rheumatologist) to confirm that DLA were restricted continuously or for extended periods. The ministry argued that the information indicated the appellant was able to manage several DLA independently and the degree of assistance he required was unclear.

Legislative requirement

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 not being able to do DLA without a lot of help, or support from an assistive device 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 activity is restricted most days of the week, or for the whole day on the days that the person cannot do the activity without help or support.

The panel views the ministry's interpretation of the legislation as reasonable. Accordingly, where the evidence indicates that a restriction arises periodically or requires periodic support as was indicated in the MR and AR for several DLA, it is appropriate for the ministry to require information on the duration and frequency of the restriction as well as details about the help or support that is needed. With that information, the ministry can assess whether the legislative requirement is met.

DLA are defined in section 2(1) of the EAPWDR and are also listed in the MR, with additional details in the AR. Therefore, the doctor or other practitioner completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the applicant's impairments either continuously or periodically for extended periods and to provide additional details. **It is important to note that under the**

legislation, the inability to work or manage job or training duties, is not considered a DLA. Also, the ministry cannot consider financial need in determining PWD eligibility.

Regarding how many DLA need to be impacted for the legislative requirements to be met, the BC Supreme Court decision *Hudson* v. *Employment and Assistance Appeal Tribunal* [2009 BCSC 1461] stated that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two DLA. Not all DLA need to be affected by the severe impairment.

Panel's decision - restrictions to DLA

The panel has considered the evidence from Dr. A in the MR and AR, with additional information from the rheumatologist. The panel finds that the reconsideration decision was reasonably supported by the evidence. While it is obvious that the appellant's arthritis makes physical movement difficult, there was inconsistent information between the MR and AR for most DLA so it was difficult to get a clear picture of restrictions.

For example, restrictions were reported for *Personal Care*, but there was inconsistent information between the MR and AR regarding the degree of the restriction. In the MR, the restriction was periodic, "limits showering to every 3 days" but in the AR, the appellant showers only once or twice a month due to pain upon standing. To further confuse the assessment, the most recent letters from the rheumatologist said the appellant is functionally independent with personal care despite having difficulty putting on his shoes.

In the AR, Dr. A said the appellant takes an "inordinate amount of time to dress due to prolonged stiffness. Dr. A indicated that getting dressed took the appellant 10-15 minutes, which in the panel's view, supports the ministry's finding of a moderate level of restriction. Taking 5 minutes to transfer out of bed also did not indicate a significant degree

of restriction.

In the MR, *Meal preparation* was not restricted, but in the AR, the appellant was unable to cook at all and could only prepare pre-packaged meals. There was inconsistent information for *Basic housekeeping* between the MR and AR. In the MR, housekeeping was only periodically restricted, but in the AR, the appellant was unable to do laundry and required continuous assistance from family for *Basic housekeeping*. The panel finds the ministry was reasonable to conclude that the degree of restriction was not clearly and consistently laid out in the reports. Dr. A did not offer any explanation for the discrepancy between the assessments in the MR and AR and the rheumatologist said the appellant is doing some of the cooking and housework.

There was also inconsistent information for *Shopping*. In the MR, *Daily shopping* was not restricted, but in the AR the appellant was unable to go to the grocery store "due to joint pain and difficulties walking and standing." This degree of restriction was supported by the evidence on very limited walking due to inflammatory arthritis. However, the appellant was not restricted with *Reading prices and labels* or managing medications and finances despite his self-reported visual impairment and memory issues.

In the MR, *Use of transportation* was checked as not restricted but the doctor commented that the appellant can only use a taxi for transportation as he is unable to stand at the bus stop. While this assessment was consistent with the AR ("cannot stand or walk to bus stops") it is unclear why the appellant does not also have difficulty taking a taxi due to his problems with stiffness and pain. The appellant said at the hearing that even a taxi is challenging for him, but in the AR, Dr. A assessed the appellant as independent with *Getting in and out of a vehicle*.

Regarding *Social functioning*, the appellant was assessed as independent with all areas (AR) except *appropriate social decisions* for

which he needed periodic support/supervision because of relapses in his opioid addiction. However, Dr. A also said the appellant has “stable cognition, able to get out of addictive behaviour” and he has good functioning with his social networks. Therefore, no significant restriction was reported for *Social functioning*.

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. The strongest evidence for significant restrictions to DLA was for one area of *Shopping*: *Going to and from stores*. There was conflicting evidence or not enough evidence from the appellant’s doctors for restrictions to most DLA. The panel therefore finds that the ministry reasonably determined that significant restrictions were not established under subsection 2(2)(b)(i) of the EAPWDA.

Help with daily living activities

Arguments

The appellant argued that he needs help to manage DLA because he is in constant pain from his rheumatoid arthritis, and he has multiple medical conditions on top of the arthritis. The appellant said that he considers the bannister on the stairs, as well as his cane, to be assistive devices. At the hearing, the ministry explained that they can only consider assistive devices as they are defined in the legislation. In the reconsideration decision, the ministry argued that because DLA were not significantly restricted, it could not be determined that significant help from other persons was required.

Legislative requirement

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 to perform DLA. An "assistive device" is defined in section 2(1) of the EAPWDA as a device specifically 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. The panel finds the ministry was reasonable in saying that, that a stair railing would not meet the statutory definition of assistive device.

Panel's decision - help with daily living activities

The evidence indicated the appellant does use an assistive device (cane) for outdoor mobility all the times, and periodically indoors as well. However, 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 was reasonable because the evidence from the appellant's doctors did not clearly or consistently describe the degree of restriction for most DLA. The panel therefore finds that 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 was reasonably supported by the evidence. To be eligible for PWD designation, the legislation requires all the criteria to be met. The ministry was reasonable in finding that only the age requirement was met because there was insufficient evidence to confirm the appellant has a severe impairment that will continue for at least 2 more years, and that significantly restricts DLA continuously or for extended periods, and that the appellant therefore needs help with DLA. 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) 2021/12/31

Print Name: Wesley Nelson	
Signature of Member	Date (Year/Month/Day) 2021/12/31
Print Name: Robert (Bob) Fenske	
Signature of Member	Date (Year/Month/Day) 2021/12/31