

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) Reconsideration Decision dated December 1, 2021 which found that the appellant did not meet all of the 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 requirement. However, the ministry was not satisfied that the evidence established that:

- the appellant has an impairment that is likely to continue for at least two years;
- the appellant has a severe mental and/or physical 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 these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, 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

Appeal Number 2021-0238

Part E – Summary of Facts

Evidence at Reconsideration

1. The appellant's PWD application comprised of a Medical Report (MR) and Assessor Report (AR) [dated May 31, 2021], which was completed by the appellant's GP (the GP), who had known the appellant since March 2021 and seen him 2-10 times in the past 12 months. The approaches and sources used to conduct the MR and AR was a phone interview with appellant and file/chart information. The PWD application also included the appellant's Self-Report (SR) dated May 27, 2021.
2. An X-ray report dated February 12, 2021 which indicated "There is a severe disc narrowing with small endplate osteophytes at L5-S1".
3. Letter from a local advocacy agency dated July 2, 2021. The letter is addressed to the GP and asks to confirm that the appellant is unable to return to work or work in any capacity in the future by placing a 'check mark' in the 'yes' box. The GP confirmed.
4. Request for Reconsideration (RFR), signed and dated November 22, 2021, in which the appellant stated, in part, the following:
 - The GP signed a form stating that the appellant is unable to return to work of any type in the future;
 - The fact that the appellant is unable to work should qualify for PWD;
 - He can walk 2-4 blocks and climb 5 steps, but it takes 3 times longer and leaves him in pain;
 - He can lift 5-15 lbs, but it causes pain, and it cannot be repeated too often.
 - He is always stiff, sore and in pain;
 - He can sit for 1-2 hours but will change positions and be in pain;
 - He uses a cane for assistance;
 - He does DLA as little as possible because they cause pain;
 - He does not stand to cook and gets take-out or microwavable meals;
 - He shops once per month and his daughter does all the heavy lifting;
 - His daughter cleans his bathroom, and he will mop and vacuum once per month. He only has one room and a bathroom;
 - He is restricted in the management of his medications;
 - He relies on his daughter for transportation;
 - He dresses in sweats and a housecoat, so he does not have to struggle with dressing; and
 - He has been struggling with this condition for 20 years.

Diagnoses

In the MR, the GP notes that the appellant has been diagnosed with Chronic Backache L1-S1.

Health History

In the MR, the GP indicated that the application is "based on limited" information, and patient "has chronic backache – [difficulty] doing daily chores".

Degree and Course of Impairment

In the MR, the GP indicated that he is "unsure" if the appellant's impairment will likely continue for 2 or more years from the date of the application.

Physical Impairment

In the MR the GP indicated the following about the appellant:

- Can walk 2-4 block and climb 5+ steps unaided, lift 5-15 lbs and remain seated for 1-2 hours.

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

- “difficulty standing prolonged time”
- Walking indoors/outdoors, climbing stairs, standing, lifting, and carrying/holding are all performed independently, with the comment: “periodic help on bad days (walking [illegible]).”

Mental Impairment

In the MR, the GP indicated the following about the appellant:

- There are no difficulties with communication.
- There are no significant deficits with cognitive and emotional function.

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

- Speaking, reading, writing, and hearing are good.
- ‘No impacts’ to all listed items in the cognitive and emotional functioning category.
- All listed tasks under ‘social functioning’ are performed independently.
- Good functioning with immediate and extended social networks.

Daily Living Activities

In the MR, the GP indicated the following about the appellant:

- The appellant has not been prescribed any medications and/or treatments that interfere with the ability to perform DLA.
- There are no restrictions with performing DLA.
- The appellant is periodically restricted with his performance of “personal care” and “meal preparation”.
- “occasional help for daily chores except [illegible]”.
- Occasional difficulty with daily chores.

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

- All listed tasks under ‘personal care’, ‘basic housekeeping’, and ‘shopping’ are performed independently, and comment: “Periodic help from daughter on [illegible] days, except [illegible] and bathing”.
- All listed tasks under ‘meals’, ‘pay bills/rent’, ‘medications’, and ‘transportation’ are performed independently, and commented: “periodic help as needed”.

Need for Help

In the MR, the GP indicated the following:

- That the appellant does not require any prostheses or aids for the impairment.

In the AR, the GP indicated the following:

- The appellant lives with family, friend, or caregiver.
- The appellant receives help from family.

- Under 'describe what assistance would be necessary' the GP stated "unsure".
- The appellant occasionally uses a cane as an Assistive Device.
- No assistance is provided by Assistance Animals.

Additional Comments

- In the MR – "Unsure as not received medical records from previous physician. X-ray shows L5-S1 [illegible].
- In the AR – "unable to comment yet".

Evidence Prior to the Hearing

Prior to the hearing the appellant submitted the following documents:

1. 7-page medical report for the Canada Pension Plan (CPP) Disability Pension application, which was completed by the GP, and indicated that the appellant has lumbar disc degeneration, its onset has been more than 2 years and there is constant lower back pain. The appellant's DLA are impacted, including walking (cannot walk beyond 2-4 blocks), difficulty getting up and walking, he has to get only microwaved food, cannot cook, no driving. The prognosis is that the condition will remain the same, expected duration is more than 1 year and frequency is continuous.
2. Lumbar spine X-ray dated February 12, 2021, which was previously listed here.
3. 2-page telephonic dictation of the appellant's visits with the GP dated March 24, 2021 to October 5, 2021.
4. 2-page telephonic dictation of the appellant's visits with the GP dated March 24, 2021 to May 29, 2021.
5. 1-page surgical pathology report dated July 9, 2021.
6. 2-page Hematology panel and Chem panel report dated, March 16, 2021.
7. 4-page Chart summary indicated the appellant's lab work and observation notes.
8. Report - January 8, 2019 X-ray of the chest and abdomen.
9. May 16, 2019 specialist's report, impression, and plan to deal with the appellant's abdominal pain.
10. July 15, 2019 colonoscopy procedure report.
11. 1-page surgical pathology report dated July 18, 2019.
12. 1-page letter from the specialist dated July 29, 2019 describing the colonoscopy results and that the appellant should have another colonoscopy in 2 years.
13. 3-page physical examination report dated June 27, 2013.
14. June 10, 2013 laboratory requisition request.
15. 2-page medical appointment report– dated October 18, 2012.
16. August 21, 2012 note indicating that the appellant was to be referred to a dermatologist but there is no letter on file.
17. 2-page medical appointment report– dated August 23, 2012.
18. 2-page medical appointment report– dated February 12, 2012.
19. 2-page medical appointment report– dated January 16, 2012.
20. 2-page medical appointment report throat – dated August 3, 2011.
21. 2-page medical appointment report– dated July 20, 2011.
22. 2-page medical appointment report regarding the appellant's back pain – dated January 22, 2008.
23. 2-page medical note regarding the appellant's back pain and requesting that the come see his GP at that time – dated January 15, 2008.

24. 2-page medical appointment report regarding the appellant's back pain – dated January 5, 2008.
25. 1-page medical appointment report– dated January 22, 2008.
26. 2-page medical appointment report– dated June 14, 2007.
27. 1-page medical note requesting that the appellant come see his GP at that time – dated June 12, 2008.
28. 1-page medical note regarding the appellant's chest X-ray – dated February 22, 2007.
29. 3-page physical examination report dated February 19, 2007.
30. 1-page medical note requesting that the appellant come see his GP at that time – dated February 12, 2007.
31. 2-page medical appointment report– dated January 26, 2007.
32. 1-page medical appointment report– dated December 9, 2006.
33. 1-page ultrasound request – dated December 11, 2006.
34. 1-page ultrasound report - dated June 5, 2007.
35. 1-page sinus rhythm report – date unknown.
36. 1-page laboratory results – dated February 20, 2007.
37. 1-page note regarding the appellant's chest – dated February 20, 2007.
38. 1-page ultrasound request – dated February 19, 2007.
39. 1-page ultrasound report - dated June 5, 2007.
40. 1- page laboratory results – dated January 26, 2007.
41. 1-page X-ray report of the lumbar spine – dated January 7, 2008.
42. 1-page lung test report – dated January 6, 2013.
43. 1-page release of information – dated July 20, 2011.
44. 1-page laboratory results – dated June 10, 2013.
45. 1-page sinus rhythm report – date unknown.
46. 1-page cardiology consultation report – dated June 27, 2013.
47. 1-page communicable disease report – date unknown.
48. 1-page referral – dated August 23, 2012 – with a handwritten note that the appellant cancelled the appointment.
49. 4-page laboratory results – dated June 18, 2013.
50. 1-page request for laboratory work – dated June 10, 2013.
51. 1-page laboratory results – dated July 22, 2011.
52. 1-page laboratory report – dated July 21, 2011.
53. 1-page laboratory results – dated July 21, 2011.
54. 1-page laboratory results – dated February 19, 2007.
55. 2-page laboratory results – dated February 21, 2007.
56. 1-page certificate of illness for time off work – dated January 22, 2008.
57. 1-page medical history – dated February 20, 2007.
58. 2-page request for ultrasound consultation – dated February 19, 2007.
59. 2-page request for ultrasound consultation – dated December 9, 2006.

Evidence at Appeal

A Notice of Appeal, signed and dated December 8, 2021, was submitted but left blank.

Evidence at the Hearing

At the hearing the appellant reiterated the information presented in the RFR and, in part, added the following:

- Duration has been met because the GP has confirmed that the appellant cannot work in the future due to the impairment.
- In the CPP application, the GP indicates that the impairment will last more than 1 year.
- His arthritis is severe, and this is confirmed by the X-ray results (February 12, 2021).
- In terms DLA, the appellant is in bed most of the time. He tries to walk outside but must stop to rest after 1 block. He uses a cane to walk outdoors and rails to walk indoors. He eats microwavable meals and cleans once per month.
- Standing for more than 5 minutes causes severe pain and can land him in bed for a week.
- His daughter, who lives upstairs, helps with shopping, heavy lifting, cleaning, and some aspects of dressing such as putting on socks and tie-up shoes.
- He uses a pull-bar and a chair in the shower.
- He will start to attend a pain clinic soon.
- The GP will start him on anxiety medications soon as well because meditation did not help.

In response to questions, the appellant stated the following:

- His daughter lives upstairs. She helps continuously for 1 week of the month and occasionally for the remaining month.
- He uses a cane 50% of the time.
- He needs help 20-25% of the time. However, he does not like asking for help and does so only when he really needs it.
- When things get bad, he cannot function for 1-2 weeks.
- Bending causes pain and he cannot lift anything without pain.
- This is a long-term impairment as he ruptured a disc in his back 25 years ago.
- Surgery has not been suggested and he uses 8-10 Tylenol per day to manage the pain.

At the hearing the ministry relied on its reconsideration decision.

Admission of Additional Information.

The ministry did not object to admitting into record the information submitted prior to the appeal.

A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

In this case, the panel determined that the 7-page application for CPP Disability Pension and 4 pages of recent medical clinic notes (items numbered 3 & 4 in the evidence submitted prior to the appeal) are admissible because this information will allow for full, and fair disclosure of all matters related to the issue on appeal.

The panel determined that the other approximately 81 pages of medical appointment summaries, reports and test results are admissible because this information will allow for full, and fair disclosure of all matters related to the appellant's overall health. However, the panel places little weight on these documents because they do not directly relate to the matters at this appeal.

The panel determined that the appellant's testimony regarding anxiety, and the use of assistive devices (such as a pull bar and chair in the shower) is admissible because this information will allow for full, and fair disclosure of all matters related to the issue on appeal. However, the panel also determined that little weight can be placed on this information because it has not been corroborated by a prescribed professional such as the appellant's GP.

The panel determined that the appellant's testimony regarding:

- His opinion that the arthritis he experiences is severe.
- The help he receives from his daughter, which is continuously for 1 week of the month and occasionally for the remaining month.
- His use of a cane which is 50% of the time.
- His need for help 20-25% of the time.
- When things get bad, he cannot function for 1-2 weeks.
- Bending which causes pain and he cannot lift anything without pain.

is admissible because this information will allow for full, and fair disclosure of all matters related to the issue on appeal. However, the panel also determined that little weight can be placed on this information because it has not been corroborated by a prescribed professional such as the appellant's GP.

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, and that it will likely last for 2 or more years, and that his DLA are, in the opinion of a prescribed professional, directly, and significantly restricted either continuously or periodically for extended periods. Also, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person.

Panel Decision**Duration**

The appellant argued that he has been suffering from backpain for 25 years. He also argued the fact that he cannot work in the future and the GP indicated on the CPP disability application that the condition will last more than 1 year confirms duration.

The ministry argued that based on the information provided, it has not been established that the appellant has an impairment that will likely last for 2 or more years.

In its reconsideration decision, the ministry noted that in the PWD application, the GP indicated that he is "unsure" that the appellant's medical condition will last 2 or more years from the date of the application. The ministry also noted that the July 2, 2021 letter specifically indicated that the appellant is unable to work or return to any type of work in the future. The ministry concluded that it is not satisfied that the reference to the inability to work is sufficient to confirm that a severe mental or physical impairment will likely last 2 or more years.

At appeal, the appellant provided a copy of a 7-page CPP disability pension application. In this application the GP indicated that the appellant's condition is chronic and had an onset of more than 2 years ago. Its expected duration is more than 1 year, its frequency is continuous, and the prognosis is that it will 'remain the same'.

The panel finds that the information provided by the GP in the PWD application does not establish that the appellant's medical condition will likely last for 2 or more years. Regarding the July 2, 2021 letter, the panel finds that the inability to work now or in the future has no bearing on PWD designation. It is clear from the legislation that employability is not a criterion.

The PWD application was completed by the GP in May 2021 and the CPP disability application was completed by the same GP in November 2021. In the PWD application the GP was 'unsure' if the appellant's condition will last for 2-years or more. In the CPP disability application the GP indicated that the condition will last for more than 1 year. The sources of information for the PWD application were file/chart information and the sources for the CPP disability application were 'longitudinal clinical notes' and 'previous x-ray'. The panel acknowledges that the appellant is new to the GP and the file/chart information was limited to "Only a few appointments. No previous charts available yet" as indicated in the PWD application. The 'previous x-ray' dated February 12, 2021 was also included

with the PWD application and therefore the GP had access to it at that time. Based on the information, the panel can only assume that the GP obtained previous charts and therefore indicated 'longitudinal clinical notes' as the sources of information on the CPP disability application. However, this is an assumption on part of the panel and the GP did not explain or give reason as to why he has changed his opinion on the duration of the appellant's condition. Without such information two panel members could only place little weight on the information regarding duration in the CPP disability application.

One panel member gave significant weight to the medical report on the CPP disability application because it is updated information from the doctor who completed reports for the initial PWD application. Whether or not there is an explicit reason for the change, the doctor's opinion, which the legislation says must be relied upon has become certain. That member found the medical condition is likely to last for 2 or more years and would have found the ministry's conclusion unreasonable on the evidence. That member notes that duration does not mean the medical condition is severe.

Given the overall assessments in the PWD application, the July 2, 2021 letter, the new information submitted at appeal and the lack of any additional information provided at appeal from a prescribed professional, the majority panel finds that the ministry reasonably determined that the evidence does not support a finding that the appellant suffers from a severe mental and/or physical impairment that will likely last for 2 or more years as required by Section 2(2) of the EAPWDA.

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 his backpain impairs his ability for function or work. The appellant argued that he is in pain most of the time and needs to take 8-10 Tylenol per day to manage his pain. He stated that he cannot bend without pain and when things are bad, he cannot function for 1-2 weeks.

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 the appellant's statements in the SR and RFR. The ministry also noted that the GP indicated that the appellant has backpain and difficulty with daily chores and uses a cane. The ministry concluded that the occasional use does not confirm a severe impairment. The ministry noted that the appellant can walk 2-4 blocks and climb 5+ steps without assistance, lift 5-15 lbs, and remain seated for 1-2 hours. The ministry noted that in the AR, the GP indicated that the appellant is independent in all areas of mobility and physical abilities, with periodic assistance required with walking, climbing, and lifting on bad days. The appellant reported that these activities take 3x longer to complete. The ministry concluded that taking 3x longer to complete tasks that are listed as independent does not confirm a severe impairment. Furthermore, the ministry noted that no information is provided regarding the nature, frequency and duration of the periodic assistance that was required. The ministry concluded that, based on the information provided, it cannot confirm that the appellant has a severe physical impairment.

The panel finds that the ministry reasonably concluded that the information provided by the GP regarding the appellant's physical functioning does not support a finding of a severe physical impairment. As noted above the appellant is independent in his mobility and physical functioning and the GP did not provide any information regarding the periodic assistance required. Additionally, the appellant's submission and the July 2, 2021 letter focussed on employment which, as previously stated, is not a criterion for PWD. The additional information submitted at appeal, which again included the February 12, 2021 x-ray results and information regarding other conditions the appellant faced in the past, did not directly speak to the severity of the appellant's current condition of back pain.

At the hearing the appellant stated that his arthritis is severe, and this is confirmed by the X-ray results (February 12, 2021), he is in bed most of the time, he tries to walk outside but must stop to rest after 1 block, he cannot stand for more than 5 minutes without pain, he will soon attend a pain clinic, bending causes pain, and he cannot lift without pain. The panel finds that this information has not been confirmed by the GP or indicated in any of the information submitted for appeal. The appellant also stated that his daughter helps with heavy lifting, shopping, cleaning, and some aspects of dressing. The appellant stated that the daughter helps continuously for 1 week and occasionally for the rest of the month. The panel finds that the GP confirmed this information but did not indicate the type, frequency, and duration of the assistance the daughter provides.

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 reasonably determined 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 he will soon be placed on medication for his anxiety.

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

In its reconsideration decision, the ministry noted that there is no diagnosis of a mental impairment, there are no difficulties with communication, no significant deficits to cognitive and emotional function, and no impacts to all listed areas of cognitive and emotional functioning.

The panel finds that the ministry reasonably concluded that the information provided by the GP regarding the appellant's mental functioning does not support a finding of a severe mental impairment.

In the information provided in the SR, July 2, 2021 letter and submissions at appeal did not speak of the existence of a mental impairment. Though, at the hearing, the appellant indicated that he will be taking medication for anxiety, the panel place little weight on this information as there was no medical diagnosis of anxiety and no mention of the need for medication. Furthermore, there is no indication, either by the appellant or the GP, that anxiety restricts his ability to function in any capacity. At the hearing the appellant mentioned staying in bed most of the time but that was attributed to his pain and not anxiety. He also mentioned that he will be prescribed anti-anxiety medication soon, but this has not been confirmed by the GP or any other prescribed professional.

Given the overall assessments of the appellant's mental, cognitive, and emotional ability and functioning in the PWD application, 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 mental impairment and that the legislative criteria outlined in Section 2(2) of the EAPWDA have not been met.

Restrictions in the ability to perform DLA

Section 2(2)(b)(i) of the EAPWDA requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether 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 it is difficult to live his life. In particular, he cannot stand to cook, he needs help from his daughter to go shopping and do the heavy lifting, and his daughter cleans his bathroom. He also argued that he is restricted in the management of his medications, his daughter provides transportation, and he keeps his clothing simple so he can dress himself.

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

In the reconsideration decision, the ministry noted that in the MR, the GP stated that the appellant was not restricted in DLA and then indicated that the appellant requires periodic assistance with personal care and meal preparation. However, the type, frequency and duration of the help needed was not indicated. The ministry noted that in the AR, the GP indicated that the appellant is independent in all areas of DLA and commented that some tasks require periodic assistance. However, the GP did not indicate the nature, frequency, or duration of the assistance the appellant requires. The ministry concluded that it is not satisfied that a severe impairment directly and significantly restricts the appellant's ability to perform his DLA either continuously or periodically for extended periods.

At appeal, the appellant provided a copy of a 7-page CPP disability pension application. In this application the GP indicated that the appellant cannot walk beyond 2-4 blocks, has difficulty getting up to walk, cannot cook and is in constant pain. The appellant also provided 4 pages of medical clinic notes from his doctor. This document referred to the appellant's disc degeneration and treatments, and indicated the appellant is trying exercises and taking pain and muscle relaxant medication. The doctor discussed stiffness after heavy work and that the appellant had a couple of days in bed but was back to normal. The doctor discussed using a mechanism to pick up objects and agreed to fill out a disability form. This information is consistent with that in the PWD application and the analysis for it has already been provided above. Also, this information and the other multiple documents submitted at appeal, do not directly address DLA and/or the nature, frequency and duration of the periodic assistance required by the appellant.

At the hearing the appellant stated that he cannot cook, clean his washroom, lift heavy objects, go shopping on his own, or complete some aspects of dressing. However, as indicated previously, the panel places little weight on this evidence as it has not been confirmed by a prescribed professional as to the type, duration and frequency of the assistance required.

The panel finds that the ministry reasonably concluded that the information provided by the GP regarding the appellant's functioning does not support a finding that a severe impairment directly and significantly restricts the appellant's ability to perform his 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 indicated that he receives help from his daughter with shopping, transportation, lifting and cleaning. He argued that he receives help continuously for 1 week of the month and occasionally for the remainder of the month.

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, in the AR, the GP indicated that assistance is required from the appellant's daughter. However, it was not indicated what assistance is provided, how often or for how long. In the July 2, 2021 letter, the GP made no reference to the requirement of assistance from others.

At the hearing, the appellant indicated that he uses a pull bar and chair to help bathe. However, this information was not provided or confirmed by the GP in the PWD application, or any other documents submitted at appeal. Furthermore, the appellant stated that he uses a cane outdoors and equated it to 50% of the time. The panel finds that the GP did confirm the occasional use of a cane but did not confirm that the appellant uses a cane 50% of the time.

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.

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*

2021-0238

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)

2021/12/29

Print Name

Julie Iuvancich

Signature of Member

Date (Year/Month/Day)

2022/01/01

Print Name

Margarita Papenbrock

Signature of Member

Date (Year/Month/Day)

2021/01/08