

### **Part C – Decision Under Appeal**

Under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated January 6, 2022, that denied the appellant designation as a person with disabilities (PWD) under section 2 of the *Employment and Assistance for Persons with Disabilities Act*. The ministry stated that the appellant met the requirement of having reached 18 years of age but was not satisfied that:

- the appellant has a severe mental or physical impairment
- a medical or nurse practitioner confirms the impairment is likely to continue for at least 2 years
- the appellant's impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform daily living activities ("DLA") either continuously or periodically for extended periods; and,
- as a result of restrictions caused by the impairment, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

The ministry also found that the appellant is not in one of the prescribed classes of persons who may be eligible for PWD designation under section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation* ("EAPWDR"). As there was no information or argument provided for PWD designation on alternative grounds, the panel considers that matter not to be at issue in this appeal.

### **Part D – Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Act* (EAPWDA), section 2

*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), sections 2 and 2.1

**Part E – Summary of Facts**

With the consent of the appellant, a ministry observer attended the hearing.

**Information before the ministry at reconsideration**

- The appellant's PWD application, comprised of:
  - A Medical Report (MR) dated August 3, 2021, and Assessor Report (AR) dated August 6, 2021, both completed by the appellant's general practitioner (GP) of 1 year who had seen the appellant 2 – 10 times in the preceding twelve months.
  - The Self-report (SR) section was not completed by the appellant.
- The appellant's December 7, 2021 Request for Reconsideration, in which the appellant provides information relating to each reason for denial.

**Information provided on appeal and admissibility**

The appellant's Notice of Appeal dated January 7, 2022, in which the appellant writes that she disagrees with "Just about every item listed in the determining worker's rationale."

Prior to the hearing, the appellant provided a 33-page submission, largely comprised of the appellant's linkedin.com profile (work history). Also included are:

- Photographs of medication bottles for four prescription medications the appellant describes as needed for: pain management due to a 2012 sports injury; a chronic and ongoing health issue; insomnia; and panic, anxiety, and PTSD.
- Screen shots of November 2021 telephone appointments with a psychiatrist and an OBGYN as well as a January 2022 appointment with the GP.
- Receipts for vision wear and dental services.

At the hearing, the appellant referred the panel to her written submissions. In response to questions, the appellant stated that she believes the psychiatrist submitted something to the GP, but she is not sure when. The appellant confirmed that she is currently taking all four of the prescription medications.

Prior to the hearing, the ministry provided a written submission stating that it was relying on its reconsideration decision. At the hearing, the ministry provided a summary of the reconsideration decision but did not introduce new evidence.

The ministry stated that the appellant could apply for Persons with Persistent Multiple Barriers to Employment (PPMB) qualification, which is based on a person's inability to work, unlike PWD designation.

The panel admitted the appellant's information provided at the hearing and in the 33-page appeal submission under section 22(4) of the *Employment and Assistance Act* as information

reasonably required for full and fair disclosure of the matters at issue. The panel considered the information to be in support of information previously provided by the appellant.

The positions of both parties are set out in Part F of this decision.

### **Summary of relevant evidence**

#### **Diagnoses and Health History**

The GP diagnoses social anxiety. “Provisional Diagnoses – has not seen Psychiatry. Patient reports anxiety with interpersonal interactions. Sometimes sleep is disrupted.” The GP also notes that as a result the appellant is finding it difficult to work.

#### **Degree and Course of Impairment**

The GP responds “no” when asked if the impairment is likely to continue for two years or more from today, commenting “I would hope that with engagement with treatments her symptoms should improve.”

The appellant reports currently experiencing anxiety, social anxiety, and symptoms of PTSD, at times to a debilitating degree, and hoping to return to suitable work either before or after two years. Until that time, the appellant requires income assistance.

#### **Physical Impairment**

The GP does not identify any limitations in the ability to lift and remain seated and that the appellant can walk 4+ blocks and climb 5+ steps. All aspects of physical ability and mobility are managed independently, and no prostheses or aids are required.

In the reconsideration submission, the appellant reports having begun seeing an OBGYN for health concerns not discussed by the GP; these conditions impact the ability to sleep. She is being treated for insomnia which plays a factor in her ability to function and work.

#### **Mental Impairment**

In the MR, the GP reports:

- A significant deficit for 1 of 11 listed areas of cognitive and emotional function - emotional disturbance.
- There are no difficulties with communication.
- The appellant struggles with interpersonal interactions due to anxiety and it is difficult to find work as a result.

In the AR, where asked to indicate no impact, minimal impact, moderate impact, or major impact on daily functioning for 14 listed areas of cognitive and emotional functioning, the GP reports:

- Moderate impact for emotion.
- No impact for all other areas.

In the reconsideration submission, the appellant reports that the symptoms of anxiety, social anxiety and PTSD are to a debilitating degree at times, when she is unable to leave home. She prefers not to discuss these matters in detail in the hopes of returning to functioning. The appellant reports that debilitating anxiety, PTSD, burn out and compassion fatigue result from harassment in the workplace and at home. The appellant reports having begun to see a psychiatrist.

### DLA

The GP reports:

- The appellant has not been prescribed medication or treatment that may interfere with the ability to perform DLA.
- All tasks of the DLA (personal care, basic housekeeping, shopping, meals, pay rent and bills, medications, and transportation) are managed independently with no identified limitations on the appellant's ability to independently perform any of the listed tasks.
- Walking indoors/outdoors, climbing stairs, standing, lifting, and carrying/holding, which relate to the DLA move about indoors and outdoors, are managed independently, with no reported restrictions.
- For social functioning:
  - All listed areas (appropriate social decisions, ability to develop and maintain relationships, interact appropriately with others, deal appropriately with unexpected demands, and securing assistance from others) are managed independently without the need for support/supervision.
  - The appellant has marginal functioning with immediate social network and good functioning with extended social networks.
  - No safety issues are identified.

The appellant writes that people experiencing the symptoms she has, even when to a debilitating degree, can often perform tasks such as cleaning and laundry.

### Need for Help

The GP does not identify the need for assistance.

The appellant writes that people may prefer to complete such tasks alone due to their anxiety, social anxiety, and PTSD symptoms.

## **Part F – Reasons for Panel Decision**

### **Issue on Appeal**

The issue on appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. That is, was the ministry reasonable when determining that the requirements of section 2(2) of the EAPWDA were not met because:

- a severe physical or mental impairment was not established
- a medical or nurse practitioner has not confirmed the impairment is likely to continue for at least 2 years
- the appellant's DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods, and
- as a result of those restrictions, in the opinion of a prescribed professional, the appellant does not require an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

### **Panel Decision**

#### **Eligibility for PWD designation under section 2 of the EAPWDA**

#### **Duration**

##### *Positions of the Parties*

The ministry's position is that it must rely on the opinion of a medical or nurse practitioner when assessing duration of impairment. The ministry finds that the GP indicates that the impairment is not likely to continue for at least two years and expresses hope that with engagement and treatment the appellant's symptoms should improve.

Based on the appellant's written submissions, her position appears to be that she hopes to return to work at some point either before or after two years but requires financial assistance until she can return to work.

*Panel Analysis*

The panel finds that the only information provided by a nurse or medical practitioner is that of the GP. The GP indicates that the impairment is not likely to continue for at least two years and hopes that engagement with treatment will improve the appellant's symptoms.

The panel acknowledges the new information provided by the appellant regarding treatment by a psychiatrist and taking medication, however this information does not confirm the expected duration of the appellant's impairment. The panel also notes the appellant's reference to additional information from the psychiatrist but unfortunately, the panel does not have that information.

Based on the available information, the panel finds that the ministry was reasonable to conclude that a medical or nurse practitioner has not confirmed that the appellant's impairment is likely to continue for at least two years.

**Severe Impairment – Physical or Mental**

Section 2 of the EAPWDA requires that the minister "is satisfied" that a person has a severe physical or mental impairment, giving the minister discretion when making the determination. When exercising this discretion, the legislation's requirement for information from a medical or nurse practitioner (and other prescribed professionals) makes it clear that the fundamental basis for assessing PWD eligibility is information from one or more prescribed professionals. The panel also notes that the legislation does not identify employability or financial constraints as considerations when determining PWD eligibility.

A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish severe impairment. While neither "impairment" nor "severe impairment" is defined in the legislation, the PWD Application defines "impairment" as a loss or abnormality of psychological, anatomical, or physiological structure or function, causing a restriction in the ability to function independently, effectively, appropriately, or for a reasonable duration. Although this definition is not binding on the panel, the panel considers the assessment of the severity of impairment based on daily functional abilities to be reasonable.

**Physical Impairment**

*Positions of the Parties*

The appellant's submissions do not directly address severe physical impairment, though the appellant does report having ongoing health issues for which she has been prescribed medication and sees a specialist. The appellant also states that she does not want to discuss these matters in detail.

The ministry's position is that a severe physical impairment cannot be established on the information. The ministry notes that the GP does not diagnose a medical condition that explicitly results in a physical impairment. The ministry also states that the GP's assessment of physical abilities for walking, climbing stairs, standing, and carrying/holding does not identify any restrictions or limitations. Therefore, a severe physical impairment cannot be established.

### *Panel Analysis*

The appellant is not diagnosed with a physical medical condition and no limitations or restrictions in the ability to manage any aspect of physical functioning are reported by the GP. The panel acknowledges the appellant's information regarding ongoing medical conditions treated by an OBGYN and the need for pain medication for a past injury, but the appellant does not describe impacts on her physical functioning.

Therefore, the panel finds that the ministry was reasonable to rely on the GP's assessment of independent physical functioning to conclude that the information does not establish a severe physical impairment.

### *Mental Impairment*

#### *Positions of the Parties*

The appellant's position is that the symptoms of anxiety, social anxiety, and PTSD are at times to a debilitating degree, making her unable to leave her home. Insomnia also impacts her ability to function and work.

The ministry's position is that the information does not establish a severe mental impairment. The ministry stated that one deficit and one moderate impact on daily cognitive and emotional functioning does not establish severe mental impairment. The ministry also found that the GP assessed good communication abilities and independence with all DLA, including activities that relate to decision making and social functioning. The ministry acknowledged the appellant's reporting of debilitating symptoms and being unable to leave home "at times" but found no information from the appellant or the GP describing how often the symptoms are debilitating or of any impact on the ability to perform DLA.

### *Panel Analysis*

The appellant is diagnosed with social anxiety. The GP reports that emotional disturbance is a significant deficit with cognitive functioning. However, the GP reports that the impact on daily cognitive and emotional functioning is moderate, rather than severe, and that there are no other impacts on daily functioning for any of the other listed areas of cognitive and emotional function. Additionally, aside from reporting that the appellant struggles with interpersonal interactions and has marginal functioning with immediate social networks, the GP does not indicate any impact from social anxiety on the ability to manage DLA.

As was noted by the ministry, the appellant reports that symptoms are at times debilitating but that there is no additional information describing how often the symptoms are debilitating or how long the symptoms last. The information provided by the appellant for the appeal is that the appellant is taking medication and seeing a psychiatrist but unfortunately does not include additional information from the GP or psychiatrist about the appellant's social, cognitive, or emotional functioning.

Therefore, the panel finds that based on the available information, the ministry was reasonable to rely on the GP's assessment of mental functioning and to conclude that the information does not establish a severe mental impairment.

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

#### *Positions of the Parties*

The appellant's position is that people experiencing symptoms of anxiety, social anxiety, and PTSD can often independently perform certain daily tasks, such as cleaning and laundry, and may prefer to do so because of their symptoms. Therefore, the appellant questions why these factors are considered when determining PWD eligibility.

Noting that the opinion of a prescribed professional is fundamental when determining if the ministry is satisfied that impairment directly and significantly restricts DLA, the ministry found that the GP assessed the appellant as independently managing all DLA. Also, the appellant can maintain marginal functioning in her immediate social network and good functioning with extended social networks. The ministry also found that the appellant confirmed being able to complete DLA independently and highlighted that assistance was not needed because of socially isolating due to her medical condition. Therefore, the ministry determined that direct and significant restrictions in the ability to perform DLA, in the opinion of a prescribed professional, were not established.

#### *Panel Analysis*

Section 2(2)(b)(i) of the EAPWDA requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether it is satisfied, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant.

DLA are defined in section 2(1) of the EAPWDR and are listed in both the MR and the AR sections of the PWD application with the opportunity for the prescribed professional to check marked boxes and provide additional narrative.



In this case, the GP is the only prescribed professional who provided information respecting the appellant's ability to perform DLA. The GP indicates that all listed tasks of the DLA (moving about outdoors and indoors, personal care, basic housekeeping, shopping, meals, pay rent and bills, medications, and transportation) are managed independently. The GP does not identify any restrictions, such as taking longer to perform a task or being able to perform a task only at certain times or only under certain conditions.

The panel accepts that there are some DLA tasks that a person dealing with anxiety may be capable of and, as the appellant states, prefer to do without assistance from another person at home. However, other tasks such as going to and from stores, walking outdoors, and using public transit cannot be performed at home. While the appellant reports that at times she is debilitated to the point where she cannot leave her home, the GP does not confirm this information but instead reports no restrictions in the ability to manage DLA tasks outside the home. Also, the ability to work is not a DLA set out in the legislation and is therefore not considered when determining a person's ability to manage DLA.

The panel also notes that there are two DLA that are specific to mental impairment: make decisions about personal activities, care, or finances; and relate to, communicate, or interact with others effectively. Aside from reporting marginal functioning with the appellant's immediate social network, the GP reports that all decision-making tasks are managed independently, and that the appellant independently develops and maintains relationships, appropriately interacts with others, appropriately deals with unexpected demands, and can secure assistance from others.

Based on the GP's assessment of the appellant's ability to independently manage all DLA, including the tasks associated with social functioning, the panel finds that the ministry was reasonable in concluding that direct and significant restrictions in the ability to manage DLA either continuously or periodically for extended periods were not established.

### **Help to perform DLA**

Section 2(2)(b)(ii) of the EAPWDA requires that, *as a result of direct and significant restrictions in the ability to perform DLA*, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

Establishing direct and significant restrictions with DLA is a precondition of the need for help criterion. As the panel found that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel also finds that the ministry reasonably concluded that it cannot be determined that the appellant requires help to perform DLA as required by section 2(2)(b)(ii) of the EAPWDA.

### **Conclusion**

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was reasonably supported by the evidence, and therefore confirms the decision. The appellant is not successful on appeal.

**Relevant Legislation**

**EAPWDA**

**2** (1) In this section:

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

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

- (a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and
- (b) in the opinion of a prescribed professional
  - (i) directly and significantly restricts the person's ability to perform daily living activities either
    - (A) continuously, or
    - (B) periodically for extended periods, and
  - (ii) as a result of those restrictions, the person requires help to perform those activities.

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

- (a) a person who has a severe mental impairment includes a person with a mental disorder, and
- (b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires
  - (i) an assistive device,
  - (ii) the significant help or supervision of another person, or
  - (iii) the services of an assistance animal.

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

**EAPWDR**

**Definitions for Act**

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

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

- (i) prepare own meals;
- (ii) manage personal finances;

- (iii) shop for personal needs;
- (iv) use public or personal transportation facilities;
- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self-care;
- (viii) manage personal medication, and

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

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

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

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

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

(b) acting in the course of the person's employment as a school psychologist by

- (i) an authority, as that term is defined in section 1 (1) of the [Independent School Act](#), or
- (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the [School](#)

[Act](#),

if qualifications in psychology are a condition of such employment.

### **Alternative grounds for designation under section 2 of Act**

**2.1** The following classes of persons are prescribed for the purposes of section 2 (2) [*persons with disabilities*] of the Act:

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the [Community Living Authority Act](#);
- (d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the [Community Living Authority Act](#) to assist that family in caring for the person;

(e) a person who is considered to be disabled under section 42 (2) of the [Canada Pension Plan](#) (Canada).

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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

Jane Nielsen

Signature of Chair

Date (Year/Month/Day)

2022/01/25

Print Name

Inge Morrissey

Signature of Member

Date (Year/Month/Day)

2022/01/25

Print Name

Jeremy Scott

Signature of Member

Date (Year/Month/Day)

2022/01/25