

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated November 24, 2021, which held that the appellant did not meet 3 of the 5 statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age and duration requirements, but was not satisfied that:

- the appellant has a severe 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

PART E – SUMMARY OF FACTS**Evidence at Reconsideration**

1. The appellant's PWD application comprised of a Medical Report (MR) dated July 22, 2021, which was completed by the appellant's General Practitioner (the GP), who had known the appellant for 2.5 years and seen her 11 or more times in the past 12 months. The PWD application included the appellant's Self-Report (SR) dated July 7, 2021.
2. The PWD application also included an Assessor's Report (AR) dated July 6, 2021, which was completed by the appellant's Occupational Therapist (OT), who had known the appellant for 2 years and seen her 2-10 times in the past 12 months. In completing the AR, the OT relied on an office interview with the appellant, in-person functional assessment and previous OT report (May 27, 2021).
3. 1-page progress note from the appellant's psychologist dated October 11, 2021. The progress note indicated the following about the appellant:
 - She had been in therapy from August 18, 2019 to July 22, 2021 for 17 sessions.
 - She was in treatment for Post Traumatic Stress Disorder (PTSD), which affects her functioning in a wide variety of social and interpersonal situations.
 - She also presents with symptoms consistent with incapacitating depression and anxiety dating back to high school.
 - She is not sufficiently coping with these symptoms and is unable to work.
 - Meaningful change will only be met with intentional and consistent effort from the appellant, and it is incumbent on her to take responsibility.
 - She requires psychotropic medications and additional supports.
4. ICBC OT Reassessment Report dated November 10, 2021, which was completed by the same OT who completed the AR:
 - The self-report provided by the appellant in this assessment is consistent with the information provided with the PWD application.
 - The OT reports that the appellant's range of motion (ROM) in regard to her neck, shoulder and trunk are within functional limits but with pain.
5. Independent Medical Assessment Report dated October 17, 2018, which was completed by a registered psychologist (who is not the author of the October 11, 2021 1-page progress note). The psychologist reports a summary of the appellant's condition as reported by her, an assessment, diagnosis and treatment suggestions. A prognosis is not provided.
6. Independent Medical Assessment Report dated November 15, 2018, which was completed by a Medical Doctor (MD), who is not the author of the MR in the PWD application. The MD reports medical, social history, a summary of the appellant's presenting complaints, physical exam results, diagnosis, and prognosis.
7. A medical document index that the MD relied on for his report.
8. Request for Reconsideration (RFR), signed and dated October 26, 2021, in which the appellant stated, in part, the following:
 - She was injured in two motor vehicle accidents (MVA) since 2016 and has not

been able to work for years.

- She has been terminated from a few jobs because she could not show up for work due to the need for treatment and rest.
- There are times she cannot move for days and weeks especially in her back and neck.
- She has been attending therapies, getting treatments and taking medications since 2016 for her physical pain and mental problems.

Diagnoses

- In the MR, the GP diagnosed the appellant with musculoskeletal (neck, upper and lower back, and shoulders), depression and anxiety (onset was not indicated).

Health History

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

- 2020 car accident caused severe pain in neck, both shoulders, upper and lower back, and knees. It also caused depression and anxiety which are moderate and sometimes severe.
- She visits the physiotherapist, chiropractor, kinesiologist, and does treatment for anxiety and depression.

Duration

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

- The impairment is likely to continue for two or more years.
- It is “unknown” what the estimated duration of the impairment is and if there are remedial treatments that may resolve or minimize the impairment.

Physical Impairment

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

- She can walk more than 4 blocks and climb more than 5 steps unaided, lift 5-15lbs and remain seated for less than 1 hour.

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

- Chronic pain in neck, bilateral shoulders, upper and lower back, radiating pain from axillary region to hand (predominately right).
- She is independent with walking indoors/outdoors and climbing stairs.
- She with independent and takes significantly longer with standing. The OT commented: that the appellant “reports increased pain in lower back after 5 minutes”.
- She requires periodic assistance with lifting and, carrying/holding. The OT commented: “able to squat and lift 5lbs. Not able to lift weight overhead”, and “unable to carry 8lbs over 10 minutes at a time”.

In the SR, the appellant stated the following:

- “I have physical pain on my (neck, shoulders, upper back, lower back and knees).
- She goes to treatment a few times per week.

Mental Impairment

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

- “Cognitive” issues cause difficulties with communication.
- There are significant deficits with cognitive and emotional function in the areas of ‘memory’, ‘emotional disturbances’, ‘motivation’, and ‘attention or sustained concentration’.

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

- Speaking is ‘good’ and commented: “occasional difficulty with word finding”.
- Reading is ‘satisfactory’ and commented: “breaks every 15-20 minutes, reduced concentration”.
- Writing is ‘satisfactory’ and commented: “increased radiating pain in right/left upper extremity after 5-10 minutes of writing”.
- Hearing is ‘good’ and commented: “difficulty with information processing/listening but is able to hear/distinguish sounds”.
- Section B-4 was left blank.

In the SR, the appellant stated the following:

- “I’m also suffering from mental health such as mood changes, depression, eating disorder and anxiety.
- She works with a psychologist, a counsellor, and takes medication.

Daily Living Activities

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

- Medications that interfere with the ability to perform DLA have been prescribed and it is anticipated that the appellant will use them for a minimum of 1 year.
- There are no restrictions to: ‘personal self-care’, ‘mobility inside the home’, ‘mobility outside the home’, ‘use of transportation’, ‘management of finances’, and ‘social functioning’.
- There are periodic restrictions to: ‘meal preparation’, ‘management of medications’, ‘basic housework’, and ‘daily shopping’.
- Where asked to explain ‘periodic’ the GP stated: “Her activity restrictions are related to her musculoskeletal pain that change on different days”.
- Under degree of restriction, the GP stated: “It is mild to moderate and mostly moderate”.
- Under need for help, the GP state: “Sometimes need[s] other people [to] help”.
- “Her mood and interest/low energy and concentration tiredness and insomnia do affect her daily life and body pain make it worse”.

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

- All listed tasks under ‘personal care’ are performed independently except ‘regulating diet’ which requires periodic assistance, “reduced appetite, encouraged by mother/boyfriend to increase food consumption daily” and “regulating diet, client reports occasionally having just 1 meal per day due to reduced appetite”.
- ‘Laundry’ is performed independently, but basic housekeeping requires periodic assistance, “assistance from sister with repetitive overhead movements (e.g. Cleaning windows) 2 [times per week]”.
- All listed task under ‘shopping’ are performed independently except: ‘making appropriate choices’ which takes significantly longer “easily distracted”, and ‘carrying purchases

home' which requires periodic assistance "receives assistance from taxi 3 [times per week].

- Under 'meals', 'safe storage of food' is performed independently. All other listed tasks (meal planning, food preparation and cooking) require periodic assistance 2 times per week.
- All listed tasks under 'pay rent/bills' are performed independently.
- All listed tasks under 'medications' are performed independently except 'take as directed' which requires periodic assistance, "client is reminded by boyfriend daily due to forgetfulness".
- All listed tasks under 'transportation' are performed independently.
- The entire section pertaining to 'social functioning' was left blank.
- "Client reports being stuck in a constant cycle of doing too [many] activities and then not being able to do any activities for a few days afterwards".
- "Client reports struggling with low motivation to perform instrumental activities of daily living occasionally. Client reports her mood fluctuates frequently".

In the SR, the appellant stated the following:

- Physical pain prevents her from doing most of the things she did prior to her accidents, such as studying, having a job, housework, and working out/gym.
- Mental health problems and mood changes affects school, work and the relationship she has with loved ones.
- She has tried having a stable and health routine but after a few days she collapses and that puts her down for a few days.

Help

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

- Requires no prostheses or aids for her impairment.
- "sometimes need[s] other people [to] help".

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

- The appellant lives with 'family, friends or caregiver', "with older sister".
- Help with DLA is provided by 'family' and 'boyfriend'.
- No assistance is provided through the use of Assistive Devices.
- No assistance is provided by Assistance Animals.
- Occasionally when help is not available the client does not reach out for help. The client reports that when she is in a better mood, she is able to reach out for assistance.

In the SR, the appellant did not comment on the help she receives or requires with DLA.

Evidence on Appeal

Notice of Appeal (NOA), signed and dated December 3, 2021. The appellant stated that "I believe the ministry's decision is wrong and it's not fair as I've proved that I'm not able to work due to my physical and mental health problems".

The panel found that the information in the NOA consists of the appellant's argument and does not require a determination of admissibility.

Evidence Prior to the Hearing

Prior to the hearing the appellant submitted a note from her GP, date January 12, 2022, which stated, in part, the following about the appellant:

- She has pain in both shoulders, upper and lower back, and the neck. The pain is mainly on the right side.
- She has panic attacks since January 2022.
- “She mentioned to me that [she] cannot work for that reason and needs to apply for disability”.

The panel found that the information in the GP’s letter dated January 12, 2022 consists of information that has been provided with the PWD application and does not require a determination of admissibility.

Evidence at the Hearing

At the hearing the appellant’s advocate reviewed the appellant’s SR, and in part, stated the following:

- Severity of an impairment is not defined but is the test.
- Severity is objective and therefore, weight can be placed on the appellant’s testimony.
- English is her second language and therefore things get lost in translation.
- She had a flat affect – is mechanical and has a tendency to minimize.
- She has barriers and thoughts of suicide are severe.
- When she over does it, she collapses and that puts her down for days.
- The PWD application may not be understood by all doctors or it may not be understood what is needed or reasonable.
- When asked, the advocate stated there are no new medical or psychological assessments due to the cost involved in completing one. The last ones are from 2018.

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

- She is exhausted and cannot motivate herself.
- She gets frustrated and can be in a brain-fog for days—zones out.
- Her sister helps with cleaning, groceries and reminds her to take her medications.
- She was also physically assaulted.

When asked the appellant stated the following:

- The physical pain impacts her mental wellbeing and vice versa.
- When things are bad the pain is at a level 10.
- When things are good the pain is at a level 3.
- There is no referral to a pain clinic, but she does attend physiotherapy and sees a chiropractor. This provides temporary relief.
- If her mental health was better, she would be more active and follow-up on things.

At the hearing, the ministry relied on its reconsideration decision.

Admissibility

The panel finds that the two independent medical assessments (dated October 17, 2018 and November 15, 2018) provided information that allow for a full disclosure and understanding of the appellant’s overall historical medical and psychological well-being. However, both assessments are from 2018 which is prior to the appellant’s car accident in 2020. As a result, the assessments do not reflect the appellant’s current medical and psychological well-being.

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 her 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

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 due to her neck, shoulder, upper and lower, and knee pain she is unable to do most things that she used to or enjoyed doing, such as studying, having a job, housework and working out.

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

In its reconsideration decision, the ministry noted that the GP indicated that the appellant had a MVA in 2020 that caused severe pain in her neck, both shoulders, upper and lower back, and knees and she receives treatment from physiotherapy, chiropractor, and kinesiologist. The appellant does not require aids for her impairment. The appellant's 2016 MVA was worse than the 2020 MVA. The appellant uses medication for her pain and this medication interferes with her ability to perform DLA. The ministry noted that the GP did not indicate the impact the medication has on the appellant's ability to perform her DLA.

The ministry noted that the GP indicated that the appellant can walk 4 or more blocks and climb 5 or more steps without assistance, lift between 5-15lbs and remain seated for less than 1 hour. The ministry stated that at this range the appellant continues to be able to complete most aspects of daily functioning.

The ministry noted that in the AR, the OT indicated that the appellant is independent in walking indoors/outdoors, climbing stairs and standing. Periodic assistance is required with lifting and

carrying/holding. The ministry concluded that these limitations do not confirm a severe impairment in the appellant's ability to lift or carry or her overall physical functioning.

The ministry noted that in the ICBC OT assessment, the OT indicated that the appellant ROM for her neck, shoulder and trunk were within functional limits but with pain. The appellant self-assessment reports that she is in the crippled range. The ministry noted that despite this the appellant can lift light weight, complete transfers and is mobile on her own, ambulate indoors easily without a gait aid, sit for 1 hour, and be independent in DLA. The ministry concluded that this degree of physical functioning and mobility does not confirm a severe physical impairment.

The panel finds the ministry's analysis of the evidence as stated here was reasonable and that the appellant's level of physical functioning does not support a finding of a severe physical impairment. This is supported by the GP's assessment of the appellant mobility and physical functioning as stated in the MR. Added to this are the OT's physical assessments of the appellant which put her within functional limits albeit with pain. The additional information provide by the OT, through way of questionnaires, speaks to the appellant's self-assessment and there is no explanation given as to why the appellant self reports differ from the OT's physical assessments.

The panel also considered the SRs provided by the appellant which includes information about her bodily pain, and the impacts on her daily life. The panel empathizes with the appellant, however, it finds that, though this information is important to understand the full picture of the appellant's condition, it is not enough to satisfy the legislative requirements even when seen in conjunction with the information provided by the GP and OT.

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

Mental Impairment

The appellant argued that she suffers from a history of anxiety, depression, and panic attacks, which restricts her ability to function day to day and causes a lack motivation to do anything. This is exacerbated by her physical condition and pain.

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

In its reconsideration decision, the ministry noted that, in the MR, the GP indicated that due to the MVA in 2020 the appellant experienced depression and anxiety that is moderate and sometimes severe. The panel notes that the GP did not indicate how often the appellant's depression and anxiety symptoms present as severe.

The ministry noted that the GP indicated that the appellant has significant deficits to her cognitive and emotional functioning in the areas of memory, emotional disturbance, motivation and attention/concentration. The panel notes that the GP did not provide any information to explain how these deficits manifest or present in the appellant's day to day life even though space is provided in the PWD application.

The ministry noted that in the AR, the OT did not identify any impacts cognitive or emotional functioning. In the ICBC OT assessment, the OT indicated that the appellant's memory and concentration have

worsened since her antidepressant medication dosage increased, overall mood and motivation has worsened, there is ongoing anxiety and depression with increased irritability and anger, and the appellant's depression was severe, and PTSD was concerning. The ministry concluded that the assessment of the appellant's mental symptoms is related to her ability to work and complete education rather than her ability to perform DLA. The panel notes that in the ICBC OT assessment of the appellant's mental functioning, the OT repeatedly uses language such as 'the client reported'. The psychological assessment used to determine the appellant's degree of mental disturbance are largely based on self-report/assessment. The panel finds that the information in the ICBC OT assessment regarding the appellant's mental state largely represents a self-report rather than the OT's professional opinion.

The ministry noted that the psychologist's letter dated October 11, 2021 indicated that the appellant is being treated for PTSD which impact the appellant in a variety of social and interpersonal situations, she has 'incapacitating depression and anxiety', and is not sufficiently coping with the amalgamation of her symptoms. The ministry concluded that the information provided in this letter is insufficient to confirm a severe impairment of the appellant mental functioning as it relates to DLA as set out in the legislation. The panel notes that the October 11, 2021 letter further confirms diagnosis of mental conditions. However, the psychologist does not go far enough to explain how these presenting issues impact her cognitive and emotional functioning. The panel also notes that it focuses on the appellant's ability to work rather than her ability to manage her daily life.

The panel finds that the ministry reasonably concluded that the information provided by the GP, OT and psychologist regarding the appellant's mental functioning does not support a finding of a severe mental impairment. The panel adds that in terms of social functioning, which is related to mental wellbeing, the GP reported no restriction to social functioning and the OT left that section blank. Though the psychologist stated that the appellant is impacted in a variety of social and interpersonal situations, the GP did not demonstrate agreement. Thus, it is difficult to make a clear determination. The panel notes that the appellant is also independent in her functioning to pay rent, bills, budgeting and banking. These tasks are also related to mental and cognitive ability and it is not explained why she can perform them independently despite the reports of 'brain-fog', lack of motivation and impacts to memory and attention/concentration. The panel notes that the appellant reports having an eating disorder and requires periodic assistance with regulating diet, meal planning, food preparation and cooking. This assistance includes being reminded to eat. However, neither the GP nor psychologist has diagnosed the appellant with an eating disorder, so it is unclear why she needs help in this area.

The panel also considered the SRs provided by the appellant which includes information about her depression and anxiety, and the impacts they have on her daily life. The panel empathizes with the appellant, however, it finds that, though this information is important to understand the full picture of the appellant's condition, it does not satisfy the legislative requirements and it has not demonstrated that the depression and anxiety negatively impact the appellant's cognitive and emotional functioning in a severe way even when seen in conjunction with the information provided by the GP and OT.

Given the overall assessments of the appellant's mental, cognitive, and emotional ability and functioning in the PWD application, by the psychologist and the lack of any additional information provided at appeal from a prescribed professional, the panel finds that the ministry was reasonable in its determination that the evidence does not support a finding that the appellant suffers from a severe 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 or not it is satisfied that the legislative criteria are met, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration – the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended periods. Any analysis of periodicity must also include consideration of how frequently the activity is restricted. All other things being equal, a restriction that only arises once a year is less likely to be significant than one that occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

DLA are defined in section 2(1) of the EAPWDR and are listed in both the MR and the AR sections of the PWD application with the opportunity for the prescribed professional to check marked boxes and provide additional narrative. DLA, as defined in the legislation, do not include the ability to work.

The appellant argued that due to her bodily pain, depression, and anxiety, she is unable to perform her DLA.

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

In its reconsideration decision, the ministry noted that the GP indicated that the appellant has low mood, low energy and concentration, tiredness and insomnia which affect her daily life and her body pain is worse. The appellant is periodically restricted with meal preparation, medication management, basic housework, and daily shopping. The ministry noted that the appellant is not restricted in the other listed areas of DLA. The ministry concluded that based on the GP's information, it is not clear that these restrictions occur periodically for extended periods, and it is not clear if the restriction is significant has the GP stated the degree of the restrictions to be mild to moderate.

The ministry noted that in the AR, the OT indicated that DLA are impacted by the appellant's bodily pain, reduced concentration, increased anxiety and depressive symptoms, lower mood and motivation. The appellant requires periodic assistance with regulating diet and basic housekeeping. The ministry noted that the OT also indicated that any activity overhead or below the waist aggravates that appellant's symptoms, she receives assistance from taxi 3 times a week with carrying purchases home, she receives assistance from her mother 2 times per week with meal planning, food preparation and cooking. The OT indicated that the appellant is in a cycle of doing too much then not being able to do any activity for a few days. The ministry concluded that the appellant is able to complete her DLA with mild to moderate support and this is supported by the GP who indicated that the appellant's range of functioning is in line with mild to moderate restrictions rather than significant restrictions. The panel notes that the OT did not explain the type of assistance the appellant receives from her mother in regard to meal planning, food preparation and cooking. Thus, it is difficult to determine if the help required is significant.

The panel finds that the ministry reasonably concluded that the information provided by the GP and OT regarding the appellant's functioning does not support a finding that a severe impairment directly and significantly restricts the appellant's ability to perform her DLA either continuously or periodically for extended periods.

The panel considered the assessment by the GP in the PWD application of no restriction with 6 of the 10 listed areas of the DLA and where a periodic restriction was indicated, the GP did not describe the type, frequency and duration of the assistance required. The panel considered the assessment from the OT of independence with most DLA and a requirement of mild to moderate help. The panel considered that overall, there was a lack of sufficient information indicating whether there is a restriction to perform some DLA either continuously or periodically for extended periods, and that insufficient additional or supporting information was provided from a prescribed professional at appeal to support the appellant's position.

The panel finds that the evidence provided does not describe or indicate that a severe impairment restricts the appellant's ability to perform her 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 she receives help her family and boyfriend, as is indicated by the GP and OT in the PWD application.

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 OT indicated that assistance is required from the appellant's family and boyfriend. However, 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.

2021-0234

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

Jennifer Smith

Signature of Chair

Date (Year/Month/Day)

2022/01/28

Print Name

Neena Keram

Signature of Member

Date (Year/Month/Day)

2022/01/28

Print Name

Rosalie Turcotte

Signature of Member

Date (Year/Month/Day)

2022/01/28