

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 January 4, 2022, 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, which includes: a person who is enrolled in palliative care; a person who has at any time been determined eligible for At Home Program payments through the Ministry of Children and Family Development; a person who has at any time been determined eligible by Community Living BC for community living support; and a person who is considered disabled under section 42(2) of the *Canadian Pension Plan Act*.

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 information before the ministry at the time of reconsideration included the appellant's PWD application comprised of a Medical Report (MR) [dated August 22, 2021] and an Assessor Report (AR) [dated September 8, 2021], which was completed by the appellant's neurologist (the 'neurologist'), who had known the appellant for 3 years and seen him 2-10 times in the past 12 months. The approaches and sources used to conduct the MR and AR were indicated as office interview and file/chart information with the comment: "Medical chart; but direct interview was the main interview". The PWD application also included the appellant's Self-Report (SR) dated August 12, 2021.
2. Request for Reconsideration (RFR), signed and dated December 3, 2021, in which the appellant, in part, stated the following:
 - The information that the ministry received in the initial application did not adequately describe the impact of the disability on daily life.
 - The disability has caused a lack of balance that requires an additional person to be around in situations where there is discomfort. This includes climbing up and down stairs during snow or rain and climbing ladders.
 - Driving or travel by public transit is not possible.
 - Consistent assistance is required to complete daily activities such as food preparation and home maintenance work due to shaky hands and frequent light-headedness. The neurologist indicated periodic assistance is required.
 - Double time is required to complete school-related work such as assignments and tests. The school has accessibility services and accommodations available. Assistive devices with accessibility features are required to complete schoolwork.
 - Due to light sensitivity, frequent light-headedness, headaches and increased fatigue, multitasking is not possible.
 - There are major cognitive challenges such as maintaining concentration, recalling information and performing executive functions regularly.
 - In addition, there are sleep disturbances with frequent anxiety and emotional distress.
 - There is also premature mental fatigue which results in feeling ill for some time.
 - The culmination of these challenges has significantly impacted the ability to communicate effectively with others.
3. A note from another physician (the GP) confirming agreement with the contents of the appellant's RFR; "I agree with [the appellant's] statement". This note is signed and stamped but not dated.

Diagnoses

In the MR, the neurologist notes that the appellant has been diagnosed with epilepsy (onset 2010) and traumatic brain injury (onset 2019).

Health History

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

- "This patient has epilepsy. He is on medications to control and has been seizure free for two years. The patient also had a traumatic brain injury and has the sequelae of that injury as he describes in his self-report. The traumatic brain injury has resulted in post-concussive syndrome which has persisted. He reports experiencing photophobia, chronic daily headache, insomnia, and problems with sleep maintenance. He also experiences problems with attention, calculation, memory, reading and expression. He also describes experience emotional sequelae of the traumatic brain injury - anhedonia, anxiety, and dysthymia. The summation of these symptoms has resulted in limitations in his daily life. The disequilibrium and photosensitivity have precluded

him from travelling long distances on transit, or his own transportation. He has limitations in cognitive processing that have introduced significant delays in learning new tasks and performing independent activities of daily living. He describes taking significantly longer in cooking, bathing, and toileting as a result of the injury.”

Degree and Course of Impairment

In the MR, the neurologist indicated that the appellant’s impairment is likely to continue for two years or more.

Physical Impairment

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

- Can walk 4+ blocks and climb 5+ steps unaided, lift 15-35lbs and remain seated with no limitation.

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

- Can perform walking indoors/outdoors, climbing stairs (ensures to hold rails), and standing, independently.
- lifting, and carrying/holding require periodic assistance “because of light-headedness, or motion induced headaches”.

In the SR, the appellant stated that he has physical difficulties including severe light sensitivity and changes in vision, headaches, motion sickness, premature fatigue, frequent hand tremors, some issues with balance, occasional stuttering and some sleep difficulties.

Mental Impairment

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

- There are cognitive difficulties with communication.
- There are significant deficits with cognitive and emotional function in the areas of executive function, language, memory, perceptual psychomotor, emotional disturbance, and attention/sustained concentration. There were no comments provided.

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

- Speaking (“describes intermittent dysarthria non-limiting”), writing (“mild tremor – not limiting of writing; slower typing than baseline”), and hearing (“hyperacusis- loud noises describes including headaches”) are satisfactory.
- Reading is poor (“difficulty reading/comprehending”).
- Of the listed functions under cognitive and emotional functioning: 5 moderate impacts, 4 have minimal impacts and 5 have no impacts.
- Under ‘social functioning’, the tasks of ‘able to develop and maintain relationships’ (“*withdrawn from social activities, unable to maintain connections. Obtaining coaching to manage social anxiety*”) and ‘able to deal appropriately with unexpected demands’ (“*social anxiety limits is function; requires assistance from others*”) require periodic assistance. ‘Appropriate social decisions’ and ‘interacts appropriately with others’ are performed independently. ‘Able to secure assistance from others is left blank and with the comment: “reaches out when needs help – counsellor, family, coach”.
- Marginal functioning with immediate and extended social networks.

In the SR, the appellant stated that he has cognitive barriers such as issues with memory, concentration, premature mental fatigue, cognitive processing speed, difficulties with reading and comprehension and anxiety and emotional distress.

Daily Living Activities

In the MR, the neurologist did not indicate if medication interferes with the appellant's ability to perform DLA.

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

- “Can walk to a store but describes problems using transit - he feels intolerant of longer distances on transit with nausea, and headache. He states he can take a car but is dependent on others; he can walk to a store without limitation”.
- All tasks under ‘personal care, basic housekeeping, pay rent/bills and medications’ are performed independently.
- Under shopping all tasks are performed independently except ‘reading prices/labels’ (“If text is small sometimes needs help; can manage large text”) and ‘carrying purchases home’ (“if walking, carrying things causes pain and is worse with a heavier load; over 5 pounds”). These tasks require periodic assistance.
- Under ‘meals’ all tasks are performed independently except ‘meal planning’ (“requires intermittent assistance using a knife”). This task requires periodic assistance.
- Under ‘transportation’ all tasks are performed independently except ‘using public transit’ (“unable to take public because of reoccurrence of headache and light headedness, and nausea. He estimates 6-7 minutes”). This task requires periodic assistance.
- Under ‘social functioning’, the tasks of ‘able to develop and maintain relationships’ (“*withdrawn from social activities, unable to maintain connections. Obtaining coaching to manage social anxiety*”) and ‘able to deal appropriately with unexpected demands’ (“*social anxiety limits is function; requires assistance from others*”) require periodic assistance. ‘Appropriate social decisions’ and ‘interacts appropriately with others’ are performed independently. ‘Able to secure assistance from others is left blank and with the comment: “reaches out when needs help – counsellor, family, coach”.

In the SR, the appellant stated, in part the following:

- He cannot lock the door while bathing due to the risk of losing balance, falling or having a seizure.
- He is unable to handle sharp or delicate objects safely due to hand tremors.
- He cannot remain under bright light settings or sunlight due to light sensitivity.
- He cannot ride on public transit for long (over 10 minutes) due to motion sickness.
- He is frequently unable to use an elevator.
- All of this makes independent travel difficult.

Need for Help

In the MR, the neurologist indicated the following:

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

In the AR, the neurologist indicated the following:

- The appellant lives with family, friends or caregiver with the comment section left blank.
- ‘Assistance provided by other people’ was indicated as ‘family’.
- The check-mark section ‘Assistance provided through the use of Assistive Devices’ was left blank and comment: “Uses sunglasses because of photophobia, as sun light or white light induces symptoms of his post-concussive syndrome”.
- No assistance is provided by Assistance Animals.

In the SR, the appellant did not elaborate on the assistance he requires, how often or for what duration.

Evidence at Appeal

A Notice of Appeal (NOA) signed and dated January 14, 2022 and left blank.

Evidence Prior to the Hearing

Prior to the hearing the appellant submitted a 1 page note from the GP, signed and dated March 2, 2022, which indicated that the appellant has been a patient at the clinic since 1996.

Evidence at the Hearing

At the hearing the appellant reiterated the information presented at the time of the reconsideration decision and RFR, and, in part, added the following:

- The ministry’s decision gave more weight to the neurologist’s evidence and not on the GP’s evidence, which supports the appellant’s position.
- The appellant has only known the neurologist for 3 years and has known the GP since 1996.
- The appellant turns to the GP more frequently and for pressing issues.
- The appellant added more detail to the experiences and impacts of his physical imbalance, light headedness, hand tremors, basis housekeeping, mental cognition, memory, concentration, executive function, sleep disturbances, emotional regulation, vision and hearing.
- The appellant stated that he was advised by a ministry worker that not every DLA had to be impacted to a severe level. In his case, some of his DLA are impacted severely while others are impacted to varying degrees.
- When asked the appellant stated that when travelling in a car, he will ask the driver to drive slowly, and he will look down to prevent the light-headedness and dizziness. However, he is still dependent on others to drive.
- When asked the appellant confirmed that the doctor who agreed with his statement in the RFR is a general practitioner.
- When asked the appellant confirmed that he lives with family (mom, dad and sister) who are largely out of the home during the day.
- When asked the appellant stated that he needs to have someone around when taking a shower due to his balance issues.
- When asked the appellant stated that the GP advised him to have the neurologist complete the PWD application.
- When asked the appellant confirmed that he sees a counsellor for his emotional dysregulation on a weekly basis and that it helps to an extent. In the future he may look at taking medication for his anxiety but is looking for better alternatives.
- When asked the appellant stated that he does not use a cane or walker for his balance issues. He stated that at one point when he was in rehabilitation, he used crutches, but he does not need them all the time.
- When asked the appellant stated that the PWD application was completed with his input.

At the hearing the ministry relied on its reconsideration decision. When asked, the ministry stated:

- The type of doctor, (specialist or otherwise), completing will matter depending on the type and complexity of the impairment. However, ultimately the ministry is looking for a prescribed professional to confirm the self-report.
- The statement confirmed by the GP does not change the ministry’s position because the statement does not speak to whether the restrictions the appellant faces are either periodic for extended periods or continuous, there is not enough information regarding physical and/or mental impairment, it does not speak to physical mobility and functioning or mental functioning, and there is not enough information on the impact on DLA.

- There is no special consideration when the prescribed professional does not articulate the issues or impairment because the ministry relies on this information to make a determination if the legislative requirements are met.

Admissibility of New Information

The ministry did not object to the admission of the note from the GP dated March 2, 2022.

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 information submitted prior to the hearing is admissible and keeping with the procedures stated above. However, the panel places less weight on this information because there is little to no information regarding the severity of the impairment, the type, duration and frequency of the assistance required to perform DLA and it is unclear why the GP did not complete the initial PWD application and suggested the neurologist to it instead.

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 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

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 or attending post-secondary school is not a consideration for eligibility for PWD designation because neither 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 the physical ability and functioning is severely impacted by issues with balance, light-headedness, dizziness, hand tremors and motion sickness which result from his epilepsy and brain injury.

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, in the MR, the neurologist indicated that the appellant does not need prostheses or aids for his impairment. The neurologist indicated that the appellant can walk 4+ blocks and climb 5+ steps *unaided* on a flat surface, lift 15-35lbs and remain seated without limitation. In ministry noted that in the AR, the neurologist indicated that the appellant is independent with walking indoors/outdoors, climbing stairs (with railing) and standing. The neurologist indicated that lift requires periodic assistance due to light-headedness and motion induced headaches. The ministry noted that the appellant or the neurologist did not indicate how often light-headedness and headaches are experienced to such a degree that assistance is required. The ministry concluded that without such information it is difficult to make determination of the presence of a significant impairment.

The panel finds the ministry's analysis of the evidence as stated here was reasonable and adds that the neurologist indicated that the appellant is on medication and has been seizure-free for 2 years. The neurologist did not indicate whether the appellant is symptom-free. In the AR, the neurologist indicated that the appellant has 'mild tremor' when writing but it is 'not limiting writing'. In the MR, the neurologist indicated that the appellant can lift up to 35lbs but in the AR the same neurologist indicated that the appellant needs periodic assistance due to light-headedness. The panel is not sure how the light-headedness impacts the amount of weight the appellant can lift and

no issues relating muscle strength have been indicated. The panel finds that the neurologist did not provide sufficient evidence to support the appellant's impressions of his impairment.

The panel also considered the SRs provided by the appellant which includes information about issues with vision, motion sickness, headaches, premature fatigue, hand tremors, some issues with balance, and occasional stuttering. The panel notes that, in the MR, the neurologist provided a narrative that indicated that the appellant reports issues with photophobia, chronic daily headaches, insomnia, and problems with sleep disturbances. The panel finds that neurologist did not confirm premature fatigue, issues with balance or occasional stuttering. As noted by the ministry, the panel notes that these conditions do not translate to a severe impairment of the appellant's mobility and physical functioning.

When considering the appellant's statements at the hearing and in the RFR, the panel noted that neither spoke to a severe physical impairment. For example, the appellant indicated that he requires a person to be around in situation where he does not feel comfortable such as climbing stairs in rain or snow or climbing ladders. At the hearing, the appellant stated that his discomfort extends to escalators, elevators or walking on the street. The person required to be with him will provide physical support so that he does not fall from imbalance. However, when asked if he uses a cane or walk to provide balance and stability the appellant indicated no and that he used crutches in the past but found that he did not need them all the time. Furthermore, the neurologist does not support that the appellant's physical mobility is limited in the manner described by the appellant. When describing his experience of light-headedness and dizziness, the panel noted that the appellant's position is not supported by the information in the PWD application which describes good physical mobility and functioning. When considering the appellant's description of motion sickness and shaky hands (hand tremors), the panel found that the experience is limited to certain activities. Moreover, the description of these and other experiences as listed here do not translate to an inability to function.

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

Mental Impairment

The appellant argued that he suffers from issues with memory, concentration, premature mental fatigue, cognitive processing speed, difficulties with reading and comprehension, concentration, anxiety and emotional distress.

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

The ministry noted that in the neurologist diagnosed the appellant with traumatic brain injury. In the MR, the neurologist indicated that the appellant has difficulties with communication caused by cognitive functioning. The ministry noted the appellant's ability to speak, read, write and hear as indicated by the neurologist. The ministry noted that the neurologist indicated that speaking, writing and hearing are non-limiting. The ministry concluded that since the appellant is in post-secondary school and even with accommodations, the appellant must be able to read at a functional level. The ministry also noted that the neurologist indicated that the appellant sometimes needs help if the text is small and can manage large text.

The ministry noted that in the MR, the neurologist indicated significant deficits in cognitive and emotional functioning in the areas of executive, language, memory, perceptual psychomotor, emotional disturbance and attention and sustained concentration. The ministry noted that in the AR, the neurologist did not indicate that there were major impacts to these same areas of cognitive and emotional functioning. All areas of cognitive and emotional functioning were indicated to have either moderate, minimal or no impacts.

The ministry also noted that the neurologist indicated that the appellant is independent with the DLA that are typically difficult for someone with a severe cognitive and emotional impairment, such as decisions about personal care, shopping, or managing rent/bills, and medications.

The ministry noted that the neurologist indicated that the appellant requires periodic assistance with some aspects of social functioning. The ministry noted that the type of assistance required was not indicated by the neurologist.

The panel finds that the ministry analysis of the evidence was reasonable, and it reasonably concluded that the information provided by the neurologist regarding the appellant's mental functioning does not support a finding of a severe mental impairment.

The panel considered the appellant's statements at the hearing and the RFR. The appellant stated that he faces challenges with multitasking due to light sensitivity, frequent light headedness, headaches and increased fatigue. The appellant described challenges with, but limited to, concentration, memory, sleep disturbances, executive function and emotional regulation. However, when considered as a whole, these challenges do not translate into limitation in mental functioning. For example, the appellant attends post-secondary school and can manage to make decisions about personal activities, care and finances. As discussed previously, the limitations to social functioning are not supported with sufficient information from the neurologist. The panel finds that the ministry was reasonable in its conclusion.

Given the overall assessments of the appellant's mental, cognitive, and emotional ability and functioning in the PWD application and the lack of any additional information provided at appeal from a prescribed professional, the panel finds that the ministry was reasonable in its determination that the evidence does not support a finding that the appellant suffers from a severe 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 his medical conditions he is not able to complete is DLA without assistance from another person.

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.

The ministry noted that the neurologist indicated that the appellant is not prescribed medications and/or treatments that interfere with the ability to manage DLA. The ministry noted that the neurologist indicated that the appellant is independent with most of the listed DLA. However, the neurologist indicated that the appellant needs continuous assistance or is unable to take public transportation due to the recurrence of headaches, light-headedness and nausea. The ministry noted that the appellant can take a car but is dependent on others and can walk to the store without limitation.

The ministry noted that the neurologist indicated that periodic assistance is required with reading prices (if text is small, sometimes needs assistance; can manage large text), carry purchases home (if walking, carrying things causes back pain and is worse with a heavier load over 5 pounds) and meal planning (needs intermittent assistance using a knife). The ministry concluded that the appellant experiences some difficulties, but the assistance required as described by the neurologist does not reflect significant restriction to the ability to shop and plan meal.

The ministry noted the appellant's submissions in the RFR. It noted that the appellant stated that, he needs continuous assistance from another person to prepare food and clean because he tends to have shaky hands and frequent light-headedness. The ministry stated that while notable, this is not supported by the information provided by the neurologist. Although it is acknowledged that the appellant may require help with chopping and cutting, the ministry noted that the neurologist did not indicate any other restrictions in preparing food and basic housekeeping. The ministry concluded that based on the assessments of the appellant's basic physical functioning he would be able to complete these activities to a reasonable degree.

The ministry made a determination on social functioning as discussed previously.

The panel finds the ministry's analysis of the evidence and its conclusion regarding the evidence as stated here was reasonable. The panel finds that being independent with the majority of listed DLA and lacking information regarding frequency and duration of the periodic assistance that is required does not satisfy the legislative requirements. The panel notes that the neurologist indicated that the appellant has been seizure-free for 2 years. Therefore, it is unclear why the appellant has reason to believe he will experience a seizure while in the shower and therefore requires assistance. The neurologist did not confirm or support the appellant's position here. The panel considered the information the neurologist provided regarding the appellant's need for periodic assistance with reading labels/prices, carrying purchases home and meal planning. The panel finds that without information regarding the frequency and duration of the assistance required, it cannot be determined if periodic assistance is required for extended periods as required by the legislation. Additionally, requiring intermittent assistance with using a knife does not meet the legislative requirement.

The panel considered the information in the SR and RFR provided by the appellant. This information was confirmed by the GP in a note. However, the GP did not describe the type or duration of assistance

that is required with food preparation or with basic housekeeping. The appellant indicated struggles with performing executive functioning regularly. The panel notes that the appellant is independent with all DLA related to executive functioning such as paying bills/rent and making decisions about personal care.

The panel considered the assessment by the neurologist in the PWD application of independence with almost all of the DLA, the 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 by the neurologist does not describe or indicate that a severe impairment restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. Given the evidence as a whole, the panel finds that the ministry reasonably concluded that the evidence does not establish that an impairment significantly restricts DLA continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

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

The appellant indicated that he requires help with his DLA and his family currently provides this assistance.

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

The panel notes that, AR, the neurologist indicated that assistance is required from the appellant's family. However, it was not indicated what assistance is provided, how often or for how long. The panel finds that without such information it is difficult to determine if the criteria of help has been met.

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.

2022-0009

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)

2022/03/24

Print Name

Kevin Ash

Signature of Member

Date (Year/Month/Day)

2022/03/24

Print Name

Barbara Sharp

Signature of Member

Date (Year/Month/Day)

2022/03/24