Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated February 3, 2022, in which the ministry found the appellant was not eligible for designation as a Person with Disabilities ("PWD") under section 2 of the *Employment and Assistance for Persons with Disabilities Act* ("EAPWDA"). The ministry found that the appellant met the age requirement and the requirement for the impairment to continue for at least 2 years but was not satisfied that:

• the appellant has a severe mental or physical impairment;

• the impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform daily living activities ("DLA") either continuously or periodically for extended periods; and

• as a result of restrictions caused by the impairment, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

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

Part D – Relevant Legislation

The ministry based the reconsideration decision on the following legislation:

Employment and Assistance for Persons with Disabilities Act - EAPWDA - section 2

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - section 2

The full text is available in the Schedule after the decision.

Part E – Summary of Facts

The evidence and documentation before the minister at the reconsideration consisted of:

1. Information from the ministry's record of decision indicating that the PWD application was submitted on November 1, 2021 and denied on November 23, 2021 with an explanation (*Decision denial summary*) of the criteria that were not met. On January 6, 2022, the appellant submitted a *Request for Reconsideration* ("RFR"). On February 3, 2022, the ministry completed the review of the RFR.

2. An RFR signed by the appellant on January 5, 2022, with a request for an extension to provide an update from the appellant's doctor and cardiologist about the appellant's declining health. The ministry noted that no additional information was received for the reconsideration.

3. The PWD application comprised of:

- the *Applicant Information* (self-report - "SR") signed by the appellant on September 22, 2021. No submission was provided with the report.
- a *Medical Report* ("MR") dated October 15, 2021, signed by a cardiologist who has known the appellant for 10 months and has seen the appellant once in the past 12 months (comment, "patient has been feeling flu-like symptoms, unable to be seen in person due to this").
- *Assessor Report* ("AR") dated October 15, 2021, completed by a registered nurse ("RN") who indicates they saw the appellant once for the purpose of the assessment and based the assessment on hospital records and information from nursing staff at the heart function clinic.

Summary of relevant evidence from the application and RFR:

Diagnoses

In the MR, the appellant was diagnosed with heart conditions: ischemic cardiomyopathy ("ICMO"), and heart failure with reduced ejection fraction ("HFrEF") - 40% (onset January 2021). In Section B - *Health History*, the cardiologist explains that heart failure is a chronic, life-limiting condition that requires the appellant to take "heart failure medications for life."

In the AR, the RN explains that the appellant is enrolled in the heart function clinic "where we address the pumping function of his heart and provide therapies to improve his symptoms of heart failure and improve his heart function." The appellant has been enrolled in the program or 8-10 months.

Functional skills

Medical Report

In Section B - *Health History*, the cardiologist explains that heart failure "has significantly reduced [the appellant's] functional capacity." After the heart failure diagnosis and a hospital emergency ("ER") visit in December 2021, the appellant "has been progressively declining in functional status." The cardiologist states that before the diagnosis of heart failure, the appellant had no difficulty in walking long distances but since the diagnosis, shortness of breath "limits patient from walking more than 2 blocks and makes it challenging to walk up stairs."

In section D - *Functional Skills*, the cardiologist indicates the appellant can walk 1-2 blocks unaided on a flat surface and climb 5 or more steps unaided. The appellant is unable to lift any weight (comment, "no energy"). The appellant has no limitations with *remain seated*.

Regarding mental functions (questions D-5 and D-6), the cardiologist indicates no difficulties with communication. The cardiologist checked *yes*, the appellant has significant deficits with cognitive and emotional function in the areas of *Emotional disturbance* and *Motivation*. The 2 sections for comments were left blank.

Assessor Report

Under Section B-2, *Ability to Communicate*, the RN indicates a *good* ability for 3 of the 4 areas listed: *Speaking*, *Writing*, and *Hearing*. The appellant's ability to read was marked *satisfactory* (comment, "vision difficulties").

Under section B-3, *Mobility and Physical Ability*, the RN indicates restrictions for 4 of the 6 areas listed. Specifically, the appellant *takes significantly longer than typical* with the following functions:

- *Walking outdoors*: comment, "needs to take frequent breaks"
- *Climbing stairs*: comment, "challenges taking stairs due to shortness of breath"
- *Lifting*: comment, "not able to lift heavy objects"
- *Carrying and holding*: comment, "difficulty with groceries."

The RN marked the remaining 2 areas as independent:

- *Walking indoors*
- *Standing*

In section B-4, *Cognitive and Emotional Functioning*, the assessor is asked to indicate what impacts the appellant's impairments have on various cognitive and emotional functions. For the 14 areas listed, the RN indicates impacts in 4 areas:

- Minimal impact for *Consciousness*
- Moderate impact for:
  -*Emotion*
  -*Motivation*
  -*Motor Activity* (including decreased goal-oriented activity).

No impact is reported for the following areas:

- *Bodily functions* (including poor hygiene and sleep disturbance)
- *Impulse control*
- *Insight and judgment*
- *Attention/concentration*
- *Executive*
- *Memory*
- *Language*
- *Psychotic symptoms*
- *Other neuropsychological problems*
- *Other emotional or mental problems*.

Daily Living Activities

Medical Report

In Section B - *Health History*, the cardiologist explains that before the appellant was diagnosed with heart failure, he was able to work and perform DLA with no issues, but now the appellant experiences daily fatigue and requires naps throughout the day "as he has no energy to perform his daily activities or grocery shopping."

In Section B-3, the cardiologist checked *yes*, the appellant has been prescribed medications or treatments that interfere with the ability to perform DLA (comment, "patient has been prescribed heart failure medications. Some of the symptoms/side effects of these medications can include dizziness/lightheaded spells as well as fatigue").

Section E of the MR - *Daily Living Activities*, was left blank.

Assessor Report

In Section B1 - *Mental or Physical Impairment*, the RN explains that “fatigue and shortness of breath affect ability to manage daily activities which makes [the appellant] depressed.”

In Section C - *Daily Living Activities*, the RN indicates the following restrictions for 3 of the 8 DLA listed. Specifically, these DLA take significantly longer than typical to perform:

- ***Personal Care***: The appellant takes significantly longer with 1 of the 8 activities listed:

    - *Dressing*: comment, “shortness of breath while dressing.”

The appellant was assessed as independent with the remaining personal care activities:

- *Grooming*
- *Bathing*
- *Toileting*
- *Feeding self*
- *Regulating diet*
- *Transfers (bed)*
- *Transfers (chair)*

- ***Basic Housekeeping***: The appellant takes significantly longer with all activities:

    - *Laundry*: comment, “difficulty carrying laundry”
    - *Basic Housekeeping:* comment, “needs frequent breaks.”

- ***Shopping***: The appellant takes significantly longer with 2 of the 5 activities:

    - *Going to and from stores*: comment, “needs breaks when walking”
    - *Carrying purchases* home: comment, “difficulty lifting groceries for long distances.”

The appellant is assessed as independent with the remaining areas of *Shopping*:

- *Reading prices and labels*
- *Making appropriate choices*
- Paying for purchases.

Additional comments for these DLA was left blank and all areas of the remaining DLA are assessed as independent.

- ***Meals***: The appellant is independent with all areas:

    - *Meal planning*
    - *Food preparation*
    - *Cooking*
    - *Safe storage of food.*

- ***Pay Rent and Bills***: The appellant is independent with all areas:

  - *Banking*
  - *Budgeting*
  - *Pay rent and bills.*

- ***Medications***: The appellant is independent with all areas:

  - *Filling/refilling prescriptions*
  - *Safe handling and storage.*

- ***Transportation***: The appellant is independent with all areas:

  - *Getting in and out of a vehicle*
  - *Using public transit (where available)*
  - *Using transit schedules and arranging transportation.*

- ***Social Functioning***: The appellant is independent with all areas:

  - *Appropriate social decisions*
  - *Able to develop and maintain relationships*
  - *Interacts appropriately with others*
  - *Able to deal appropriately with unexpected demands*
  - *Able to secure assistance from others*

The RN checked *marginal functioning* when asked to describe how a mental impairment affects the appellant's relationship with his immediate and extended social networks. No support/supervision was indicated to maintain the appellant in the community and no safety issues were reported.

Section E - *Additional Information* (including the effect of the impairment on DLA), was left blank.

Need for help

Information from the MR and AR

In the MR under *Health History* (Section B-4), the cardiologist marked *no*, the appellant does not need any prostheses or aids for the impairment.

In the AR, The RN indicates the appellant lives alone and "patient currently does not have assistance" with DLA.

Section D - *Assistance provided through the use of Assistive Devices,* was left blank.

The RN checked *no,* the appellant does not have an assistance animal.

Additional submissions

Subsequent to the reconsideration decision the appellant filed a *Notice of Appeal* with a 2-page typed submission and a letter from his new family doctor.

The appellant's submission, dated February 14, 2020, provides detailed information about his medical history and resulting restrictions. The appellant reported that:

- on June 3, 2020, he tested positive for Covid-19. It lasted for 5 months and he finally tested negative on December 16, 2020;
- in late December 2020, he had his first stroke, followed by a second stroke 3 days later. After some recovery time, he tried to walk "step by step, with a lot of pauses and by supporting myself with furniture and everything around me." Once the appellant was able to go outside, he realized "that what used to take me 5 minutes takes me now 25 minutes;"
- after having Covid-19 and 2 strokes, he was diagnosed with heart failure which makes him "very easily out of breath, dizzy, and I lost all my strength;"
- he can't stand for long periods of time "which makes difficult, daily basic tasks like cooking, dressing, cleaning, or even showering." His hygiene is deteriorating, as are his living conditions because he can't clean his place properly or cook. He relies on pre-cooked meals or cans;
- his doctor asked him to go out and walk but he "can't go further than one block which already takes me 25 minutes, so 5 times longer than before;"
- on his way home he has to climb stairs and that takes him 10 times longer than it used to, "to which we can add 30 minutes of recovery because of my shortness of breath;"
- he can't carry more than 5 lbs. "because of the loss of strength, energy, shortness of breath, and dizziness." An outreach worker brings the groceries home for hm because going up the stairs would double the time of his trip to approximately an hour and a half;
- he is only able to buy a few grocery items at once which makes his life "very complicated and doesn't help to eat healthier;"
- his sleep has also been affected because he can only nap, even at night, and that reduces his ability to concentrate, "and to think long term like organizing or planning as well as my memory;"
- any attempt to socialize "is limited" and this affects his morale and general motivation. He is starting therapy with a specialist to help him persevere and "not be carried away by this life which has become very complicated."

The letter from the appellant's new doctor is dated March 10, 2022 and includes the following information:

- They have been the appellant's doctor since November 2022 [*sic*, 2021].
- The appellant has "multiple comorbidities" including coronary artery disease, congestive heart failure, and hypertension for which he is under the care of a cardiologist. The most recent left ventricle ("LV") function was 30%.
- The appellant is also under investigation for chronic bronchitis. He contracted Covid-19 in June 2020, with his breathing more laboured since then.
- Based on the appellant's medical history, the doctor wrote, "I support his application for PWD."

Admissibility of appeal documents

The ministry did not raise any objections to the appellant's written submission or the letter from his new doctor. The panel admits the oral submissions under section 22(4) of the *Employment and Assistance Act* as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The panel finds that the documents are relevant to the appeal because they provide a self-report on restrictions to daily functioning, and additional medical information that includes diagnoses that were not mentioned in the PWD application.

Oral submissions

The appellant attended the hearing with his advocate (outreach worker). They provided argument and elaborated on the appellant's restrictions with the following information:

- The appellant's health continues to decline and he cannot walk far or do things due to the effects of 2 strokes, heart failure, and Covid-19. His shortness of breath has worsened due to "long Covid" and his doctor has now confirmed chronic bronchitis.
- The appellant experienced further vision problems due to Covid-19 and had to get strong glasses.

The panel admits this additional information as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The ministry relied on the reconsideration record and did not submit any new evidence at the hearing. Both parties stated their arguments which the panel will consider in Part F - *Reasons*.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision that found the appellant ineligible for PWD designation was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. The panel's role is to determine whether the ministry was reasonable in finding that the following eligibility criteria in section 2 of the EAPWDA were not met:

• the appellant has a severe mental or physical impairment;

• the impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform daily living activities ("DLA") either continuously or periodically for extended periods; and

• as a result of restrictions caused by the impairment, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

Analysis

Severe mental or physical impairment

Arguments

Appellant

The appellant agrees that the reconsideration decision "was correct because it was missing information" but he argues that the appeal submissions. including the letter from his new family doctor, fill in the missing details about his declining health and limitations and confirm a severe impairment. The appellant explained that his new doctor told hm that the information "has to be very explicit and precise." The appellant said the doctor asked for the PWD package but the appellant didn't have it so the doctor wrote a letter instead.

In response to questions, the appellant said that the assessments by the cardiologist and RN do not accurately reflect his limitations. He said he wasn't feeling well when the application was filled out and they didn't discuss his restrictions. The advocate said "not everything was explained to him"; the appellant didn't know what information was needed until he got the new family doctor who told him to be more specific.

The advocate said she helped the appellant prepare the 2-page appeal submission and describe his restrictions in detail. While they did not ask the appellant's new doctor to sign the self-report, they said that the doctor read it and they argue that "her letter follows from [the appellant's] submission."

Ministry

The ministry argues that the information from the cardiologist and RN does not establish a severe impairment of physical or mental functioning. The ministry notes that the appellant is able to walk 1-2 blocks and climb 5 or more steps without assistance despite his shortness of breath and a progressive decline in functional status (MR).

The ministry argues that the severity of the functional limitations is unclear based on the information in the AR because the RN indicates the appellant takes significantly longer for most physical functions but did not say how much more time the appellant needs. Regarding lifting, the ministry argues there was conflicting information between the MR ("no lifting") and AR ("not able to lift heavy objects"), making it difficult to determine the degree of restriction.

The ministry argues the appellant does not have a severe mental impairment because the appellant was not diagnosed with a mental impairment (MR); he has good to satisfactory communication skills despite "vision difficulties" impacting reading (AR); and only moderate impacts are reported for cognitive and emotional functions with most functions assessed as "no impact" (AR). The ministry further notes that only a few areas of cognitive and

emotional functioning are affected by the appellant's impairment; most areas are not restricted, and all areas of social functioning are independent. Despite significant impacts reported for emotion and motivation (MR), the ministry argues that the appellant is independent with most DLA that require motivation and energy to perform.

At the hearing, the ministry said it finds the additional submissions (self-report) helpful in that the appellant explains how much longer it takes him to walk and climb stairs, and he clarifies how much weight he can lift and how his impairment affects his motivation and morale. However, the ministry argues that the letter from the appellant's new doctor falls short of confirming a severe impairment of physical or mental functioning because a severe impairment "is not based on medical diagnoses and the letter did not talk about the impacts to function and DLA, or what help is needed."

Legislative requirement

To be eligible for PWD designation, the legislation (EAPWDA section 2) requires several criteria to be met including the minister being satisfied that the applicant has a severe mental or physical impairment. The ministry found the appellant was not eligible for PWD because not all five criteria were met. "Severe" is not defined in the legislation but in the ministry's view, the diagnosis of a serious medical condition does not in itself establish a severe impairment of mental or physical functioning. The PWD medical reports ask for information on functional skills and abilities and the panel finds that the ministry's assessment of severity based on daily function is a reasonable interpretation of the legislation.

Mental and physical impairment - specific considerations

To assess the severity of a mental impairment, the ministry considers the extent of any impact on daily functioning as evidenced by limitations/restrictions with mental functions and emotion. The ministry does not only look at the diagnosis or a medical practitioner's comment that the condition is "severe" but considers functional abilities and whether there are restrictions to DLA requiring mental/social functioning including any safety issues. The panel finds that an assessment of severity based on cognitive, emotional, and social functioning is a reasonable interpretation of the legislation.

To assess whether the applicant has a severe physical impairment, the ministry considers information on the degree of restrictions to physical functioning and whether the applicant requires significant help or any assistive devices to manage physical tasks. The panel finds that the assessment of severity based on daily physical functioning is a reasonable interpretation of the legislation.

Panel's decision - mental impairment

The panel has considered the evidence as a whole and finds that the ministry was reasonable to conclude the appellant does not have a severe mental impairment. The appellant is not diagnosed with a mental impairment in the MR and there is no indication of a referral to a mental health practitioner. In the MR and AR, the appellant has significant and moderate restrictions in the areas of emotion and motivation, but the only detail provided is that fatigue and shortness of breath leave the appellant feeling depressed (AR). Both the cardiologist and RN comment on the appellant's fatigue ("requires naps throughout the day"- MR) but at the same time, no impact was reported for sleep disturbance (*Bodily functions* - AR).

In the appeal submission the appellant describes his sleep disturbance and fatigue in greater detail, stating that his ability to concentrate, organize, plan, and socialize are impacted by his inability to sleep properly ("I can only sleep in the form of naps, even at night"). However, no deficits/impacts for attention/concentration and executive function are reported in the MR and AR, and the appellant is independent with social functioning despite marginal functioning with his social networks. In the appeal submission the appellant indicates starting therapy to help with his emotional functioning; however, there is no information from a therapist such as intake notes or mental health assessment results and such evidence would be helpful in explaining the extent of a mental impairment.

Regarding the most recent medical information, the letter from the appellant's new doctor lists the appellant's physical conditions but does not diagnose a mental impairment or give any detail about the appellant's mental functioning. The panel accepts the appellant's evidence that the doctor read his self-report and provided a letter as follow-up to his submission. However, the doctor has not signed the self-report to indicate they endorse the

appellant's information or provided their own assessment of cognitive and emotional functioning. The panel therefore finds that the additional evidence falls short of confirming a severe mental impairment. The panel finds that the ministry reasonably determined a *severe* mental impairment under section 2(2) of the EAPWDA was not established on the evidence in the PWD application.

Panel's decision - physical impairment

The panel has considered the evidence as a whole and finds that the ministry was reasonable to conclude the appellant does not have a severe physical impairment. Both the cardiologist and the appellant's new doctor describe several serious and progressive medical conditions that are reasonably expected to limit the appellant's physical functioning. The appellant has congestive heart failure with his heart function (LV) reduced to 30% according to the most recent information. He is also suffering from another heart condition (coronary artery disease) as well as hypertension, and chronic bronchitis/increased shortness of breath from "long Covid."

However, despite these serious medical conditions, the degree of restriction with walking is in the low-middle range in the MR (1-2 blocks unaided) and the frequency of rest breaks for walking is not described in the AR. Both the cardiologist and RN comment on the appellant's difficulties in going upstairs (due to shortness of breath) but in the MR, the appellant is able to climb 5 or more steps unaided which is the lowest degree of restriction on the rating scale. As the ministry notes, there is inconsistent information for lifting: the cardiologist indicates "no lifting" due to the appellant's lack of energy, but the RN said the restriction is only for lifting heavy objects.

The panel acknowledges the appellant's detailed information about functional restrictions in the appeal submission:

- walking now takes him 5 times longer (25 minutes, versus 5 minutes before his heart failure diagnosis) and he can't walk further than a block;
- he has had to support himself "with furniture and everything around me" in order to walk indoors;
- he can't stand for a long time due to dizziness and loss of strength;
- stairs take 10 times longer and he has to rest for 30 minutes after going up stairs ("recovery because of my shortness of breath");
- he can't carry more than 5 lbs. "because of loss of strength, energy, shortness of breath and dizziness."

The panel finds that the appellant's descriptions support the RN's information that indicates most physical functions take significantly longer than typical. However, it remains unclear from the evidence why the appellant has not been prescribed any assistive devices for basic mobility when walking and stairs are taking 5-10 times longer. The panel notes that holding onto furniture would not meet the definition of assistive device under the legislation.

Further, while the appellant's new doctor states their support for the PWD application, they did not sign the appeal submission to indicate their endorsement of the reported restrictions, nor did they provide their own assessment of functional limitations or physical DLA. The panel finds that the new medical information does not provide enough detail to clarify the appellant's information on physical functioning including being able to walk only half a block or carry up to 5 lbs. despite taking longer and not being able to lift at all in the MR. For these reasons, the panel finds that the ministry reasonably determined a severe physical impairment under section 2(2) of the EAPWDA was not established on the evidence.

Restrictions to daily living activities

Arguments

Appellant

The appellant agrees that the reconsideration decision "was correct" because of a lack of detailed information about his day-to-day restrictions. The appellant argues that the appeal submissions. including the letter from his new family doctor, provide "precise information" to confirm significant difficulties with cooking, dressing, cleaning, showering, and social functioning. The appellant argues that his life has become very complicated and difficult due to the amount of time it takes him to do things.

Ministry

The ministry acknowledges the RN's information indicating that dressing, doing laundry and housework, going to and from stores, and carrying purchases take the appellant significantly longer due to fatigue; the need for frequent breaks; and difficulty with lifting. The ministry argues that "no information was provided to indicate how much longer than typical you take to complete these tasks, making it difficult to determine if you are significantly restricted either continuously or periodically for extended periods." The ministry notes that the majority of DLA are assessed as independent, and was therefore not satisfied that a prescribed professional has confirmed significant restrictions to DLA as required by the legislation.

At the hearing the ministry acknowledged the appellant's appeal submission but argues that a self-report is not sufficient to confirm restrictions to DLA because the legislation requires the restrictions to be in the opinion of a prescribed professional. The ministry argues that the letter from the appellant's new doctor does not confirm restrictions to DLA "because the letter doesn't talk about impacts to function or DLA" and there is "no new information from the physician" that speaks to the legislative criteria that must be met.

Legislative requirement

Subsection 2(2)(b)(i) of the EAPWDA requires the ministry to be satisfied that, in the opinion of a prescribed professional, a severe impairment directly and significantly restricts a person's ability to perform DLA either continuously, or periodically for extended periods. This means that restrictions to DLA must be confirmed by the appellant's doctor or one of the practitioners named in the legislation such as a psychologist or occupational therapist.

The term "directly" means that the severe impairment must cause or result in restrictions to activities. The direct restriction must also be significant. This means that not being able to do DLA without a lot of help, or support from an assistive device will have a large impact on the person's life.

Finally, there is a time or duration factor: the restriction may be either *continuous* or *periodic* under the legislation. Continuous means that the activity must generally be restricted all the time. The ministry views a periodic restriction as significant when it occurs frequently or for longer periods of time; for example, the activity is restricted most days of the week, or for the whole day on the days that the person cannot do the activity without help or support.

The panel views the ministry's interpretation of the legislation as reasonable. Accordingly, where the evidence indicates that an activity takes significantly longer to perform as was indicated in the AR for several DLA, it is appropriate for the ministry to require information on how much longer the activity takes as well as details about the help or support that is needed. With that information, the ministry can assess whether the legislative requirement is met.

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

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

Panel's decision - restrictions to DLA

The panel has considered the evidence from the cardiologist and the RN in the MR and AR, with additional information from the appellant in the appeal submission. While the appellant's information fills in detail about restrictions for *Shopping* and *Basic housekeeping*, the panel finds that the reconsideration decision was reasonable because the information from prescribed professionals does not confirm restrictions to other DLA that are expected to be impacted by the appellant's serious and progressive medical conditions. Furthermore, the panel was not

satisfied that the medical evidence from the appellant's new doctor confirms a severe impairment of physical functioning which results in significant restrictions to DLA.

Shopping

The panel acknowledges that the appellant's self-report provides some detail on how much longer it takes him to perform activities that take significantly longer than typical (AR). The appellant indicates that gong to and from stores takes him 5 times longer due to his restrictions with walking. The appellant said that carrying purchases home would take an hour and a half because he must go up some stairs to get to his place, and he can only carry a few items at once.

The panel accepts that the information in the AR, with additional details from the appellant, confirms that *Shopping* is restricted continuously due to the appellant's fatigue and shortness of breath. The cardiologist also notes that the appellant "has no energy for grocery shopping" (MR). However, without information from the appellant's new doctor in support of the functional limitations in the self report, the panel finds there is insufficient evidence to confirm that a severe impairment is directly and significantly restricting these shopping activities.

In addition, there is no additional information from the appellant's new doctor about a vision problem which the appellant said has gotten a lot worse since he contracted Covid-19. Evidence, in the opinion of a prescribed professional (the RN), indicates the appellant is independent with *Reading prices and labels*, and with other DLA that typically require reading small print (*Pay Rent and Bills*, and *Medications*). It remains unknown, on the evidence from a prescribed professional, whether *Shopping* or other DLA are significantly restricted by the appellant's reduced vision.

Basic housekeeping

The panel accepts that the information from prescribed professionals, with the additional details from the appellant, establishes that *Basic Housekeeping* is restricted continuously due to shortness of breath and other symptoms. The appellant describes his "environmental hygiene" as "not satisfactory" due to his difficulties with cleaning. The RN confirms that cleaning and laundry take significantly longer due to the appellant's limitations in carrying a load and his need for frequent rest breaks. The cardiologist notes that the appellant "has no energy to perform his daily activities." The cardiologist also said that the appellant's medications can interfere with DLA as they can cause light headedness and fatigue.

However, the panel finds that the evidence from the appellant's new doctor does not address how his functional limitations impact his ability to do household chores. The letter only describes the diagnoses but does not clarify or confirm severe functional limitations and their impact on DLA. The panel finds that the reconsideration decision that found there was no severe impairment that significantly restricts DLA remains reasonable because the new information from a prescribed professional does not address the legislative criteria for DLA.

Other DLA

The panel also finds that the reconsideration decision was reasonable because there are unanswered questions about why many DLA remain independent. The RN assesses the appellant as independent with most activities and there was no information from the appellant's new doctor on his ability to mange DLA despite the progressive decrease in his heart function as well as his other symptoms and conditions.

The appellant said he is restricted with more areas of *Personal Care* than the one activity described by the RN (*Dressing*) because showering is also very difficult and his hygiene has deteriorated due to his shortness of breath, dizziness, lack of strength, and fatigue. The appellant argues that cooking and regulating diet are restricted because shortness of breath makes it difficult to stand and do things, and he suffers from poor nutrition as he is only able to prepare processed food. The appellant submits that his social functioning is also significantly restricted because "any attempt to meet and socialize is limited" due to fatigue.

However, these DLA are assessed as independent in the AR, as are activities requiring motivation and energy or physical effort such as grooming and using transportation. There is no information from the appellant's new doctor to confirm the restrictions reported by the appellant. The appellant said he didn't have the PWD package to give to his new doctor, yet he didn't indicate if he contacted the ministry to ask about getting new forms.

The appellant argues that the letter from his doctor should be treated as an adjunct to his self report and viewed as endorsing the restrictions the appellant describes. However, the legislation specifically requires the doctor or another professional to confirm that a severe impairment directly and significantly restricts the person's ability to perform DLA either continuously or periodically for extended periods.

The panel is sympathetic to the appellant's situation and acknowledges the efforts the appellant and advocate have made to provide the required information, but unfortunately the letter from the appellant's new doctor only describes the appellant's medical diagnoses and does not explain how the impairment impacts DLA. It is unclear from the new medical evidence whether the doctor disagrees with the RN's assessment of DLA being largely independent. The panel therefore finds that the ministry reasonably determined significant restrictions to DLA were not established under subsection 2(2)(b)(i) of the EAPWDA.

Help with daily living activities

Arguments

Appellant

The appellant confirmed that he doesn't have any help except for carrying groceries. He argues that he needs help to cope with his situation and has started therapy to gain some support. The advocate explained that although she helps the appellant carry groceries up the stairs, her agency does not provide home support. The advocate said she would like the panel and the ministry to acknowledge that the appellant's condition is getting worse and her agency is trying to get home help and other supports for the appellant but it takes time to set it up.

Ministry

In the reconsideration decision, the ministry acknowledges the appellant's current lack of help with DLA but argues that because DLA are not significantly restricted, it could not be determined that significant help from other persons, or from an assistive device, is required. At the hearing, the ministry argued that the letter from the appellant's new doctor does not address the legislative requirement for help with DLA.

Legislative requirement

Subsection 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA. An "assistive device" is defined in section 2(1) of the EAPWDA as a device specifically designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform.

Panel's decision - help with daily living activities

There was no evidence from the cardiologist, RN, or the appellant's new doctor to indicate the need for an assistive device for the appellant's mobility restrictions. The cardiologist checked *no*, the appellant does not require any aids for his impairment, and the RN left that section of the AR blank. The RN indicates the appellant does not have any help with DLA but he is enrolled in a heart function clinic to provide therapies to address his symptoms of heart failure and improve his symptoms.

The appellant described getting help with one activity (his support worker carries his groceries) and starting therapy to help him cope with the emotional impact of his conditions. While there is evidence to suggest that the appellant needs help with DLA because his conditions continue to progress, the legislation requires confirmation of direct and

significant restrictions to DLA as a precondition for needing help to perform DLA. The panel found that the ministry's determination that significant restrictions to DLA were not established was reasonable because most DLA were assessed as independent and the letter from the appellant's new doctor did not address restrictions to DLA. The panel therefore finds that the ministry's conclusion that the criteria for help under subsection 2(2)(b)(ii) of the EAPWDA were not met, was a reasonable application of the legislation.

Conclusion

The panel considered the information in its entirety and finds that the ministry's reconsideration decision is reasonably supported by the evidence. To be eligible for PWD designation, the legislation requires all the criteria to be met. The ministry was reasonable in finding that only the age and duration requirements were met because there was insufficient evidence to confirm the appellant has a severe impairment that significantly restricts DLA continuously or for extended periods, and that the appellant therefore needs help with DLA. The panel finds that the ministry reasonably applied the legislative requirements to the information provided. The panel confirms the reconsideration decision. The appellant is not successful in his appeal.

Schedule – Relevant Legislation

EAPWDA

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

(a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

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

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

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

EAPWDR

Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self-care;

(viii) manage personal medication, and

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

(i) make decisions about personal activities, care or finances;

(ii) relate to, communicate or interact with others effectively.

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

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

(i) medical practitioner,

(ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner,

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Part G – Order

The panel decision is: (Check one) ☒**Unanimous** ☐**By Majority**

The Panel ☒**Confirms the Ministry Decision** ☐**Rescinds the Ministry Decision**

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes☐ No☐

Legislative Authority for the Decision:

Employment and Assistance Act

Section 24(1)(a)☒ or Section 24(1)(b) ☐
Section 24(2)(a)☒ or Section 24(2)(b) ☐

Part H – Signatures

Print Name Margaret Koren	
	Date (Year/Month/Day) 2022/04/07

Print Name Wendy Marten	
Signature of Member	Date (Year/Month/Day) 2022/04/07
Print Name Anil Aggarwal	
Signature of Member	Date (Year/Month/Day) 2022/04/07