

Part C – Decision Under Appeal

Under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated March 28, 2022, that denied the appellant designation as a person with disabilities (PWD) under section 2 of the *Employment and Assistance for Persons with Disabilities Act*. The ministry stated that the appellant met the requirements of having reached 18 years of age and of a medical practitioner confirming the impairment is likely to continue for at least 2 years. However, the ministry was not satisfied that:

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

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

Part D – Relevant Legislation

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

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

Part E – Summary of Facts**Information before the ministry at reconsideration**

- The appellant's PWD application, comprised of:
 - A Medical Report (MR) and an Assessor Report (AR). Both were completed in December 2021 by a general practitioner (GP) who had seen the appellant 2 – 10 times since the appellant became a patient in October 2021.
 - A Self-report (SR) dated December 2, 2021.
- The appellant's March 5, 2022, Request for Reconsideration.

Information provided on appeal and admissibility

The appellant's Notice of Appeal dated March 31, 2022, in which the appellant writes that he needs income assistance due to not being able to work because of his right arm injury.

At the hearing, the appellant provided additional details about the impact of his medical conditions and his functioning (summarized below).

At the hearing, the ministry reviewed the reconsideration decision. The ministry did not provide evidence at the hearing.

The panel admitted the appellant's information provided on appeal under section 22(4) of the *Employment and Assistance Act* as information reasonably required for full and fair disclosure of the matters at issue. The panel considered the information to be directly related to PWD eligibility.

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

Summary of relevant evidence**Diagnoses and Health History**

The GP diagnoses psychotic, anxiety and substance disorders and a right arm injury (while intoxicated). Additional information from the GP includes:

- Date of onset for all diagnoses is July 2021 as reported by the appellant – unknown if there were any earlier diagnoses.
- Psychiatric ward hospitalization from “July 1st ? to Sep 1st.”
- Appellant reports having been on some substance which made him “high,” having an altercation with police resulting in fracture of the right upper arm humerus, and that he cannot use his right arm now.
- Psych conditions seem to be stable, and he is taking medication for anxiety.

- Unknown if psychotic disorders stemmed from substance use – the GP will observe.

Physical Impairment

The GP reports:

- Prostheses or aids are required – right arm cast.
- Functional skills: the appellant can walk 4+ blocks unaided on a flat surface; climb 5+ steps unaided; and remain seated without limitation. The appellant can do no lifting.
- Walking indoors and outdoors, climbing stairs, and standing are managed independently. Lifting, and carrying and holding require continuous assistance from another person - right arm cast.

In the SR and Request for Reconsideration, the appellant reports:

- He is right-handed and cannot use his right arm properly because of nerve damage which the nerve specialist stated will take about 2 years to heal.
- He drives to earn money and is unable to work.
- All the doctors recommend he do no lifting or pulling; he needs help for carrying and holding things, limiting his daily functions in everyday activities.
- He uses splints and braces on his right arm.

At the hearing, the appellant stated that he:

- is right-handed, must use a brace and is unable to use his right arm
- is not able to work or wash himself.
- is suffering financially, which is why he wants income assistance
- used to drive, and work as a delivery driver, but is afraid to drive without the use of his right arm, so he is quite anxious and reluctant to socialize
- heavily relies on use of his right arm and hand but won't be able to use them for at least 2 years
- has no additional information from the GP.

Mental Impairment

The GP reports:

- A significant deficit in 1 of the 11 listed areas of cognitive and emotional function – emotional disturbance (anxiety).
- Social functioning is not restricted by the appellant's impairment.
- No cognitive, motor, sensory or other difficulties with communication. Ability to communicate (speaking, reading, writing, hearing) is good.
- Minimal impact on daily cognitive and emotional functioning in 5 of 14 listed areas – consciousness, emotion, impulse control, insight and judgement, and psychotic symptoms. No impact is reported for the remaining areas.

In the Request for Reconsideration, the appellant writes that he is being treated for psychotic

and anxiety disorders, which includes taking medication. He is impacted in the areas of consciousness, emotion, impulse control, insight and judgement, and psychotic symptoms.

At the hearing, the appellant stated that he:

- is also suffering emotionally and psychologically, and is taking psychiatric medications
- is financially stressed out having no work income which impacts his mood and emotions.

DLA

In the MR, the GP reports:

- Prescribed medication interferes with the ability to perform DLA - anxiety medication can cause drowsiness and fatigue and has a small risk of inducing psychotic episodes. Duration of medication is unknown.
- The appellant's impairment does not directly restrict the ability to perform DLA - personal care, meal preparation, basic housework, daily shopping, mobility inside and outside the home, use of transportation, management of finances, and social functioning are not restricted.

In the AR, the GP reports:

- All listed tasks of the DLA personal care, basic housekeeping, shopping, meals, pay rent and bills, medications, transportation, and social functioning are managed independently. No tasks are reported to take significantly longer to perform.
- Right arm cast – “after humerus healed, he should be fine.”
- Good functioning with immediate and extended social networks.

The GP provided no response where asked “What are the applicant's mental or physical impairments that impact his/her ability to manage Daily Living Activities?”

In the Request for Reconsideration, the appellant states that help for DLA is provided by his family and his friend, as he has a difficult time conducting them alone.

Need for Help

The GP reports:

- Help required for DLA is provided by family and friends.
- The appellant uses splints, braces, and a right arm cast.

Part F – Reasons for Panel Decision**Issue on Appeal**

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

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

Panel Decision**Eligibility for PWD designation under section 2 of the *EAPWDA*****Severe Impairment – Physical or Mental**

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

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

Physical Impairment

Positions of the Parties

The appellant's position is that he is unable to manage daily activities or work due to his right arm injury, which will take more than 2 years to heal.

The ministry's position is that the GP's assessments indicate some limitations of the appellant's physical abilities due to the fracture of his right arm humerus but not a severe impairment of physical functioning. The ministry notes the GP assesses independent physical functioning, except for requiring continuous assistance with lifting, carrying, and holding, and the use of a right arm cast, splint, and brace. The ministry also notes that in the MR the GP reports that DLA are not directly restricted. Respecting the AR, the ministry states that the appellant is assessed as being between independent functioning and requiring periodic assistance from another person with all areas of DLA, but that no further information about the frequency and duration of the need for assistance is provided. The ministry concludes that being limited in one aspect of physical functioning does not constitute an overall severe physical impairment.

Panel Analysis

The appellant is diagnosed with a fractured right arm humerus. No other physical medical conditions are diagnosed.

The appellant and the GP both describe limitations to the appellant's ability to lift, carry and hold due to the right arm humerus fracture. The GP indicates that the appellant should be fine once the humerus has healed. As the ministry notes, the GP reports that the appellant is not limited in any other areas of physical functioning, including walking and climbing stairs. Additionally, in the MR, the GP reports that the appellant's ability to manage the prescribed DLA is not restricted. The ministry finds that in the AR, the GP assesses the appellant's functioning with all listed DLA tasks as being somewhere between independent and needing periodic assistance from another person. The panel finds that it is more likely than not that the GP's tick marks in the DLA section of the AR indicate independent functioning and that the tick marks simply extend into the next box which is used to identify the need for periodic assistance. The panel makes this finding because the GP clearly ticked all the "No" boxes in the MR when asked if the appellant's impairment directly restricts the ability to perform each DLA. Additionally, in the AR, the GP did not respond when asked to identify any impairments that impact the ability to manage DLA. The panel also finds that the need for periodic assistance with all listed tasks of all DLA is not consistent with other information provided by the GP. For example, the appellant's reading ability is indicated as good, which does not support an assessment of the need for periodic assistance reading labels and prices when shopping. Similarly, the GP clearly indicates good functioning with all social networks, which does not support the conclusion that periodic assistance is required with all areas of social functioning. However, even if the panel found that the need for periodic assistance from another person was indicated in the AR, there is, as noted by the ministry, insufficient detail about the nature of the assistance, including frequency and duration, to establish a severe degree of physical impairment.

Based on the available information, the panel finds that the ministry was reasonable when concluding that the reported limitations to physical functioning due to the appellant's right arm injury are not sufficient to establish an overall severe physical impairment.

Mental Impairment

Positions of the Parties

The appellant's position is that he has mental health conditions for which he takes medication to improve his mental state and that he is also emotionally impacted by the financial stress resulting from his inability to work. He reports that he is anxious and reluctant to socialize.

The ministry's position is that the information does not establish a severe mental impairment. The ministry notes that a significant deficit with emotional disturbance (anxiety) is reported by the GP but that the impact on daily functioning in this area is minimal. The ministry also notes that both the appellant and the GP report impacts on consciousness, impulse control, insight and judgement, and psychotic symptoms, but that the GP indicates the impact in these areas on daily functioning is minimal and that no moderate or major impacts are reported. The ministry also notes that the GP reports that all DLA are managed independently, including all activities related to making decisions regarding personal activities, care, and finances, as well as social functioning. The ministry concludes that the information presented does not establish a severe mental impairment.

Panel Analysis

The appellant is diagnosed with psychotic, anxiety, and substance use disorders and the GP reports a significant deficit for emotional disturbance. The appellant also reports being emotionally impacted by the financial difficulties caused by his inability to work. The appellant and the GP both report impacts on the appellant's functioning respecting consciousness, impulse control, insight and judgement, and psychotic symptoms. However, the appellant does not provide additional description of the impacts and the GP indicates that the impact on daily functioning is minimal for all these areas and for emotion. The GP indicates that other areas of cognitive and emotional functioning are not impacted, and that the appellant has no cognitive difficulties with communication. Additionally, as the ministry notes, the GP reports that all decision-making DLA tasks and areas of social functioning are managed independently.

Therefore, as the available information indicates only minimal impacts on daily functioning in some areas of cognitive and emotional functioning, with no major impacts in any areas, and independent decision-making and social functioning, the panel finds that the ministry was reasonable to conclude that the information does not establish a severe mental impairment.

Restrictions in the ability to perform DLA*Positions of the Parties*

The appellant's position is that he is unable to use his right arm and as a result he cannot work and requires help with DLA as he has a difficult time conducting them on his own.

The ministry's position is that it is not satisfied that the appellant has a severe impairment that directly and significantly restricts the appellant's ability to perform DLA. The ministry states that it relies on the medical opinion and expertise of the GP, a prescribed professional, to determine if an impairment directly and significantly restricts DLA. The ministry states that in the MR the GP reports that impairment does not restrict the appellant's ability to perform DLA. In the AR, the GP reports that the appellant is between independent and needing periodic assistance from another person in all areas of DLA, but there is no description of the degree, duration or frequency of assistance required. Additionally, the ministry finds that the GP's comment "R arm cast healing, after humerus healed, he should be fine" does not support significant restrictions either continuously or periodically for extended periods. Additionally, the GP reports good functioning with immediate and extended social networks and does not identify the need for assistance to maintain the appellant in the community or any safety issues.

The ministry acknowledges that the appellant reports the need for assistance from family and friends to complete DLA, but states that it must rely on the opinion of a medical practitioner or other prescribed professionals.

Based on the information provided by the GP, the ministry is not satisfied that the appellant has a severe impairment that, in the opinion of a prescribed professional, directly and significantly restricts the appellant's ability to perform the DLA set out in the legislation.

Panel Analysis

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

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

In this case, the GP is the only prescribed professional who provided information respecting the appellant's ability to perform DLA.

In the MR, the GP indicates that the appellant's ability to manage personal self-care, meal preparation, management of medications, basic housework, daily shopping, mobility inside and outside the home, use of transportation, management of finances, and social functioning is not restricted. For the reasons previously provided, the panel also finds that in the AR the GP reports that the appellant independently manages all listed DLA tasks. The panel finds that these assessments do not establish direct and significant restrictions in the ability to perform DLA. Additionally, even if the GP has indicated the need for periodic assistance with all listed tasks of DLA, as the ministry found, the panel finds that the ministry has reasonably concluded that direct and significant restrictions that are either continuous or periodic for extended periods are not established. As the ministry notes, aside from stating that the appellant should be fine once his humerus has healed, the GP does not describe the assistance making it difficult to establish the restrictions as being significant and either continuous or for extended periods.

Based on the above analysis, the panel finds that the ministry was reasonable in concluding that direct and significant restrictions in the ability to manage DLA either continuously or periodically for extended periods were not established.

Help to perform DLA

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

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

Conclusion

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

Relevant Legislation

EAPWDA

2 (1) In this section:

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

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

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

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

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

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

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

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

EAPWDR

Definitions for Act

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

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

- (i) prepare own meals;
- (ii) manage personal finances;
- (iii) shop for personal needs;
- (iv) use public or personal transportation facilities;
- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self-care;
- (viii) manage personal medication, and

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

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

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

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

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

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

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

if qualifications in psychology are a condition of such employment.

Alternative grounds for designation under section 2 of Act

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

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the [Community Living Authority Act](#);
- (d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the [Community Living Authority Act](#) to assist that family in caring for the person;
- (e) a person who is considered to be disabled under section 42 (2) of the [Canada Pension Plan](#) (Canada).

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Part G – Order

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

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

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

Legislative Authority for the Decision:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name

Jane Nielsen

Signature of Chair

Date (Year/Month/Day)

2022/04/26

Print Name

Sarah Bijl

Signature of Member

Date (Year/Month/Day)

2022/04/26

Print Name

Carmen Pickering

Signature of Member

Date (Year/Month/Day)

2022/04/28