

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD) dated March 31, 2022, which found that the Appellant did not qualify for the designation of a person with disabilities (PWD). The Ministry found that the Appellant did not meet three of the five requirements of Section 2 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA). While the Ministry found that the Appellant met the age requirement and had an impairment which was likely to continue for at least two years, it was not satisfied that the evidence establishes that:

- The Appellant has a severe physical or mental 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.

The Ministry also found that the Appellant is 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), and the Appellant did not appeal the decision on this basis.

Part D – Relevant Legislation

EAPWDA, Section 2

EAPWDR, Sections 2 and 2.1

Employment and Assistance Act (EAA), Section 22(4)

The relevant legislation is provided in Appendix A.

Part E – Summary of Facts

The evidence before the Ministry at the time of the RD included the PWD Application comprised of the applicant information and a self report (SR) completed by the Appellant on August 30, 2021; comprising a Medical Report (MR) dated September 11, 2021, completed by the Appellant's General Practitioner (GP) who has known the Appellant for 3 years and who has seen him 2 – 10 times in the past year; and an undated Assessor Report (AR) also completed by the GP.

The Appellant also provided some SR information using the AR form in error. Evidence included in the Appellant's version of the AR is included in the SR information summaries below.

The evidence before the Ministry at the time of the RD also included:

- A Request for Reconsideration form (RFR) signed by the Appellant on February 28, 2022 in which the Appellant has written the following reasons for which he is asking for an RFR: *“Seeking legal advice due to massively incompetent doctor. Having to gather paperwork from surgeon, physiotherapist and neurologist. Considering I've been stuck in a recliner for the last 2 ¾ years should tell you something, not to mention the back brace and drugs!”*; and,
- A six-page document comprising a cover letter from WorkSafe BC and a review decision (the WorkSafe BC Decision) both dated August 26, 2021, in which:
 - The cover letter, which is addressed to the Appellant, denies a request *“for an extension of time to request a review of the April 20, 2020 decision”*; and,
 - The WorkSafe BC Decision, the preamble of which refers to an April 2, 2020 decision by WorkSafe BC which found that the Appellant was no longer entitled to wage loss benefits. The preamble states, in part, *“The (Worker's Compensation) Board (the WCB) also determined that the applicant was entitled to referrals to Long-Term Disability Services and Vocational Rehabilitation Services. The request for review was received on August 17, 2021, 404 days late”*. The WorkSafe Decision Letter also explains why the applicant's request for an extension of the 90 day statutory limit to request a review of the decision was denied.

Diagnoses

In the MR, the GP diagnosed the Appellant with degenerative disk disease with an unknown date of onset, and mechanical low back strain (MLBS) with a date of onset of October 2019.

Severe Physical Impairment

Physical Functioning

The GP did not provide any information in the health history section of the MR. With respect to functional skills, the GP reports that the Appellant can walk 2 – 4 blocks unaided on a flat surface, is unable to climb any steps unaided, can lift 2 – 7 kg, and can remain seated for less than one hour. The GP has not made any comments where asked to provide any additional information that might be considered relevant to understanding the significance of the Appellant's medical condition and the nature of his impairment. In the DLA section of the MR, the GP indicates that the Appellant does not have any impairments that directly restrict his ability to perform DLA.

In the AR, the GP says that the Appellant's persistent back pain prevents him from returning to his job. The GP also refers to "*the most recent assessment*" by a spinal surgeon and a computed tomography (CT) scan of his lumbar spine which the GP indicates are attached to the MR. However, neither document appears in the appeal documents provided to the Panel. In the section of the AR where the assessor is asked to indicate the assistance required related to impairments that directly restrict the applicant's management of mobility and physical abilities, the GP indicates that the Appellant is independent with walking indoors and outdoors and standing, and that he requires continuous assistance from another person or is unable to climbing stairs, lift or carry and hold objects. No explanations or specific assistive devices are identified in the space provided. In the section of the AR where asked to provide any additional information that may be relevant to understanding the nature and extent of the applicant's impairment, the GP has written "*Constant pain is affecting patient's ... mobility significantly*". Where asked for further comment, the GP has written "*Difficult to climb stairs with right lower extremity*".

In the SR, the Appellant says that he sustained a workplace injury to his lower back ("*lumbar right side*") on October 7, 2019. He also says that he was referred by WorkSafe BC to a rehabilitation program after a few months of physiotherapy where he further aggravated the injury. He also writes "*Sent to specialist who determined no surgery. There are a number of problems with my back but it's the injury keeping me from work at this time and (I) am currently in dispute with (the WCB) over this matter ... I am currently on gabapentin and in a large back brace. I have also returned to physio and massage therapy twice a week full time and hope to increase in the future to hopefully gain more mobility and freedom to move ...*" and "*I cannot do a stair with my right leg. I have to drag it up after climbing with my left*".

Severe Mental Impairment

Mental Functioning

The GP does not identify any mental impairments in the MR.

In the section of the AR where the prescribed professional is asked to provide any additional information that may be relevant to understanding the nature and extent of the applicant's impairment, the GP has written "*Constant pain is affecting patient's ... mental health significantly*". In addition, and without any further explanation, the GP indicates that the Appellant has a mental impairment that moderately impacts his ability to perform DLA in the areas of bodily functions, emotion, impulse control, attention and concentration, memory, motor activity and other emotional or mental problems, and a minimal impact on insight and judgement, executive functioning, motivation, language and psychotic symptoms. The Appellant does not claim to have any impairments to his mental functioning

Restrictions in the Ability to Perform DLA

In the MR, the GP indicates that the Appellant has not been prescribed any medications or treatments that interfere with his ability to perform DLA. The GP has not provided any information in the section of the AR where asked for any additional information that might be considered relevant to understanding the impact of the Appellant's medical condition on daily functioning.

In the AR, the GP indicates that the Appellant is independent with respect to the personal care DLA except for dressing, which takes him four times as long as typical. Bathing and getting in and out of

chairs and bed take twice as long as typical. Regarding basic housekeeping, the GP indicates that the Appellant takes twice as long as typical and requires periodic assistance from his family with doing his laundry. The GP indicates that the Appellant is independent with all shopping tasks but gets help from family when going to and from stores. The GP indicates that the Appellant is independent with all aspects of meal preparation, paying rent and bills and medication. With respect to the DLA of transportation, the GP indicates that the Appellant doesn't use public transit because he would have to sit for too long, it takes him twice as long as typical to get in and out of a vehicle, and it takes him longer than typical to arrange transportation. The GP doesn't say how much longer than typical he takes or explain why it takes longer. No additional comments are made by the GP in the space provided. In the SR the Appellant writes that, while he is independent with most DLA, it takes him four times longer than typical to get dressed, and twice as long as typical to bathe, get into and out of chairs and bed, to do his basic housekeeping, and to get in and out of a vehicle. He also says that he hopes to gain more mobility and freedom *"to shop and do something besides wear out chairs"*

Need for Help

In the MR the GP indicates that the Appellant requires a lumbar support belt for his impairment. In the AR, the GP indicates that the Appellant lives alone, but that he gets help from his family with doing laundry and going to and from stores. In the section of the AR that asks who provides the help required for DLA, the GP has ticked "Family" and "Friends" but does not elaborate in the space provided for comments. Where asked what assistance is provided through the use of assistive devices, the GP has written *"back brace"*. Where asked what equipment is required but not being used, the GP has written *"mobility device such as scooter"*. The GP also states that the Appellant does not have an assistance animal.

In the SR, the Appellant says that he is currently using a back brace.

Additional Information Submitted after Reconsideration

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based the requirements set out in the legislation and on all admissible evidence.

In the Notice of Appeal (NOA), the Appellant states that he is appealing the RD because he can't sit or stand for more than 20 minutes at a time and that he has *"lots more medical information to submit"*. While the Panel considered the Appellant's statement that he could not sit or stand for more than 20 minutes to be new evidence, the Panel assigned little weight to the evidence because it was not provided by a prescribed professional and the Appellant's GP, who is a prescribed professional, had previously indicated in the MR that the Appellant could remain seated for less than one hour and could walk 2 – 4 blocks unaided on a flat surface.

On May 3, 2022, the Employment and Assistance Appeal Tribunal (the Tribunal) received a submission from the Appellant (the First Submission). The First Submission comprised a five-page letter dated April

25, 2022 (the Letter) to the WCB from a lawyer acting on behalf of the Appellant. In the First Submission, the lawyer identified the issues he is covering in the Letter as:

- Whether the “*target occupation*” of the Appellant is suitable and reasonably available to him and whether he is “*competitively employable*” for the target position; and
- Should the issue of a loss earnings amount be referred back to the WCB to investigate his competitive employability for other alternate occupations and a new decision regarding loss of earnings amount?

The lawyer also makes the argument in the Letter that the target occupation is not suitable or reasonably available to the Appellant as, due to his chronic back pain, he is “*unable to tolerate critical job demands*”. The lawyer also states that the Appellant was discharged from the WCB’s occupational rehabilitation program with the following functional limitations, as set out in the discharge report:

- Waist to head lifting - limited to 10 lbs;
- Transfer side-to-side lifting - limited to 10 lbs;
- Waist to overhead lifting - limited to 9lbs;
- Right carrying - limited to 13.2 lbs;
- Sustained forward bending - limited to 91 seconds;
- Pushing/pulling - limited to 17 lbs;
- Right half kneel – intermittent, limited to 1 repetition;
- Crouching - client could not safely assume position during testing due to mechanical limitations about lumbar region;
- Sustained dynamic standing - limited to 30 minutes;
- Ladder climbing - declined to complete due to fear of pain aggravation; and
- Walking - 960 ft. in 6 minutes (<age and gender norms).

The Letter goes on to say that the Appellant was discharged early from the occupational rehabilitation program after aggravating his back pain, and that the discharge report stated that ““*aggravating factors of back pain continue to include standing, walking, rotating, and any extension of the low back, which can increase pain ratings to 8/10*”. The Letter also provides information that the Appellant provided in a vocational assessment and planning memo, as follows:

“(The Appellant) shared that his life routine now is around his pain tolerance. He sleeps ‘fairly good’, and his injury wakes him up sporadically through the night. He moves around frequently throughout the day as he is only able to stand, sit and walk for 20 minutes at a time. Each day he gets out for a walk for about 30 minutes, and when he does he always brings his cane. Using a cane increases his walking time by roughly 10 minutes. He finds cooking and doing household chores somewhat challenging, especially vacuuming as he needs to be very cognizant about not bending down or twisting his upper body ... He describes his pain as 24/7, and he has learned to

move around frequently through the day to keep himself comfortable. In order to get comfortable he lies down in his bed with pillows propped under his legs, or sits back in one of 4 recliner(s) in the house. His sitting, standing and walking tolerance are all at 20 minutes, however he is able to walk outside for 30 minutes if he uses his cane. When he reaches his tolerance in either sitting, standing or walking he needs to lay down in his bed or recliner for 20 minutes to rest. After this rest he is able to get up and move around again."

The lawyer also writes that the Appellant *"is not able to drive and there is no public transit close to his home...the closest bus stop is a 20 minute walk from his house, and he would not be able to physically walk that far"*.

On May 13, 2022, the Tribunal received another submission from the Appellant (the Second Submission). The Second Submission was a three-page WCB "Physiotherapy Extension Request Report" prepared in the name of the Appellant and dated January 21, 2022 (the Report). The Report provides details of the Appellant's physiotherapist treatment which started on September 7, 2021 and comprised six visits for treatment by a physical therapist. In the "Assessment Findings" section of the Report the physiotherapist has written *"client reports that physiotherapy is helping the client to stay mobile, without physio pain aggravates and he is restricted to bed."* The report also provides the following "Change in significant clinical/objective findings":

- Under the heading "ROM (Range of Motion) and biomechanical analysis":
*"Lumbar ROM: 70%
Tenderness ++ L3 – L5, Right Sacroiliac (SI) Joint, Right Gluteus"*
- Under the heading "Strength":
"Thoracolumbar ROMs: weak and painful", and
- Under the heading "Neurological":
*"Straight Leg Raise (SLR) - (illegible)
Pain radiation down the leg"*

This section does not provide an explanation of what physical limitations are indicated by these findings. However, under "Barriers to Work", the report says that the Appellant can't do heavy work, bend, climb, or (drive a) truck because of pain.

In a letter to the Appellant dated April 27, 2022, the Tribunal had asked the Appellant to *"send ... any written submissions, documents or evidence that you want the Tribunal to look at by Friday, May 6"*. While the Second Submission was received 7 days after the deadline, the Panel considered the evidence contained in the Second Submission as it was received prior to the written hearing and might include evidence that was reasonably required for a full and fair disclosure of all matters related to the decision under appeal, pursuant to EAA Section 22(4).

The Panel considered the written evidence provided in the First Submission and the Second Submission to be evidence that is reasonably required for a full and fair disclosure of all matters relating to the decision under appeal. Therefore, the Panel admitted the additional information in accordance with Section 22(4) of the EAA.

General principles of weighing evidence require that the evidence be considered based on its credibility and its probative value. The Panel considers the new evidence in both the First Submission and the Second Submission to be credible because it generally aligns with the evidence provided by the Appellant's GP, a prescribed professional, in relation to the severity of the Appellant's physical disability.

The probative value of evidence is the degree to which the information is useful in answering the question which must be addressed.

In the First Submission, the evidence is provided by the Appellant's lawyer, who is not a prescribed professional. While the lawyer refers to or quotes from a total of 15 medical reports and memos that apparently contain information, some of which are said to be the opinions of prescribed professionals (e.g., a December 29, 2021 "*physio discharge report*", a January 24, 2022 physiotherapist's report and an April 7, 2021 orthopedic surgeon's "*consult report*"), none have been provided as evidence in the appeal record. In addition, and as noted above, the Appellant said in the RFR that he is "*having to gather paperwork from surgeon, physiotherapist and neurologist*", and in the NOA that he "*has lots more medical information to submit*". However, no additional medical reports are provided in the appeal record (other than the physiotherapist's report in the Second Submission, which is discussed below).

In the Second Submission, while the evidence regarding the Appellant's physical limitations is provided by a physiotherapist (who is a prescribed professional), the information does not provide a full explanation of what physical limitations are indicated by these findings, or the extent to which those limitations affect his ability to perform DLA. A fuller explanation of the implications of the measurements provided in the Second Submission is required in order for the Panel to be able to assess the severity of the Appellant's physical disability.

In addition, the Panel notes that both the First Submission and the Second Submission address issues raised in the Appellant's WCB claim, which relates to his ability to work. As indicated in the PWD application form, an applicant for the PWD designation is not based on the applicant's employability or vocational abilities. While an individual's physical impairments might reasonably be expected to impact both their ability to work and their DLA, the legislation requires that a prescribed professional assess the severity of the impairment and the degree to which it might directly and significantly impact a person's ability to perform DLA and the degree to which an applicant requires assistance to perform DLA.

For these reasons, the Panel considers the new evidence in both the First Submission and the Second Submission to be of low probative value.

Part F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's RD, 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 legislation in the circumstances of the Appellant. Was it reasonable for the Ministry to determine that the evidence does not establish that the Appellant has a severe mental or physical impairment, and that the Appellant's DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods? Was it reasonable for the Ministry to determine that as a result of any direct and significant restrictions it could not be determined that the Appellant requires the help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA?

ANALYSIS**Severity of Impairment**

Neither the terms "*impairment*" nor "*severe*" are defined in the EAPWDA. The Cambridge Dictionary defines "*impairment*" in the medical context to be "*a medical condition which results in restrictions to a person's ability to function independently or effectively*" and defines "*severe*" as "*causing very great pain, difficulty, worry, damage, etc.; very serious*". "*Impairment*" is defined in the MR and the AR sections of the PWD application form to be "*a loss or abnormality of psychological, anatomical, or physiological structure or function causing a restriction in the ability to function independently, appropriately or for a reasonable duration*". While the term is not defined in the legislation, the Panel finds that the Ministry's definition of "*impairment*" as set out in the MR and the AR is a reasonable definition of the term for the purpose of partially assessing an applicant's eligibility for the PWD designation.

A diagnosis of a severe impairment does not in itself determine PWD eligibility. Section 2(2) of the EAPWDA requires that in determining whether a person may be designated as a PWD, the Ministry must be satisfied that the individual has a severe physical or mental impairment with two additional characteristics: in the opinion of a prescribed professional, it must both be likely to continue for at least two years [EAPWDA 2(2)(a)] and it must directly and significantly restrict a person's ability to perform DLA continuously or periodically for extended periods, resulting in the need for the person to require an assistive device, significant help or supervision or an assistance animal in performing those activities [EAPWDA 2(2)(b)]. Therefore, in determining PWD eligibility, after assessing the severity of an impairment, the Ministry must consider how long the severe impairment is likely to last and the degree to which the ability to perform DLA is restricted and whether assistance in performing DLA is required. In making its determination the Ministry must consider all the relevant evidence, including that of the Appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a prescribed professional – in this case the GP.

Physical Functioning

The Ministry's position is that, while it acknowledges that the Appellant has restrictions with lifting, carrying and holdings items weighing greater than 5-15 pounds and has difficulty climbing stairs, based on the information provided, a severe impairment to his physical functioning has not been established.

The Appellant's position is that he has a severe physical impairment as a result of a workplace injury. He has to wear a back brace at all times, he can't sit or stand for more than 20 minutes, and he is unable to work.

Panel Decision

In the RD, the Ministry acknowledges that the GP has indicated that while the Appellant's "*constant pain is affecting his ... mobility significantly*", the GP also has indicated that the Appellant is able to walk 2 to 4 blocks and lift 5 to 15 pounds unaided. In addition, the Ministry points out that there is inconsistent information provided in the Appellant's PWD application regarding his ability to climb stairs. While the GP indicates in the MR that the Appellant can't climb stairs, in the AR the GP says that it is difficult for him to climb stairs, and in the SR, the Appellant says that he has to climb stairs by using his left leg first. The Ministry also notes that the additional medical documentation from the Appellant's spinal surgeon, physiotherapist, neurologist, and CT scan was not include in the Appellant's original PWD application or RFR.

The Panel notes that the GP has not made any comments in the section of the MR where the prescribed professional is asked to provide any additional information that might be considered relevant to understanding the significance of the Appellant's medical condition and the nature of his impairment. The Panel also notes the inconsistent information contained in the Appellant's application regarding his ability to climb stairs and the lack of additional medical documentation which both the Appellant and his GP have referred to but not provided.

Based on all of the admissible evidence, the Panel finds that the Ministry reasonably determined that the information provided does not establish that the Appellant has a severe physical impairment.

Mental Functioning

The Ministry's position is that the GP has not provided a diagnosis which explicitly gives rise to a mental impairment.

The Appellant has not indicated that he has a severe mental impairment.

Panel Decision

In the MR, the GP does not diagnose a mental impairment and has indicated that the Appellant does not have any difficulties with communication or deficits with cognitive and emotional function. In the AR, the GP says that the Appellant has good functioning with both his immediate and extended social networks. While the GP has filled out the section of the AR that the is designed to be completed "*for an Applicant with an identified mental impairment or brain injury*", the Panel assumes that this section of the MR was completed in error as no mental impairments or brain injuries have been diagnosed or otherwise referred to in the Appellant's PWD application.

Based on all of the available evidence, the Panel finds that the Ministry reasonably determined that the information provided does not establish that the Appellant has a severe mental impairment.

Restrictions in the Ability to Perform DLA

The Ministry's position is that, because the Appellant's GP has reported that the Appellant's impairment does not directly restrict his ability to perform DLA, and because the GP does not provide explanatory details regarding the degree, frequency, or duration of the periodic assistance the Appellant needs with the single DLA for which the GP says the Appellant needs periodic assistance (basic housekeeping), direct and significant restrictions in the Appellant's ability to perform DLA have not been established.

The Appellant's position is that, while he is independent with most DLA, it takes him two to four times longer than typical to perform several DLA.

Panel Decision

DLA are defined in Section 2(1) of the EAPWDR and are also listed, in an expanded form and using different language, in the MR and in the AR. For example, the DLA of "*prepare own meals*" in EAPWDR Section 2(1) appears in the AR as "*meal planning*", "*food preparation*", "*cooking*" and "*safe storage of food*".

Section 2(2)(b) of the EAPWDA requires that the Ministry be satisfied that a prescribed professional has provided an opinion that an applicant's severe impairment directly and significantly restricts their DLA, either continuously or periodically for extended periods. The term DLA appears in EAPWDA Section 2(2)(b) in the plural ("daily living activities"), which means that at least two of the activities listed in Section 2(1) must be significantly restricted for this legislative criterion to be met.

Section 2(2)(a) of the EAPWDR defines "*prescribed professional*" to include a "*medical practitioner*" and a "*physical therapist*". Therefore, the Appellant's GP and the physiotherapist who completed the report in the Second Submission are both considered prescribed professionals for the purpose of providing opinions regarding the nature of the Appellant's impairment and its impact on the performance of DLA. 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. There is also a component related to time or duration - the direct and significant restriction must be either continuous or periodic. If periodic, it must be for extended periods.

In the MR and the AR, prescribed professionals are instructed to check marked boxes and to provide additional explanations; for example, a description of the type and amount of assistance required and the frequency and duration of periodic restrictions.

The Panel notes that in the Appellant's case, the GP reports that all listed DLA tasks, except for basic housekeeping, are managed independently, though some restrictions are identified for a few of those DLA in that it takes either two or four times longer than typical to perform them. In addition, regarding tasks that take longer to perform, the GP does not provide sufficient information to establish that any of the Appellant's periodic restrictions are significant. Specifically, the GP does not describe the frequency or duration of the restrictions, or provide any further explanation of the frequency or nature of the assistance required. In addition, the Panel notes that the GP has not provided any information in the section of the AR where the prescribed professional is asked for additional information that might be

relevant to understanding the impact of the Appellant's medical condition on daily functioning. There are also some inconsistencies from the GP. For example, the GP indicates that the Appellant can shop independently but has family assistance, and the Appellant is independent walking and standing but requires a mobility scooter. The Panel had difficulty establishing severity and need for assistance based on the GP's reports. The Panel also notes that the legislation requires that the Ministry base its decision on the opinion of a prescribed professional, and that the physiotherapist who prepared the report in the second submission did not address DLA impacts.

Based on all of the available evidence, the Panel finds that the Ministry reasonably determined that the information provided does not establish that the Appellant is directly and significantly restricted in his ability to perform DLA either continuously or periodically for extended periods.

Help with DLA

The Appellant's position is that he requires assistive devices to assist with his DLA. Specifically, he must wear a back brace at all times, and it has been recommended that he use a scooter or other mobility device.

The Ministry's position is that, because it has not been established that the Appellant's DLA are significantly restricted, it cannot be determined that significant assistance is required from other persons or an assistive device.

Panel Decision

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. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. 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 one or more DLA. Having found that the Ministry was reasonable in concluding that this precondition was not met, the Panel also finds that the Ministry reasonably concluded that it cannot be determined that the Appellant requires help to perform "those activities" because of direct and significant restrictions with DLA as required by section 2(2)(b)(ii) of the EAPWDA.

Given all the available evidence, the Panel finds that the Ministry reasonably determined that it could not conclude that significant help is required from other persons or a device because it has not been demonstrated that DLA are significantly restricted.

Alternate Grounds

While no information or argument was provided for PWD designation on alternative grounds, the Panel notes that the Appellant might qualify for a Canada Pension Plan (CPP) disability pension, i.e., as "*a person who is considered to be disabled under section 42 (2) of the Canada Pension Plan (Canada)*" per EAPWDR Section 2.1(e). The Panel also notes that the Appellant might qualify for a CPP disability pension because he was employed at the time of his workplace injury. As the hearing was a written hearing which neither party attended, the Panel was unable to ask the Appellant at the hearing whether

he had applied for a CPP disability pension. If the Appellant qualifies for a CPP disability pension, applies for and is granted one, he may qualify for a PWD designation on that basis. In addition, there is nothing in the EAPWDA or EAPWDR that limits the number of times that a person can apply for a PWD designation

Conclusion

Having reviewed and considered all the evidence and relevant legislation, the Panel finds that the Ministry's RD, which determined that the Appellant was not eligible for the PWD designation under Section 2 of the EAPWDA, was reasonably supported by the evidence and was a reasonable application of the EAPWDA in the circumstances of the Appellant, and therefore confirms the decision. The Appellant's appeal, therefore, is not successful.

Appendix – Relevant Legislation

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 ...

Part 1.1 — Persons with Disabilities

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:

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

The EAA provides as follows:

Panels of the tribunal to conduct appeals

22(4) 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.

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

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2022/05/22

Print Name

Margarita Papenbrock

Signature of Member

Date (Year/Month/Day)

2022/05/22

Print Name

Kenneth Smith

Signature of Member

Date (Year/Month/Day)

2022/05/22