

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated April 28, 2022, which held that the appellant did not meet 3 of the 5 statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age and duration requirements, but was not satisfied that:

- the appellant has a severe physical and/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 those restrictions, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

In addition, the ministry found that it had not been demonstrated that the appellant is one of the prescribed classes of persons who may be eligible for PWD designation on alternative grounds, which includes: a person who is enrolled in palliative care; a person who has at any time been determined eligible for At Home Program payments through the Ministry of Children and Family Development; a person who has at any time been determined eligible by Community Living BC for community living support; and a person who is considered disabled under section 42(2) of the *Canadian Pension Plan Act*.

Part D – Relevant Legislation

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

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

Part E – Summary of Facts**Evidence at the time of Reconsideration**

1. The appellant's PWD application comprised of:
 - A Medical Report (MR) [dated November 16, 2021] completed by the appellant's Psychiatrist (the psychiatrist), who had known the appellant for 3 years and had seen the appellant 2-10 times in the past 12 months of the PWD application.
 - An Assessor Report (AR) [dated September 22, 2021], which was completed by the appellant's Social Worker (the SW), who had known the appellant for 3 years and seen her 11 or more times in the past 12 months. The approaches and sources used to conduct the AR were an office interview with the appellant, file/chart information (neuropsychological report and the appellant's counsellor).
 - The PWD application also included the appellant's Self-Report (SR) dated December 1, 2021.
 - A second Medical Report (MR) [dated March 23, 2022] completed by the appellant's neurosurgeon (the surgeon), who has known the appellant since February 3, 2021.
2. 4-page Independent Medical Examination (IME) dated October 15, 2013 which, in part, stated the following:
 - The appellant had normal appearance, good eye contact, and listened attentively.
 - "No overt pain behaviours such as overreaction, regionalization, distraction or simulation behaviours were observed".
 - Provided a medical history and it was noted that the appellant suffers from headache, pain, dizziness, frustration, sleep disturbance, balance problems, word recognition problems, reduced concentration and calculation, ringing in ears, depression and anxiety. [The panel notes that this information is consistent with the information in the MR's and AR of the PWD application, SR and RFR]
 - Provided multiple diagnoses [The panel notes that the diagnoses are consistent with the diagnoses provided in both MRs, AR and as described by the appellant in the SR and RFR].
3. 18-page Neuropsychological Assessment Report (NPR) dated December 12, 2011.
 - The purpose of this assessment was to delineate any cognitive and/or psychological sequelae related to an accident the appellant had in 2009 and provide prognosis and treatment recommendations. The assessment seems to be prepared for court proceedings and is related to the ability to participate in gainful employment. [The panel notes that the purpose of the assessment was not to determine impact psychological conditions have on the appellant's daily functioning and ability to perform DLA.]
 - It noted that the appellant experiences feeling dazed, problems with vision, concentration and balance.
 - It noted that the appellant had ringing in the ears, headaches, nausea, memory disturbances, poor frustration, sleep disturbances, fatigue, and difficulty with word recognition and pronunciation. There is reduced ability to do calculations, problem-solve and making decisions.

- The appellant demonstrated impairments in visual and auditory memory, abstract thinking, general intellectual measures, verbal fluency and perceptual reasoning.
- The appellant has a mild traumatic brain injury and has developed depression and anxiety.
- The appellant's mood disorder, sleep disturbances and pain contribute to her cognitive difficulties in her day-to-day life.
- A second assessment was recommended once the appellant's pain, mood and sleep improved. [The panel notes that a second assessment was not presented at this appeal].
- [The panel notes that this assessment is from 2011 and does not speak to the appellant's current mental impairments, current mental functioning, or ability to perform DLA.]

4. Request for Reconsideration (RFR) dated March 22, 2022, which in part stated the following:

- The appellant has Traumatic Brain Injury (TBI), Osteoarthritis in the back and Chronic Obstructive Pulmonary Disease (COPD).
- She has trouble with memory, concentration, balance and anxiety.
- When symptoms are bad – which is almost everyday- she cannot leave the house or do much at home. Bad days can last all day or even a week.
- Headaches and balance problems prevent her from completing household duties.
- She uses a cane to help with balance and mobility most days or when her pack pain is bad.
- Her physical and mental symptoms increase her anxiety. She sees a counsellor for this. Her anxiety contributes to her impairment by preventing her from completing important tasks, such as groceries.
- The TBI and anxiety make communication difficult and concentrating on tasks and memory. This makes DLA very hard and sometimes impossible (shopping, cooking, remembering to take medication).
- She does not take medication for the brain injury.

Diagnoses

In the MR, the psychiatrist diagnosed the appellant with anxiety disorder [secondary to TBI] (onset 2009) and cognitive disorder [secondary to TBI] (onset not specified).

In the second MR, the surgeon diagnosed the appellant with persistent back pain with intermittent leg pain with decreased walking distance, joint pain in spine, diverticulosis and COPD.

Health History

In the first MR, the psychiatrist stated the following about the appellant and her ability to work:

- She had a significant impact on her mental state due to her injury.
- She has difficulty with problem solving.
- She is easily overwhelmed by loud noise within her environment, and as a result is distracted and cannot complete tasks on time.
- She developed anxiety to the point of panic attacks.

In the second MR, the surgeon stated the following about the appellant:

- Head injury, still going to counselling and on medication for PTSD.
- Persistent back pain, mild degenerative disc disease, cervical and lumbar spine and L5-S1.
- Diverticulosis – bowel resection twice – intermittent flare up.

Physical Impairment

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

- She can walk 4+ blocks and climb 5+ steps unaided, cannot lift and can sit without limitation.

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

- Walking indoors/outdoors, climbing stairs and standing are performed independently.
- Lifting and carrying/holding take significantly longer with the comment: “degenerative disc disease (DDD) + osteoporosis”.
- She experiences dizziness, double vision, and ringing in the ears.
- Her balance and coordination are poor.
- She has difficulty sleeping and a poor sleeping routine.
- She experiences persistent and constant headaches.

In the second MR, the surgeon indicated the following about the appellant:

- She can walk 1-2 blocks and climb 2-5 steps unaided, lift 5-15 lbs and sit less than 1 hour.

In the SR, the appellant stated the following about her physical impairment:

- She has a brain injury, osteoarthritis, osteoporosis, COPD, anxiety, degenerative disc disease and neck pain.
- She has ringing in her ears 24 hours a day.
- The pain is unbearable and worse on cold days.
- She cannot lift things and these conditions impact her mobility.
- The COPD is really bad some days and it feels like she cannot breathe.
- This impacts her ability to go for walks and function outside for long periods.
- Her back pain makes it difficult to function daily.

Mental Impairment

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

- There are no difficulties with communication.
- There are significant deficits with cognitive and emotional functioning in the areas of executive, memory, emotional disturbance, and attention/sustained concentration.

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

- Speaking and reading are satisfactory: “some difficulty recognizing + pronouncing words”.
- Writing and hearing are good.

- In terms of cognitive and emotional functioning, there are major impacts to bodily functions and emotion, and moderate impacts to consciousness, attention/concentration, memory, motor activity and other emotional or mental problems. All other areas in this category have either a minimal or no impact.
- “She has a history of anxiety and depression”.
- “She has difficulty concentrating and [with] memory”.
- “She has decreased frustration and has a very short temper and when she becomes frustrated her mental/physical impairments get worse”.
- She can read prices and labels, make appropriate choices, and paying for purchases independently.
- All tasks under pay bills/rent and medications are performed independently.
- All tasks under social function are performed independently except ‘able to deal appropriately with unexpected demands’ which requires periodic assistance.
- She has good functioning with her immediate social networks and marginal functioning with her extended social networks.
- “She has a great relations with her immediate family. She is a good advocate for herself – seeking professional help when needed”.

In the second MR, the surgeon indicated the following about the appellant:

- There are no difficulties with communications.
- It is unknown if there are significant deficits to cognitive and emotional functioning: “generally looks ok but [illegible] memory difficulty and understanding spoken word intermittently”.
- Social functioning and management of medication are restricted (with no indicating if its restricted periodically or continuously).

In the SR, the appellant indicated the following:

- She has major anxiety.
- Her brain injury makes her very confused and scattered.
- Her memory is poor and makes it hard to function daily.
- Anxiety does not allow her to sit still or think straight.
- She sees a counsellor for this.

Daily Living Activities

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

- No medications that interfere with the ability to perform DLA have been prescribed.
- There are no restrictions to all listed areas of DLA except use of transportation and social functioning which are continuously restricted.
- “Patient has difficulty with attention and focused concentration, easily distractable making it challenging to interact with others”.

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

- All listed tasks of all listed areas of DLA are performed independently except under social functioning ‘able to deal appropriately with unexpected demands’ which requires periodic

assistance and under transportation 'using public transit' and 'using transit schedules and arranging transportation' were crossed out.

- She “does well with her [DLA]. The disability is her mental/physical impairments that hinder her from maintaining employment. She tires more easily and often needs direction of what to do next. She is easily distracted and in appearance seems emotionally fatigue and in a state of confusion.

In the second MR, the surgeon stated that following about the appellant:

- A list of medications was provided but it was not indicated if they interfere with the appellant’s ability to perform her DLA.
- There are no restrictions to all listed areas of DLA except management of medications, mobility outside the home and social functioning (with no indication if its restricted periodically or continuously).

Help

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

- Requires no prostheses or aids for her impairment.

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

- Help for DLA is provided by two community service agencies, and she has a case manager.
- Assistance is also provided by assistive devices: cane.
- No assistance is provided by assistive animals.

In the second MR, the surgeon stated the following about the appellant:

- The appellant does not require any prostheses or aids for her impairment: “intermittent loss of balance...has to use a cane”.
- Assistance with DLA comes from medication and occasional use of a cane.

In the SR, the appellant did not indicate who helps her with her DLA.

Evidence on Appeal

Notice of Appeal (NOA), signed and dated May 19, 2022, which, in part, it is stated that the doctor who gave the description of the appellant’s impairment never met the appellant in-person and did not accurately capture the severity of the impairment. The doctor is a back specialist and the appellant suffers from a brain injury.

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

Evidence at the Hearing

At the hearing, the appellant reiterated the information found in the SR, RFR and NOA, and stated, in part, the following:

- The appellant is mentally able to advocate for herself.
- The initial MR was completed by a psychiatrist that was unfamiliar with her and her struggles.

- When completing the initial MR with the prescribed professional, the appellant did not understand that she needed to provide a wholistic picture of her overall wellbeing. Rather she focused on how she felt in the moment.
- There are days that she cannot function due to pain, dizziness and swelling in the legs. The dizziness also impacts the ability to drive safely so the appellant stays home most days.
- Due to the TBI she forgets to take her medication, has memory problems and cannot think straight.
- She often gets depressed.
- On bad days she gives up, shuts down and can panic at times.
- The lower back and spine were fractured therefore she cannot sit, walk, lie down for too long.
- She experiences double vision and her corrective lens cost over \$400.00 several years ago. She cannot afford to get a new prescription and as a result she gets headaches.
- The appellant's advocate indicated that the appellant's functioning varies from day to day. Some days she uses a cane, has memory issues, and walking issues. They are working on getting her food hamper delivery for days she cannot function. When she cannot function keeping up with things such as hygiene and appointments is forgotten.
- In response to questions the appellant stated that bad days (days she cannot function) occur 1-2 times per month and can last up to 2 weeks at a time. That is, she is incapacitated for up to 2 weeks of the month. At this time, she is unable to leave the home and she often falls due to dizziness which is daily. Also at this time, DLA do not get done, including eating and hygiene.
- In response to questions the appellant stated that she has had osteoporosis since her 20's and she will be receiving spinal injections for damage in her spine in October 2022.
- In response to questions, the appellant stated that the supports she has are medications and a cane but no help from others. A walker would be helpful to prevent falls because the cane cannot always prevent falls.

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

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a PWD, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the evidence does not establish that the appellant has a severe mental or physical impairment and that her DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person.

Panel Decision**Severe Impairment**

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical or mental impairment. Determining a severe physical or mental impairment requires weighing the evidence provided against the nature of the impairment and its reported functional skill limitations. A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. An "impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively. To assess the severity of an impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning.

The panel finds that employability is not a consideration for eligibility for PWD designation because employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

Physical Impairment

The appellant argued that her physical injuries and conditions cause severe daily pain resulting in the inability to function.

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

In its reconsideration decision, the ministry noted that the Psychiatrist did not provide a diagnosis of medical condition which explicitly gives rise to a physical impairment. The ministry also noted that the Psychiatrist indicated that the appellant can walk 4+ blocks and climb 5+ steps without assistance and has no limitations to time she can remain seated. The Psychiatrist indicated that the appellant cannot lift but no narrative or information was provided to support this restriction. In the second MR, the Surgeon indicated persistent back pain, mild DDD and osteoarthritis likely causing pain, and that the appellant also has diverticulosis and two bowel resections. The Surgeon indicated that the appellant can walk 1-2 blocks and climb 2-5 steps unaided, lift 5-15 lbs and unable to remain seated less than 1 hour. The ministry also indicated that the SR indicated that the appellant uses a cane most days. The ministry found that the use of cane and the inability to remain seated for long do not speak to a severe physical impairment. The ministry also noted that in the AR, the SW indicated that the appellant is independent

with walking indoor/outdoor, stand, and climb stairs. It takes significantly longer to lift and carry/hold due to DDD and osteoporosis. However, the additional time it takes to lift and carry/hold is not indicated which makes it difficult to establish an impairment in this regard.

The panel finds that the ministry reasonably concluded that the information provided by Psychiatrist regarding the appellant's physical functioning does not support a finding of a severe physical impairment. That is, there is no diagnosis provided of a physical impairment and mobility and physical ability is indicated as good. The panel also considered the narrative provided by the Psychiatrist which focused on the appellant's mental ability to work (employment) and did not mention a physical inability to work.

The Surgeon's assessment of the appellant's physical functioning and mobility presents some limitations but falls short of describing them as severe. Specifically, the panel considered that the Surgeon indicated that the appellant can walk 1-2 blocks and climb 2-5 steps, lift 5-15 lbs and remain seated for less than 1 hour intermittently. When the panel considered the narrative provided by the Surgeon it focused only on listing the appellant's diagnosed conditions rather than explain how these conditions impair the appellant.

The SW also indicated that the appellant is largely independent with physical functioning and mobility and did not provided information on how much longer it takes to lift and carry/hold. The panel found the three assessments to be similar in nature and that they paint a picture of a mild to moderate impairment. When there are discrepancies (i.e., the psychiatrist indicated that the appellant can walk 4+ blocks unaided whereas the Surgeon indicated she could walk 1-2 blocks unaided), there is no information provided from a prescribed professional to rectify this discrepancy. The situation is similar with the ability to climb steps, remain seated and lift.

The panel also considered the appellant's SR, RFR and testimony at the hearing. Though the panel empathizes with the appellant, both MRs and the AR. do not support her position.

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

Mental Impairment

The appellant argued that she suffers from TBI, anxiety and depression, which prevents the ability to function day to day.

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

In its reconsideration decision, the ministry noted that the narrative provided by the psychiatrist. The ministry noted that the psychiatrist indicated significant deficits to cognitive and emotional functioning in the areas of executive, memory, emotional disturbance and attention/sustained

concentration. The ministry noted that the surgeon indicated intermittent memory difficulty and understanding spoken word. Both assessors indicate no difficulties with communication.

The ministry noted that the SW indicated that there are major impacts to bodily function and emotion, with moderate impacts to consciousness, attention/concentration, memory, motor activity and executive and other. All other areas under cognitive functioning were indicated as either mild or no impact. The ministry noted that the appellant is independent with the majority of her DLA including the majority of the tasks related to social functioning.

The ministry noted the appellant's SR and concluded that the experience and symptoms the appellant described are not discussed by her prescribed professionals.

The panel finds that the ministry analysis of the evidence was reasonable, and it reasonably concluded that the information provided by the prescribed professional regarding the appellant's mental, cognitive and emotional functioning does not support a finding of a severe mental impairment. In addition to the analysis provided by the ministry, the panel notes that psychiatrist's narrative speaks specifically about the appellant's ability to function within a work environment and not her home environment. For example, the psychiatrist speaks of the inability to focus in a loud environment which leads the appellant to be distracted and unable to complete tasks. However, no information was provided on how the appellant functions at home.

In the second MR, the surgeon does not provide a mental health related diagnosis. In the narrative the only mention of a mental health issue is PTSD which has not been diagnosed. The surgeon indicated that it is "unknown" if the appellant suffers from significant deficits to cognitive and emotional functioning and stated that the appellant "generally looks ok" and has difficulty with memory and understanding spoken word. The psychiatrist indicated significant deficits in the areas of executive, memory, emotional disturbance and attention/sustained concentration. Added to this is the AR by the SW who indicated minimal impacts to the areas of executive, language and moderate impact to attention/concentration. The appellant indicated problems with vision but the SW indicated 'no impact' to other neuropsychological problems which includes visual/spatial problems. For the panel, the discrepancies indicated that the ministry's decision was reasonable.

Additionally, when the appellant's mental impairment is compared to her ability to function in areas that are typically related to mental functioning it is difficult to conclude that the appellant suffers from a severe mental impairment. That is, the panel considered that the appellant independently performs the majority of the listed tasks under social functioning, has good functioning with immediate social networks and is "a good advocate for herself – seeking professional help when needed". The panel also considered that the SW indicated that the appellant is independent with decisions regarding personal activities, care and finances, as well as with the management of medications. Though the psychiatrist indicated a continuous restriction with social functioning, all other areas related to mental health were not restricted and the psychiatrist did not explain how social functioning was restricted. Similarly, the surgeon indicated that management of medications and social functioning were restricted, the surgeon did not indicate if this was continuous or periodic for extended periods, nor was there a narrative provided to explain the restrictions.

The panel also considered the appellant's SR, RFR and testimony at the hearing. Though the panel empathizes with the appellant, both MRs and the AR. do not support her position. The appellant's advocate indicated that the MR and AR did not clearly indicate the appellant's actual experience.

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

Restrictions in the ability to perform DLA

Section 2(2)(b)(i) of the EAPWDA requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether or not it is satisfied that the legislative criteria are met, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration – the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended periods. Any analysis of periodicity must also include consideration of how frequently the activity is restricted. All other things being equal, a restriction that only arises once a year is less likely to be significant than one that occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction to be "satisfied" that this legislative criterion is met.

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

The appellant argued that due to her pain, her inability to focus or concentrate, her anxiety and her depression, she cannot complete tasks of DLA.

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

The ministry noted that the psychiatrist indicated that the appellant is continuously restricted in her ability to manage transportation and social functioning. The ministry noted that the degree of the restriction is not indicated and that assistance is not required. The ministry concluded that a significant restriction could not be established.

The ministry noted that the surgeon indicated restrictions in management of medication, mobility outside the home and social functioning, and indicated that the issues related to the head injury and bowel are periodic. The ministry concluded that it is not clear which conditions impact which DLA. The ministry noted that the surgeon did not indicate the degree, the frequency and duration of the periodic restrictions. The help noted is via medication and the occasional use of a cane which the ministry concluded as not being significant. The ministry concluded that it is not clear how these restrictions interact with those reported by the psychiatrist.

The ministry noted that in the AR, the SW indicated independence with all DLA except one task in social functioning (dealing with unexpected demands) which requires periodic assistance.

The panel notes that the psychiatrist indicated that medications/treatments do not interfere with the ability to perform DLA and the surgeon listed the appellant's medication but did not indicate if they interfere with the ability to perform DLA. Moreover, the SW indicated that the appellant "does well with her ADL (activities of daily living), the disability is her mental/physical impairment that hinder her from maintaining employment". On the other hand, the appellant testified that she was fully restricted from performing DLA about ½ the time and partially restricted during parts of the other ½ of the time.

The legislation requires that a prescribed professional confirm that a severe impairment significantly and directly restricts the ability to perform DLA. Though the appellant provided evidence that she is incapacitated for up to half of the month, this is not supported by her three prescribed professionals.

The panel considered the assessment by the prescribed professionals in the PWD application of independence with almost all the DLA, the lack of information regarding the causal link between a physical or mental impairment and a restriction to perform some DLA either continuously or periodically for extended periods, and that insufficient additional or supporting information was provided from a prescribed professional at appeal to support the appellant's position.

The panel finds, because no severe impairment has been established, any significant restriction in the ability to complete a DLA could not be directly attributed to a severe impairment and the requirement could not be met. Even if a significant impairment were to be established, given the lack, and conflict, of information regarding frequency and duration of the periodic assistance that is required, the legislative requirements would not be satisfied.

The panel finds that the evidence provided by the prescribed professionals does not describe or indicate that a severe impairment restricts the appellant's ability to perform her DLA either continuously or periodically for extended periods. Given the evidence as a whole, the panel finds that the ministry reasonably concluded that the evidence does not establish that an impairment significantly restricts DLA continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

Section 2(2)(b)(ii) of the EAPWDA requires that, *as a result of direct and significant restrictions in the ability to perform DLA*, a person requires help to perform those activities. Help is defined

in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform DLA.

The appellant indicated that she must use a cane for balance but needs a walker.

The ministry noted that the neurosurgeon indicated that the appellant receives help from medication and uses a cane, and the SW indicated that the appellant receive help from community service agencies. The ministry argued that because it has not been established that DLA are significantly restricted, it cannot be determined that help is required.

The panel notes that the SW indicated that assistance is required from community service agencies. However, it was not indicated what assistance is provided, how often or for how long. The surgeon indicated that helps is proved by medication and a cane.

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

Conclusion

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

The criteria for being designated as a PWD are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the

purposes of this Act if the minister is satisfied that the person is in a prescribed class of persons or that the person

has a severe mental or physical impairment that

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

The EAPWDR provides as follows:

Definitions for Act

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

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

activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

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

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

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

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

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

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

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

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

- (i) an authority, as that term is defined in section 1 (1) of the Independent School Act, or
- (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the School Act, if qualifications in psychology are a condition of such employment.

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*

2022-0106

Part G – Order

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

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

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

Legislative Authority for the Decision:

Employment and Assistance Act

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

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

Part H – Signatures

Print Name

Neena Keram

Signature of Chair

Date 2022/06/15

Print Name

Wesley Nelson

Signature of Member

Date 2022/06/15

Print Name

Margarita Papenbrock

Signature of Member

Date 2022/06/15