

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD) dated May 12, 2022, which found that the Appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) for designation as a person with disabilities (PWD). 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, Section 2 and 2.1

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

The relevant legislation is provided in the Appendix.

Part E – Summary of Facts

The evidence before the Ministry at the time of the RD included the PWD Application comprised of an applicant information and self report (SR), completed by the Appellant on December 10, 2021, a Medical Report (MR) dated December 10, 2021 and completed by the Appellant's General Practitioner (GP) who has known the Appellant for five years and who has seen the Appellant 11 or more times in the past year, and an Assessor Report (AR) dated December 10, 2021, also completed by the GP.

The evidence available to the Ministry at the time of the RD also included:

- A Request for Reconsideration form (RFR) signed by the Appellant on April 11, 2022, which says that the Appellant *“has had back problems since before 1982. It is so bad that there are no words to explain it. Knees are gone, shoulder hurt(s). The Ministry decision is unfair. The Ministry is ignoring supporting documents provided by (the Appellant's) doctors.”*;
- Fifteen-pages of records detailing the contents of the Appellant's medical file from his chiropractor's office (the Chiropractor's Records) comprising:
 - A one-page cover letter dated November 22, 2021, addressed to the GP and signed by the Appellant's chiropractor (the Chiropractor), indicating that the Appellant had asked the Chiropractor to provide the GP with the Appellant's medical file;
 - A two-page patient intake form in the name of the Appellant, dated May 17, 2018, providing information on the Appellant's medical condition including that the health concern that brought the Appellant to the Chiropractor's office was a *“bad back”*, with pain located in his *“lower lumbar and mid back”* affecting his work (*“constant mid back pain”*), and for which the Appellant had previously received chiropractic and massage treatments;
 - A three-page initial evaluation of the Appellant, dated May 17, 2018 and conducted by the Chiropractor, including a history of his present illness, his past medical history, the results of the Chiropractor's musculoskeletal examination, range of motion, manual muscle, lumbar and reflex testing results, and a diagnosis and treatment plan;
 - Five pages of *“Daily Notes”* prepared by the Chiropractor summarizing symptoms, recommendations and treatment of the Appellant on 45 visits to the Chiropractor's office between May 22, 2018 and May 13, 2021;
 - A one-page letter dated February 7, 2020, addressed *“To Whom It May Concern”* and signed by the Chiropractor saying that the Chiropractor was recommending a gradual return to work with four hours work per day for the next week;
 - A one-page letter dated February 14, 2020, addressed *“To Whom It May Concern”* and signed by the Chiropractor saying that the Chiropractor was recommending another week where the Appellant works four hours per day; and,
 - A two-page Workers' Compensation Board (WCB) Chiropractor's Report, identified as the Chiropractors First Report (the WCB Report) and indicating a date of service of January 31, 2020. The WCB Report was prepared on behalf of the Chiropractor, who is identified as the practitioner. Where asked to identify what happened, the Chiropractor has written *“(The Appellant) feeling much better however he still has a bit of discomfort/locking feeling on the left lower lombar/s] area with no symptoms down the legs. I am recommending a gradual return to work starting ... February 10, 2020. He should not lift more than 10 kg. His work*

hours next week should be four hours per day. Minimize sustained sitting or standing to less than 30 minutes."

Diagnoses

In the MR, the GP diagnosed the Appellant with shoulder and knee arthritis with a date of onset of January 2019 and degenerative disk disease (DDD) with a date of onset of January 1979.

Severe Physical Impairment

Physical Functioning

In the MR, under Health History, where asked to indicate the severity of the applicant's medical conditions and how they impair the applicant, the GP wrote that the Appellant has been found to have degenerative joint disease of the shoulders and back which were confirmed by an X-Ray taken in November 2021...The X-Ray showed the presence of degeneration of the joints at his left shoulder and lower spine. The GP also indicates that these degenerative changes caused reduced mobility in his shoulder and back and impacted his ability to move, and that a clinical examination of the Appellant's knees supports early degenerative joint disease in the knees with the same joint instability.

With respect to functional skills, the GP reports that the Appellant's ability to walk unaided on a flat surface, climb stairs unaided and his lifting limitations are unknown, and that he has no limitations in how long he can remain seated. The GP has not provided any additional information in the section of the MR where the prescribed professional is asked for anything that might be considered relevant in understanding the significance of the applicant's medical condition and the nature of their impairment.

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 all listed activities (walking outdoors and outdoors, standing, climbing stairs, lifting, and carrying and holding), but that it takes him significantly longer than typical to perform these activities, adding "*(The Appellant) is able to walk and mobilize. Due to pain and stiffness he has to take breaks and takes significantly longer to move*".

In the SR, the Appellant states that he has shoulder and back pain, and that his knees lock up sometimes, adding "*My left shoulder was injured in 2007. I go through great pain when lifting my left arm. My lower lumbar was injured in 1978. I experience great pain when it dislodges. I can't walk or move without spasms. I need someone to help me when this happens. The last time it happened all I did was cough. It took some time and it was a great expense. My knees also cause great pain when they lock on me. The pain is sharp and immediate. In all, my body has broken down. Reaching up, squatting, or bending over can and does create pain*".

The Appellant does not provide any additional information about his impairments in the RFR.

Severe Mental Impairment

Mental Functioning

Neither the Appellant nor the GP provide any evidence of a mental impairment.

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.

In the AR, the GP states that the Appellant is independent with respect to all listed DLA tasks but that it takes him significantly longer than normal to perform:

- All personal care tasks (dressing, grooming, bathing, toileting, feeding self, regulating diet, and transfers in and out of chairs and bed), adding “*(The Appellant) is able to perform self care but this takes significantly longer due to pain and stiffness*”;
- All basic housekeeping tasks (including laundry), adding “*These activities take much longer to do*”;
- All shopping tasks (going to and from stores, reading prices and labels, making appropriate choices, paying for purchases and carrying purchases home). No comments are provided by the GP for these activities.;
- Food preparation and cooking, adding “*Due to joint pain and stiffness this takes longer*”; and,
- Getting in and out of a vehicle, adding “*He moves slowly*”.

The Appellant does not provide any information about his ability to perform DLA in either the SR or the RFR.

Need for Help

In the MR, the GP indicates that the Appellant does not require any prostheses or aids for his impairment. Where asked to provide any additional information that might be considered relevant in understanding the impact of the Appellant’s medical condition on daily functioning, the GP has written “*(The Appellant) lives alone. He receives minimal assistance in his (DLA)*”.

In the AR, the GP has indicated that the Appellant lives alone. The GP has not completed the section of the AR that asks who provides the help required for DLA. In the section of the AR where the prescribed professional is asked what assistance is provided through the use of a specific list of assistive devices, the GP has not indicated that any assistive devices are required. The GP also indicates that the Appellant does not have an assistance animal.

The Appellant does not provide any information about his need for help in either the SR or the RFR.

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.

Evidence Presented at the Hearing

At the hearing, the Appellant said that he didn't want to blame anyone, but that his PWD application had been processed "*haphazardly*". He said that the GP didn't fill out all the forms and that the GP didn't know him. The Appellant also said that the GP filled out the MR and the AR without asking him any questions, adding "*He gets you out as fast as he can*". He said that the Ministry told him to fill out the SR and to get his doctor to fill out the rest of the forms. He provided the MR and the AR to the GP to complete and when he got the forms back from the GP he assumed everything was there and submitted the application to the Ministry. After the Ministry's first decision to deny his PWD designation, the Appellant visited the GP again and had the GP fill out new MRs and ARs, correcting and completing the information in those forms, and he delivered the revised forms to the Ministry. He said he didn't remember the date that he provided the Ministry with the new forms. In response to a question from the Panel, the Ministry said that its records indicate that the Appellant hand-delivered his RFR and the Chiropractor's Records on April 29, 2022, but revised MRs and ARs were not received at that time, and that the Ministry has no record of having received revised application documents.

In response to a question from the Panel, the Appellant said that when he said that the GP didn't know him he didn't mean that the GP had not seen him before, he meant that the GP didn't complete the MR and the AR with the Appellant present, and that the GP had neglected to provide detailed answers to all of the questions and got some of the information wrong. He also said that he had asked the GP for a magnetic resonance imaging (MRI) but none has been scheduled.

Regarding assistive devices, the Appellant also said that he now has a power lift chair with massage and heat (the Power Lift Chair), purchased through a loan from his sister, that he uses sometimes to help him get into a standing position. He said that every morning he has to sit in a heated chair for 20 minutes before he can move about and that he can't even pick up a pillow because his left shoulder had been torn out of its socket. He also said that he does exercises for 20 minutes at a time, and uses a treadmill on which he walks about a mile on most days.

The Appellant said that when he was a child he had been hit by a car on two separate occasions, and that in one of those accidents he had suffered a fractured skull that put him in a coma for two weeks and required a transfer by plane from the hospital in his hometown to a specialized hospital in a different community.

The Appellant also said that he is now approaching retirement age and it is almost impossible for him to find a job. He can no longer do the work that he used to do because of his impairments, and since the pandemic there is no other work available. He said that his pain is unbearable, and he doesn't want to get a job and then have to "*go on WCB*" after a couple of weeks because the pain leaves him unable to work.

Regarding help from others, he said that his sister helps him when he is unable to move.

In response to questions from the Panel, the Appellant said that when his knees lock up "*it takes a couple of minutes before it goes away*". He also said that the dislodging of his lower lumbar caused by a cough referred to in his SR happened at about the last time he saw the Chiropractor, which was on May 13, 2021. Regarding the lifting incident at work that resulted in the WCB Report, the Appellant said that he did gradually return to work as recommended by the Chiropractor, but that he had to stop working when the pandemic started a few weeks later.

When asked by the Panel to provide some examples of how his DLA were impacted by his impairments, the Appellant said that he has difficulty taking milk out of the fridge; he can do dishes, but only for a few

minutes at a time; he sometimes gets help from his sister with his laundry and cooking; he is able to do his own shopping, but relies on the shopping cart for support, and when his back is out “*he can’t do anything*”. He also said “*I am not an invalid. I can do things ok*”.

In response to a question from the Panel about whether the Appellant had applied for a Canada Pension Plan (CPP) disability pension, the Appellant said he was not aware that he might be entitled to one and had not applied.

At the hearing, the Ministry relied on its RD, and stressed that the Ministry must have details regarding restrictions in a person’s ability to perform DLA in situations where the assessor has indicated that it takes the applicant significantly longer to complete tasks or has a periodic restriction. Unless the Ministry knows how much longer it takes, or, if periodic restrictions are identified, how often the applicant is unable to perform certain DLA, it is not able to determine whether the impairments are significant. The Ministry also stressed that the PWD legislation does not consider a person’s ability to work but instead addresses their ability to perform everyday tasks associated with DLA.

In response to a question from the Panel regarding whether an applicant can re-submit missing documents like the revised MR and AR, the Ministry said that there were no limits to the number of times that a person can apply for the PWD designation, but the submission of any required application documents in the Appellant’s case would be considered a new application. The Ministry also said that the AR did not have to be completed by the same medical practitioner who completes the MR, and could be completed by anyone identified as a prescribed professional in the legislation, which might include, for example, the Chiropractor or an occupational therapist.

In response to another question from the Panel about eligibility for the PWD designation for a person who is receiving a CPP disability pension, the Ministry said that there was a branch of the Ministry that reviews PWB applications for federal CPP disability pension recipients and that those applicants might qualify for the PWD designation because they were receiving CPP disability benefits.

Admissibility of New Evidence

No new evidence was presented in the NOA.

New verbal testimony was provided by the Appellant at the hearing. The new information provided by the Appellant was that the GP had completed revised MRs and ARs, and that the Appellant’s sister had provided him with the funds necessary to purchase a Power Lift Chair, which he sometimes uses to mobilize, and that his sister helps him with housekeeping DLA when he is unable to move.

The Panel considered the new verbal evidence presented at the hearing to be evidence that is reasonably required for a full and fair disclosure of all matters relating to the decision under appeal, pursuant to Section 22(4) of the EAPWDA.

General principles of weighing evidence require that the evidence be considered based on its credibility and its probative value. The probative value of evidence is the degree to which the information is useful in answering the question which must be addressed; in this case whether the Appellant has a severe physical impairment that directly and significantly restricts his DLA, either continuously or periodically for extended periods, and that as a result of those restrictions he requires help to perform DLA.

The Panel considers all of the new information provided at the hearing to be of potentially high probative value as it directly addresses the criteria set out in the legislation.

Regarding credibility, the Panel notes that no conclusive evidence has been provided to confirm that the Appellant gave the Ministry a revised MR and a revised AR. While the Appellant stated at the hearing that he recalls providing the revised application forms to the Ministry when he submitted the RFR, he did not know on what date he provided the new forms to the Ministry and could provide nothing in writing to confirm that he had done so. In addition, the Ministry acknowledged receipt of the RFR and the Chiropractor's Report, which were part of the appeal record, and the date that they were submitted was provided to the Panel at the hearing, but the Ministry's record of the information submitted to the Ministry by the Appellant with his RFR does not include a revised MR or a revised AR. As there is no corroborating evidence of revised application documents, or, if the GP prepared them, whether they were provided to the Ministry, and because there are no revised documents in the Appeal record for the Panel to review, the Panel assigns no weight to the Appellant's testimony regarding the submission of a revised MR and a revised AR.

With respect to the Appellant's verbal evidence that he sometimes uses a Power Lift Chair, and that his sister sometimes helps him with housekeeping DLA, the Panel has no reason to doubt the accuracy of this information. However, EAPWDA Sections 2(2)(b)(ii) and 3(2)(b) say that the evidence of the need for help to perform DLA using the Power Lift Chair (which might reasonably be considered a "lifting device") or the significant help of another person is the evidence provided by a prescribed professional, in this case the GP. As the GP has not indicated in the MR or the AR that the Appellant needs either form of help in performing DLA, the Panel finds that this new information is 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 because 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.

In addition, 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 medical practitioner or a nurse practitioner it must both be likely to continue for at least two years [EAPWDA 2(2)(a)], and in the opinion of a prescribed professional 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 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 of prescribed professionals, in this case the GP, regarding the length of time that the severe impairment is likely to continue, and the GP and potentially the Chiropractor regarding the impairment's impact on DLA and the need for assistance.

The Ministry has determined both the duration of the impairment criterion and the Appellant's age criterion to have been met and are not at issue in this appeal.

Physical Functioning

The Ministry's position is that the Appellant does not have a severe physical impairment because the GP has not provided any information regarding the Appellant's functional skills in the MR, and in the AR the GP says that, while the Appellant takes significantly longer than normal to move, he is independent in all aspects of mobility and physical ability.

The Appellant's position is that he experiences great pain in his lower back and knees and that activities such as reaching up, bending over and squatting are very painful.

Panel Decision

The Panel notes the lack of information from the GP concerning the Appellant's functional skills in the MR. The Panel further notes that the GP has indicated that the Appellant is independent in all functional skills, and has not provided any information about how much longer than typical it takes the Appellant when walking indoors and outdoors, climbing stairs, standing, lifting, carrying and holding. In addition, the Panel notes that the GP has not provided any information in the section of the MR where the prescribed professional is asked for anything that might be considered relevant in understanding the significance of the applicant's medical condition and the nature of their impairment, nor has the GP provided any comments in the section of the AR where space is provided for the assessor to elaborate on the applicant's mobility and physical functioning.

Based on all the available evidence, including the lack of information from the GP to allow the Ministry to determine severity, the Panel finds the Ministry's conclusion that the Appellant's physical limitations do not represent a severe physical impairment was reasonable.

Restrictions in the Ability to Perform DLA

The Ministry's position is that it has not been demonstrated that the Appellant has significant restrictions in his ability to perform DLA because the GP has reported that, while it takes the Appellant longer with some of those activities (without indicating how much longer), the Appellant is independent in all DLA.

The Appellant's position is that he has difficulty taking items out of the fridge due to his shoulder injury, he can do dishes but only for a few minutes at a time, he sometimes needs help with his laundry and cooking, and, while he is able to do his own shopping, he relies on the shopping cart for support.

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, 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 "*chiropractor*". Therefore, the GP and the Chiropractor are 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, whether specific DLA take significantly longer than typical, descriptions of the type and amount of assistance required, and the frequency and duration of periodic restrictions. The Panel notes that the GP has indicated that the Appellant is independent with respect to all listed DLA while saying that he takes significantly longer to perform many of them. However, no information is provided about how much longer than typical the Appellant’s DLA take, no information is provided about the type or amount of assistance required, and no information is given in the space provided on the form for additional comments.

In addition, the Panel notes that the information in the Chiropractor’s Report does not assess the Appellants ability to perform DLA, and no evidence has been presented to suggest that the Chiropractor provided the Ministry with any information about the Appellant’s ability to perform DLA.

Based on all the available evidence, the Panel finds the Ministry reasonably determined that it has not been demonstrated that the Appellant has significant restrictions in his ability to perform DLA.

Help with DLA

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

The Appellant’s position is that he sometimes requires the use of a Power Lift Chair and help from his sister with housekeeping and cooking.

Panel Decision

Section 2(2)(b)(ii) of the EAPWDA requires that, because of direct and significant restrictions in the ability to perform DLA, a person must require 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 to perform one or more DLA.

At the hearing, the Appellant said that he sometimes uses an assistive device and occasionally gets help from his sister with his housekeeping and cooking DLA. The Panel notes that none of this information is provided by the GP, on whose evidence the Ministry must rely to assess the Appellant’s need for help. In addition, the Panel notes that the GP says in the MR that the Appellant lives alone and receives minimal assistance with DLA. The Panel further notes that the legislation requires that the need for help with DLA can only be assessed if significant restrictions in the ability to perform them have been identified, which was not established in this case.

Based on all the available evidence, the Panel finds the Ministry reasonably determined that it has not been demonstrated that the Appellant requires assistance from another person or the use of an assistive device to perform DLA.

Alternative Grounds for Designation under EAPWDA Section 2

Panel Decision

Section 2.1 of the EAPWDR says that a person who is considered disabled under Section 42(2) of the federal *Canada Pension Plan* is a prescribed class of persons for the purpose of EAPWA Section 2(2), meaning that the person may be designated by the Ministry as a PWD without having to meet the requirements of EAPWDA subsections 2(a) and 2(b), i.e. without requiring that, in the opinion of a medical practitioner or nurse practitioner, the person has a severe physical or mental impairment that is likely to continue for at least 2 years, and, in the opinion of a prescribed professional, directly and significantly restricts the person's ability to perform DLA either continuously, or periodically for extended periods, and as a result of those restrictions, the person requires help to perform those activities.

As the Appellant confirmed at the hearing that he has not applied for a disability pension under Section 42(2) of the Canada Pension Plan, the Panel finds that the Ministry reasonably determined that it has not been demonstrated that the Appellant is one of the prescribed classes of persons who may be eligible for the PWD designation on alternative grounds.

Conclusion

Having reviewed and considered all the admissible 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 available evidence and was a reasonable application of the legislation in the circumstances of the Appellant, and therefore confirms the Ministry's 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:

- (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).

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.

APPEAL NUMBER 2022-0108

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)

2022/06/14

Print Name

Warren Fox

Signature of Member

Date (Year/Month/Day)

2022/06/14

Print Name

Joseph Rodgers

Signature of Member

Date (Year/Month/Day)

2022/06/14