

### **Part C – Decision Under Appeal**

Under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated April 8, 2022, that denied the appellant designation as a person with disabilities (PWD) under section 2 of the *Employment and Assistance for Persons with Disabilities Act*.

The ministry was satisfied that the appellant met the age requirement and has a severe physical impairment that, in the opinion of a prescribed professional directly and significantly restricts the ability to perform daily living activities ("DLA") either continuously or periodically for extended periods, resulting in the need for help to perform DLA.

The ministry was not satisfied that a medical or nurse practitioner confirms that the severe impairment is likely to continue for at least two years.

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

### **Part D – Relevant Legislation**

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

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

The full text of this legislation is included in the Schedule of Legislation at the end of this decision.

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

- The appellant's PWD application, comprised of:
  - A Medical Report (MR) dated August 17, 2021, completed by the appellant and the appellant's general practitioner (GP) of 3 ½ years and signed by the GP.
  - An Assessor Report (AR) dated September 29, 2021, completed by a chiropractor who has known the appellant since June 26, 2021.
  - The appellant's 3-page typewritten Self-report (SR).
- A 14-page typewritten Neuro-Psychological Vocational Assessment dated March 31, 2021.
- Additional medical documentation (years 2020 and 2021).
- A November 4, 2021 fax from the ministry to the GP requesting that the GP review and assess whether it is likely that the appellant's impairment will continue for two or more years. The GP is also directed to answer either "Yes" or No" to the question regarding degree and course of impairment.
- A November 5, 2021 faxed response from the GP.
- The appellant's 4-page typewritten reasons for requesting reconsideration.
- An April 4, 2022 letter from the GP to which the GP attached consult letters described as the appellant's most recent medical appointments.

**Information provided on appeal and admissibility**

The appellant's Notice of Appeal dated April 19, 2022, in which the appellant writes that there was some confusion from the GP to the ministry about the appellant's recovery status.

On appeal, the appellant submitted a letter dated May 6, 2022 from the GP.

In its appeal submission, dated May 25, 2022, the ministry acknowledges having reviewed the appellant's appeal submission. The ministry states that the appellant's submission includes confirmation from the GP "that it is unlikely these [medical conditions] will resolve in the next couple of years." The ministry states that if the ministry had this information when it made its reconsideration decision, it is likely the ministry would have approved the appellant's request for PWD designation at that time.

The panel admitted the new information in the GP's May 6, 2022 letter which directly addresses the issue on appeal under section 22(4) of the *Employment and Assistance Act* as information

reasonably required for full and fair disclosure of the matters at issue. The panel accepted the ministry's May 25, 2022 submission as argument.

### **Summary of relevant evidence**

The appellant submitted a substantial amount of detailed medical information. The panel has only summarized information that is provided by a medical practitioner (none of the information is from a nurse practitioner) and addresses the expected duration of impairment.

### **Diagnoses and Health History**

The GP diagnoses the appellant with musculoskeletal system, cardiovascular system, and cyclical vomiting syndrome.

### **Degree and Course of Impairment**

In the MR section of the PWD application, the GP does not check the "yes" or "no" box when asked if the appellant's impairment is likely to continue for two years or more from today, commenting "unsure."

In the November 5, 2021 response to the ministry's request for further information respecting duration of the appellant's impairment, the GP ticks the "No" box where asked if the impairment is likely to continue for two years or more from today, commenting "I am hopeful [the appellant] will make a full recovery."

In the May 6, 2022 letter the GP states that she would like to clarify her previous statement that the appellant "is likely to improve over time." The GP writes:

"[The appellant] has struggled with many problems throughout [their] life including cyclical vomiting syndrome, mental health problems, insomnia, eating disorder, chronic fatigue and chronic pain. Our practice, along with other specialists, are working with the [appellant] to improve these problems. It is unlikely these will resolve in the next couple of years and I do believe [the appellant] will benefit from disability at the present time.

For more information on [the appellant's] previous problems, please see previous letters."

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

The issue on appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. That is, was the ministry reasonable when determining that the requirements of section 2(2) of the EAPWDA were not met because a medical or nurse practitioner has not confirmed the impairment is likely to continue for at least 2 years.

**Panel Decision****Eligibility for PWD designation under section 2 of the *EAPWDA*****Duration*****Positions of the Parties***

The appellant's position is that there has been some confusion in the communication between the GP and the ministry and that the new information from the GP establishes that impairment is likely to last at least two years.

The ministry states that it must rely on the opinion of a medical or nurse practitioner when assessing duration of impairment. At reconsideration the ministry relied on the information from the GP, who initially reported being "unsure" of the likely duration of impairment and subsequently indicated that impairment is not likely to continue for two years and that the GP is hopeful the appellant will make a full recovery. The ministry's position was that this information did not meet the legislated requirement that a medical or nurse practitioner confirm that impairment is likely to continue for at least two years.

On appeal, the ministry states that the information provided on appeal includes confirmation from the GP that it is unlikely the appellant's medical conditions will resolve in the next couple of years. The ministry states that if it had this information when it made its reconsideration decision, it is likely the ministry would have approved the appellant's request for PWD designation at that time.

***Panel Analysis***

To be designated as a PWD, section 2(2) of the EAPWDA requires that the ministry is satisfied that a person has a severe mental or physical impairment that, in the opinion of a medical practitioner or nurse practitioner, is likely to continue for at least 2 years. The ministry was satisfied that the appellant has a severe mental impairment but was not satisfied that the appellant's GP, a medical practitioner, confirmed the impairment is likely to last for at least two years.

The panel finds that the information from the GP in the PWD application indicated uncertainty as to the expected duration of the appellant's impairment. The panel finds that the subsequent information provided by the GP on November 5, 2021, indicated that the appellant's impairment was not expected to last for two years, and that the GP was hopeful for a full recovery. Based on this information, the panel finds that the ministry was reasonable at reconsideration to conclude that the legislative duration requirement was not met.

However, after reconsideration, new information from the GP was provided and was admitted by the panel. The panel finds that in the May 6, 2022 letter, the GP states that it is unlikely that the appellant's medical problems will resolve in the next couple of years. The panel finds that this information is sufficient to meet the requirement of a medical practitioner's opinion that impairment is likely to last for at least two years. The panel also notes that the ministry's position was that it would have likely found the appellant eligible for PWD at reconsideration if it had had the new information from the GP.

Based on the new information provided on appeal, the panel finds that the ministry's decision that a medical or nurse practitioner has not confirmed that the appellant's impairment is likely to continue for at least two years, is not reasonable.

**Conclusion**

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

**Schedule of Legislation**

**EAPWDA**

2 (1) In this section:

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

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

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

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

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

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

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

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

**EAPWDR**

**Definitions for Act**

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

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

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

(vii) perform personal hygiene and self-care;

(viii) manage personal medication, and

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

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

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

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

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

(i) medical practitioner,

(ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner, or

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

(i) an authority, as that term is defined in section 1 (1) of the [Independent School Act](#), or

(ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the [School Act](#),

if qualifications in psychology are a condition of such employment.

### **Alternative grounds for designation under section 2 of Act**

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

(a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;

(b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;

(c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the [Community Living Authority Act](#);

(d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the [Community Living Authority Act](#) to assist that family in caring for the person;

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

**Part G – Order**

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

The Panel       Confirms the Ministry Decision       Rescinds the Ministry Decision  
 If the ministry decision is rescinded, is the panel decision referred back  
 to the Minister for a decision as to amount?      Yes       No

**Legislative Authority for the Decision:**

*Employment and Assistance Act*

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

**Part H – Signatures**

Print Name

Jane Nielsen

Signature of Chair

Date (Year/Month/Day)

2022/06/01

Print Name

Glenn Prior

Signature of Member

Date (Year/Month/Day)

2022/06/01

Print Name

Tina Ahnert

Signature of Member

Date (Year

2022/06/01