

Part C – Decision Under Appeal

Under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated June 3, 2022, that denied the appellant designation as a person with disabilities (PWD) under section 2 of the *Employment and Assistance for Persons with Disabilities Act*. The ministry stated that the appellant met the requirements of having reached 18 years of age and of a medical practitioner confirming the impairment is likely to continue for at least 2 years. However, the ministry was not satisfied that:

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

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

Part D – Relevant Legislation

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

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

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

- The appellant's PWD application, comprised of:
 - A Medical Report (MR) and an Assessor Report (AR). Both were dated January 24, 2022 by the appellant's general practitioner (GP) of less than one year who had seen the appellant 2 – 10 times.
 - A Self-report (SR) dated January 14, 2022.
- The appellant's April 4, 2022, Request for Reconsideration.

Information provided on appeal and admissibility

The appellant's Notice of Appeal dated June 10, 2022.

The panel waited approximately 20 minutes to allow time for the appellant to join the teleconference. The appellant did not attend the hearing. The panel had confirmation that the appellant had been notified of the hearing and proceeded in the appellant's absence in accordance with section 86(b) of the Employment and Assistance Regulation.

At the hearing, the ministry reviewed the reconsideration decision. In response to a question, the ministry stated that it does not contact a client directly to enquire about impacts on the client's ability to manage DLA. The ministry did not provide evidence at the hearing.

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

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

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

The GP diagnoses:

- Digestive disorder – other IBS (irritable bowel syndrome). Onset 1984
- GU (genitourinary disorder) – other, pelvic organ prolapse. Onset 2018

Additional information from the GP includes:

- The appellant's impairment is lifelong.

- IBS – severe. Patient reports multiple episodes of stool incontinence secondary to IBS; requires urgent access to toilet; abdominal pain/vomiting associated; multiple attacks/day.
- Prolapse – severe. Unable to do heavy lifting or will precipitate organ prolapse.

Physical Impairment

The GP reports:

- No prostheses or aids are required.
- Functional skills: the appellant can walk 4+ blocks unaided on a flat surface; climb 5+ steps unaided; and remain seated without limitation. Lifting is limited to 15 to 35 lbs.
- Walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding are managed independently. The GP does not identify the need for any assistance from another person.

In the appellant's written submissions, the SR, Request for Reconsideration and NOA, the appellant describes having incontinence and extreme IBS attacks that keep her on the toilet for long periods of time. She experiences extreme pain, sometimes vomiting, and is left foggy-headed and extremely fatigued after an attack. Extreme attacks don't happen every day, she never knows when they will happen. Everyday she has lesser painful cramps. She no longer gets physical cues that an attack will happen – they are instantaneous, and she must always be near a bathroom. Even if a bathroom is close by, it may be too late. The appellant states that she has a debilitating lifelong disability – a hidden disability - she will be dealing with IBS for life. She is also dealing with urinary incontinence and has a prolapse and umbilical hernia. She was born with a deformed bladder which is now compounding any other health issues. Prolapse surgery will be a years' wait, with 6-8 weeks of post-operative recovery.

Mental Impairment

The GP reports:

- No significant deficits in any of the 11 listed areas of cognitive and emotional function.
- Social functioning is not restricted by the appellant's impairment.
- No cognitive, motor, sensory or other difficulties with communication. Ability to communicate (speaking, reading, writing, hearing) is good.
- Major impact on daily cognitive and emotional functioning in 2 of 14 listed areas – bodily functions and emotion. No impact is reported for the remaining areas.

In her written submissions, the appellant describes being constantly worried about having access to a washroom and having high anxiety around daily bathroom activities. She must always have a second pair of clothes and cleaning supplies with her.

DLA

In the MR, the GP reports:

- The appellant has not been prescribed medications and/or treatments that interfere with the ability to perform DLA.
- The appellant's impairment does not directly restrict the ability to perform DLA.

In the AR, the GP reports:

- Frequent bowel movements, little warning for stool, and abdominal pain in response to the question "What are the applicant's mental or physical impairments that impact his/her ability to manage Daily Living Activities?"
- All listed tasks of the DLA personal care, basic housekeeping, shopping, meals, pay rent and bills, medications, transportation, and social functioning are managed independently. No tasks are reported to take significantly longer to perform.
- Good functioning with immediate and extended social networks.

Need for Help

The GP reports:

- "N/A" when asked about assistance provided by other people.
- "Change of clothes/cleaning supplies carried in case of stool accident" when asked to provide details on any equipment or devices used by the appellant.

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

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

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

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

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

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

Physical Impairment

Positions of the Parties

The appellant's position, based on her written submissions, is that she has a life long medical issue that has become worse. She has severe IBS attacks which cause her to be late for work often or miss days completely. Due to IBS, she must always be near a washroom and even then, it may be too late. She also has urinary incontinence due to a prolapse for which surgery will be a years' wait, plus recovery time.

The ministry's position is that the GP's assessments indicate that the appellant has fully independent functioning with all DLA, does not take longer with mobility and physical activity, with the only limitations being for heavy lifting and the frequent need to be near a toilet. The ministry concludes that the appellant's overall impairment is more indicative of a mild physical impairment, and that a severe physical impairment has not been established.

Panel Analysis

The appellant is diagnosed with IBS and pelvic organ prolapse, both of which are described by the GP as "severe." The GP and the appellant report the need to always be near a washroom due to episodes of stool incontinence that occur with little or no warning. Additionally, the GP reports that the appellant has daily abdominal pain due to IBS and is unable to do heavy lifting due to the prolapse. However, when assessing the appellant's physical functioning in the MR, except for the heavy lifting limitation, no limitations are reported by the GP. In the AR, the GP reports that all aspects of physical ability and mobility are managed independently, without taking significantly longer to perform or requiring any assistive devices or assistance from another person. Additionally, the GP reports that the appellant's impairment does not directly restrict the ability to perform any of the prescribed DLA and that all listed DLA tasks are managed independently and do not take significantly longer to perform. The panel acknowledges the appellant's description of difficulties with work due to IBS attacks and urinary incontinence, and the need to be always near a washroom but finds that, except for what is reasonably viewed as a moderate limitation on the ability to lift, the GP has assessed the appellant as having good physical functioning. Therefore, the panel finds that it was reasonable for the ministry to conclude that a severe impairment of physical functioning has not been established.

Mental Impairment

Positions of the Parties

The appellant's position is that she is constantly worried and has high anxiety about the need to always have immediate access to a bathroom, and that the IBS attacks sometimes result in being foggy headed.

The ministry's position is that the information does not establish a severe mental impairment. The ministry acknowledges that the appellant has anxiety because of her condition which requires quick access to a washroom. However, the GP has not diagnosed a mental disorder or brain injury and assesses the appellant as having fully independent functioning with no need for any emotional or cognitive help. The ministry concludes that the information provided establishes at most a mild mental impairment in function. Therefore, a severe mental impairment has not been established.

Panel Analysis

The appellant is not diagnosed with a mental impairment or brain injury. The GP reports that there are no significant deficits with cognitive and emotional function, and that the appellant's ability to communicate is good. The GP does report major impacts on daily functioning for two listed aspects of cognitive and emotional functioning - bodily functions and emotion – and the appellant describes constant anxiety due to IBS episodes and sometimes being foggy headed after an attack. However, there is no apparent correlation between these impacts and the ability to perform DLA, as the GP reports that the appellant independently manages all DLA tasks, including decision-making and all aspects of social functioning, without the need for any support or supervision. Given the level of independent cognitive, emotional, and social functioning assessed by the GP, the panel finds that the ministry was reasonable to conclude that the information does not establish a severe mental impairment.

Restrictions in the ability to perform DLA

Positions of the Parties

The appellant's position is that she has a life long hidden disability that is getting worse which often makes her late for work or miss days completely. The appellant does not specifically address the prescribed DLA.

The ministry's position is that it is not satisfied that the appellant has a severe impairment that directly and significantly restricts the appellant's ability to perform DLA. The ministry states that it relies on the medical opinion and expertise of the GP, a prescribed professional, to determine if an impairment directly and significantly restricts DLA. The ministry states that the GP reports no continuous restrictions with any DLA, except for the urgent need for a bathroom because of frequent bowel movements with little warning. The GP reports that the appellant is fully independent in all DLA, that none of the DLA take significantly longer to perform or require any assistance. The ministry recognizes the frequent need for a bathroom and the abdominal pain and vomiting the appellant experiences but finds that the GP's assessment indicates independent functioning, with no assistance or assistive devices required, which does not establish a severe impairment in function that directly and significantly restricts DLAs.

Panel Analysis

Section 2(2)(b)(i) of the EAPWDA requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly

restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether it is satisfied, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant.

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

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

In the MR, the GP reports that the appellant's impairment does not directly restrict the appellant's ability to perform DLA. In the AR, the GP reports that frequent bowel movements, with little warning, and abdominal pain, are impairments that impact the appellant's ability to manage DLA but also reports that all listed task of all DLA are managed independently, with no identified limitation. The panel acknowledges the evidence that the appellant experiences daily pain, vomiting, and unpredictable severe IBS attacks, all of which are suggestive of impacts on the ability to manage DLA. However, the legislation requires a prescribed professional's opinion that an impairment directly and significantly restricts DLA. Therefore, based on the information provided by the GP, the panel finds that the ministry was reasonable in concluding that direct and significant restrictions in the ability to manage DLA either continuously or periodically for extended periods were not established.

Help to perform DLA

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

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

Conclusion

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

Relevant Legislation

EAPWDA

2 (1) In this section:

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

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

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

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

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

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

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

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

EAPWDR

Definitions for Act

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

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

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

(vii) perform personal hygiene and self-care;

(viii) manage personal medication, and

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

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

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

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

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

(i) medical practitioner,

(ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner, or

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

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

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

if qualifications in psychology are a condition of such employment.

Alternative grounds for designation under section 2 of Act

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

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

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

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

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

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

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)

2022/06/28

Print Name

Jennifer Armstrong

Signature of Member

Date (Year/Month/Day)

2022/06/28

Print Name

Elaine Jeffery

Signature of Member

Date (Year

2022/06/28