

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) Reconsideration Decision dated July 20, 2022 which found that the appellant did not meet all of the 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 requirement, that she has an impairment that is likely to continue for at least two years and she has a severe mental impairment. However, the ministry was not satisfied that the evidence established that:

- 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.

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 April 2, 2022] completed by the appellant's general practitioner (the GP), who had known the appellant for 10 years and had seen the appellant 11 or more times in the past 12 months of the PWD application.
 - An Assessor Report (AR) [dated April 12, 2022], which was completed by the appellant's Social Worker (the SW), who had seen the appellant 2-10 times in the past 12 months. The statement asking how long the assessor has known the applicant was left blank by the SW. The approaches and sources used to conduct the AR were an office interview with the appellant and other assessments (phone calls).
 - The PWD application also included the appellant's Self-Report (SR) dated April 12, 2022. The SR was left blank.
2. 1-page psychiatric consultation report dated April 21, 2020. The report confirms the GP's narrative regarding the appellant's mental health history and diagnosis of generalize anxiety disorder in the context of cluster B personality traits. It also indicated that the appellant denied persistent depressive mood, sleeps and eats well, and weight is stable.
3. Request for Reconsideration dated July 4, 2022, which indicated the following:

"I have been very sick for the last few years. Even to write this is difficult for me it's hard for me to put my thoughts together and explain that I am deficient in my daily life. I no longer can keep up with laundry and cleaning my house are simple things like meal preparation are going to a grocery store is overwhelming for me. I face about 20 to 30 triggers A-day that remind me of the pains I've gone through. Most days I don't want to get out of bed and even when I can get out of bed my whole body is in complete agony. When I wake up in the morning it takes me hours to stand up straight because of the pain in my tailbone caused from an accident. My wrists are full of tendonitis And because of my disability it causes the pains to flare up. I am so exhausted every single day that if I have a shower or brush my teeth it's a victory and even then it's so difficult I have to sit down in the shower. I have tried to hold down employment in the last few years but got fired because of my mind not retaining information. [Everyday] I'm unable to leave my house and drive I have to get other people to drive me because I get anxious from traffic or people. I have difficulty making decisions and I never feel secure or stable. I cannot stand loud noises or bright lights. My teeth are completely worn down from grinding them from the stresses I feel every single day. When people talk to me they say I don't listen but the fact is there's too much going on in my mind to hear. this affects my ability with my relationships around me including my children. Most days I have difficulty preparing food preparing food and eating does not happen very often because I'm too upset to eat. I have to rely on my parents to help me With my children every single day. I am now in sleep medications to help me sleep and for my disorder. Panic attacks are now a part of my daily life especially when I'm faced to do something like this form like this form or [going] to an appointment or dealing with a child that needs my assertiveness. I'm asking you to please reconsider As I have come to a place admitting I need help. I used to love working and dream of being better one day and hope you can understand how difficult my life has been coping with my mental and physical impairments. I am doing all I can to get better and hope one day to be normal."

Diagnoses

In the MR, the GP diagnosed the appellant with severe anxiety disorder and cluster B personality disorder (onset: many years).

Health History

In the MR, the GP stated the following about the appellant:

- Struggled with anxiety the entire time (10 years) that the GP has known the appellant.
- She is quite impulsive at times and easily overwhelmed.
- She often presents in chaos with severe anxiety.
- She has a history of emotional abuse.
- She has tried a number of anti-anxiety medications but the lack of a stable environment limits the medications' effectiveness.
- She is extremely vulnerable to feelings of abandonment and rejection.

Degree and Course of Impairment

In the MR, the GP indicated that the appellant's impairment is likely to continue for two or more years from the date of the application and commented: "she has struggled with this for most of her adult life. Medications will help to an extent but are likely not to result in sustained improvement".

Physical Impairment

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

- She can walk 4+ blocks and climb 5+ steps unaided, lift and remain seated without limitation.

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

- The appellant is independent with walking indoors/outdoors, climbing stairs, standing, lifting and carrying/holding.

Mental Impairment

In the MR, the GP 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, emotional disturbance, impulse control and other (emotional control).
- There is a continuous restriction with social functioning, with the comment: "[the appellant] often makes impulsive decisions that have resulted in negative outcomes and chaos in her life. She struggles with feelings of abandonment and this causes emotional dysregulation and instability of interpersonal relationships".
- The assistance required: "she intermittently gets financial support and child care support from her parents".

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

- Speaking, reading, writing and hearing are good.
- In terms of cognitive and emotional functioning the section there are major impacts to bodily function, emotion, impulsive control, executive. There are moderate impacts to consciousness, insight/judgement, attention/concentration, memory and motivation. All other listed areas of cognitive and emotional functioning have minimal or no impacts.

Daily Living Activities

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

- No medications that interfere with the ability to perform DLA have been prescribed.
- There are no restrictions with all listed areas of DLA except social functioning as described in the previous section of this document.

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

- All tasks under ‘personal care’, ‘shopping’, ‘pay bills/rent’, ‘medications’ and ‘transportation’ are performed independently.
- Periodic assistance is required with the tasks of laundry and basic housekeeping, with the comment: “support from family”.
- Under ‘meals’, safe storage of food is performed independently and meal planning, food preparation and cooking required continuous assistance with the comment: “requires support from family”.
- “Client’s mental health prevents her from engaging with physical and personal care. She will often miss days not showering, brushing teeth or feeding herself. She requires family support to cook and make meals for kids”.

Help

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

- Requires no prostheses or aids for her impairment.
- Financial and child care support is intermittently provided by parents.

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

- Help with DLA is provided by family and friends: “parents and partner (who is not living in home)”.
- The section ‘assistance provided through the use of Assistive Devices’ was left blank.
- No assistance is provided by assistance animals.

Evidence prior to the Appeal

Prior to the hearing the appellant submitted a 2-page patient history from her dentist. The history is from November 23, 2021 to June 7, 2022. The notes confirm the appellant’s assertion that she grinds her teeth and has dental problems. It also indicated that in November 2021, the appellant brushed her teeth twice per day, and rinsed once per day.

Evidence on Appeal

Notice of Appeal (NOA), signed and dated July 25, 2022, the appellant stated, “my doctor, counsellor and dentist agree that I am not capable [of] working”.

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

Evidence at the Hearing

At the hearing, the appellant provided details regarding the appellant’s mental health, reiterated the information shared in the PWD application and RFR, and stated, in part, the following:

- The SW knows the appellant better than the GP and the appellant should have obtained a letter from the GP with more information.
- She has high anxiety when doing anything like this hearing.
- She is down to 80% of her molars as she grinds her teeth.
- Anxiety is a lifelong struggle and she cannot hold down a job due to it.
- Her mom and grandmother also suffer from mental health issues, and she see signs of mental illness in her children.
- Her children are her only motivation to do anything and hold her up.
- She was denied PWD designation due to her physical abilities but she cannot keep up mentally.
- She tried finishing university (completed 2 years) but she cannot focus and has memory problems.
- She has tried natural remedies and exercise to treat her mental illness, but she was unsuccessful and is now on medications.

- Her mind races at night so she has difficulty sleeping and takes sleeping medication.
- 50% of the time she is not with her children because she is having a bad day and makes irrational decisions. Her parents help on these days.

The advocate stated, in part, the following:

- Everything is overwhelming, she suffers from PTSD and is currently living off the generosity of the food bank and women's shelter.
- There are a lot of stressors/triggers throughout the day but she recognizes when she is triggered and reaches out for help.
- Making decisions is challenging.
- She cannot hold down a job.
- She needs help with motivation, hygiene, making food and feeding herself.
- She needs basic needs met and mental health supports.
- Every conversation and encounter with others is a struggle.
- The prescribed professional could have done a better job of providing specific information regarding the appellant.

When asked, the appellant and/or her advocate stated the following:

- She used to work for a telecommunication company and as an executive assistant. She has a diploma in business administration - bookkeeping.
- She did not complete the SR because she cannot deal with paperwork and was dealing with a highly stressful custody battle.
- Her mind is constantly in a state of fight, flight or freeze. Therefore, completing DLA is not a priority and she relies on her family to help. Her parents help a lot with the children.
- She struggles with depression so there is a lack of motivation to function.
- She is unable to complete her DLA more than 50% of the time.

At the hearing, the ministry relied on its reconsideration decision. However the ministry representative stated that, given the information presented at the hearing, it is her opinion that the appellant is restricted with her DLA and she stated that she does not agree with the reconsideration decision.

Admissibility of Additional Information

The ministry did not object to the admission of the information submitted prior to the appeal or at the hearing.

A panel may consider evidence that is not part of the record but the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The panel found that the information submitted prior to the appeal (dental patient history) provided additional detail or disclosed information that was required for a full and fair disclosure of all matters related to the decision under appeal. Accordingly, the panel has admitted this additional information in accordance with s. 22(4) of the *Employment and Assistance Act*.

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's 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.

The relevant legislation is included in Appendix A.

Panel Decision

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 anxiety she is unable to perform her DLA and needs help from her parents.

The ministry argued that it is not satisfied that the information provided establishes that the appellant's severe mental impairment directly and significantly restricts DLA continuously or periodically for extended periods.

In its reconsideration decision, the ministry noted that in the MR the GP indicated that the appellant is not restricted in performing in the ability to perform personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside/outside the home, use of transportation, and management of finances. The ministry noted that in regard to social functioning, the GP indicated that the appellant is continuously restricted and described the assistance required as intermittent financial and child care support from her parents.

In its reconsideration decision, the ministry noted that in the AR the SW indicated that the appellant requires continuous assistance with managing areas of meals (including meal planning, food preparation and cooking) and that support comes from her family. The ministry also noted that the SW indicated that the appellant requires periodic assistance with managing laundry and basic housekeeping and that support comes from family. The ministry noted that no information was provided to explain the degree or the frequency of the assistance that the appellant requires. The ministry also noted that the appellant independently manages all other DLA including personal care, shopping, safe storage of food, paying rent/bills, medications and transportation.

The ministry noted that the SW did not provide any information regarding social functioning.

The panel agrees with the ministry's analysis; specifically, it notes that in the PWD application, the prescribed professionals have not provided sufficient information describing the degree and frequency of the restriction, and the type and amount of the assistance the appellant requires. Therefore, it is reasonable that it is difficult to determine whether the restriction the appellant experiences is continuous or periodic for extended periods as required by the legislation.

In making its determination, the panel considered the ministry representative's opinion that the information provided at the hearing meets the legislative requirement [The panel notes that pursuant to section 24 of the EAA, the panel must consider all of the evidence and whether the reconsideration decision was reasonably supported by the evidence or a reasonable application of the legislation. It also notes that section 2(2) of the EAPWDA requires that ministry must be satisfied that the legislative requirements have been met].

At the hearing, the SW stated that the appellant is unable to cope with DLA more than 50% of the time and that DLA are not a priority for the appellant because she is in survival mode. This speaks to the issue of frequency of the restriction. However, the SW did not specify the degree of the restriction, type of assistance required and this information was not provided in the PWD application. As a result, it is reasonable that the ministry would have difficulty making a determination and it is reasonable to conclude that the legislative requirements have not been met.

The panel notes that in the MR, the GP indicated that the appellant is not restricted with any of the DLA except social functioning, which is continuously restricted. However, the GP did not explain the restriction or the degree of the restriction as requested by the application. The panel notes that in the AR the SW indicated that assistance is required continuously for 3 of 4 tasks of 'meals' and periodically for extended periods with 'basic housekeeping' with no information regarding the type and frequency of the assistance required. No information was provided regarding social functioning. The only explanation provided to explain why the two prescribed professional have differing opinions regarding the appellant's ability to perform basic housekeeping, specific tasks of meal preparation or social functioning was a statement by the appellant at the hearing indicating that the SW knows her better than the GP. However, without clarifying information that is confirmed by a prescribed professional, it is reasonable that it would be difficult for the ministry to determine which assessment is accurate.

The panel also notes that it was determined that the appellant has a severe mental impairment. The appellant argued that it's her mental impairment that prevents her from performing her basic housekeeping and meal preparation. At the hearing she demonstrated the link between the mental impairment and inability to perform these DLA. Pursuant to the legislation (section 2(1)(a) of the EAPWDR), these DLA can be significantly and directly restricted by either a mental or physical impairment. However, the panel reiterates that the prescribed professionals in this case did not provide enough information regarding the degree, type and amount of assistance required.

Section 2 (1)(b) of the EAPWDR states for the purpose of the EAPWDA DLA 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. The panel notes that the AR indicated that the appellant independently performs all tasks related to personal care, medications and paying bills/rent. At the hearing, the SW stated that the appellant struggles with decision making but did not provide any information or details as to how this struggle translates to the appellant's everyday life and specifically in the areas of personal activities, care and finances.

No information was provided by either prescribed professional to the effectiveness of the appellant's communication or interactions with others. At the hearing, the appellant indicated that she is overwhelmed with things such as this hearing, she cannot focus on a conversation and has problems remembering what is said. However, this was not confirmed by the SW either in the AR or at the hearing.

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 regarding her ability to perform DLA, this was not sufficiently supported by her prescribed professionals.

The panel considered:

- the assessment by the prescribed professionals in the PWD application of independence with most of the DLA (and insufficient information regarding the duration, degree and frequency of the assistance required with DLA), and
- that insufficient additional or supporting information was provided from a prescribed professional at appeal to support the appellant's position.

The panel finds that the evidence provided by the prescribed professionals does not describe or indicate that a severe mental 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 needs help from her parents to complete her DLA.

At the hearing, the ministry representative, who determined that the appellant met the criteria for DLA, did not provide any analysis or opinion regarding the appellant's need for help or if the need for help met the legislative requirements.

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.

Appendix A

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*

2022-0168

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: 2022/08/15

Print Name

Erin Rennison

Signature of Member

Date: 2022/08/15

Print Name

Carla Tibbo

Signature of Member

Date: 2022/08/15