

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD) dated July 11, 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. 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

EAPWDA, Section 2

EAPWDR, Section 2

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), signed by the Appellant on February 8, 2022, a Medical Report (MR) dated January 20, 2022 completed by the Appellant's General Practitioner (GP) who has known the Appellant for 3 years and who has seen the Appellant 2 - 10 times in the past year, and an Assessor Report (AR) also completed by the GP and signed on January 20, 2022.

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

- A Request for Reconsideration form (RFR) signed by the Appellant on June 8, 2022 in which the Appellant explains why he requires an extension of the deadline for submitting an RFR. Also included in the section of the RFR where the Appellant is asked why he is asking for an RD, the Appellant has written:

"I ... (have) had health problems for over a month. I was in the hospital twice. I had problems breathing when I did anything. I went to the hospital for that. Then a week later I went to the bathroom in the middle of the night and legs and feet are very weak and I blacked out and fell chest first on the toilet. I went to the hospital and had (a computerized tomography [CT]) scan on my chest and had severe bruising in my ribs and possible cracked rib ... I also had open heart surgery 9 months ago. Needless to say I haven't been out of the house for weeks to get some more info for my (RFR), i.e., testing, doctor's appointments and advocacy group ... I have attached the report of the second time I went to the hospital";
- A six-page emergency department visit information form (the First Emergency Info Form), printed on April 30, 2022 and completed in the Appellant's name. "*Chest Pain, Hemo Compromise*" is identified as the chief complaint at triage. The discharge diagnosis reads "*Mild chronic obstructive pulmonary disease exacerbation (COPDE) / soft tissue chest injury*". Under a section titled "Additional Instructions", the First Emergency Info Form states that the Appellant should use a puffer and take certain specified medications, adding "*if you have worse chest pain, shortness of breath, fever – return to emergency ... you should have a follow-up CT after this episode to ensure resolution – please see (your GP) to arrange this*". Also included in the First Emergency Info Form are the results of two medical imaging reports (MIRs), both completed on April 30, 2022; and
- An undated three-page letter from the Appellant addressed to the Ministry (the Appellant's Letter), in which the Appellant explains why his RFR is late, and says "*Here is a breakdown of my health conditions complete with documents*". The Appellant provides a history of his impairments under the headings "Heart", "Back", "Hernia", "Legs and Feet", and "COPD". That information is summarized in the relevant sections below. The attached documents include:
 - An echocardiography report (ER), dated April 13, 2022, in the name of the Appellant;
 - Four pages from the First Emergency Info Form described above;

- A three-page emergency department visit information form (the Second Emergency Info Form), printed on April 14, 2022 in the name of the Appellant, identifying the reason for the visit as “*Influenza like illness*” and also including another MRI; and
- Two prescriptions for medications signed by the GP and dated June 29, 2022 and July 7, 2022.

Diagnoses

In the MR, the GP diagnosed the Appellant with Ischemic Heart Disease with a date of onset of August 2001, COPD with a date of onset of January 2019, a Neurological Disorder with a date of onset of April 2019, Degenerative Disk Disease with a date of onset of November 2021, and Inguinal Hernias with the date of onset not provided.

Severe Physical Impairment

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 has written:

“Ischemic heart disease - Required coronary artery bypass in July 2021. Unable to physically exert himself without having chest discomfort.

COPD - Occasional shortness of breath with (increase) in physical exertion. Currently using [illegible] to help control breathing.

Tremor in bilateral hands - Has a hard time with holding objects steady in hands, secondary to tremor (coffee cup, fork, etc.).

Degenerative disc disease (DDD) lumbar spine - Causing numbness/tingling and occasional weakness in lower extremities. Making it difficult to ambulate secondary to pain and weakness. Had recent fall secondary to weakness in legs which resulted in right clavicle fracture.

Multiple bilateral inguinal hernias - Has required multiple hernia repairs. Recurrent inguinal hernias. Has difficulty lifting/pushing > 10-15 lbs. secondary to pain and weakness in inguinal region.”

With respect to functional skills, the GP reports that the Appellant can walk more than four blocks unaided on a flat surface, climb more than 2 – 5 steps unaided, can lift 5 – 15 lbs., and has no limitations in the length of time he can remain seated.

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 (with comments in *italics*) that the Appellant is independent with walking indoors and outdoors, is independent but takes significantly longer than typical when climbing stairs (*weakness in lower extremities. shortness of breath*) and standing (*pain in inguinal region*), is independent with lifting, and needs continuous assistance from another person or is unable to carry or hold anything (*tremor in hands, inguinal hernias*).

The Appellant does not provide any information on his physical impairments in the SR.

In the Appellant's Letter:

- The Appellant said he had triple bypass surgery in July 2021, following which his cardiologist told him he had to take it easy. The Appellant wrote *"No strenuous tasks. Do not lift over 10 lbs. I find myself fatigued if I do too much. I'm on high blood pressure, blood thinner and cholesterol pills"*;
- Regarding his back problems, the Appellant wrote *"I have been diagnosed with compressed discs. I have extreme fatigue in my back. My (GP) recommends physio might help but it's too expensive"*;
- Regarding his inguinal hernias, the Appellant wrote *"I have had two surgeries on my left side. Still have pain if I do too much. I have now been diagnosed with two hernias on my right side. I have to be careful as not to aggravate it so (I) don't have to get additional surgery"*;
- With respect to the problems with his legs and feet, the Appellant wrote *"I started having numbness in my feet over two years ago. It slowly got worse ..."*. The Appellant also stated that based on his GP's referral he has seen a neurologist three times and has had *"no answers"*. He later developed weakness in his leg muscles and swelling in his feet and ankles, adding *"This has caused me considerable trauma. The first time I broke my clavicle 7 months ago, ribs over 2 months ago"*. He also says that he wants to try acupuncture but it's too expensive; and,
- Regarding his COPD, the Appellant has written *"I was diagnosed with COPD three years ago. With my heart and my COPD I run out of breath from time to time. I did have two episodes where I could not walk to the bathroom without losing my breath. Both times I ended up in the hospital and had to be put on antibiotics and steroids the second time"*.

Severe Mental Impairment

In the section of the MR where the prescribed professional is asked if there are any significant deficits with cognitive and emotional function, the GP has ticked "no".

In the section of the AR where the assessor is asked to indicate the level of ability to communicate, the GP has said "good" in all areas (speaking, reading, writing and hearing).

The GP has completed the section of the AR designed to be completed for an applicant who has a mental impairment or brain injury, indicating no impacts in all areas except bodily functions, consciousness, emotion and motivation, where the GP has indicated a minimal impact. In the section of the AR where the assessor is asked if the applicant has any restrictions in social functioning (again designed for an applicant with a mental impairment or brain injury), the GP has indicated that the Appellant is independent in all areas and has good functioning with both his immediate and extended social networks.

The Appellant does not indicate that he has any mental impairments in any of the documents he submitted.

Restrictions in the Ability to Perform DLA

In the section of the MR where the prescribed professional is asked if the applicant's impairment directly restricts their ability to perform DLA, the GP has ticked "no". The GP has also indicated that the Appellant is not taking any medications that interfere with his ability to perform DLA. In the section of the MR which is expected to be completed only if the prescribed professional does not complete the AR, the GP has filled out this section of the form indicating that the Appellant's impairment restricts his ability to perform DLA periodically for the DLA of basic housework, daily shopping and mobility outside the home, adding the explanation "*Unable to increase exertion*".

In the AR, the GP indicates that the Appellant's physical impairments that impact his ability to perform DLA are coronary artery disease, COPD, degenerative disc disease, lumbar spine, tremors, and inguinal hernias. The GP indicates (with comments in *italics*) that the Appellant is independent in all listed DLA functions relating to personal care, meals, paying rent and bills, medications, transportation and all aspects of shopping except carrying purchases home, where he is periodically restricted (*unable to carry > 5 – 10 lbs. [tremor, degenerative disc disease, inguinal hernias]*). Regarding the basic housekeeping and laundry DLA, the GP indicates that the Appellant is periodically restricted in doing his laundry (*unable to exert self*) and continuously restricted or unable to perform basic housekeeping (*unable to physically exert himself*).

The Appellant does not provide any information on DLA restrictions in the SR.

In the Appellant's letter, the Appellant said that he can barely get out of the bathtub.

Need for Help

In the MR the GP indicates that the Appellant does not require any prostheses or aids for his impairment.

In the section of the AR that asks who provides the help required for DLA, the GP has ticked "Family" and "Friends", and where asked what assistance would be necessary if the applicant requires help but none is available, the GP has written "*May require home health in the future when health deteriorates further*". In the section of the AR where the prescribed professional is asked what assistance is provided through the use of any of a list of assistive devices, the GP has not identified any. In the DLA restrictions section of the AR the GP has written "*Requires help from others to clean and do laundry. Also requires help to carry groceries home (unable to lift > 5 – 10 lbs.)*".

The Appellant does not provide any information on need for help in the SR.

In the Appellant's Letter, the Appellant said that he has to use a cane now "*for fear of falling again*".

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.

In the section of the Notice of Appeal (NOA) that asks why the Appellant disagrees with the Ministry's RD, the Appellant writes:

"I've got lots of medical issues right now and I can't work. I've got problems with my feet and everything else. I need to see my (GP) and neurologist which takes forever. I am still waiting to get an appointment with him. I have numbness and swelling for two years that's just getting worse. It's worse than my heart condition and my hernias."

Evidence Presented at the Hearing

At the hearing, the Appellant said that he doesn't have any mental impairments, but he definitely has physical ones, and doesn't understand how the Ministry determined that he didn't meet the other three criteria.

Regarding his physical impairments, he explained that since his triple bypass heart surgery last year there is significant difference in what he is able to do. He said that while he had two hernias repaired on his left side, he is still in some pain on his left side that he "*feels every day*". He said that since his left-side hernias have been repaired he has developed two additional hernias on his right side that have not yet been repaired. The Appellant also said that the compressed discs in his back mean that he can only do things for a limited amount of time, and the problems he has with his feet, heel and toes make it uncomfortable for him to walk for any length of time and he can't walk up stairs or hills. He explained that the problems with his feet are worse when he has been lying down, and that he has to sit up for a minute before he is able to stand. He provided an example of problems he experienced on Canada Day when he took public transit and had to climb stairs at the station. He said that after climbing the stairs he had to sit down and rest for five minutes. Regarding his COPD he said that his cardiologist had told him not to exert himself. He also explained that he has visited a neurologist four times in the past two years and that he has trouble getting the results of tests, stating that he had an MRI on his back two weeks ago and still hasn't seen the results.

The Appellant also provided some details regarding his three most recent falls. Following his first two falls he ended up in the hospital with a broken collar bone and bruised and cracked ribs. The second fall was three months ago and he is still feeling the impact, adding that it was really bad for a month and a half and is "*a bit better now*".

Regarding his difficulties with DLA and need for help, the Appellant said "*if I didn't have a roommate I couldn't get anything done*". He said that all of the housecleaning is now done by his roommate. He said he rarely cooks anymore, relying on frozen food when he has to prepare something, and that his roommate "*does 90 percent of the cooking*". He explained that when he goes shopping he usually relies on his roommate to buy groceries and carry them to the car while he waits in the car. He said that he also has to rely on his roommate to cut the grass and

take out the garbage because he can't do that anymore. He also said that he has recently had to rely on a cane for mobility and that when he does shop, he uses a shopping cart for physical support.

In response to a question from the Ministry, the Appellant said that he uses his cane "sometimes" and began using it a couple of months ago. When asked by the Ministry if he was present when the GP completed the MR and the AR, the Appellant said that he was there when the GP completed the "Health History" section of the MR and the rest was "filled out after the fact". Regarding the GP's indication in the MR that the Appellant did not require any prostheses or aids for his impairments, the Appellant explained that the GP had completed that part of the form in January 2022 and that he (the Appellant) was not using a cane at that time. Regarding functional skills, the Appellant said that he is now only able to walk one or two blocks outside on a flat surface, that he "doesn't like doing stairs", that he now can't lift anything over five lbs., and "things have got worse since January 2022". Regarding DLA, the Appellant said that his abilities are now more restricted in meal preparation and housekeeping and he doesn't take public transit anymore.

In response to another question from the Ministry, the Appellant said that the GP was aware that he was living with a roommate when he completed the MR and the AR in January 2022.

When asked by the Panel to rank the five diagnoses in terms of their impacts on his functioning, the Appellant said that the biggest impact was his heart disease which affects him daily, followed by his neurological disorder, which he described as "really bad", then the DDD, which he said was really bad when he over-exerts himself, then the COPD, which he said "is not really bad but I can feel it in my breathing when I walk or climb stairs", and finally his hernias, which he "feels everyday".

The Ministry relied on the RD, and emphasized that there was a lot of new information presented verbally at the hearing that the Ministry didn't have at the time of the RD, and that none of the new information comes from a medical professional "setting out current impairments and impacts".

Admissibility of New Evidence

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), it must assign weight to the new evidence. Once the weight has been assigned to the new evidence, 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.

No new evidence was provided in the NOA.

New evidence presented at the hearing by the Appellant was that he lives with a roommate who does all of the housekeeping, cuts the grass and takes refuse to and from the curb, and does 90

percent of the Appellant's cooking for him. The Panel admits the new evidence relating to the help the Appellant is provided with those activities that are considered DLA (i.e., "*perform housework to maintain the person's place of residence in acceptable sanitary condition*" and *prepare own meals*") as the information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The Ministry did not object to the Panel admitting the new evidence.

The Panel assigns only moderate weight to the new evidence as it has not been confirmed by a prescribed professional as required under EAPWDA Section 2(2)(b).

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. In other words, 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 the lack 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)].

Physical Functioning

The Ministry's position is that the GP has reported that the Appellant is independent and does not require assistance with walking indoors/outdoors, climbing stairs, standing and lifting, and, while the GP reports that the Appellant is unable to carry and hold items due to the tremor in his hands and the hernias' restrictions to his range of physical functioning, and that he requires

more time to climb and stand due to weakness in his lower extremities and pain in his inguinal region, such limitations do not support a *severe* degree of impairment.

The Appellant's position is that he has five severe physical impairments, all of which have gotten worse over the past several months. While he does not dispute the GP's assessment of his physical functioning at the time of his PWD application eight months ago, since then he has a great deal more difficulty with climbing stairs and standing, requires a cane sometimes when walking and can only lift and carry 5 lbs. As a result, he feels he has a severe physical impairment.

Panel Decision

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 assessing the severity of an applicant's impairment, 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 impact on the Appellant's DLA and his need for help. Both the duration of the impairment criterion and the Appellant's age criterion have been determined by the Ministry to have been met and are not at issue in this appeal. What is at issue regarding physical functioning is whether the Appellant's impairments have a significant impact based primarily on the available assessments of a prescribed professional.

The Panel notes that the assessments made by the GP in January 2022 have not been updated through any reassessment by the GP to reflect any further restrictions to the Appellant's physical functioning since that time, and the Ministry has accurately summarized those assessments in the RD.

Having considered the evidence, the Panel finds that the Ministry reasonably determined that there was not sufficient evidence to confirm that the Appellant has a severe physical impairment based on the available information from a prescribed professional.

Mental Functioning

The Ministry's position is that the GP reports that the Appellant has no significant deficits or moderate or major impacts in his cognitive and emotional functioning, no difficulties with communication, good abilities in speaking, reading, writing, and hearing, and no other identified diagnoses related to impaired cognitive and emotional functioning. As a result, the Appellant does not have a severe mental impairment.

The Appellant's position is that he does not have a severe mental impairment.

Panel Decision

The Panel notes that the information as summarized in the RD relating to the GP's reporting of the Appellant's cognitive and emotional abilities is consistent with what appears in the MR and the AR. The Panel further notes that the Appellant has not argued that he has a severe mental impairment.

Having considered all of the evidence, the Panel finds that the Ministry reasonably determined that there was not sufficient evidence to confirm that the Appellant has a severe mental impairment.

Restrictions in the Ability to Perform DLA

The Ministry's position is that, while the GP reports that the Appellant is periodically restricted in basic housework, daily shopping, and mobility outside of the home, and requires help with cleaning and carrying objects over 5-10 pounds, the GP does not report how often the Appellant is restricted, making it difficult to determine if he is restricted periodically for extended periods. Furthermore, the requirement for assistance with heavier tasks or carrying more than 5-10 pounds does not confirm a significant restriction in his overall ability to complete these tasks.

The Appellant's position is that over the past year or so his abilities to perform the DLA of basic housekeeping, preparing meals and shopping have deteriorated further, to the point that he is unable to do any laundry or basic housekeeping, is unable to prepare meals 90 percent of the time, is able to do very little shopping, and is no longer able to take public transit.

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 forms. 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.

Section 2(2)(a) of the EAPWDR defines "*prescribed professional*" to include a "*medical practitioner*". Therefore, the GP is considered a prescribed professional for the purpose of providing an opinion 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, a description of the type and amount of assistance required and the frequency and duration of periodic restrictions.

The Panel notes that the GP did identify some restrictions with the DLA of basic housekeeping and shopping in the Appellant's initial application, and that the GP did not provide details as to

the duration or extent of those periodic restrictions, which, if the information had been provided, might have permitted the Ministry to assess whether those periodic restrictions were “*for extended periods*” as required by the legislation. In addition, the Panel notes that the GP reported that the Appellant was independent with preparing meals and taking public transit when the PWD application was submitted in January 2022, and that no revised assessments have been provided by the GP or any other prescribed professional since that date.

Having considered all of the evidence, the Panel finds that the Ministry reasonably determined that there was not sufficient evidence to confirm that the Appellant’s impairments directly and significantly restrict his DLA, continuously or periodically for extended periods.

Help with DLA

The Ministry’s position is that it has not been established that the Appellant’s DLA are significantly restricted either continuously or periodically for extended periods and therefore it cannot be determined that significant help is required from other persons or an assistive device.

The Appellant’s position is that he now sometimes requires a cane when walking and relies on his roommate to prepare most of his meals, to assist him with his daily shopping and to keep his home clean.

Panel Decision

Help is defined in EAPWDA Section 2(3)(b) 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.

The Panel notes that the GP said that the Appellant “*May require home health in the future when health deteriorates further*” in the AR. The evidence presented by the Appellant in the RFR and at the hearing describes deterioration in the severity of physical impairment, significant continuous restrictions in his ability to perform at least two DLA and a need for help with those DLA. However, the legislation requires that the evidence of a severe physical impairment and its impact on DLA be provided by a prescribed professional. At the time that the Appellant’s GP completed the MR and the AR, the GP indicated that the Appellant did not have significant restrictions in performing DLA, and did not need help in performing DLA at that time, which was in January 2022. A more recent prescribed professional’s assessment has not been submitted.

Having found that the Ministry was reasonable in concluding that the precondition for meeting the need for help criterion was not met (i.e., that the need for help must result from direct and significant restrictions in the ability to perform DLA), the Panel also finds that the Ministry reasonably concluded that it cannot be determined that the Appellant requires help to perform specified DLA. Therefore, the Panel finds that the Ministry’s conclusion that it could not be determined that the Appellant needs significant help from others is reasonable.

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 evidence and was a reasonable application of the legislation in the circumstances of the Appellant, and confirms the decision. As a result, the Appellant's appeal 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 ...

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.

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)

2022/09/14

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2022/09/14

Print Name

Carla Tibbo

Signature of Member

Date (Year/Month/Day)

2022/09/14