

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated July 28, 2022, where the ministry found the appellant was not eligible for designation as a Person with Disabilities (“PWD”) under section 2 of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”). The ministry found that the appellant met the age (18 years or older) and duration (impairment to continue for at least 2 years) requirements, but was not satisfied that:

- the appellant had a severe mental or physical impairment;
- the appellant’s impairment significantly restricts her ability to perform daily living activities (“DLA”); and
- the appellant requires the significant help or supervision of another person to perform daily living activities restricted by her impairment.

The ministry also found that the appellant was not one of the prescribed classes of persons who may be eligible for PWD designation on the alternative ground set out in section 2.1 of the EAPWDR. As there is 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, SBC 2002, c.41, section 2 (“EAPWDA”).

Employment and Assistance for Persons with Disabilities Regulation, B.C. Reg. 265/2002, section 2 (“EAPWDR”)

The full text of these sections of legislation are set out in the schedule of legislation after this decision.

Part E – Summary of Facts

The hearing took place by teleconference. The appellant did not attend the hearing. A representative of the ministry did attend. The panel reviewed the email delivery receipt for the Notice of Hearing sent to the appellant and confirmed that the appellant was notified of the date, place, and time of the hearing at least two business days prior to the hearing. The panel contacted the tribunal office and an appeal coordinator tried to call the appellant to advise them that the hearing was underway, but the appellant could not be reached. As permitted by section 86(b) of the *Employment and Assistance Regulation* the panel proceeded with the hearing without the appellant.

Evidence Before the Ministry at Reconsideration

The appellant is over 18 years of age and applied for PWD designation on April 28, 2022. In support of her application, the appellant submitted the application materials, which included a Medical Report, an Assessor Report and a portion of the application form entitled Applicant Information, which includes a hand-written self-report from the appellant. In addition to the application materials, the Ministry also had the appellant's Request for Reconsideration where the appellant wrote that mental illness runs in her family, she does not have motivation or energy to keep up with daily life, and pain affects this ability as well. The appellant stated that she can go days without bathing, falls behind with housekeeping, and is unable to interact with people due to severe anxiety, noting that the latter severely impacts her daily functioning such that every part of her life is majorly impacted.

New Evidence Provided on Appeal

There was no additional evidence provided on appeal by either party. However, the appellant stated on the Notice of Appeal, dated August 9, 2022, that she can't take care of herself properly, cannot make her health issues disappear and will have to live with them the rest of her life. The panel considered this statement to be argument in support of the material previously before the Ministry at Reconsideration.

Summary of Relevant EvidenceDiagnoses and Health History: Medical Report

The Medical Report was completed by a nurse practitioner that states that they have seen the appellant 2 to 10 times in the past 12 months. The nurse practitioner does not indicate how long the appellant has been their patient. In the medical report the nurse practitioner diagnoses the appellant with anxiety, depression and chronic back pain, all of which are likely to be ongoing, and states the following about the appellant's health history:

- Difficulty maintaining employment;
- Daily activities of living are difficult;
- Overall has low energy;
- Difficulty leaving the house;
- Chronic back pain with limited mobility; and
- Physical work is difficult.

With respect to functional skills the nurse practitioner states that the appellant can walk unaided 4+ blocks, can climb 2 to 5 steps unaided, can lift 5-15 lbs, and can remain seated less than 1 hour. The nurse practitioner notes that the appellant's cognitive and emotional function is impacted in areas of emotional disturbance (e.g., depression, anxiety) and motivation (loss of initiative or interest).

The nurse practitioner did not complete part E of the Medical Report that assesses whether the impairments diagnosed affect the appellant's daily living activities.

Diagnoses and Health History: Assessor Report

The Assessor Report was completed by a registered social worker who has known the appellant since January 2022 and has seen the appellant 2-10 times. Like the nurse practitioner, the social worker indicates that the appellant has depression, anxiety and chronic pain. The social worker states that the appellant has good communication, mobility and physical ability but notes that mobility and physical ability can take longer to complete a task if experiencing an exacerbation of pain. With respect to cognitive and emotional function the social worker stated that there was no impact to the appellant's insight and judgment, executive abilities, motor activity or language and that the appellant did not experience psychotic or other neuropsychological problems. The social worker stated that the following areas were impacted:

- Consciousness (distractibility) – minimal impact
- Impulse control – minimal impact
- Attention/concentration (distractible, unable to concentrate) – minimal impact

- Memory (names and ability to recall information and appointments) – fluctuates between no to moderate impact
- Bodily functions (eating, poor hygiene, sleep disturbance) – moderate impact
- Emotion (fear) – moderate impact
- Motivation – major impact

With respect to daily living activities the social worker noted that the appellant is independent in all areas except for the following, but did not indicate how much longer the appellant takes with the noted activities:

- Personal care (dressing, grooming, bathing, feeding self, regulating diet) – states takes significantly longer but does not provide advice on how much longer these activities take other than to say they are “impaired”.
- Basic housekeeping (laundry, basic housekeeping) - states takes significantly longer but does not provide advice on how much longer these activities take other than to say they are “impaired”.
- Shopping (going to and from stores, making appropriate choices and carrying purchases home) - states takes significantly longer but does not provide advice on how much longer these activities take other than to say they are “significantly impaired” and that the appellant “self isolates”.
- Using public transit and transit schedules –states this takes significantly longer and notes that the appellant is socially withdrawn and has difficulty managing these tasks.
- Social functioning – states that the appellant requires periodic support to make social decisions, to deal appropriately with unexpected demands, and to secure assistance from others, and requires continuous support with developing and maintaining relationships and interacting appropriately with others.

When asked how the mental impairment impacts the appellant’s relationship with her immediate and extended social networks the social worker indicated that there is very disrupted functioning with major social isolation and withdrawal.

The social worker stated that the appellant receives help from family and would benefit from access to counselling and focused cognitive behavioural therapy with their social worker.

Diagnoses and Health History: Self-Report

As mentioned above, in the self-report portion of the PWD application, the appellant states

that she lacks motivation or energy to keep up with daily life, and pain affects this ability as well. The appellant states that she can go days without bathing, falls behind with housekeeping and is unable to interact with people due to severe anxiety noting that the later severely impacts her daily functioning such that every part of her life is majorly impacted.

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

The issue on appeal is whether the ministry's decision that the appellant was ineligible for PWD designation was reasonably supported by the evidence or was a reasonable application of the legislation 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 mental or physical impairment was not established;
- the appellant's daily living activities were 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 did not require an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform daily living activities.

Panel DecisionPhysical Impairment

The appellant's position is that she has significant anxiety, depression, and chronic back pain and that together these diagnoses represent a severe physical and mental impairment that affect her daily functioning such that every aspect of her life is majorly impacted.

The ministry's position is that when it comes to physical impairment that the appellant has been diagnosed with chronic back pain and although the appellant experiences chronic pain the evidence does not show that the appellant's impairment is severe. The ministry states that the evidence submitted in the PWD application shows that the appellant may have some physical restrictions but is reported to be independent with respect to all daily living activities. The ministry notes that the social worker completing the Assessor Report states that when back pain is experienced that the appellant takes significantly longer to complete activities, but also notes that no further information is provided to clarify how often such restrictions occur or how much extra time is needed to complete daily living activities.

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.

With respect to whether the appellant has a severe physical impairment the panel finds that the evidence from prescribed professionals shows that the appellant has chronic back pain and experiences significant pain at times. The panel notes that this diagnosis is set out in both the Medical Report and Assessor Report. In the Medical Report the nurse practitioner indicated that this back pain causes the appellant to experience limited mobility and that physical work is difficult. However, the panel also notes that the nurse practitioner found the appellant largely independent with respect to functional skills. While in the Assessor Report, the social worker indicated that the appellant takes twice as long with mobility and physical functioning when experiencing an exacerbation of pain, no information is provided to explain how frequently the appellant experiences exacerbated pain. Accordingly, the panel is unable to determine how often the appellant experiences debilitating pain. For this reason, the panel finds that the ministry reasonably determined that the evidence did not show that the appellant had a severe physical impairment.

Mental Impairment

The appellant’s position is that she has significant anxiety, depression and chronic back pain and that together these diagnoses represent a severe physical and mental impairment that affect her daily functioning such that every aspect of her life is majorly impacted.

The ministry’s position is that when it comes to mental impairment the appellant has been diagnosed with anxiety and depression, but that the evidence does not show that this causes a severe impairment. The ministry notes that, despite having low motivation and difficulty leaving the house, the appellant is reported to have moderate, minimal or no impacts to daily cognitive and emotional function in all other areas and that the appellant is reported to be able to complete the majority of daily living activities independently.

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.

With respect to whether the appellant has a severe physical impairment the panel finds that the evidence from prescribed professionals certainly shows that the appellant has anxiety and depression. The panel notes that this diagnosis is set out in both the Medical Report and Assessor Report. In the Medical Report the nurse practitioner indicated that the appellant has difficulty maintaining employment, has low motivation and difficulty leaving the house. The panel notes that that employability is not a consideration when assessing PWD designation under the legislation. The panel finds that while the Assessor Report completed by the social worker provides more detail as to the effect of the appellant's anxiety and depression than the Medical Report that it does not explain how often the appellant experiences these impacts or how much longer the appellant takes to complete activities when she is impacted. Accordingly, the panel finds that the ministry reasonably concluded that the evidence does not show that the appellant has a severe mental impairment.

Restrictions in ability to perform daily living activities

The appellant's position is that her chronic pain, anxiety, and depression affect her daily functioning such that every aspect of her life is majorly impacted. In particular, the appellant reports that she finds leaving the house and interacting with others difficult and this impacts her ability to do anything requiring either of those activities.

The ministry's position is that the appellant does not have significant restrictions in her ability to perform daily living activities. In this regard the ministry states that the nurse practitioner did not complete the portion of the Medical Report addressing daily living activities. The ministry further states that while the social worker indicated in the Assessor Report that the appellant takes significantly longer with some daily living activities that the social worker did not describe how much longer than typical the appellant takes to complete these activities. The ministry also noted that the appellant was assessed as independent with respect to other daily living activities. With respect to social functioning, the social worker indicated that the appellant required periodic support making appropriate social decisions, dealing with unexpected demands, and securing assistance from others and that the appellant has very disrupted functioning with immediate and extended social networks. The ministry notes however that the social worker also notes that friends and family are reportedly used for support and states that this makes it difficult to determine how disrupted social functioning is. The ministry also states that as the social worker assessed the appellant as having no impacts in the areas of

insight/judgement, executive functioning, or language that the ministry could not say that there was a significant restriction in the appellant's ability to perform daily living activities.

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 restriction. The direct restriction must also be significant.

The panel notes that the nurse practitioner completing the Medical Report did not complete the section about daily living activities. Accordingly, the only evidence from a prescribed professional about the appellant's ability to perform daily living activities comes from the social worker in the Assessor Report. In this regard, the panel finds that the social worker assessed the appellant as independent in most areas of daily living activities. Further, where the social worker indicated that the appellant took significantly longer to complete an activity the social worker did not explain how frequently this occurred or how much longer the appellant took to complete the activities. While the social worker did clearly state that the appellant had very disrupted social functioning, without further evidence as to how often the appellant is restricted in functioning, the panel is unable to assess the extent of the appellant's ability to perform daily living activities. Accordingly, the panel finds that the ministry reasonably concluded that the appellant's ability to perform daily living activities was not significantly restricted, either continuously or periodically for extended periods.

Help to perform daily living activities

Subsection 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. To put it another way, the legislation requires confirmation of direct and significant restrictions to performing daily living activities in order to say that help is needed performing such daily living activities. Since the panel agreed that the ministry reasonably determined that the appellant did not have direct and significant restrictions in performing daily living activities it follows that the panel also finds the ministry reasonably determined that help was not required.

Panel Comment

While the panel has found that, based upon the evidence in this appeal, the ministry reasonably found that the appellant is not eligible for PWD designation, the panel notes that with further evidence/clarification the appellant may indeed qualify for PWD designation. The panel also notes that the appellant's anxiety and depression may have made it difficult for the appellant to appear before the Tribunal where she could provide further information in support of her application. The panel is sympathetic to the situation the appellant finds herself in whereby effort is needed to obtain PWD designation, but the restrictions faced by mental and physical impairments make it difficult to take part in the application and appeal processes. Should the appellant wish to reapply for PWD designation with new evidence, it may be helpful to find an advocate to assist with the application process.

Conclusion

After reviewing the evidence submitted in this appeal, 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.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Act

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).

Employment and Assistance for Persons with Disabilities Regulation

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 panel's role is to determine whether the ministry was reasonable in finding that the following eligibility criteria in section 2 of the EAPWDA were not met:

- the appellant has a severe mental or physical impairment;
- a medical practitioner had confirmed the appellant's impairment is likely to continue for two years or more;
- 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.

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

Emily Drown

Signature of Chair

Date (Year/Month/Day)

September 26, 2022

Print Name

Kevin Ash

Signature of Member

Date (Year/Month/Day)

2022/09/26

Print Name

Rick Bizarro

Signature of Member

Date (Year/Month/Day)

2022/09/26