

**Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated August 11, 2022, in which 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 requirement and the requirement for the impairment to continue for at least 2 years but was not satisfied that:

- the appellant has a severe mental or physical impairment;
- the 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 was 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”). 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**

The ministry based the reconsideration decision on the following legislation:

*Employment and Assistance for Persons with Disabilities Act* - EAPWDA - section 2

*Employment and Assistance for Persons with Disabilities Regulation* - EAPWDR - section 2

The full text is available in the Schedule after the decision.

**Part E – Summary of Facts**

The evidence and documentation before the minister at the reconsideration consisted of:

1. Information from the ministry’s record of decision indicating that the PWD application was submitted on March 24, 2022, and denied on May 9, 2022 with *Decision denial summary* explaining the criteria that were not met. On August 2, 2022, the appellant submitted a *Request for Reconsideration* (“RFR”). On August 11, 2022, the ministry completed the review of the RFR.
2. The PWD application comprised of:
  - the *Applicant Information* (self-report - “SR”) signed by the appellant on February 8, 2022. Due to the appellant’s vision problems, the SR was hand-written by a counsellor on the appellant’s behalf.
  - a *Medical Report* (“MR”) dated February 13, 2022, signed by the appellant’s doctor, a General practitioner specializing in addictions (“Dr. A”) who has known the appellant for more than 2 years and has seen him 11 or more times in the past 12 months.
  - an *Assessor Report* (“AR”) dated February 13, 2022, also completed by Dr. A who based the assessment on an office interview with the appellant; the patient’s medical chart, and information from the appellant’s family/friends. Dr. A notes that they have been supporting the appellant’s substance use issues (alcohol and opiates) for multiple years.

*Summary of relevant evidence from the application:*

**Diagnoses**

In the MR, the appellant is diagnosed with alcohol dependence and opiate dependence (date of onset pre-2018); depression (date of onset pre-2018), traumatic brain injury/epidural bleed/skull fracture (date of onset January 2022), and double vision – left CNG palsy (date of onset January 2022). In Section B - *Health History*, Dr. A writes that the appellant has a well-entrenched and severe alcohol use disorder, as well as an opiate use disorder. The opiate addiction was successfully treated with suboxone. However, the appellant has been having multiple relapses with alcohol use including severe withdrawal symptoms requiring emergency visits and hospitalizations. At the same time, the appellant is being treated for depression.

Dr. A explains that the appellant was recently admitted to Rehab for alcohol withdrawal. While walking home from the hospital upon discharge, the appellant fell and suffered head trauma including an epidural bleed that required 2 surgeries (January 27 and 29, 2022). The appellant suffered a fractured skull and a right temporal bone fracture. He developed a cranial nerve palsy with double vision requiring a patch over one eye to minimize dizziness.

**Functional skills**

Self-report

The appellant explains that all the blood went to his brain due to his head injury and he now has memory problems and depression as well, and can't work anywhere. The appellant says he cannot lift anything because his body is so weak. The appellant says he can't walk very much because his leg is in too much pain; he needs medication for his legs every 3 hours.

### Medical Report

In section D - *Functional Skills*, Dr. A indicates *unknown* for the distance the appellant can walk unaided, and the number of steps the appellant can climb (comment, "since injury to head double vision is problematic"). The appellant has no limitation with lifting (comment, "no limits if headache and double vision are not there"), and no limitation with *remain seated*.

Regarding mental functions (questions D-5 and D-6), Dr. A indicates *yes*, the appellant has difficulties with communication (comment, "new head injury plus 2 skull/brain surgeries have left him with cognitive problems"). Dr. A checked that the appellant has significant deficits with cognitive and emotional function in 4 of the 12 areas listed: *Memory* (comment, "unclear"), *Emotional disturbance*, *Impulse control* (comment, "tend to relapse - substance use"), and *Attention or sustained concentration*. The section for comments was left blank.

Under *Additional Comments* (section F), Dr. A indicates that the appellant's alcohol use and depression were the primary issues prior to the significant head injury in January 2022.

### Assessor Report

Under Section B-2, *Ability to Communicate*, Dr. A indicates a *good* ability for all 4 areas: *Speaking*, *Reading*, and *Writing* and *Hearing*.

Under section B-3, *Mobility and Physical Ability*, Dr. A indicates the appellant is independent with all functions:

- *Walking indoors:*
- *Walking outdoors:*
- *Climbing stairs:*
- *Standing:*
- *Lifting*
- *Carrying and holding:*

Dr. A commented, "post head injury and 2 surgeries – visual issues can pose a problem. "

In section B-4, *Cognitive and Emotional Functioning*, the assessor is asked to indicate what impacts the appellant's impairments have on various cognitive and emotional functions. For the 14 areas listed, Dr. A indicates impacts in 5 areas:

- **Minimal impact** for *Attention/concentration*, *Memory*, *Motor activity*, and *Other neuropsychological problems*
- **Moderate impact** for *Impulse control*
- **No major impacts** were reported

- **No impact** was indicated for:
  - Bodily functions
  - Consciousness
  - Emotion
  - Insight and judgment
  - Executive
  - Motivation
  - Language
  - Psychotic symptoms
  - Other emotional or mental problems.
- Part E – *Additional Information* was left blank.

### ***Daily Living Activities***

#### Self-report

The appellant says he cannot drive (and therefore cannot go to work) due to his vision problems. The appellant says that due to his brain injury he does not remember anything such as whether he took his medication or if he ate or not.

#### Medical Report

In Section B-3, Dr. A checked *no*, the appellant has not been prescribed medications or treatments that interfere with the ability to perform DLA. Medications were prescribed to try and stabilize the appellant's substance use disorder and depression.

#### Assessor Report

In Section C - *Daily Living Activities*, Dr. A indicates that the appellant is independent with all areas of all DLA, with the exception of one area of *Social Functioning*:

***Social Functioning***: 4 out of 5 activities were assessed as independent including *able to develop and maintain relationships, interacts appropriately with others, able to deal appropriately with unexpected demands, and able to secure assistance from others.*

Dr. A marked the remaining activity, ***appropriate social decisions*** as requiring periodic support/supervision (comment, "tendency to relapse to alcohol use with severe consequences – repetitive occurrence.")

Dr. A checked *marginal functioning* when asked to describe how a mental impairment affects the appellant's relationship with his immediate social network. The appellant was assessed as having good functioning with his extended social network.

No support/supervision was indicated to maintain the appellant in the community and no safety issues were reported (these questions on the form were left blank).

Activities marked as independent include:

*Personal Care*: dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers (bed), and transfers (chair)

*Basic housekeeping*: laundry, and basic housekeeping

*Shopping*: going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, carrying purchases home

Under ***Additional comments*** for these DLA, the doctor wrote, “problems with vision (double), wears patch. Risk of falls. Attentional issues. Trouble concentrating.”

*Meals*: meal planning, food preparation, cooking, and safe storage of food

*Pay Rent and Bills*: banking, budgeting, and pay rent and bills

*Medications*: filling/refilling prescriptions, taking as directed, and safe handling and storage

*Transportation*: getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation

*Additional comments* for these DLA was left blank.

### ***Need for help***

#### SR

The appellant states that he lives with family and needs help taking care in his home as he cannot walk properly.

#### Information from the MR and AR

In the MR under *Health History* (Section B-4), Dr. A marked *no*, the appellant does not need any prostheses or aids for the impairment.

In the AR - section D, Dr. A said the appellant gets help with DLA from family, and from health authority professionals (comment, “for medicine and interventions”).

In Section D - *Assistance provided through the use of Assistive Devices*, Dr. A checked *Other* (comments, “patch on eye for double vision...will get special glasses from ophthalmologist”).

The doctor checked *no* the appellant does not have an assistance animal.

**3.** An RFR signed by the appellant on July 20, 2022, with the following documents attached:

- A letter from a Disability Support Advocate (“the advocate”) dated July 28, 2022, stating the appellant’s argument for the reconsideration.

- A checklist of medical conditions and restrictions to specific physical and mental functions and DLA (“checklist”), dated July 22, 2022. The checklist, with additional comments regarding the need for assistance, was prepared by the advocate. The appellant’s physician, Dr. A. has checked the items they agree with and endorsed the form at the end with their signature and a statement indicating that it is their medical opinion that the appellant is directly and significantly restricted in his ability to perform DLA and requires continuous assistance to perform the check marked activities.

*Diagnoses*

The doctor confirms that the appellant is diagnosed with alcohol and opiate dependence, depression, traumatic brain injury, and CNG sixth nerve palsy resulting in double vision. Specific information about limitations and restrictions is provided as follows:

*Physical functions*

**Basic mobility and stairs:** Dr. A indicates that the appellant cannot walk for more than 10 minutes or climb more than 5 steps due to shortness of breath, dizziness, and pain in his head and chest. The appellant also takes 2 times longer than typical due to his vision issues.

**Lifting, carrying, and holding:** the appellant cannot lift, carry, or hold more than 10-15 lbs. due to shortness of breath, dizziness, and pain. He requires continuous assistance.

**Standing:** the appellant cannot stand for longer than 5 minutes due to dizziness and pain in his legs.

*Mental functioning*

**Moderate impact:** the appellant’s impairment has a moderate impact on:

- consciousness (comment, “dizzy spells”)
- insight/judgment (comment, “poor management of health conditions”)
- “poor executive function”
- “lack of motivation”
- motor activity (comment, “coordination issues”)
- visual/spatial (comment, “double vision”).

**Major impact:** the impairment has a major impact on:

- emotion (comment, “chronic depressed moods”)
- “poor impulse control”
- “poor attention and concentration”
- memory (comment, “unable to retain information”)

*Daily living activities and assistance needed*

**Dressing, grooming, and bathing:** due to shortness of breath and pain, the appellant must sit down to dress and shower. He neglects these activities for up to a week if he is drinking.

**Toileting, Feeding self, regulating diet, laundry, and housekeeping:** Dr. A commented: "Unable to verify"

**Shopping:** the appellant is significantly restricted from going to stores due to mobility issues. He is unable to stand in line for more than 5 minutes or carry more than 10-15 lbs. of purchases home. He takes 2 times longer to read prices and labels due to his vision issues. He requires continuous assistance from family with shopping.

**Meals:** the appellant has direct restrictions with meal planning, preparation, and cooking due to dizziness, pain, lack of motivation, and poor concentration. He frequently forgets to store food safely in the fridge. His family provides meals that he can heat in the microwave.

**Filling prescriptions:** the appellant has significant restrictions in accessing a pharmacy due to mobility issues and poor memory. He requires his medications to be in a blister pack to help with managing them. He also neglects taking his medications when he is drinking.

**Transportation:** the appellant takes 2 times longer to get in and out of a vehicle and holds onto the door for support. He must have a seat on public transit.

**Social functioning:** the appellant would benefit from continuous assistance with making appropriate decisions and avoiding dangerous situations due to his tendency to relapse with alcohol and suffer serious consequences as a result. He has difficulty interacting with others when drinking. He isolates himself and avoids his friends and family. The appellant is easily overwhelmed by unexpected demands and will resort to drinking. He requires continuous support.

### ***Additional submissions***

With the consent of both parties the appeal format was a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act* ("EAA"). Neither party submitted new evidence requiring an admissibility determination under section 22(4) of the EAA. Subsequent to the reconsideration decision the appellant filed a *Notice of Appeal* with a statement that the panel accepts as argument. In an email to the Tribunal, the ministry states that the reconsideration summary is the ministry's submission on appeal.

**Part F – Reasons for Panel Decision**

The issue on appeal is whether the ministry's decision that found the appellant ineligible for PWD designation was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. 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;
- the 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.

***Analysis******Severe mental or physical impairment******Arguments******Appellant***

In the appeal submission, the appellant argues that the ministry interpreted the PWD legislation too narrowly. The appellant argues that the medical evidence from Dr. A confirms a severe impairment. The letter from the advocate for the reconsideration states that the checklist and additional statements from Dr. A confirm severe medical conditions that impact the appellant's ability to function.

***Ministry***

The ministry argues that the information provided for the PWD application and the reconsideration does not establish a severe impairment of physical or mental functioning. The ministry said that it has considered the information from the appellant in conjunction with Dr. A's assessments. The ministry noted that that PWD application is not intended to assess employability or vocational abilities.

The ministry acknowledges that the appellant has challenges with mobility and physical abilities due to shortness of breath, dizziness, and pain from the impairments. However, the ministry was not satisfied that the degree of restrictions indicated in the application and RFR submission represents a severe physical impairment. The ministry argues that being able to walk for up to 10 minutes, climb up to 5 stairs, and lift/carry/hold up to 15 lbs. (while taking 2 times longer than typical) allows the appellant to complete the majority of daily living activities independently.

Regarding a mental impairment, the ministry acknowledges the appellant's brain injury and depression but argues that a severe impairment was not established on the evidence because



the appellant was assessed as independent with decisions relating to personal care, finances, and other activities considered difficult for someone with a severe mental impairment. The ministry argues that the impact of the appellant's cognitive problems on communication was not clear as the appellant's ability to communicate was assessed as *good* in the AR. The ministry accepts that the appellant has recurrent psychological problems due to his alcohol addiction but said it was unclear how often he relapses.

### *Legislative requirement*

To be eligible for PWD designation, the legislation (EAPWDA section 2) requires several criteria to be met including the minister being satisfied that the applicant has a severe mental or physical impairment. The ministry found the appellant was not eligible for PWD because not all five criteria were met.

"Severe" is not defined in the legislation but an impairment is defined in the PWD application 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." In the ministry's view, the diagnosis of a serious medical condition does not in itself establish a severe impairment of mental or physical functioning. The PWD medical reports ask for information on functional skills and abilities and the panel finds that the ministry's assessment of severity based on daily function is a reasonable interpretation of the legislation.

### *Mental and physical impairment - specific considerations*

To assess the severity of a mental impairment, the ministry considers the extent of any impact on daily functioning as evidenced by limitations/restrictions with mental functions and emotion. The ministry does not only look at the diagnosis or a medical practitioner's comment that the condition is "severe" but considers functional abilities and whether there are restrictions to DLA requiring mental/social functioning including any safety issues. The panel finds that an assessment of severity based on cognitive, emotional, and social functioning is a reasonable interpretation of the legislation.

To assess whether the applicant has a severe physical impairment, the ministry considers information on the degree of restrictions to physical functioning and whether the applicant requires significant help or any assistive devices to manage physical tasks. The panel finds that the assessment of severity based on daily physical functioning is a reasonable interpretation of the legislation.

### ***Panel's decision - mental impairment***

#### *Depression and traumatic brain injury*

The panel has considered the evidence in its entirety and finds that the ministry was not reasonable in finding that the information provided does not establish a severe mental impairment. In the SR, the appellant notes memory problems that resulted from his brain injury, "I don't remember anything – I can't remember my medication – did I take it or not. I don't remember if I ate."

In the MR, Dr. A indicates significant deficits with memory but writes that the ability to recall information was “unclear.” In the AR, the impact of the appellant’s mental impairment on memory is assessed as *minimal impact*. However, in the checklist, Dr. A indicates that the impairment has a *major impact* on memory (comment, “unable to retain information”).

The panel gives greater weight to the checklist information which is more recent, more detailed, consistent with the appellant’s self-reported memory problems, and clearly more plausible given the diagnosis of a “severe” traumatic brain injury that included a “brain bleed”, fractured skull, broken temporal bone, and 2 surgeries. In the MR, significant deficits were also reported for emotion, and attention/sustained concentration, further supporting the diagnosis of traumatic brain injury and depression.

While emotion and attention/concentration were assessed as *no impact*, and *minimal impact*, respectively (AR), the more recent and thorough checklist from Dr. A, indicates the impairment has a *major impact* on emotion and attention/concentration. In addition, the checklist indicates a moderate impact for insight/judgement, executive function (described as “poor”), and motivation (which the appellant is said to lack). While no impairment to these functions was indicated in the MR and AR, the panel finds that the moderate impacts reported in the checklist, taken together with the major impact on memory and other functions and the narrative comments, establish a severe impairment of mental functioning.

#### *Alcohol dependency*

The panel finds the ministry was not reasonable to conclude that the appellant does not have a severe mental impairment due to alcohol abuse. The ministry acknowledges the moderate to major impact on impulse control and major impact on social functioning due to the appellant’s tendency to abuse alcohol, but said there was not enough information on how often the relapses occur to establish a severe impairment. The panel does not find the ministry’s view of the evidence reasonable because Dr. A (and the appellant) note frequent relapses, to the point where the appellant has been hospitalized several times for treatment; successfully managed his opiate addiction but the alcohol abuse continued; and will start drinking when stressed by the symptoms from his other conditions or when faced with unexpected demands. The panel is satisfied that the evidence demonstrates a severe mental impairment due to the substance use disorder.

The ministry’s main argument against finding a severe mental impairment is that the appellant, in their view, can independently make decisions about activities such as personal care and finances, and there is no consistent information (or additional information in the checklist) about communication/language difficulties. The panel accepts that there is insufficient evidence about any communication difficulties to establish a severe impairment in that area. However, the cumulative impacts to memory and other cognitive and emotional functions, together with the narrative comments from the appellant and his doctor and additional information about DLA, do indicate that the appellant needs support in decision-making. Based on the information in the PWD application and RFR submission, the panel finds that the ministry’s finding of no severe mental impairment is not reasonably supported by the evidence.

***Panel's decision - physical impairment***

The panel has considered the evidence in its entirety and finds that the ministry was reasonable to conclude the appellant does not have a severe physical impairment. The appellant suffers from dizziness, headaches, significant deficits with vision and coordination, and chronic and "severe" leg pain that impairs the ability to walk, climb stairs, stand, and lift/carry. Nevertheless, Dr. A assessed the appellant as independent with all physical functions (AR).

In the checklist submitted for the reconsideration, most physical functions including walking, climbing stairs, and lifting, are rated in the least restricted range; i.e., the appellant is able to walk for up to 10 minutes unaided, climb 2-5 steps, and lift/hold/carry up to 15 pounds. Only standing was assessed with a higher degree of restriction (maximum 5 minutes due to dizziness and leg pain).

The panel acknowledges the appellant's struggles with his vision and dizziness (especially), but the record indicates that the appellant continues to perform his physical functions at a higher level of ability. Dr. A commented in the checklist that the appellant needs continuous assistance with lifting but it is unclear why that level of assistance is required when he can lift or carry up to 15 lbs. The panel also finds that the ministry was reasonable in finding that taking 2 times longer with walking and climbing stairs does not represent a severe physical impairment.

The panel finds that the reconsideration decision was reasonable with regard to a physical impairment. However, a severe mental impairment is established on the evidence, and the ministry was therefore not reasonable in finding that the requirement for a severe impairment under section 2(2) of the EAPWDA was not met.

***Restrictions to daily living activities******Arguments******Appellant***

The appellant argues that the detailed checklist information from Dr. A establishes that DLA are directly and significantly restricted continuously by the appellant's impairments. The appellant says that due to his brain injury he cannot drive, or remember if he took his medications or ate.

***Ministry***

The ministry argues that DLA are not significantly restricted by the appellant's impairments because in the original application all activities were marked as independent with the exception of one area of social functioning. Further, the ministry was not satisfied that the additional checklist confirms significant restrictions other than with social functioning. On reconsideration, the ministry accepted that social functioning is directly and significantly restricted by the appellant's addiction to alcohol. However, the ministry found that restrictions to one DLA were not sufficient to confirm that the legislative criteria for DLA were met.

Regarding, personal care, shopping, and use of transportation, the ministry acknowledges that the appellant experiences dizziness and has some mobility issues but argues that having to sit down or lean against something to shower, groom, get into a vehicle, etc. does not demonstrate a significant restriction. The ministry argues that the appellant has sufficient physical ability (with walking and lifting) to perform most activities and could use a store scooter to address any limitations with shopping.

The ministry argues that taking twice as long to read prices and labels (due to the appellant's vision problems) and taking twice as long to get out of a vehicle (due to mobility issues) are not significant restrictions. The ministry submits that despite the appellant's tendency to relapse into alcohol addiction, it was not clear how frequently the appellant "neglects activities for up to one week if you are drinking." The ministry acknowledges the appellant's problems with cognition and memory due to the brain injury but argues that the appellant could use prescription delivery or alarms as reminders to take medications, in addition to the "blister packs" prescribed by Dr. A.

#### *Legislative requirement*

Subsection 2(2)(b)(i) of the EAPWDA requires the ministry to be satisfied that, in the opinion of a prescribed professional, a severe impairment directly and significantly restricts a person's ability to perform DLA either continuously, or periodically for extended periods. This means that restrictions to DLA must be confirmed by the appellant's doctor or one of the practitioners named in the legislation such as a psychologist or occupational therapist.

The term "directly" means that the severe impairment must cause or result in restrictions to activities. The direct restriction must also be significant. This means that not being able to do DLA without a lot of help, or support from an assistive device will have a large impact on the person's life.

Finally, there is a time or duration factor: the restriction may be either *continuous* or *periodic* under the legislation. Continuous means that the activity must generally be restricted all the time. The ministry views a periodic restriction as significant when it occurs frequently or for longer periods of time; for example, the activity is restricted most days of the week, or for the whole day on the days that the person cannot do the activity without help or support.

The panel views the ministry's interpretation of the legislation as reasonable. Accordingly, where the evidence indicates that an activity takes significantly longer to perform as was indicated in the AR for several DLA, it is appropriate for the ministry to require information on how much longer the activity takes as well as details about the help or support that is needed. With that information, the ministry can assess whether the legislative requirement is met.

DLA are defined in section 2(1) of the EAPWDR and are also listed in the MR, with additional details in the AR. Therefore, the doctor or other practitioner completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the applicant's impairments either continuously or periodically for extended periods and to provide additional details. It is important to note that the ability to work is not consideration a DLA under the legislation.

Regarding how many DLA need to be impacted for the legislative requirements to be met, the BC Supreme Court decision *Hudson v. Employment and Assistance Appeal Tribunal* [2009 BCSC 1461] stated that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two DLA. Not all DLA need to be affected by the severe impairment.

***Panel's decision - restrictions to DLA***

The panel finds that the ministry was not reasonable in determining that Dr. A has not confirmed significant restrictions to at least 2 DLA due to a severe mental impairment. While the ministry was satisfied that social functioning is continuously restricted by the appellant's alcohol dependency, they did not find that the impairment itself was severe. The legislation requires the significant restriction to result directly from a severe impairment.

The panel finds that the restrictions to social functioning that were accepted by the ministry are the result of severe alcohol dependency because the evidence from Dr. A indicates the appellant suffers from "severe consequences - repetitive occurrences" with relapses into alcohol addiction. These frequent relapses cause the appellant to isolate himself from friends and family; enter dangerous situations; and not deal appropriately with unexpected demands.

In addition, Dr. A. indicates that the appellant will neglect personal care for up to week at a time when drinking. The panel considers that to be a significant restriction given that the relapses with alcohol occur frequently and repetitively. Furthermore, the most recent and detailed evidence from Dr. A indicates that the appellant's brain injury impacts the ability to manage medications, prepare meals, and store food properly. The ministry argues that any limitations with memory and cognition can be addressed through reminders and "blister packs" for medications but the appellant and his doctor indicate that remembering to take medications and manage his health conditions appropriately, remain a significant and ongoing challenge for the appellant.

Aside from social functioning, which the ministry accepted is significantly restricted, the panel is satisfied that the evidence from Dr. A also confirms continuous restrictions with personal care, meals, and medications and that the restrictions indicated for DLA are the direct result of the appellant's alcohol addiction and brain injury. The panel therefore finds that the ministry's decision was not reasonably supported by the evidence. Significant restrictions to DLA are confirmed by a prescribed professional in accordance with subsection 2(2)(b)(i) of the EAPWDA.

***Help with daily living activities***

*Arguments*

*Appellant*

The appellant indicates that he has to live with family and could not take of a home on his own. The advocate maintains that the medical evidence confirms that the appellant requires significant help and support from other people to manage his DLA.

### *Ministry*

In the reconsideration decision, the ministry acknowledges Dr. A's information that the appellant gets help and support with DLA from family and health authority professionals. Nonetheless, the ministry argues that the criteria for help was not met because DLA are not significantly restricted, and it could therefore not be determined that significant help from other persons, or from an assistive device, is required.

### *Legislative requirement*

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. 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. An "assistive device" is defined in section 2(1) of the EAPWDA as a device specifically 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.

### ***Panel's decision - help with daily living activities***

The panel finds that the ministry was not reasonable in finding that the help criteria were not met. The legislation requires confirmation of direct and significant restrictions to DLA as a precondition for needing help to perform DLA. The panel found that the ministry's determination that significant restrictions to DLA were not established on the evidence was unreasonable because the evidence from Dr. A confirms significant restrictions for several "mental DLA" including personal care, management of medications, and social functioning. Dr. A confirms that these restrictions are due to the appellant's alcohol dependency and traumatic brain injury.

The application and submissions for the reconsideration indicate that the appellant requires continuous help and support from his family and healthcare professionals to function mentally and socially. Even with help and support, the appellant continues to experience memory problems that significantly impact his daily activities and create safety concerns. The appellant also continues to engage in inappropriate social interactions, or long periods of isolation, during frequent relapses in alcohol use. The panel therefore finds that the ministry's conclusion that the criteria for help under subsection 2(2)(b)(ii) of the EAPWDA were not met, was not a reasonable application of the legislation in the appellant's circumstances.

### ***Conclusion***

The panel considered the information in its entirety and finds that the ministry's reconsideration decision is not reasonably supported by the evidence. To be eligible for PWD designation, the legislation requires all the criteria in section 2(2) of the EAPWDA to be met. The ministry found that the age and duration requirements were met but was not satisfied that the evidence

establishes a severe impairment that significantly restricts DLA to the extent that the appellant requires a lot of help and support to manage his daily life.

The panel found that the ministry's assessment of the evidence was unreasonable because there is sufficient medical evidence to confirm the appellant has a severe impairment of mental functioning that has a major impact on his memory and cognition; his impulse control for managing addictions; and his social functioning especially when abusing alcohol. The evidence from Dr. A confirms that "mental DLA" are restricted continuously and that the appellant needs significant help and support for daily living.

The panel rescinds the reconsideration decision and sends it back to the minister for a decision on the amount of disability assistance. The appellant is successful with his appeal.

### **Schedule – 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 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).

## **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,

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**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

Margaret Koren

Date (Year/Month/Day)

2022/10/05

Print Name

Peter Mennie

Signature of Member

Date (Year/Month/Day)

2022/10/05

Print Name

Marvam Maiedi

Signature of Member

Date (Year/Month/Day)

2022/10/05