

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated July 7, 2022, which held that the appellant did not meet 4 of the 5 statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that the appellant has physical and/or mental impairment that is likely to last 2 years or more from the date of the PWD application; but was not satisfied that:

- the appellant has a severe physical and/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 those restrictions, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

In addition, the ministry found that it had not been demonstrated that the appellant is one of the prescribed classes of persons who may be eligible for PWD designation on alternative grounds, which includes: a person who is enrolled in palliative care; a person who has at any time been determined eligible for At Home Program payments through the Ministry of Children and Family Development; a person who has at any time been determined eligible by Community Living BC for community living support; and a person who is considered disabled under section 42(2) of the *Canadian Pension Plan Act*.

Part D – Relevant Legislation

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

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

Part E – Summary of Facts**Evidence at the time of Reconsideration**

- The appellant's PWD application consisted of:
- A Medical Report (MR) [dated May 13, 2022] completed by the appellant's Nurse Practitioner (NP), who had known the appellant for 1 year and had seen the appellant 2-10 times in the past 12 months prior to the completion PWD application.
- An Assessor Report (AR) [dated May 24, 2022], which was also completed by the appellant's Social Worker (SW) who had known the appellant since November 2021 and had seen the appellant 2-10 times in the past 12 months prior to the completion PWD application. The approaches and sources used to complete the AR were an office interview with the appellant.
- The PWD application also included the appellant's Self-Report (SR) dated March 10, 2022.
- Request for Reconsideration (RFR) dated Aug 4, 2022. Information provided by the appellant included:
- He has severe alcohol addiction stemming from self-medicating from anxiety. However, the alcohol aggravates anger and impairs self-control, and causes problems in all relationships.
- There is difficulty walking even 1 block due to hip, back and ankle pain.
- There is difficulty holding small objects like a pen and required writing is done by others (girlfriend and nephew).
- He cannot manage buttons, zippers or tie shoes.
- He gets angry at those who help him due to embarrassment.
- Most days he rolls out of bed because getting out normally is difficult due to back, ankle and knee pain.
- Due to many dislocations in combat, there is difficulty raising arms above the shoulders.
- Wrists and ankles hurt all the time due to combat injuries.
- There is difficulty climbing stairs or hills due to pain in knees and ankles.
- There are titanium implants in the ankles due to gun shot wounds.
- He has difficulty maintaining relationships due to anger and stress, and alcohol makes it even more difficult to keep anger and self-control in check.
- Talking about the events leading up to the onset of PTSD increases his stress to the point he may 'explode' at those around him. Therefore, for he tends to isolate himself.
- He has only 2-3 hours of sleep as the nightmares of combat keep him up. Alcohol is used to 'pass-out'.

Diagnoses

In the MR, the NP diagnosed the appellant with depression/ anxiety (onset: left blank) and post traumatic stress disorder [PTSD] (onset: left blank).

Health History

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

- "[He] suffers from extreme PTSD as a result of his time in the military. He has been a patient of mine for the past year. He tells me he has been assessed by psychiatrists and counsellors in the past. Unfortunately, he has not gained a lot of benefit from these experiences. He finds that counselling forces him to relive his traumatic experiences and

makes him feel re-traumatized. [He] now lives in a rural area. He finds being around a lot of people to be very triggering. He frequently struggles to manage his emotions. He “snaps” very easily and often has to remove himself from situations when his emotions are triggered. He understands that his reactions are often unwarranted and over the top, but he is unable to control these. He is currently using clonazepam as needed in these situations to calm himself down and avoid angry outbursts. He has tried several SSRIs with no improvement. [He] is incapable of holding a job due to his frequent and unpredictable episodes of anger, PTS flashbacks, and anxiety.”

- The appellant has not been prescribed medications or treatment that interfere with the ability to perform his DLA.
- He does not require any prosthesis or aids for his impairment.

Under additional comments in the MR, the NP stated:

- The appellant “is able to maintain a level of coping with his PTSD symptoms by living in a rural area away from triggers and people as much as possible. Due to his severe PTSD, it is unlikely that he will be able to safely return to a working environment”.

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

- “[He] mostly self-isolates due to PTSD therefore he lives in a remote area and rarely interacts with others. He has a tendency to take dangerous risks and uses extreme sports as an outlet. His multiple injuries also include a perforated right eye socket, (reconstructed with 7 surgeries), and a "smashed" cheek bone”.
- “Lives in a remote area. Told that he needs counselling but doesn't want to due to PTSD”.

Physical Impairment

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

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

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

- He can independently walk indoor/outdoor, climb stairs, stand, lift and carry/hold.

In the SR, the appellant stated, in part, the following:

- Injuries suffered in combat cause daily pain. He has 2 gun shot wounds, broken ankle, and broke knee. They are healed but cause pain.

Mental Impairment

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

- There are cognitive and ‘other’ difficulties with communication; “marginal cognitive, emotional and social functioning. Poor motivation, emotional regulation and marginal impulse control”.
- There are significant deficits with cognitive and emotional functioning in the areas of executive, memory, psychotic symptoms, emotional disturbance, motivation, impulse control, motor activity and attention or sustained concentration.
- There are no restrictions to social functioning.

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

- Reading, writing, and hearing are good. Reading was indicated as both good and poor with the comment: “Difficult communication depending on the subject. Could lose temper/become violent or have PTSD. Military combat trained him to have no filter”.
- In terms of cognitive and emotional functioning, there are major impacts to emotion, impulse control, insight/judgment, motor activity and other emotional or mental problems. There are moderate impacts to psychotic symptoms, motor activity, motivation and attention/concentration.
- All other listed areas of cognitive and emotional function are indicated to have either minimal or no impact.
- All listed tasks under ‘shopping’, ‘pay rent/bills’ and ‘medications’ are performed independently.
- All listed tasks under ‘social functioning’ are performed independently except ‘appropriate social decisions’ and ‘able to deal appropriately with unexpected demands’. These tasks require continuous assistance and/or periodic assistance.
- He has good functioning with immediate social networks and marginal with extended social networks.

In his SR, the appellant indicated, in part, the following:

- “I suffer from extreme PTSD sustained from my military service”.
- “I have witnessed death and carnage and also contributed to it as a soldier”.
- As a result of this he “is unable to interact effectively in the world as I have emotional outbursts that negatively impact those around me”.
- “I do not want to engage in counselling because it triggers my PTSD furthermore, these services are not available where I live”.
- “I intentionally live in a remote area in order to avoid feeling overly stimulated.”
- “Trust is a major issue for me and trying to gain trust in others causes extreme anxiety responses”.
- “I suffer from combat related PTSD. It gives me daily nightmares and rage issues. Makes it hard to deal with people. Loud noises set me off”.

Daily Living Activities

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

- There are no restrictions to any of the listed areas of DLA.

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

- All tasks under the DLA of ‘medications’, ‘pay bills/rent’, ‘meals’, ‘basic housekeeping’ and ‘shopping’ are performed independently.
- Under the DLA of ‘transportation’ the tasks of ‘using public transportation’ and ‘using transit schedules and arranging transportation’ are indicated as “n/a” while ‘getting in/out of vehicle’ is performed independently.
- Under the DLA of ‘personal care’, all listed tasks are performed independently except ‘transfers (in/out of bed and on/off chair)’ which are performed both independently and uses assistive devices with the comment: “knee, hip, back lock, sciatic, has fallen” and “doesn’t ask for help, uses table for balance”.

- All listed tasks under ‘social functioning’ are performed independently except ‘appropriate social decisions’ and ‘able to deal appropriately with unexpected demands’. These tasks require continuous assistance and/or periodic assistance.
- He has good functioning with immediate social networks and marginal with extended social networks.

In the SR, the appellant did not make a statement about DLA.

Help

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

- Requires no prostheses or aids for the impairment.

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

- He lives with family, friends or caregivers.
- His partner assists with shopping and other public tasks.
- Help required for DLA is provided by family and friends.
- The section ‘assistance provided through the use of assistive devices’ was left blank.
- Assistance provided by assistance animals was indicated as ‘no’.

In the SR the appellant did not make a statement regarding the need for help or who provides it.

Evidence on Appeal

Notice of Appeal (NOA), signed and dated August 23, 2022, the appellant stated, “I cannot work due to pain in my body. My doctor is working with me and has more information”.

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

Evidence Prior to the Written Hearing

Prior to the hearing the appellant submitted the following:

- September 28, 2022 letter from the advocate. This letter highlights information previously put forward by the appellant, NP and SW to argue that the appellant has met the threshold of the PWD designation. The panel considers this letter to be argument and it does not require an admissibility determination.
- One page of the appellant RFR (written submission) that is already in evidence and it does not require an admissibility determination.
- One page of the ministry’s reconsideration decision (page 2) that is already in evidence and it does not require an admissibility determination.
- September 28, 2022 letter from the SW. The letter indicates that the appellant has severe and prolonged PTSD, due to his trauma/trauma responses and remote rural living he cannot access supports, and due to his emotional dysregulation and physical injuries he cannot seek or maintain employment. The panel notes that the information in this letter reiterates information that was before the ministry at the time of reconsideration.
- September 28, 2022 letter from the NP (the letter). The NP reiterated some of the information presented in the PWD application and RFR such as the appellant’s social challenges and the need to live in a rural setting. The letter also indicated that the appellant’s PTSD symptoms “make it challenging for him to carry out day to day

activities. For example, he does not drive. He relies on his spouse to do grocery shopping and take him to appointments because he is not able to safely do so". The letter also indicated that the appellant has been struggling with chronic pain over the past year; "He has stiffness and pain in his hands, wrists, shoulders and knees". The NP suspects it may be inflammatory arthritis but since the appellant cannot drive, he cannot complete the necessary assessments. "This joint stiffness and pain is beginning to impact his ability to dress himself and he relies on his spouse daily for support with this".

- General material related to PTSD and alcohol addition, and a scholarly article regarding mental and physical health and quality of life for those injured during deployment.

Admissibility of Additional Information

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.

The panel found that the September 28, 2022 letters from the SW and NP provided additional detail or disclosed information that provides a full and fair disclosure of all matters related to the decision under appeal. The panel has admitted this new information as being in accordance with s. 22(4) of the *Employment and Assistance Act*. An analysis of each is provided in the panel's decision.

The panel found that the general material and scholarly article provided additional detail or disclosed information that was provides a full and fair disclosure of all matters related to the decision under appeal. The panel has admitted this new information as being in accordance with s. 22(4) of the *Employment and Assistance Act*. However, this information did not directly speak to the appellant's condition, his mental and/or physical ability, the ability to perform his DLA or the help that he requires with his DLA. As such the panel places little weight on this information.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a PWD, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the evidence does not establish that the appellant has a severe mental or physical impairment that will last 2 years or more and does not establish that his DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person.

The relevant legislation can be found in Appendix A.

Panel Decision**Severe Impairment**

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical or mental impairment. Determining a severe physical or mental impairment requires weighing the evidence provided against the nature of the impairment and its reported functional skill limitations. A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. An "impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively. To assess the severity of an impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning.

Physical Impairment

The appellant argued that due to his multiple combat injuries and pain resulting from those injuries he suffers from a severe physical impairment that restricts his ability to function independently.

The ministry argued that based on the information provided in the PWD application, a severe impairment of the appellant's physical functioning has not been established.

In its reconsideration decision, the ministry noted that the NP did not provide a diagnosis of a medical condition which explicitly gives rise to a physical impairment. The ministry also noted that the NP indicated that the appellant can walk 4+ blocks and climb 5+ steps unaided, and lift and remain seated without limitation. The ministry noted that in the AR, the SW indicated that the appellant has multiple wounds and injuries (knees, ankles, wrists, bullet wounds in both shins, chest and armpit, bayonet in chest, burns on back) which make movement challenging sometimes. However, she also reports he is independent in all assessed mobility and physical ability tasks, including walking indoors/outdoors, climbing stairs, standing, lifting, carrying and holding. The NP also indicates that the appellant has not been prescribed any medication and/or treatment that may interfere with the ability to perform daily living activities and he does not require any prostheses or aids for the impairment. While the appellant discussed ongoing pain from combat injuries and surgery, these have not been identified by the NP, nor did the SW report that the appellant requires assistance as a result of physical conditions.

The ministry also noted that in the RFR, the appellant provided revisions to the AR. In it, it is noted that the appellant requires continuous assistance walking outdoors and lifting. However,

this has not been confirmed by the prescribed professionals. Additionally, it is not clear why continuous assistance is required when the NP assessed that the appellant has no limitation in lifting and can walk four and more blocks without assistance.

The panel finds that the ministry reasonably concluded that the information provided by the NP and SW regarding the appellant's physical functioning does not support a finding of a severe physical impairment. That is, there is no diagnosis of a physical impairment, functional skills are confirmed to be good, and mobility and physical ability is indicated as independent. The panel considered the SR and RFR. However, though the SW confirmed that the appellant's combat injuries cause pain, the SW's assessment indicates that this pain does not impede mobility and physical ability. Furthermore, the panel notes that the AR indicated that it was completed via an office interview with the appellant. Therefore, if the appellant has severe physical restrictions, he had an opportunity clarify the severity.

The panel also considered the additional information submitted at appeal. The letter from the SW did not speak to a physical impairment. The letter from the NP indicated that the appellant has been struggling with chronic pain over the past year and had stiffness and pain in his hands, wrists, shoulders and knees. This information supports the appellant's RFR. The panel notes that in the letter, the NP indicated that the appellant has struggled with chronic pain over the past year. In the PWD application, the NP indicated that she has known the appellant for 1 year and seen him 2-10 times prior to completing the PWD application. The letter does not explain whether the previous assessment of walking 4+ blocks unaided, climbing 5+ steps unaided, and lifting and remaining seated without limitations has now changed. Furthermore, the letter does not explain why there was no mention of chronic pain from the NP in the PWD application. The panel finds that the information provided in the letter is insufficient to support a finding of a severe physical impairment.

Given the overall assessments of the appellant's functional ability, mobility and physical ability in the PWD application and insufficient information submitted at appeal, the panel finds that the ministry was reasonable in its determination that the evidence does not support a finding that the appellant suffers from a severe physical impairment and that the legislative criteria outlined in Section 2(2) of the EAPWDA have not been met.

Mental Impairment

The appellant argued that he suffers from PTSD, anxiety and depression, which restricts his ability to function day to day and maintain relationships with others.

The ministry's position is that based on the assessments provided in the PWD application, a severe impairment of mental functioning has not been established.

In its reconsideration decision, the ministry noted that in the MR, the NP noted that the appellant has significant deficits to cognitive and emotional function in the areas of executive, memory, psychotic symptoms, emotional disturbance, motivation, impulse control, motor activity, and attention/sustained concentration. The ministry also noted that in the AR, the SW noted that the appellant has major impacts to daily cognitive and emotional functioning in the areas of emotion, impulse control, insight/judgement, and motor activity. Moderate impacts were noted in attention/concentration, motivation, motor activity, and psychotic symptoms. The ministry

concluded that considering these deficits and impacts in conjunction with DLA, a severe degree of impairment is not established, as the appellant is reported to be independent in almost all activities related to making decisions regarding personal activities (i.e., making appropriate choices while shopping), care (i.e., personal care, meals, medication management), and finances (i.e., reading prices and labels, paying for purchases, paying rent and bills).

The ministry noted that the NP indicated that the appellant has marginal cognitive, emotional, and social functioning with poor motivation, emotional regulation and marginal impulse control. However, the SW assessed the appellant to have good abilities in speaking, reading, writing and hearing, although he can lose his temper and become violent when speaking. However, it is not clear how often this occurs, nor how it impairs him. The ministry concluded that insufficient evidence has been provided to conclude that the appellant presents a severe impairment of mental functioning.

The panel finds that the ministry analysis of the evidence, as indicated above, was not reasonable and it unreasonably concluded that the information provided by the prescribed professional regarding the appellant's mental, cognitive and emotional functioning does not support a finding of a severe mental impairment.

The panel finds that the ministry did not provide an analysis of the narrative information provided by the NP. The NP indicated that the appellant has extreme PTSD, he lives in a rural area because being around a lot of people is triggering, he struggles to manage emotions and 'snaps' easily, he takes medication to avoid angry outbursts and has PTS flashbacks. In section D of the MR, the NP indicated that the appellant has "marginal cognitive, emotional and social functioning. Poor motivation, emotional regulation and marginal impulse control". Similarly, the ministry did not provide an analysis of the information provided by the SW. In the AR, the SW indicated that the appellant self-isolates due to PTSD and therefore rarely interacts with others. The SW indicated that the appellant has severe anxiety and that PTSD could trigger violent outbursts and attacks, for which the appellant takes medication. This echoes the assessment from the NP. The ministry has not indicated whether it placed any weight on this narrative or how it informed its decision.

The panel considered the September 28, 2022 letters from the NP and SW. In the SW's letter, the SW indicated that the appellant suffers from prolonged and severe PTSD. In the NP's letter, the NP indicated that the appellant's PTSD is causing significant mental impairment. Specifically, the ND indicates that "he does not drive. He relies on his spouse to do grocery shopping and take him to appointments because he is unable to safely do so..... These symptoms are now also impairing him physically as they are preventing him from seeking appropriate care and treatment for a possible inflammatory arthritis."

Additionally, the assessors independently indicated that the appellant has deficits to cognitive and emotional functioning. The NP indicated significant deficits to the areas of executive function, memory, psychotic symptoms, emotional disturbance, motivation, impulse control, motor activity, and attention/sustained concentration. The SW indicated major impacts to emotion, impulse control, insight/judgement, and motor activity, and moderate impacts to attention/concentration, motivation, motor activity, and psychotic symptoms. Taken as a whole, both assessors have similarly indicated that cognitive and emotional functioning are severely impaired. However, the ministry concluded that daily living was not impacted by these deficits.

The appellant indicated that his inability to control his anger and outbursts prevent him from having relationships or dealing with others. The NP's and SW's narratives supported this. Based on the information in the AR, the ministry found that the appellant requires "continuous or periodic support/supervision for extended periods of time in your social functioning". That is, the ministry found that there is a direct and significant restriction, either continuously or periodically for extended periods, in the appellant's ability to independently perform his social functioning. Therefore, the panel finds that it is unreasonable for the ministry to conclude that "when considering these deficits and impacts in conjunction with [the appellant's] daily living activities, a severe degree of impairment is not established".

Given the overall assessments of the appellant's mental, cognitive and emotional ability and functioning in the PWD application and the additional information provided at appeal from a prescribed professional, the panel finds that the ministry was unreasonable in its determination that the evidence does not support a finding that the appellant suffers from a severe mental impairment and that the legislative criteria outlined in Section 2(2) of the EAPWDA have not been met.

Restrictions in the ability to perform DLA

Section 2(2)(b)(i) of the EAPWDA requires that the minister be satisfied that, in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether or not it is satisfied that the legislative criteria are met, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration – the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended periods. Any analysis of periodicity must also include consideration of how frequently the activity is restricted. All other things being equal, a restriction that only arises once a year is less likely to be significant than one that occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

The appellant argued that his impairment prevents him from independently performing his DLA.

It is noted that the ministry found that the appellant does have a direct and significant restriction to his ability to perform social functioning. However, the ministry found that a restriction in one daily living activity does not meet the legislative requirements. Therefore, the ministry argued that it is not satisfied that the information provided establishes that the impairment directly and significantly restricts DLA continuously or periodically for extended periods.

The Majority Panel's Decision

In the reconsideration decision, the ministry noted that in the MR, the NP indicated impairment does not directly restrict the appellant's ability to perform DLA, including personal self care, meal preparation, medication management, basic housekeeping, daily shopping, mobility inside/outside the home, transportation, finances, or social functioning. NP stated that the appellant is able to maintain a level of coping with his PTSD symptoms by living in a rural area away from triggers and people as much as possible.

The ministry noted that in the AR, the SW indicated that the appellant's partner assists with shopping and other public tasks, the appellant is independent in personal care, basic housekeeping, shopping, meals, financial management, medications, and transportation. While the SW reported the use of an assistance device for transfers, the SW also reported that the appellant "use tables." However, a table is not an assistive device.

The ministry noted that the revised AR indicated that the appellant requires periodic assistance for dressing. However, no further information is provided by a prescribed professional to explain this change or confirm the assistance is needed periodically for extended periods. Further, requiring periodic assistance in one area of personal care does not confirm an overall significant restriction in this area.

The majority panel finds the ministry's analysis of the evidence and its conclusion to be reasonable based on the evidence before it. The majority panel finds that being independent with the majority of the listed tasks related to each daily living activity does not satisfy the legislative requirements and no additional evidence has been provided by a prescribed professional to support the appellant's claim.

In the letter, the NP indicated that the appellant relies daily on his spouse for dressing. However, the majority panel notes that the letter does not describe the type and degree of assistance required with dressing or explain why the NP indicated in the MR that personal care was not restricted. Moreover, the NP indicated that stiffness and pain "is beginning to impact his ability to dress himself". With personal care there are eight listed tasks. The inability to perform one listed task of a DLA does not necessarily mean the legislative requirement has been met.

Similarly, in the letter, the NP indicated that the appellant requires assistance with shopping and attending appointments because he cannot drive. Again, the NP did not explain why the assessment provided in the MR for shopping has now changed. Also 'going to/from stores' is one listed task under the daily living activity of shopping and, therefore, it alone does not determine a restriction with the overall activity. The NP did not indicate if help is also required with making appropriate choices, reading labels, paying for purchases or carrying purchases home. Similarly, the majority panel also notes that the inability to drive does not translate to a restriction in the daily living activity of transportation; especially since there is no indication that the appellant is restricted in his ability in get in/out of a vehicle.

The majority panel empathizes with the appellant. However, given the evidence as a whole, the majority panel finds that the ministry reasonably concluded that the evidence does not establish that an impairment significantly restricts DLA continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

Dissenting Opinion

As noted above, the ministry found that the appellant does have a direct and significant restriction to his ability to perform social functioning. The majority has concurred that this is the only DLA significantly restricted.

In my opinion, multiple additional DLA are significantly restricted.

The majority finds that the daily living activity of shopping is insufficiently restricted because “going to/from stores” is only one of the listed tasks and the appellant is capable of performing the other tasks. However, the documentation does not say he needs someone to take him to do the shopping and then he is okay. It says that “He relies on his spouse to do grocery shopping and take him to appointments *because he is unable to safely do so*”. (italics added for emphasis). As the NP comments in the MR, the appellant is able to maintain a level of coping with his PTSD symptoms by living in a rural area away from triggers and people as much as possible. Because of his PTSD, he is unable to go shopping and, therefore, is unable to perform the other tasks, such as choosing appropriate products, reading labels, paying for purchases or carrying purchases home, even if he might be physically capable of performing these tasks.

Similarly, in my opinion, he is significantly restricted in his ability to move about outdoors. The fact that he has moved to a rural location to minimize the number of triggers and people he encounters illustrates the limitation to his ability to move about on his own. When he goes to appointments, he is accompanied by someone to assist in case he is triggered. While I agree that insufficient evidence has been presented to indicate the appellant is physically restricted in this area, the restrictions imposed by PTSD are documented and indicate a significant restriction in the performance of this DLA.

In both of the above situations, there is no evidence that the appellant’s condition varies from time to time. He is constantly susceptible to being triggered and is in constant need for assistance each time the DLA is to be performed.

In conclusion, the dissenting member would find that there are multiple DLA significantly restricted due to the severe PTSD diagnosed and therefore the criterion in Section 2(2)(b)(i) has been met.

Help to perform DLA

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

The appellant indicated that he requires help with DLA from his partner and nephew.

The ministry argued that as it has not been established that daily living activities are significantly restricted (criterion 4), it cannot be determined that significant help is required from other persons or a device.

In the reconsideration decision, the ministry noted that the NP did not indicate that the appellant requires assistance. The SW indicated that the appellant's family and friends provide help.

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

Dissenting Opinion

Section 2(3) states: " 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 ..., (ii) the significant help or supervision of another person, or...."

As the NP stated in the recent letter, "these symptoms have made it impossible for him to successfully live independently...." The appellant relies on others to take him to appointments, to get his groceries, and to complete complex tasks such as this submission.

The dissenting member would have found that the ministry's Reconsideration Decision was not a reasonable application of the applicable enactment and should be rescinded.

Conclusion

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

Appendix A

The criteria for being designated as a PWD are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the

- purposes of this Act if the minister is satisfied that the person is in a prescribed class of persons or that the person
- has a severe mental or physical impairment that
 - (a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and
 - (b) in the opinion of a prescribed professional
 - (i) directly and significantly restricts the person's ability to perform daily living activities either
 - (A) continuously, or
 - (B) periodically for extended periods, and
 - (ii) as a result of those restrictions, the person requires help to perform those activities.
 - (3) For the purposes of subsection (2),
 - (a) a person who has a severe mental impairment includes a person with a mental disorder, and
 - (b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires
 - (i) an assistive device,
 - (ii) the significant help or supervision of another person, or
 - (iii) the services of an assistance animal.
 - (4) The minister may rescind a designation under subsection (2).

The EAPWDR provides as follows:

Definitions for Act

- 2 (1)** For the purposes of the Act and this regulation, "**daily living activities**" ,
- (a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following
 - activities:
 - (i) prepare own meals;
 - (ii) manage personal finances;
 - (iii) shop for personal needs;
 - (iv) use public or personal transportation facilities;
 - (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
 - (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self care;
 - (viii) manage personal medication, and

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

- (i) make decisions about personal activities, care or finances;
- (ii) relate to, communicate or interact with others effectively.

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

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

- (i) medical practitioner,
- (ii) registered psychologist,
- (iii) registered nurse or registered psychiatric nurse,
- (iv) occupational therapist,
- (v) physical therapist,
- (vi) social worker,
- (vii) chiropractor, or
- (viii) nurse practitioner, or

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

- (i) an authority, as that term is defined in section 1 (1) of the Independent School Act, or
- (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the School Act, if qualifications in psychology are a condition of such employment.

Alternative grounds for designation under section 2 of Act

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

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act*;
- (d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act* to assist that family in caring for the person;
- (e) a person who is considered to be disabled under section 42 (2) of the *Canada Pension Plan*

2022-0193

Part G – Order

The panel decision is: (Check one) Unanimous By Majority

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

Legislative Authority for the Decision:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name

Neena Keram

Signature of Chair

Date: 2022/10/26

Print Name

Wes Nelson

Signature of Member (dissenting)

Date: 2022/10/26

Print Name

Edward Wong

Signature of Member

Date: 2022/10/26