

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, 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 has a severe mental or physical impairment;
- the appellant’s impairment significantly restricts his ability to perform daily living activities; and
- the appellant requires the significant help or supervision of another person to perform daily living activities restricted by his 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 is set out in the schedule of legislation after this decision.

Part E – Summary of Facts

The hearing took place by teleconference. Present at the hearing were the panel, the appellant and their advocate/witness, a ministry representative, and an interpreter. The appellant's witness provided evidence at the beginning of the hearing and after giving evidence stayed on the teleconference to support and assist the appellant.

Evidence Before the Ministry at Reconsideration

The appellant is over 18 years of age and applied for PWD designation on June 24, 2022. In support of his application, the appellant submitted a PWD application, 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. Attached to the application were several medical reports and consultations. In addition to the application materials, the Ministry also received the appellant's Request for Reconsideration.

New Evidence Provided on Appeal

Prior to the hearing, the appellant submitted a letter from his doctor, dated September 9, 2022 and a copy of a recent consultation report from a specialist his doctor recently referred him to due to ongoing back pain, dated August 24, 2022. The appellant and his witness also provided oral testimony describing the pain experienced by the appellant, medical treatment received by the appellant, and how the pain affects the appellant's daily living. The ministry did not object to the submission of this evidence. The panel finds that the two documents submitted by the appellant for the hearing are reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Accordingly, the panel admits this information as evidence pursuant to section 22(4) of the *Employment and Assistance Act*. The panel finds that much of the testimony provided by the appellant and his witness is argument in support of the appellant's appeal. However, where the testimony of the appellant and his witness provided further detail the panel finds that the testimony was also reasonably required for a full and fair disclosure of all matters related to the decision under appeal and admits this information as evidence pursuant to section 22(4) of the *Employment and Assistance Act*.

Summary of Relevant EvidenceDiagnoses and Health History: Medical Report

The Medical Report was completed by the appellant's family doctor who has been seeing the appellant since 2016. In the Medical Report the doctor diagnoses the appellant with lumbosacral myofascial pain with an onset of 2016. The doctor reports that this diagnosis is unlikely to improve and states the following about the appellant's health history:

- long history of chronic lower back pain, exacerbated by certain activities (prolonged standing, bending, twisting, lifting);
- x-ray shows facet joint degenerative changes and end-plate osteophytes;
- CT shows minimal L5-S1 disk bulge;

- has been unable to work due to his symptoms, which occur daily and can be severe at times;
- has not been able to perform household activities that involve the above activities due to pain; and
- has been compliant with all treatments; however, nothing has completely improved his symptoms.

With respect to functional skills the doctor states that the appellant can walk 1 to 2 blocks unaided, can climb 5+ steps unaided, can lift 5 to 15 pounds, and can remain seated less than an hour. The doctor reports no impacts to the appellant's cognitive and emotional function.

The doctor included several imaging and lab reports along with the Medical Report. These reports confirm the information provided by the doctor.

The doctor did not complete part E of the Medical Report that assesses whether the impairments diagnosed affect the appellant's daily living activities as they also completed the Assessor Report, and according to the form did not have to complete this section if completing the Assessor Report.

Diagnoses and Health History: Assessor Report

The Assessor Report was completed by the same doctor that completed the Medical Report. In the Assessor Report the doctor states that he has seen the appellant 11 or more times in the last 12 months. The doctor reports that the appellant lives with family and has difficulty with lifting, bending, and twisting due to chronic lower back pain. The doctor states that the appellant has good communication. With respect to mobility and physical ability the doctor reports that the appellant is independent in all areas other than lifting, but notes that walking, climbing stairs, and lifting take significantly longer than typical. No details are provided as to how much longer the appellant takes with these activities. With respect to lifting the doctor says that the appellant requires continuous assistance to lift items greater than 15 pounds. The doctor reports that the appellant has good cognitive and emotional functioning with no impact in most areas and minimal impact in the areas of emotion and memory.

With respect to daily living activities the doctor noted that the appellant is independent in all areas except for basic housekeeping, for which he indicated the appellant requires continuous assistance and noted the appellant's children help in this area.

When asked about any mental impairment, the doctor states that the appellant has good functioning with both his immediate and extended social networks.

As stated above, the doctor noted that the appellant requires help with basic housekeeping from his children but did not indicate a need for any assistive devices or assistance animals.

Diagnoses and Health History: Self-Report

In the PWD application the appellant stated he has chronic debilitating back pain that makes it so he cannot leave the house due to ongoing pain and dizziness and is always fatigued and needing to sleep. The appellant stated that he also has issues with an irregular heartbeat and is now seeing a specialist for heart issues. The appellant stated that he is unable to return to work and was recommended by “Employment Insurance” to apply for disability assistance.

In the Request for Reconsideration the appellant further reiterated this information.

The appellant emphasized these statements at the hearing and stated that the pain is excruciating and often makes it so that he cannot do anything. Further, the appellant stated that many of the medications he takes to treat his medical condition cause him to feel nauseous and dizzy and upset his stomach. The appellant stressed that he had previously been in good health and was active and a hard worker willing to work.

New Evidence: Witness Testimony

The appellant’s spouse testified on his behalf. The witness has known the appellant for over 33 years and states that up until recently the appellant was always working and was a very active person. However, now he has lots of medical issues, can’t sleep and has a sore back. He had a stroke previously and now takes a lot of medication. The witness states that medication makes the appellant feel unwell and contributes to his inability to be active. The witness reports that the appellant feels pain all the time and can’t work anymore. The witness states that the appellant’s pain affects his mental health and the appellant now wants to be alone instead of being the active person social person he used to be. The witness argues that her evidence is more detailed and reliable than anything from a medical professional as she lives with the appellant and knows him best.

In answer to a question from the panel, the witness states that she is unable to help the appellant much due to her own health issues, but their children provide the appellant with help and support when needed.

New Evidence: Letter from Doctor and Consultation Report

In a letter dated September 9, 2022 the appellant’s family doctor wrote:

“...[the appellant] has suffered from chronic lower back pain for the past 20 years, and his symptoms have been getting progressively worse. He had CT done in 2018 which showed degenerative disc changes and a disc bulge as well as facet joint arthritis. He is currently seeing a physical medicine specialist and is awaiting a lumbar MRI. He has daily symptoms of lower back pain which prevent him from working as well as performing many day to day activities. He requires the help of his family to perform many of these activities....Unfortunately, despite all of this, his symptoms remain constant and severe enough to affect his work abilities and day to day life.”

In a letter dated August 24, 2022, the physical medicine specialist referred to in the family doctor's letter provided a consultation report to the appellant's family doctor. In this report the specialist confirmed that the appellant has chronic low back pain that is there continuously from a 5/10 on a pain scale up to a 8/10 or 9/10 at times. The specialist also confirmed that the appellant has radiating pain in his left leg and foot as well as numbness on occasion. The specialist noted that the appellant's mood is "up and down, anxious and depressed with the pain" and that the appellant's English is not good enough to convey information about how he experiences pain during physical examination. The specialist has referred the appellant for an MRI.

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 he has significant chronic back pain, which makes it impossible for him to work and difficult for him to complete many day-to-day activities. The appellant submits that the evidence of his witness and new letter from his doctor should satisfy the ministry as it shows that he has a severe physical impairment.

The ministry's position is that the appellant has been diagnosed with lumbosacral myofascial pain and although the appellant experiences chronic pain as a result 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 while the appellant takes longer with some activities the doctor has not provided evidence as to how much longer things take the appellant and accordingly the ministry is unable to find that the appellant's physical impairment is severe.

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.

The panel reviewed all the evidence submitted by the appellant. While the appellant is clear that he regularly experiences excruciating pain in his back and leg, the evidence from the doctor does not provide the level of detail necessary to find that the appellant has a severe impairment. In both the Medical Report and Assessor Report the doctor largely indicates that the appellant is unrestricted in his physical ability. Although the doctor states that the appellant finds it difficult to complete many day-to-day activities in his September 9th letter, detail as to the level of

restriction was not provided. Further, there is no explanation to explain the differences between the information in the earlier Medical and Assessor Report and the letter, which states that many day to day activities are restricted. Accordingly, the panel finds that without further details provided by the doctor that the ministry reasonably determined that the available evidence did not show that the appellant had a severe physical impairment.

Mental Impairment

The appellant's position is that his physical impairment affects his mental health, and he is no longer a social, active person.

The ministry's position is that there is no evidence of a mental impairment let alone a severe mental impairment.

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.

The panel reviewed all the evidence submitted by the appellant. While the doctor indicated that the appellant had minimal impact in the areas of emotion and memory, the doctor does not identify any major or moderate impacts on the appellant's cognitive and emotional functioning. While the panel agrees that the appellant's physical impairment is likely affecting the appellant's mental health, the panel finds that the evidence submitted by the appellant's doctor does not support a finding that the appellant has a severe mental impairment. Accordingly, the panel finds that the ministry reasonably determined that the available evidence did not show that the appellant had a severe mental impairment.

Restrictions in ability to perform daily living activities

The appellant's position is that he is no longer able to work or perform many day-to-day activities as standing, sitting, twisting, and bending cause him extreme pain. The appellant relies on the September 9th letter from his doctor that states that he is prevented from performing many day-to-day activities and needs help from family.

The ministry's position is that there is no severe impairment and without a severe impairment the appellant's daily living activities cannot be restricted by such impairment. Further, the ministry submits that the appellant's doctor indicated that he was independently able to manage all activities other than basic housekeeping, including personal care, shopping, meals, paying rent and bills, medications, and transportation. The ministry also submits that the appellant's doctor also indicated that the appellant is independently able to manage all activities relating to social functioning. The ministry states that the information from the doctor does not establish that impairment significantly restricts daily living activities either continuously or periodically for extended periods.

Section 2(2)(b)(i) of the EAPWDA requires that the ministry 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.

Given that the doctor assessed the appellant as independent in nearly all areas of daily living activities and social functioning, the panel is unable to find that the appellant's impairment causes significant restrictions to his ability to perform daily living activities. While the appellant and his witness state that the appellant needs help with many day-to-day activities no detail was provided as to the extent, frequency and duration of such restrictions. Similarly, in the September 9th doctor's letter, the doctor states that the appellant is unable to perform many day-to-day activities and needs help in this regard, but also fails to provide detail as to what activities or the extent, duration and frequency of such restrictions. Accordingly, the panel finds that the ministry reasonably determined that based upon the available evidence 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

A review of the evidence submitted clearly indicates that the appellant receives help from his family members to perform some daily living activities. However, 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

The appellant is waiting for an MRI and should have more answers regarding his medical condition. The panel notes that, in answer to a question from the panel, the ministry indicated that the appellant could reapply at any time with further evidence.

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....

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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

Emily C. Drown

Signature of Chair

Date (Year/Month/Day)

2022/10/24

Print Name

Jane Nielsen

Signature of Member

Date (Year/Month/Day)

2022/10/24

Print Name

Barbara A Sharp

Signature of Member

Date (Year/Month/Day)

2022/10/26