

Part C – Decision Under Appeal

Under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated November 18, 2022, that denied the appellant designation as a person with disabilities (PWD) under section 2 of the *Employment and Assistance for Persons with Disabilities Act*. The ministry stated that the appellant met the requirements of having reached 18 years of age and of a medical practitioner confirming the impairment is likely to continue for at least 2 years. However, the ministry was not satisfied that:

- the appellant has a severe mental or physical impairment
- the appellant's impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform daily living activities ("DLA") either continuously or periodically for extended periods; and,
- as a result of restrictions caused by the impairment, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

The ministry also found that the appellant is not in one of the prescribed classes of persons who may be eligible for PWD designation under 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

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

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 2 and 2.1

Part E – Summary of Facts**Information before the ministry at reconsideration**

- The appellant's PWD application, comprised of:
 - A Medical Report (MR) and an Assessor Report (AR), both dated July 22, 2022, and completed by the appellant's general practitioner (GP) who has treated the appellant since January 2019 and saw the appellant 11 or more times in the preceding 12 months.
 - The Self-report (SR) section of the PWD application, dated July 17, 2022.
- An angiogram image of the appellant's heart and aftercare information respecting a stent procedure the appellant underwent (discharge date November 8, 2022).
- The appellant's October 26, 2022, Request for Reconsideration submission.

Information provided on appeal and admissibility

- Notice of Appeal dated November 24, 2022, which did not include evidence or argument.

A Release of Information for an advocate had been received by the Tribunal. However, the appellant's advocate did not attend the hearing. The appellant confirmed that he wanted to proceed with the hearing without the advocate.

At the hearing, the appellant provided the following information:

- He is aware of other people who have PWD designation though they are less impacted than him.
- He has had depression for years. If he doesn't take his 12 different pills daily, in a few days he is "crazy" and wants to end his life.
- His main problem is depression.
- His knees are bone-on-bone and need surgery, but he has been told there is an 18-month wait for knee replacement surgery.
- He cannot walk more than ½ a block, do stairs, or go up hills. He told the GP this information and does not know why the GP said differently.
- He had a heart attack two weeks ago.
- His main problems are depression, his knees, and his heart.
- He does not have a problem reading prices or labels and does not know why the GP said there was a problem.

At the hearing, the ministry reviewed the reconsideration decision but did not provide evidence.

The panel admitted the appellant's oral testimony under section 22(4) of the *Employment and Assistance Act* as information reasonably required for full and fair disclosure of the matters at issue. The panel considered the information to be directly related to PWD eligibility. The ministry did not object to the admission of the new information.

The positions of both parties are set out in Part F of this decision.

Summary of relevant evidence

In the SR and reconsideration submission, the appellant provided the following information:

- He takes medication daily for depression/bipolar.
- Both of his knees have to be replaced due to arthritis.
- Due to a car accident, he is now suffering from back and neck pain.
- He "cannot walk ½ block & take a rest or going up and down in the stairs."
- He takes pain killers.

Information provided by the GP in the PWD application is set out below:

Diagnoses and Health History

In the MR, the GP diagnoses the appellant with bipolar affective disorder (onset 2002) and osteoarthritis of the knees (onset 2020).

Additional commentary respecting bipolar affective disorder includes:

- Under the care of a psychiatrist.
- Medications help symptoms.
- Hospitalized in September 2020.
- With treatment has been functional.

Additional commentary respecting osteoarthritis includes:

- A few motor vehicle accidents have worsened knee and back pain.
- Physiotherapy and pain killers help.
- Symptoms are moderate.

- The appellant's job is physically demanding – back and knee pain hinder work performance.

Physical Functioning

MR (functional skills):

- can walk 1 to 2 blocks unaided
- can climb 2 to 5 steps unaided
- can lift 5 to 15 lbs.
- no limitation respecting the time the appellant can remain seated
- no aids or prostheses are required for the impairment

AR (mobility and physical ability):

- walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding are managed independently – “reduced ability to perform all activities as described on page 11” [*The panel understand this to be a reference to the functional skills assessment on page 11 of the MR.*]

Communication

MR and AR:

- No difficulties with communication (cognitive, motor, sensory).
- Speaking, reading, writing, and hearing abilities are good.
- Lacks good English language skills.

Mental Functioning

MR:

- Significant deficits with cognitive and emotional function are identified for 2 of 11 listed areas – psychotic symptoms and emotional disturbance.
- “Has had episodes of psychosis when his bipolar disorder has flared up.”,

AR:

- Moderate impacts on daily functioning are identified for 5 of 14 listed areas – emotion, executive, memory, motivation, and psychotic symptoms.

- Minimal impacts on daily functioning are identified for 6 areas – bodily functions, consciousness, impulse control, insight and judgement, attention/concentration, and other neuropsychological problems.
- No impact on daily functioning is indicated for the remaining areas – motor activity, language, and other emotional or mental problems.
- No major impacts are identified.

Daily Living Activities

- The appellant has not been prescribed medications and or treatments that interfere with the ability to perform DLA.
- Bipolar affective disorder, osteoarthritis (knees), and soft tissue back pain impact the ability to manage DLA.
- All listed tasks of personal care, pay rent and bills, medications, and transportation are managed independently.
- All listed tasks of basic housekeeping require continuous assistance – “His wife does these tasks.”
- For shopping, going to and from stores and reading prices and labels require periodic assistance from another person (“his wife helps”). An assistive device is required for carrying purchases home. Making appropriate choices and paying for purchases are managed independently.
- For meals, meal planning, food preparation, and cooking require continuous assistance (“his wife does these”).
- For social functioning, the appellant independently manages appropriate social decisions and ability to secure assistance from others. Periodic support/supervision is required for ability to develop and maintain relationships, interacting appropriately with others, and ability to deal appropriately with unexpected demands.
- Good functioning with immediate social network. Marginal functioning with extended social network.

Help

The GP reports that assistance is provided by family and that help is need for food preparation and housekeeping chores.

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

The issue on appeal is whether the ministry's decision to deny the appellant 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. That is, was the ministry reasonable when determining that the requirements of section 2(2) of the EAPWDA were not met because:

- a severe physical or mental impairment was not established
- the appellant's DLA are 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 does not require an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

Panel Decision**Eligibility for PWD designation under section 2 of the EAPWDA****Severe Impairment – Physical or Mental**

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 also notes that the legislation does not identify employability or financial constraints as considerations when determining PWD eligibility.

A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish severe impairment. While neither "impairment" nor "severe impairment" is defined in the legislation, the PWD Application defines "impairment" 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. Although this definition is not binding on the panel, the panel considers the assessment of the severity of impairment based on daily functional abilities to be reasonable.

*Physical Impairment**Positions of the Parties*

The appellant's position is that his ability to walk and climb stairs is severely impaired by osteoarthritis of both knees. The appellant does not understand why the doctor's information does not accurately reflect the appellant's physical abilities.

The ministry states that it considers the nature of the impairment and the extent of its impact on daily functioning as evidenced by limitations/restrictions in mobility, physical ability, and functional skills to assess the severity of a physical impairment. The ministry adds that employability or vocational ability are not taken into consideration. The ministry states that although the GP reported reduced abilities when assessing functional skills, the GP also reported that the appellant independently manages all areas of mobility and physical ability without any assistance from another person or an assistive device and without taking significantly longer. The ministry found that the information established that the appellant experiences pain and some limitations but that the GP's assessment of mobility, physical ability, and functional skills does not describe a severe degree of physical impairment.

Panel Analysis

The appellant is diagnosed by the GP with osteoarthritis of both knees. The GP also reports that the appellant experiences back pain. The GP does not provide any information respecting the appellant's heart problem and, the panel notes, the appellant did not describe impairment of functioning specifically related to his heart problem. The GP describes the appellant's physical symptoms as moderate and assesses the appellant's ability to walk, climb stairs, and lift/carry/hold at levels that are consistent with a moderate degree of impairment. As the ministry noted, the GP also reports that all aspects of physical mobility are managed independently, without an assistive device and without taking significantly longer to perform. The panel acknowledges the appellant's statement that the GP did not accurately reflect the appellant's physical functioning but finds that it was reasonable for the ministry to rely on the medical information to assess severity of impairment.

Based on the above analysis, the panel finds that the ministry was reasonable to decide that the information did not establish a severe physical impairment.

Mental Impairment*Positions of the Parties*

The appellant's position is that his main problem is depression and that he must take multiple daily medications.

The ministry states that it considers the nature of the deficits to cognitive and emotional function and the extent of the impacts to daily functioning to assess the severity of mental impairment. The ministry found that the GP indicated that there are no difficulties with communication related to a medical condition and that daily functioning is moderately impacted by the appellant's mental health condition. Therefore, the ministry's position is that the information does not establish a severe mental impairment.

Panel Analysis

The appellant is diagnosed with bipolar affective disorder which requires ongoing treatment. The GP reports that the appellant has had episodes when symptoms have flared up, including being hospitalized in 2020. However, respecting current functioning, the GP does not report any major impacts on daily cognitive and emotional function. The GP identifies moderate impacts in multiple areas of daily cognitive and emotional functioning but provides no explanation or description of the impacts and indicates that the appellant is "functional" with treatment. Additionally, as the ministry noted, the GP did not identify any major impacts on daily cognitive and emotional function or difficulties with communication related to mental impairment. The appellant's own information emphasized the necessity to take his medication but did not describe impacts on daily functioning.

Based on the above analysis, the panel finds that the ministry was reasonable to decide that the information does not establish a severe mental impairment.

Restrictions in the ability to perform DLA*Positions of the Parties*

The appellant's position is that he should qualify for PWD designation due to his physical and mental health conditions.

The ministry states that the legislation requires that DLA restrictions be both significant and either continuous or periodic for extended periods and that it relies on the medical

opinion and expertise from the medical practitioner and other prescribed professionals to assess the restrictions. The ministry found that it was unclear if the continuous assistance with basic housekeeping and meals is due to the appellant's medical condition or a division of household duties. The ministry also found the information about the need for an assistive device for carrying purchases home and the need for assistance for reading prices and labels to be unclear. Respecting social functioning, the ministry found that the need for periodic support/supervision with some aspects was not described to determine the degree of assistance required. The ministry's position is that as the majority of DLA are performed independently and the help required for other DLA is unclear, the GP's information does not establish that impairment significantly restricts DLA continuously or periodically for extended periods.

Panel Analysis

Section 2(2)(b)(i) of the EAPWDA requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether it is satisfied, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant.

DLA are defined in section 2(1) of the EAPWDR and are listed in both the MR and the AR sections of the PWD application with the opportunity for the prescribed professional to check marked boxes and provide additional narrative. The definition of DLA does not include the ability to work or employability.

In the appellant's case, the GP is the only prescribed professional who has provided information about the appellant's ability to perform DLA. As the ministry noted, the GP assesses the appellant as independently managing the majority of DLA independently, including the DLA move about indoors and outdoors which is managed independently within what are reasonably considered as moderate limitations.

For those DLA tasks for which the need for assistance is indicated, the panel agrees with the ministry that the information is unclear in many respects. In particular, the panel finds that given the assessed physical functional abilities of the appellant, which reflect sufficient physical capacity to manage some aspects of housekeeping and meals, together with the GP's comment that the appellant's "wife does these," it is unclear whether

continuous assistance is needed for basic housekeeping and meals due to impairment or reflects a division of household chores

Similarly, the panel finds the information respecting the appellant's restrictions with the shopping DLA unclear. While the GP indicates that an assistive device is used to carry purchases home, elsewhere in the PWD application the GP indicates that the appellant does not use any aids for his impairment and independently manages carrying/lifting/holding within the limit of 5-15 lbs. The GP comments that the appellant's "wife helps" with shopping DLA tasks but does not explain what assistive device is used. With respect to the need for periodic assistance going to and from stores, the panel finds that the ministry was reasonable to conclude that insufficient information is provided to determine the significance of the restriction, given the appellant's reported physical functional abilities, or that the restrictions are for extended periods. Respecting the need for assistance with reading prices and labels, as the ministry noted, there is no explanation for this restriction and, at the hearing, the appellant confirmed that he does not need help with this task.

With respect to the two DLA specific to mental impairment – make decisions about personal activities, care or finances and relate to, communicate, or interact with others effectively, the panel finds that the information from the GP does not establish significant restrictions that are either continuous or periodic for extended periods. Aside from indicating that continuous assistance is needed for meal planning, which the appellant's "wife does", the GP does not identify restrictions in the appellant's ability to manage the decision-making DLA tasks. Restrictions are identified respecting the appellant's social functioning, including the ability to interact appropriately with others, however without additional information, the need for periodic support/supervision is not sufficient to establish significant restrictions that are either continuous or periodic for extended periods. Additionally, the appellant is reported to have good communication abilities, good functioning with immediate social networks, and marginal, not very disrupted, functioning with extended social networks.

Based on the above analysis, the panel finds that the ministry was reasonable in concluding that direct and significant restrictions in the ability to manage DLA either continuously or periodically for extended periods were not established.

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 to perform DLA.

Establishing direct and significant restrictions with DLA is a precondition of the need for help criterion. As 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.

Conclusion

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.

The panel acknowledges that the appellant does not consider the medical information to accurately reflect his functioning and notes that the appellant may wish to reapply for PWD designation if he obtains additional medical information.

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 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, 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](#) (Canada).

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

Jane Nielsen

Signature of Chair

Date (Year/Month/Day)

2022/12/20

Print Name

Bill Haire

Signature of Member

Date (Year/Month/Day)

2022/12/20

Print Name

Richard Franklin

Signature of Member

Date (Year

2022/12/20