

### **Part C – Decision Under Appeal**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“ministry”) dated October 18, 2022, in which the ministry denied the appellant designation as a person with disabilities (“PWD”) under the Employment and Assistance for Persons with Disabilities Act (“EAPWDA”). The ministry found that the appellant met the requirements for age (over 18) and duration (impairment to continue for at least 2 years) but was not satisfied that:

1. the appellant had a severe mental or physical impairment;
2. in the opinion of a prescribed professional, the appellant’s impairment significantly restricted her ability to perform daily living activities; and
3. in the opinion of a prescribed professional, the appellant required help to perform daily living activities restricted by her impairment.

The ministry also found that the appellant is not in one of the prescribed classes of people who may be eligible for PWD designation on the alternative grounds set out in section 2.1 of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”). As there was no information or argument provided for PWD designation on alternative grounds, the panel considers that matter not to be at issue in this appeal.

### **Part D – Relevant Legislation**

EAPWDA, section 2  
EAPWDR, section 2(1)

Full text of the legislation is provided in the Schedule of Legislation after the reasons.

## Part E – Summary of Facts

The hearing took place by videoconference. The appellant attended with a parent as a support person.

### Evidence Before the Ministry at Reconsideration:

The appellant has reached 18 years of age. In support of her application, she submitted:

1. a medical report and an assessor report, both completed by doctor #1 and dated September 1, 2022;
2. a letter from doctor #1 dated October 11, 2022;
3. a report from a diagnostic laboratory regarding gene sequencing;
4. a disability tax credit certificate form from the Canada Revenue Agency (“CRA”) dated September 9, 2017, completed by the appellant’s parents and doctor #2;
5. a letter from CRA dated December 16, 2019, confirming that the appellant is eligible for a disability tax credit from 2004 onwards;
6. the appellant’s written statement dated November 3, 2022.

Relevant portions of the evidence are summarized below.

### *Medical Report:*

Doctor #1 states that the appellant has been their patient for 18 years and 6 months and has seen the appellant between 2 and 10 times in the past 12 months.

The doctor lists diagnoses of Ehlers Danlos Syndrome (“EDS”) (onset 2010) and congenital foot abnormality (onset 2004). The doctor says that these conditions affect the appellant’s mobility and stability of joints, and result in limited ability to do sport and physical activity. The doctor also identifies a vascular component, soft tissue bruising and swelling of the lower legs and feet. The appellant needs multiple surgeries “to support her feet and mobilization” and is using braces for joint support with mobilization.

The doctor states that the condition is chronic and lifelong, therefore will continue for two years or more.

Under “Functional Skills”, the doctor states that the appellant:

- can walk 2 to 4 blocks unaided on a flat surface
- can climb 5+ stairs unaided
- can lift 2 to 7 kilograms
- has no limitation for remaining seated
- has no difficulties with communication and not significant deficits with cognitive and emotional functioning.

Under *Daily Living Activities*, the doctor states that the appellant is not restricted in any of the daily living activities (“daily living activities”) listed on the form, except periodically for mobility inside and outside the home. The doctor explains that “when joints are impaired hyper mobility of joints affects her ability to mobilize and do activity.” In answer to the question about what assistance the appellant needs with daily living activities, the doctor writes “just needs braces for support.”

*Assessor Report:*

Doctor #1 identifies the appellant’s physical impairment as “limited joint stability due to genetic condition.” They state that the appellant lives with family, friends, or caregiver. Her ability to communicate is good.

Under *Mobility and Physical Ability*, the doctor indicates that the appellant is independent for climbing stairs and standing but needs periodic assistance from another person for walking indoors and outdoors, lifting, carrying, and holding. The doctor notes “worse when she has increased joint instability.”

While the doctor has not identified any mental impairment, they also completed the section of the assessor report for *Cognitive and Emotional Functioning*, and report no impact in those areas, except they note moderate impact on motor activity. The doctor has not provided any details about the impact on motor activity.

Under *Daily Living Activities*, the doctor notes that the appellant is independent in all aspects of daily living activities listed on the form, except carrying purchases home when shopping, where she needs periodic assistance from another person. The doctor comments that the appellant “will need support – unable to carry heavy objects.”

Under *Assistance Provided for Applicant*, the doctor reports that help required for daily living activities is provided by the appellant’s family. In answer to the question about what equipment or devices the appellant routinely uses to help compensate for her impairment, the doctor indicates that the appellant needs support braces and splints for mobilization.

*Diagnostic Laboratory Report:*

The report indicates the appellant was referred for testing due to an arterial aneurysm, with easy bruising, stretchy skin, and a history of bilateral club foot. The testing identified a causative genetic mutation for “EDS type IV...characterized by complication that include arterial and bowel rupture....”

*CRA forms and letter:*

The CRA form, in the section titled *Effects of Impairment*, states:

*The effects of your patient’s impairment must be those which, even with therapy and the use of appropriate devices and medication, cause your patient to be restricted all or*

*substantially all of the time (at least 90% of the time). Note: Working, housekeeping, managing a bank account, and social or recreational activities are not considered basic activities of daily living. Basic activities of daily living are limited to walking, speaking, hearing, dressing, feeding, eliminating bracket bowel or bladder functions and bracket, and mental functions necessary for everyday life.*

Doctor #2 confirms the diagnosis of EDS and explains that the condition causes multiple joint instability. They add that the appellant was born with “severe clubfeet which are extremely complex and unstable joints.” The condition limits the appellant’s ability to walk any distances outside her home. Doctor #2 also reports that the appellant will need multiple surgeries over her life and “a lot of physio.” They state that the impairment will last for a continuous period of at least 12 months and is not expected to improve.

CRA confirms that they have determined the appellant is eligible for the disability tax credit from 2004 onwards.

*Appellant’s statement, November 3, 2022:*

The appellant explains that Vascular EDS (“VEDS”) is a genetic disorder that affects the way the body is programmed to produce collagen. VEDS results in weak collagen, which is the protein that gives strength and elasticity to skin, blood vessels, veins, organs, muscles, and ligaments. The condition causes the appellant’s veins to burst, depending on what she is doing and whether she has been on her feet all day. When the veins burst, the appellant suffers bruising, and pain that lasts one or two days, depending on the size of the vein that has burst.

The appellant states that she is limited in how far she can walk. She estimates she can walk four blocks, only once a day, about 50% of her days, but she would have to sit down for a couple of minutes to rest en route. The other days, she cannot walk four blocks.

Where doctor #1 has checked “5 to 15 pounds” in answer to the question in the medical report about the appellant’s limitations in lifting, the appellant says her ability to lift is closer to 5 pounds than 15. She cannot carry heavy items because of joint instability, and sometimes because of veins in her fingers bursting. Her veins can burst when she pushes herself up off the floor to get up. She needs help opening jars.

The appellant describes the joint instability caused by VEDS. She has dislocated her shoulder three times, once when she was sleeping. Her activities are restricted because of the risk of dislocating a joint. She is encouraged to do exercises to build up muscle mass, which helps with joint instability. She lifts 5 pounds, doing slow repetitions.

She has had reconstructive surgery on both feet, because of fused bones in both feet due to VEDS. The appellant continues to have issues with her feet, and as a result she must elevate her feet between 15 and 30 minutes a day.

She wears leg braces every day. She has two types of braces, a shorter, supra-malleolar orthosis (“SMO”) for the daytime when she is at home, and an ankle foot orthosis (“AFO”) that she wears for sleeping and stretching, as advised by her orthopaedic doctor.

Additional Evidence:*Appellant's statement, undated:*

The appellant provided a further written statement with her Notice of Appeal. The statement is mostly argument, but the appellant adds:

- VEDS is a severe impairment to her life because it impedes her ability to do basic activities such as housework and lifting heavy items
- she “always needs some type of assistance” and that is why she lives with her parents; for example, she needs help lifting or opening items.

*Evidence at the Hearing:*

At the hearing, the appellant stated:

- it is hard to walk up stairs in her home because she must wear the brace, which immobilizes her foot, preventing it from bending as she walks;
- she is very limited in the housework she can do;
- she is in school, doing a lot of writing, which can make her veins burst;
- her condition is chronic and will last all her life;
- on the days when she cannot walk four blocks, she can walk one to two blocks, then she must rest and “let my body calm”;
- she does not wear the braces when she walks outside, only when she is inside;
- without braces, inside it is more difficult to walk, and she has more pain in her feet;
- she lives with her parents because she needs their assistance with daily living activities;
- she is not able to grip items because her joints are unsteady, and she is at risk of dislocating them;
- her veins burst about three or four times a week, and when that happens, she is even more restricted;
- it is usually the veins in her feet that burst, and then she is not able to do anything for a couple of days due to the pain;
  - when veins burst, she also uses ice, elevates her legs for fifteen to twenty minutes and applies a cream for pain relief;
- she cannot walk or stand for long because of pain, and spends most of her time sitting;
- she wears the SMO all day, and the AFO at night;
- she is not able to change bedding, vacuum or lift anything heavy, including, for example, a laundry basket.

The appellant produced the AFO and the SMO for the panel and the ministry to see. Both braces appeared to be made of hard material that would immobilize the whole foot and ankle, closing with Velcro straps, with the SMO ending above the ankle and the AFO extending higher up the leg.

Admissibility of Additional Evidence:

The ministry did not object to the additional oral evidence of the appellant, or the viewing of the braces, at the hearing.

The oral evidence of the appellant provides additional evidence about the appellant's physical impairment, level of function and daily activities. Seeing the braces gives the panel and the ministry additional evidence about the assistive devices used by the appellant. The panel finds that the additional evidence is reasonably necessary for the full and fair disclosure of all matters relating to the decision under appeal, and therefore it is admissible under Section 22(4) of the Employment and Assistance Act.

**Part F – Reasons for Panel Decision**

The issue on appeal is whether the ministry's reconsideration decision, in which the ministry found the appellant to be ineligible for PWD designation under the EAPWDA, was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances. The ministry found that the appellant met the requirements for age (over 18) and duration (impairment to continue at least two years) but was not satisfied that:

- the appellant has a severe mental or physical disability;
- the appellant's impairment, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform daily living activities 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 daily living activities.

Full text of the legislation is provided in the Schedule of Legislation after these reasons.

**Appellant's position:**

The appellant maintains that the ministry has failed to consider all the evidence about the extent of her disability and its effect on her day-to-day activities. She is frustrated because people do not understand VEDS, which is a chronic, lifelong condition that significantly affects her daily life. Her condition impairs her ability to walk. While doctor #1 says that she can walk 4 blocks, she can only walk 4 blocks about half the time, and she could not walk 4 blocks more than once in a day. She cannot lift anything heavy – while doctor #1 says she can lift between 5 and 15 pounds, she actually can only lift closer to 5 pounds. Due to joint immobility, she must wear braces all the time indoors, which makes it very difficult to walk, especially upstairs, with her foot kept flat and immobile by the brace. She also suffers from burst veins, which can happen very easily, with just an awkward movement, even in her sleep. When she has burst veins, she cannot do anything at all for a day or two, as she recovers. She describes her struggle opening jars. She says her ability to do housework is very limited. She lives with her parents because she needs their help with so many aspects of her daily life.

**Ministry Position:*****Severe mental or physical impairment:***

At the reconsideration, the ministry determined that the appellant did not have a severe physical impairment. The ministry acknowledged that the appellant had limitations in her mobility and physical abilities due to her medical conditions. However, the ministry maintained that the appellant was able to maintain independence in daily functioning. The ministry argued that the braces alone did not confirm a severe impairment of the appellant's physical functioning. Considering the appellant's level of independence in daily functioning, including being able to walk 4 blocks half the time and lift around 5 pounds, the ministry determined that the appellant did not have a severe physical impairment.

While noting that doctor #1 identified a moderate impact to motor activity, the ministry pointed out that the doctor did not link that impact to a mental health diagnosis or brain injury. The ministry found that there was not sufficient information provided to establish a severe mental impairment.

At the hearing, the ministry volunteered that, based on the appellant's additional evidence at the hearing, and seeing the braces that she must wear every day, the ministry might have made a different determination about the severity of the appellant's physical impairment. However, the restrictions the appellant describes are not reflected in the medical and assessor reports. The statement of doctor #1 in the assessor report ("Just needs braces for support") made it sound as if the braces would resolve the appellant's issues around joint instability. After seeing the braces, the ministry is now aware that they do not fix the appellant's joint instability to allow normal function. The ministry placed less weight on the opinion of doctor #2 because it was less recent than that of doctor #1, the CRA form having been completed in 2019.

*Daily living activities:*

The ministry points out that doctor #1 reports that the appellant is not restricted in most daily living activities, including personal self care, meal preparation, medication management, basic housework, daily shopping, transportation, finances, and social functioning. The ministry relies on the doctor's indication that the appellant is periodically restricted in mobility inside and outside the house when her joints are injured, and the appellant "just needs braces for support." The ministry also notes that, in the assessor report, doctor #1 confirms that the appellant is independent in all daily living activities except that she needs assistance bringing heavy purchases home from shopping. The ministry maintains that limitation is not an overall restriction in the ability to complete shopping activities. Therefore, the ministry argues that the appellant does not have a severe physical impairment that directly and significantly restricts her ability to perform daily living activities.

*Help with daily living activities:*

As it was not established that the appellant's ability to perform daily living activities is directly and significantly affected, the ministry maintains that it cannot be determined that the appellant needs significant help, or an assistive device, to perform those daily living activities.

Panel Decision:

To find a person eligible for PWD designation under the EAPWDA, the ministry must be satisfied of all the requirements in section 2 of the Act. In this case, the ministry was not satisfied:

1. that the appellant had a severe mental or physical impairment,
2. that, in the opinion of a prescribed professional, the impairment directly and significantly restricted the appellant's ability to perform daily living activities and
3. that, in the opinion of a prescribed professional, as a result of those restrictions, the appellant required help to perform those activities.



*Severe mental or physical impairment:*

The panel finds that VEDS represents a severe physical impairment for the appellant.

The panel notes that the term “severe mental or physical impairment” is not defined in the legislation, and that “the Tribunal should interpret the EAPDA with a benevolent purpose in mind” (*Hudson v. British Columbia (Employment and Assistance Appeal Tribunal), 2009 BCSC 1461, “Hudson”*). The panel finds that in light of the evidence of the two doctors and the additional evidence of the appellant, summarized above, the ministry was not reasonable in its determination that the appellant does not have a severe physical impairment. The panel also notes the comments of the ministry at the hearing, that the ministry might have reached a different conclusion about the severity of the impairment, based on the additional evidence that was presented at the hearing.

VEDS is a rare genetic condition that results in multiple joint instability and veins that can burst without warning, during simple everyday actions, such as walking, writing, or turning over in one’s sleep. Doctor #1 has confirmed that “the severity of [the appellant’s] impairment is significant and chronic” and lifelong. Doctor #2 states that the appellant’s congenital club feet have resulted in “extremely complex and unstable joints” that limit her ability to walk any distance outside the home. She needs to use braces night and day for support of unstable joints. The appellant describes being able to walk four blocks only about half the time, stopping to rest en route; on half of her days, she cannot even do that. She spends most of her time sitting and is often unable to do any activities due to pain from burst veins. The panel finds that, the ministry’s determination that the appellant does not have a severe physical impairment is not reasonably supported by the evidence.

Doctor #1 does not diagnose a mental impairment or brain injury, although they have identified a moderate impact on motor activity in the *Cognitive and Emotional Functioning* section of the assessor report. The appellant has not argued that she has a mental impairment. Therefore, the panel finds that the ministry was reasonable in its determination that the appellant does not have a severe mental impairment.

However, a severe mental or physical impairment is only one of the criteria in the EAPWDA. A serious medical condition can represent a severe impairment, without directly and significantly restricting the person’s ability to perform the daily living activities specified in the EAPWDR, or without the person needing help to perform those activities.

*Ability to perform daily living activities:*

Under section 2(2)(b)(i) of the EAPWDR, if the ministry is satisfied that a person has a severe mental or physical impairment, the ministry must also be satisfied that, in the opinion of a prescribed professional, the appellant’s ability to perform daily living activities is directly and significantly restricted by the severe impairment. Not all daily living activities must be directly and significantly restricted. However, in *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal), 2009 BCSC 1461*, the court stated that “there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two daily

living activities.”

Under the EAPWDR section 2(1)(b), for a person who has a severe physical or mental impairment, “daily living activities” means the following activities:

- prepare own meals;
- manage personal finances;
- shop for personal needs;
- use public or personal transportation facilities;
- perform housework to maintain the persons place of residence in acceptable sanitary conditions;
- move about indoors and outdoors;
- perform personal hygiene and self-care;
- manage personal medication.

In the medical and assessor reports, doctor #1 has identified that the appellant is restricted periodically in mobility inside and outside the home. The doctor indicates that the appellant can walk two to four blocks and climb five steps, unaided. In her statement and her evidence at the hearing, the appellant has clarified that she can walk four blocks only half of the time, and on those days, she can only walk those four blocks once. She also showed the panel the braces she must wear indoors, and explained her difficulty walking upstairs wearing the braces, which prevent her from bending her foot and ankle.

The comment from doctor #1 that the appellant “just needs braces for support” suggests that the appellant’s impaired ability to walk is corrected by the braces. However, after seeing the braces, and hearing the appellant’s description of her ability to walk when wearing them, the panel finds that the braces would appear to protect the appellant from further injury and joint dislocation but would not allow her to walk without impairment. In fact, as she describes, it is more difficult for her to walk up stairs when wearing the braces.

Moving about indoors and outdoors is one daily living activities under the legislation. The panel finds that the appellant is directly and significantly restricted in moving about indoors and outdoors as a result of the severe physical impairment.

However, the panel finds that doctor #1 has not identified any other daily living activities that are directly and significantly restricted. In the section of the assessor report titled *Daily Living Activities*, the doctor notes that the appellant is independent in all other daily living activities as listed on the form, except carrying heavy purchases home from shopping. (The panel notes that the wording and categories listed on the form do not match exactly the daily living activities listed in section 2(1)(b) of the EAPWDR but break down similar activities into smaller components.)

The doctor notes that the appellant needs periodic assistance from another person for lifting and carrying, “worse when she has joint instability”. However, the doctor has not connected that impairment with any of the daily living activities, except the need for help carrying heavy items when shopping. The appellant has described the way joint instability, including the risk of

dislocating joints and causing burst veins, limits her in performing basic housework and kitchen activities. For example, she is not able to make a bed, vacuum, open jars, or carry a laundry basket to do her laundry. She stated that she lives with her parents because she needs their help with these activities.

In the CRA form, doctor #2 has confirmed the appellant's impairment, which they have stated restricts her basic activities of daily living all or substantially all the time. However, the definition of "basic activities of daily living" in the CRA form is different from the definition of "daily living activities" in the EAPWDR. Doctor #2 identifies impaired ability to walk outside the home but does not identify impairment in another activity of daily living that would meet the definition under the EAPWDR. As doctor #1 has confirmed in his letter of October 11, 2022, that "the severity of the appellant's impairment is significant and chronic" and her condition is lifelong, the panel would not place less weight on the 2019 opinion of doctor #2, as there is no evidence, or even a suggestion, that the appellant's condition has improved since 2019.

The appellant's evidence, and the doctor's note about the appellant's need for assistance from others for lifting and carrying, suggest that her ability to perform housework, and possibly other daily living activities, may be directly and significantly restricted by her physical impairment. Her evidence also suggests that there may be a significant number of days when she is not able to perform any daily living activities due to pain from joint instability or burst veins. However, under section 2(2)(b), the ministry must be satisfied that, in the opinion of a prescribed professional the appellant's ability is directly and significantly restricted, either continuously or periodically for extended periods of time. Where doctor #1 has stated in the assessor report that the appellant is independent in all aspects of daily living activities other than mobility inside and outside the home, and one aspect of shopping, the ministry was reasonable in determining that it was not satisfied that the criteria in section 2(2)(b) has been met.

*Help with daily living activities:*

Under section 2(2)(b)(ii), the ministry must have confirmation of direct and significant restrictions to daily living activities from the prescribed professional, as a precondition for determining that a person needs help to perform those daily living activities. The panel has found that the ministry was reasonable in determining that the evidence did not establish that, in the opinion of a prescribed professional, the appellant was not restricted in her ability to perform two or more daily living activities, because doctor #1 only confirmed direct and significant restrictions in one daily living activity. Therefore, the panel finds that the ministry's decision that it could not determine that significant help was required to perform daily living activities was reasonably supported by the evidence.

*Comments:*

The panel notes the appellant's evidence about restrictions in her ability to perform daily living activities, her need for braces to move about indoors, and the significant help her parents provide in her daily living activities. The panel would encourage the appellant to reapply for PWD designation provided that the appellant is able to obtain evidence from a medical practitioner or nurse practitioner with an opinion confirming the restrictions and significant help the appellant outlined.

Conclusion:

The panel confirms the ministry's reconsideration decision that found the appellant ineligible for PWD designation.

While the panel finds that the ministry's determination that the appellant does not have a severe physical impairment is not reasonably supported by the evidence, the panel finds that the ministry was reasonable in determining that the appellant did not meet the remaining criteria. The panel finds that the ministry was reasonable in determining that the appellant did not meet the requirements that, in the opinion of a prescribed professional, the impairment directly and significantly restricts the appellant's ability to perform daily living activities and that, as a result, the appellant requires an assistive device, the significant help or support from another person, or an assistive animal.

The appellant is not successful in the appeal.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Act

**Persons with disabilities**

Section 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**

Section 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.

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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  
Susan Ferguson

Signature of Chair

Date (Year/Month/Day)  
2022/12/20

Print Name  
Mary Chell

Signature of Member

Date (Year/Month/Day)  
2022/12/21

Print Name  
Cherri Fitzsimmons

Signature of Member

Date (Year/Month/Day)  
2022/12/20