

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated November 28, 2022, in which the ministry found the appellant was not eligible for designation as a Person with Disabilities (“PWD”) under section 2 of the Employment and Assistance for Persons with Disabilities Act (“EAPWDA”). The ministry found the appellant met the age and duration requirements but 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 was not one of the prescribed classes of persons who may be eligible for PWD designation on the alternative grounds set out in section 2.1 of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”). As there was no information or argument provided for PWD designation on alternative grounds, the panel considers that matter not to be at issue in this appeal.

Part D - Relevant Legislation

Employment and Assistance for Persons with Disabilities Act, section 2
Employment and Assistance for Persons with Disabilities Regulation, section 2

The relevant legislation is included in Appendix A.

Part E – Summary of Facts

The evidence before the ministry at reconsideration included:

- The appellant's PWD Application comprised of a Medical Report ("MR") and Assessor Report ("AR") completed by the appellant's physician who is a specialist in Family Medicine ("the doctor") and a second AR completed by the appellant's Social Worker ("the SW"). The appellant did not submit any information in the self report ("SR") portion of the PWD Application.
- A Request for Reconsideration ("RFR") form signed by the appellant and dated September 26, 2022. The appellant wrote: "Paperwork didn't go through from doctor. Another worker was assigned to it. Be talking to her October 27, 2022." The second AR was submitted along with the RFR.
- The ministry's Health Assistance Branch PWD Denial Decision Summary dated September 6, 2022, which indicates the appellant has met the Age and Duration criteria but does not meet the Severity of Impairment, Daily Living Activities ("DLA") or Need for Help criteria.

PWD Application

The PWD application was signed throughout 2022 as follows: by the appellant's doctor on February 5, 2022, for the MR and AR; by the appellant on May 5, 2022, for the SR; and an additional AR by the appellant's SW on November 10, 2022. The SW indicates that they have known the appellant for one month and has seen her once. The doctor indicates that they have known the appellant for one and a half years and has seen her eleven or more times.

Diagnosis

- History of cardiac arrest with implanted defibrillator with date of onset December 2019
- Long QT syndrome with date of onset December 2019
- Alcohol dependence with withdrawal syndrome with date of onset December 2021

Physical Impairment

The appellant did not provide any information in the SR.

In the MR, Part B Health History, the doctor wrote:

- The appellant had an out of hospital cardiac arrest in 2019 with ICD subsequently implanted.

- The appellant has been dealing with ongoing alcohol addiction which she has been seen in hospital for withdrawal symptoms, most recently December 2021 to January 2022 for which she required an ICU stay.
- The above conditions are severe and require ongoing treatment and counselling for the alcohol addictions as when she uses alcohol this worsens her cardiac condition leading to unstable heart arrhythmia.

In the MR, Part C Degree and Course of Impairment, the doctor answered yes to the question “Is the impairment likely to continue for two years or more?” and commented:

- ICD – indefinite
- Medications and treatment for alcohol dependence for minimum two to twelve months, however unable to determine as many people require longer and often have relapses during recovery.

In the MR, Part D Functional Skills, the doctor indicated:

- Able to walk four+ blocks unaided
- Able to climb 5+ stairs unaided
- Unknown if any limitations in lifting
- No limitation for how long she can remain seated

In the MR, Part F, the doctor provided additional comments:

- The cardiac disorder will be life long, but likely more manageable once patient is able to control alcohol use.
- Alcohol dependence disorder is ongoing, and patient has been set up with support as an outpatient, but when excessive drinking, is often having difficulty functioning in her daily life.

In the AR, Part B Mental or Physical Impairment, about how the impairment directly restricts her ability to manage, the doctor indicates that the appellant is independent in all areas of mobility and physical ability.

In the second AR, Part C Mental or Physical Impairment, the SW indicates, about how the impairment directly restricts her ability to manage, that the appellant requires periodic assistance from another person in the areas of:

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

The SW added as explanation, “motivation is very low, isolation, fatigue, weakness”.

Mental Impairment

The appellant did not provide any information in the SR.

In the MR, Part B Health History, the doctor wrote the appellant requires counselling as an outpatient and possible residential treatment in the future.

In the MR, Part D Functional Skills, the doctor answered "Yes" to the question "Are there any significant deficits with cognitive and emotional function?" and indicated emotional disturbance (e.g., depression, anxiety) and commented "alcohol addiction". The doctor answered "No" to the question, "Are there difficulties with communication?"

In the AR, Part B Mental or Physical Impairment, the doctor indicates the appellant has a major impact in nine areas of cognitive and emotional functioning and commented, "Moderate-severe impact is episodic due to the alcohol use and are filled out based on her recent alcohol use requiring hospital admission."

In the AR, Part C Daily Living Activities, the doctor indicates the appellant is independent in all areas of: Personal Care; Basic Housekeeping; Shopping (except for making appropriate choices which she requires periodic assistance with); paying rent and bills; medications; and transportation. As explanation, the doctor wrote "when not using alcohol."

In the second AR, Part C Mental or Physical Impairment, the SW indicated that the appellant's level of ability to communicate is "poor" with speaking, reading, writing, and hearing and commented, "The appellant isolates as a result of her depression and blocks out communication. She has difficulty concentrating which limits her ability to communicate."

In response to the impacts on the appellant's daily cognitive and emotional functioning, the SW noted:

- No impact: Psychotic symptom; other neuropsychological problems; or other emotional or mental problems
- Minimal impact: bodily functions; motor activity; or language
- Moderate impact: consciousness; emotion; impulse control; insight/judgement; or memory
- Major impact: attention/concentration; executive; or motivation

Additional comments provided by the SW:

- Depression affects the appellant's ability to think, it impairs her attention and memory, information processing and decision-making skills.
- She is less able to adapt her goals to changing situations.

- Her executive functioning is poor, she is unable to take all the steps necessary to complete a task.

Restrictions in the Ability to perform DLA

The appellant did not provide any information in the SR.

In the MR, Part B Health History, the doctor answered “Yes” to the question “Has the applicant been prescribed any medications and/or treatments that interfere with the ability to perform DLA?” and commented they are for sedation and dizziness. The doctor indicated the appellant has a cardiac ICD implanted as an aid for her impairment.

In the AR, Part C Daily Living Activities, the doctor indicated that the appellant is independent in all areas of social functioning and commented “poor judgement and choices when using alcohol.” The doctor also added the appellant has good functioning with immediate and extended social networks and commented “would benefit from supportive addictions counselling and possible inpatient/residential treatment for addictions.”

In the second AR, Part C Mental or Physical Impairment, the SW wrote “depression” in response to what impairments impact the appellant’s ability to manage DLA.

Regarding what support or supervision is required, as related to the restrictions, the SW indicated the appellant is:

- Independent in making appropriate social decisions.
- Periodic Support/Supervision is required with developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.

In the second AR, Part D Daily Living Activities, the SW noted the appellant:

- Is independent with: all areas of Personal Care (dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in and out of bed or on/off chair); reading prices and labels; paying for purchases; taking medication and storing as directed;
- Requires periodic assistance from others with: laundry; basic housekeeping; going to/from stores; making appropriate choices; carrying purchases home; meal planning; food preparation; cooking; safe storage of food; banking; budgeting; pay rent and bills; using public transit or using transit schedules; filling/refilling prescriptions;
- Has marginal functioning with immediate and extended social networks.

The SW commented, “As a result of the appellant’s depression she is quite isolated and does not engage in the community very much.”

Need For Help

The appellant did not provide any information in the SR.

In the AR, Part D Need for Help, the doctor indicated that the appellant requires assistance from Addiction Services.

In the second AR, Part D Daily Living Activities the SW wrote, "The appellant needs help from family members for shopping, choosing food items and cooking."

Additional Information Submitted after Reconsideration

On the Notice of Appeal form (NOA) dated December 2, 2022, the appellant wrote, "Was told over the phone, have not received document."

The appellant did not attend the hearing. Upon confirming that the appellant was notified of the date and time, the panel considered the appeal in the appellant's absence as it is authorized to do under section 86(b) of the Employment and Assistance Regulation (EAR). The panel will reference the appeal record for the appellant's position.

At the hearing, the ministry reviewed the RD and commented that although the appellant has met the age and duration criteria, she has not met the other three requirements to determine PWD eligibility.

They do not consider her medical condition to be severe because the doctor indicates the appellant is independent in all areas of personal care, housekeeping, shopping, and transportation, except when she is using alcohol. However, neither the doctor nor the SW have indicated the frequency and duration of how often the appellant uses alcohol.

The ministry stated that the SW indicates the appellant requires periodic assistance with DLA, however, the nature and extent is not described so it is difficult to determine if the need for support is ongoing. The doctor indicates the appellant is independent in all DLA, except when using alcohol, and does not provide clarification of the frequency and duration. The ministry notes the inconsistency between the SW and the doctor's reports. The ministry considers that the SW has seen the appellant only once and the doctor 11 times over the past year and a half, so they put more weight to the doctor's knowledge over the SW.

The ministry stated that because they could not determine a severe condition exists, or that DLA are restricted, they could not determine that a need for help exists pursuant to legislation.

Admissibility of Additional Information

No additional information was provided by either the appellant or the ministry.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant was ineligible for designation as a PWD. The ministry determined the appellant did not meet all the required criteria for PWD designation set out in the Employment and Assistance for Persons with Disabilities Act, Section 2. Specifically, the ministry determined the information provided did not establish that:

- the appellant has a severe impairment;
- the appellant's 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 these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

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

The panel notes on the RD, the Adjudicator answered “Yes” to the question, “Does the information from the application establish that the applicant has a severe physical and/or mental impairment?”. However, the written explanation in the RD indicates that they are not satisfied this requirement has been met. The panel will make a determination on the severity of the appellant’s 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 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 did not provide any information regarding her physical impairment and relied solely on the SW and doctor completing the PWD application. The panel will consider their input in the analysis below.

The ministry’s position at reconsideration was that the information provided in the PWD application demonstrates that the appellant may experience limitations to physical functioning due to alcohol use. However, there was no indication of how often the appellant requires periodic assistance to determine if it represents a significant restriction to her overall level of physical functioning. The assessments provided do not establish that the appellant has a severe physical impairment.

Panel Analysis

The appellant’s doctor has confirmed the appellant uses an ICD, and it is placed under stress when she uses alcohol. However, neither the doctor nor the SW confirm that it significantly affects her daily physical functioning. Both the SW and the doctor indicate that the appellant’s alcoholism is what affects her DLA, not the ICD. Therefore, the panel finds that the ministry was reasonable to decide that the information does not establish a severe physical impairment.

Mental Impairment

Positions of the Parties

The appellant did not provide any information regarding her mental impairment and relied on the SW and doctor completing the PWD application. The panel will consider their input in the analysis below.

The ministry’s position at reconsideration was that the information provided by the doctor

and SW does not establish a severe mental impairment. The ministry found the information provided by the medical practitioner demonstrates the appellant experiences episodic impacts with her cognitive and emotional functioning when using alcohol. However, the frequency and duration of these periods are not described to determine if they represent a significant restriction to her overall level of functioning.

Panel Analysis

Section 2(2) of the legislation requires evidence of a severe impairment. The doctor has diagnosed the appellant has a substance related disorder, alcoholism, which is considered a "Mental Disorder", and that the appellant has significant deficits with emotional disturbance, when using alcohol. Although a diagnosis of alcoholism can be considered a serious medical condition, it also must cause a restriction in the appellant's ability to function independently, effectively, appropriately, or for a reasonable duration.

The SW has indicated that there are major impacts with attention/concentration, executive, motivation and moderate impacts with consciousness, emotion, impulse control, insight, and judgement, when using alcohol, which is also supported by the doctor in the MR. The doctor indicates the appellant is independent in all areas of Personal Care, Basic Housekeeping, Paying Bills, Using Medications and Transportation, except when using alcohol. However, neither the doctor, the SW, nor the appellant provide any detailed information as to the frequency and duration of the alcohol episodes, or how frequently the appellant is emotionally disturbed, to determine the severity of mental impairment .

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

Direct and Significant Restrictions in the ability to perform DLA

Positions of the Parties

The appellant did not provide any information regarding her mental impairment and relied on the SW and doctor completing the PWD application. The panel will consider their input in the analysis below.

The ministry's position is that it is not satisfied that the appellant has a severe impairment that directly and significantly restricts the appellant's ability to perform DLA. The ministry

states that it relies on the medical opinion and expertise from the medical practitioner and other prescribed professionals to determine if an impairment directly and significantly restricts DLA.

In its reconsideration decision, the ministry acknowledges that the appellant has certain limitations when using alcohol, however the frequency and duration of these periods are not described by the doctor or the SW. The ministry considers it is reasonable, when the appellant is using alcohol, to expect her to encounter some restrictions in her ability to perform DLA and require assistance as a result. However, the ministry finds there is not enough evidence to confirm that the impairment significantly restricts her ability to perform 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.

The appellant does not provide any information as to how she is restricted with DLA. The doctor indicates the appellant is independent in managing all areas of DLA, except when using alcohol. The SW indicates that she is independent with her personal care but requires periodic assistance from another person with other DLA, when using alcohol. No information was provided to determine the frequency and duration of how often the appellant uses alcohol. Therefore, the panel finds the ministry was reasonable to determine the appellant's impairment does not directly and significantly restrict her ability to perform DLA either continuously, or periodically for extended periods as required

under subsection 2(2)(b)(i) of the EAPWDA.

Help with DLA

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of being directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods, a person must also require help to perform those activities. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. 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 a DLA.

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.

APPENDIX A

RELEVANT LEGISLATION

EAPWDA

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.

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.

Part 1.1 — Persons with Disabilities

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).

APPEAL NUMBER 2022-0297

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

Janet Ward

Signature of Chair

Date (Year/Month/Day)

2022 December 20

Print Name

Perihan Sucu

Signature of Member

Date (Year/Month/Day)

2022 December 20

Print Name

Mimi Chang

Signature of
Member

Date (Year/Month/Day)

2022/12/20