

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) Reconsideration Decision dated December 8, 2022 which found that the appellant did not meet all of the statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a Person With Disabilities (PWD). The ministry found that the appellant met the age requirement, has a severe mental impairment, her daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and as a result of these restrictions, she requires significant help or supervision of another person to perform DLA.

However, the ministry was not satisfied that the evidence established that:

- A prescribed professional confirmed that the appellant’s impairment is likely to continue for at least two years.

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

Part D – Relevant Legislation

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

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

Part E – Summary of Facts

Evidence at the time of Reconsideration

The appellant's PWD application comprised of:

- A Medical Report (MR) [dated August , 2022] and an Assessor Report (AR) [dated August 9, 2022], completed by the appellant's physician (the GP), who had known the appellant for 5 years and had seen the appellant 2-10 times in the past 12 months of the PWD application. The MR and AR were completed by an office interview with the appellant and file/chart information ("all information on current medical file").
- The PWD application also included the appellant's Self-Report (SR) dated July 18, 2022. The provided great detail on her mental impairment, how it manifests day-to-day, how it impacts her day-to-day life, how it impacts her ability to perform her DLA and the assistance she requires from others to complete her DLA.

Request for Reconsideration (RFR) dated November 9, 2022.

Letter from the GP dated December 8, 2022 (the letter), in which the GP reiterates the appellant's mental impairment, how it manifests day-to-day, how it impacts her ability to perform her DLA and the assistance she requires with DLA as a result of her mental impairment. Additionally, the GP stated, "I do feel that her condition will improve in the next two years if she is able to gain access to and be compliant with appropriate treatment and psychotherapy".

Diagnoses

In the MR, the GP diagnosed the appellant with Borderline Personality Traits (BPT), Anxiety, Depression and Panic Disorder (onset: 2017).

Health History

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

- Longstanding history of anxiety and depression with history of alcohol overuse. Also, longstanding learning disability. Strong borderline personality disorder traits but no formal diagnosis (awaiting psychiatry consult).
- Generally compliant with meds. Periods of good functioning in society, but mood very labile and behaviour can be impulsive. This affects ability to tolerate full-time work and hold down a steady job. Recent decline in ability to attend work regularly due to irritability and outbursts that she feels she cannot control.
- Currently adjusting medications in hopes to find a good regime for her.
- As above awaiting psychiatry consult and recommendations.
- Patient has history of suicidality and admission to hospital with acute intoxication (alcohol) and suicidal ideation – 2020.
- The appellant has not been prescribed medication that interferes with the ability to perform DLA.
- The appellant does not require aids or prostheses.

Degree and Course of Impairment

In the MR, the GP indicated the following regarding the appellant's medical condition: "TBD: awaiting psychiatry consult and potential dialectical behavioural therapy to help with day-to-day symptoms and coping".

Physical Impairment

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

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

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

- The appellant requires periodic assistance with walking outdoors with the comment “reports agoraphobia symptoms and need for support person”.
- Walking indoors, climbing stairs, standing, lifting and carrying/holding are performed independently.

Mental Impairment

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

- There are no difficulties with communication.
- There are significant deficits with cognitive and emotional function in the areas of language, memory, psychotic symptoms, emotional disturbance, motivation, impulse control, and attention/sustained concentration, with the comment “longstanding learning disorder and anxiety and panic with intrusive thoughts. Poor concentration due to this. Difficulty with processing of newly learned information especially math and reading.

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

- The section regarding reading, hearing, speaking and reading is left blank.
- Under cognitive and emotional function, there are major impacts to the areas of emotion, impulse control, attention/concentration, motivation, and other emotional or mental problems.

Daily Living Activities

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

- “Patient generally anhedonia and amotivation. Reports severe anxiety and feels that part of her inability to maintain work is that she can be very aggressive and impulsive and inappropriately snap at people. Likely a portion of this is behavioural. Poor concentration and long-term goal orientation at present. Note: psychotic symptoms not true hallucination or delusions but more likely severe anxiety causing intrusive thoughts”.
- All listed tasks under each listed category of DLA are performed independently, except the following: ‘going to from stores’ (“requires ‘buddy’ due to reported symptoms of agoraphobia”), ‘budgeting’, ‘filling/refilling prescription’ and ‘taking as directed’ (“needs cueing and reminding to take meds [medication]”), and ‘using public transit’ and ‘using transit schedules and arranging transportation’ (“social anxiety, agoraphobia type symptoms - requires support person with her”).
- With social functioning, the GP reports that assistance is not required but the appellant struggles in all listed task of social functioning.
- She has marginal functioning with immediate social networks and very disrupted functioning with extended social networks.

Help

In the PWD application, GP indicated the following about the appellant:

- She lives with family, friends or caregivers.
- Assistance is provided by her family and friends.
- Assistance is not provided through assistive devices or assistance animals, with the comment “relies on home pet for support but not a formal assistance animal”.

Additional Comments

In the MR, the GP stated the following about the appellant

- “Variable condition – at times thrives – at times struggles”.

- “Goal is to find a good treatment regimen to help manage anxiety/depression/impulsivity and maximize functioning with DBT” [Dialectical Behaviour Therapy].
- “Treatments take time but I do not expect disability to be permanently disruptive to patient’s life”.

In the AR, the GP stated the following about the appellant”

- “Anxiety and general functioning has recently worsened and patient feels increasingly unable to cope with life’s demands”.
- “I believe she may benefit from support from PWD on a relatively short-term basis (e.g. 1 year) to help her get appropriate treatment and begin effective therapy without the stress of the workplace as well. My hope for [the appellant] is that she is not a long-term designation”.

Evidence on Appeal

Notice of Appeal (NOA), signed and dated December 14, 2022. In it the appellant stated “My doctor does not support me; this is ongoing since 2007. It will continue far past 2 years from today”.

The panel finds that the NOA consists of the appellant’s argument.

Evidence Prior to the Hearing

Prior to the hearing the appellant submitted the following documents:

- A safety plan developed in conjunction with a regional hospital dated August 24, 2020. This plan is typically used as a suicide prevention aid for suicidal patients.
- 2-page letter from the appellant dated January 8, 2023. This letter details the appellant’s condition, how it impacts her, her daily struggles and her need for help. More specifically, the appellant stated that her work with the GP who completed the PWD application began in 2017. Her work with this GP resulted in multiple medication changes and side effects or no effects. The GP has yet to find a good regime to help stabilize the appellant’s moods and behaviour. On January 3, 2023, the appellant saw another doctor (Dr. A) who stated that the appellant has a diagnosis of a strong Borderline Personality Disorder (BPD) as well as anxiety, depression and panic disorder. Dr. A disagreed with the dosage of medication given to the appellant by the GP. The appellant also stated that she has been struggles with her mental health challenges for over 15 years.

Admissibility of Additional Information

A panel may consider evidence that is not part of the record which the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The panel found that the documents submitted prior to the hearing provided additional detail or disclosed information that was reasonably required for a full and fair disclosure of all matters related to the decision under appeal.. Accordingly, the panel has admitted this new information under s. 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, which found that the appellant is not eligible for designation as a PWD, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

The relevant legislation can be found in Appendix A.

Panel Decision

The ministry found that the appellant met 4 of the 5 legislative criteria required for PWD designation. That is, the appellant is at least 18 years of age, she has either a severe physical or mental impairment (in this case the ministry found that the appellant has a severe mental 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 those restrictions, the appellant requires the significant help or supervision of another person. Therefore, the panel's decision will focus on whether the ministry reasonably determined that a prescribed professional did not confirm that the appellant's mental impairment is likely to continue for 2 or more years.

Duration

Section 2(2)(a) of the EAPWD Act indicates that the ministry relies on the opinion of a medical or nurse practitioner to confirm that an impairment is likely to continue for at least two years.

The appellant argued that she has struggled with mental illness since 2007 and it will continue for 2 or more years.

The ministry argued that the duration has not been confirmed by a medical practitioner or nurse practitioner as required by the legislation.

In the reconsideration decision the ministry noted that the GP indicated "TBD: awaiting psychiatry consult and potential dialectical behavioural therapy to help with day-to-day symptoms and coping".

The panel notes that the ministry did not provide an analysis of all the information provided by the GP. That is, the ministry did not include in its decision a discussion about the narrative provided by the GP throughout the PWD application or the December 8, 2022 letter from the GP. In its reconsideration decision it stated that the ministry considered the letter in conjunction with the assessments provided by the medical practitioner. Without such analysis the panel is left to conclusion that the ministry did not consider the information provided by the appellant (and her GP) in its entirety.

The panel notes the additional statements provided by the GP in the PWD application (italics added):

- "Currently adjusting medications in *hopes* to find a good regime for her".
- "*Goal* is to find a good treatment regimen to help manage anxiety/depression/impulsivity and maximize functioning with DBT" [Dialectical Behaviour Therapy].
- "Treatments take time but I do not expect disability to be permanently disruptive to patient's life".
- "Variable condition – at times thrives – at times struggles".
- "*Anxiety and general functioning has recently worsened and patient feels increasingly unable to cope with life's demands*".

- “I believe she *may* benefit from support from PWD on a relatively short-term basis (e.g., 1 year) to help her get appropriate treatment and begin effective therapy without the stress of the workplace as well. My *hope* for [the appellant] is that she is not a long-term designation”.

In the letter, the GP, in part, stated that following:

- “I do feel that her condition will improve in the next two years *if* she is able to gain access to and be compliant with appropriate treatment and psychotherapy”.

The panel notes that in her January 8, 2023 letter, the appellant stated that “Previously working with [the GP] has only resulted in multiple medication changes and side effects or no effect since 2017. Still haven’t found a good regimen to help stabilize my moods and behaviour”.

The panel finds that the evidence indicates the following:

- The appellant has been a patient of the GP who completed the PWD application since 2017.
- The appellant has not seen a marked improvement in her mental condition in the time that she has been a patient of the GP.
- The treatment goal is a combination of medication and DBT.
- The GP’s goal and hope is that the above combination will result in stabilization of functioning and hopes that with such treatment the appellant will not need long-term supports.

The panel considers the GP’s narrative that the hope is that DBT and medication will work in time, and if they do, the appellant will not need supports. Given this, the panel concludes that if the combination of medication and DBT does not work, the appellant will continue to struggle in her daily life due to her mental impairment. The evidence demonstrates that the appellant has been living with her condition for at least since 2017 without marked improvement despite having been on various medications. In at least a five-year period, the GP has failed to secure DBT for the appellant and the GP’s treatment plan is contingent on treatment that has not occurred. Though the hope is that treatments and cures will one day be available for whatever ailment exist, one cannot live on hope alone. The panel finds that the totality of the evidence indicates that GP’s conclusion that the appellant’s condition is temporary is based only on hope and the evidence indicates that this has been a longstanding issue. Furthermore, since the ministry did not provide a thorough analysis of the all the evidence, the panel finds that the ministry was not reasonable in its determination on duration.

As a result, the panel finds that the ministry was not reasonable in its determination that a medical practitioner or nurse practitioner did not confirm that the appellant’s impairment is likely to last 2 or more years as is required by Section 2(2)(a) of the EPWDA.

Conclusion

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

Appendix A

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

Persons with disabilities

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

purposes of this Act if the minister is satisfied that the person is in a prescribed class of persons or that the person

has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

The EAPWDR provides as follows:

Definitions for Act

2 (1) For the purposes of the Act and this regulation, "**daily living activities**" ,

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following

activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self care;
- (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
 - (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.

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

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

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

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

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

Alternative grounds for designation under section 2 of Act

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

(a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;

(b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;

(c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act*;

(d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act* to assist that family in caring for the person;

(e) a person who is considered to be disabled under section 42 (2) of the *Canada Pension Plan*

Appeal Number 2022-0311

Part G – Order

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

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

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

Legislative Authority for the Decision:

Employment and Assistance Act

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

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

Part H – Signatures

Print Name
Neena Keram

Signature of Chair

Date: 2023/01/23

Print Name
Kulwant Bal

Signature of Member

Date: 2023/01/23

Print Name
Warren Fox

Signature of Member

Date: 2023/01/23