Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated July 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 that the appellant met the age requirement and the requirement for the impairment to continue for at least 2 years but was not satisfied that:

- the appellant has a severe mental or physical impairment,
- the 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 by the appellant for PWD designation on alternative grounds, the panel considers that matter not to be at issue in this appeal.

Appeal Number 2022-0183

Part D – Relevant Legislation

The ministry based the reconsideration decision on the following legislation:

Employment and Assistance for Persons with Disabilities Act - EAPWDA - section 2

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - section 2

The full text is available in the Schedule after the decision.

Part E – Summary of Facts

The evidence and documentation before the minister at the reconsideration consisted of:

1. Information from the ministry's record of the decision indicating that the PWD application was submitted on April 29, 2022, and denied on June 7, 2022, with *Decision denial summary* explaining the criteria that were not met. On July 12, 2022, the appellant submitted a *Request for Reconsideration* ("RFR"). On July 28, 2022, the ministry completed the review of the RFR and found that the eligibility requirements for PWD designation were still not met.

2. The PWD application comprised of:

- the *Applicant Information* (self-report - "SR") with a hand-written submission signed by the appellant on February 15, 2022. The appellant also included a typed submission dated January 24, 2022,
- a *Medical Report* ("MR") dated April 21, 2022, signed by the appellant's doctor, a General Practitioner ("Dr. A") who has known the appellant for 9 years and has seen her 2-10 times in the past 12 months,
- an *Assessor Report* ("AR") dated April 22, 2022, also completed by Dr. A who indicates they based the assessment on an office interview with the appellant, file/chart information, and information from the appellant's advocate.

Summary of relevant evidence from the application

Diagnoses

In the MR, the appellant is diagnosed with depression and anxiety, date of onset "more than 20 years"; diabetes, date of onset "December 2021;" and arrythmias ("PVCs"), date of onset "more than 20 years ago." In Section B-*Health History*, Dr. A indicates that the appellant takes medication for "frequent PVCs", but the medications do not interfere with her ability to manage DLA. Section F-*Additional comments* was left blank.

Additional information from SR

The appellant expands on the diagnoses, stating that her disability includes "a heart condition, fatigue, back pain, anxiety/depression, arthritis, diabetes, and irregular sleep. The appellant reports "premature ventricular contractions ("PVCs") for approximately 15 years for which she was prescribed medication in 2008 or 2009. The appellant says that she also takes medication for high blood pressure and high cholesterol.

The appellant notes that she is a person of short stature ("the height of an 8 or 9 year old child"). She describes chronic back pain "lower left/middle for years" for which she takes Tylenol. The appellant was told that the pain could be from a sacroiliac joint injury along with arthritis. The appellant says that degenerative disc compression as well as arthritis was seen on an X-ray of her back in 2021.

The appellant says that Type 2 diabetes contributes to her fatigue, and she experiences unexpected urination or incontinence for which she will start wearing pads. The appellant says she has problems with her eyesight (nearsightedness and "floaters") for which she is seeing an eye specialist.

The appellant notes that her conditions are likely genetic, "heart disease, high blood pressure, high cholesterol, diabetes, arthritis, and short stature." The appellant says that she takes her medications as prescribed including daily doses of medication for anxiety/depression, diabetes, "heart/PVCs", and back/knee/finger pain.

Functional skills

<u>Self-report</u>
The appellant describes being unable to sleep, "most days" she is "tired, fatigued, and feeling unwell." The appellant says that lack of sleeps limits her ability to function physically and mentally.

The appellant reports that her short stature "directly affects my mobility and performing ordinary tasks." The appellant says that due to her chronic back pain "I try not to lift and strain my back." The appellant says she does what she can on "good days", but this can mean more back pain for days afterward.

The appellant says that her fingers are often stiff with arthritis, and sometimes her right knee aches badly, further restricting her function. The appellant says that she cannot read small print without using a magnifier.

The appellant says that her heart bothers her when she exerts herself; "I experience shortness of breath and everything takes me longer to do." The appellant reports that her residence does not have stairs. She puts her dishes on the counter for daily use so that she does not have to climb to the cupboard.

The appellant reports being "unable to reach things that the average person does" including debit machines, counters at banks or the ministry office, or a chair or bed at a hospital or doctor's office. The appellant indicates that she is offered accommodations such as a stool to help her get an MRI test, or a counter at the ministry office that lowers.

The appellant says that her short stature is causing more limitations with movement as she gets older; bending, climbing, and lifting are always difficult. The appellant says that she tries to only pick up or carry small amounts.

Regarding her mental health, the appellant says that she gets easily overwhelmed and anxious, and she worries about incontinence happening in public. The appellant reports not feeling motivated to do much because her energy is low.

In the typed submission (which an advocate helped her prepare), the appellant reports on specific mental and physical functions [as well as DLA which are covered later in this *Summary of Facts*]:

Ability to communicate: the appellant says she has "difficulty expressing myself and putting my thoughts into words when speaking to others." The appellant says that she has to read things over for comprehension, and she needs her hearing tested as she has to ask others to repeat themselves.

Mobility and physical ability: the appellant says that she is only able to walk one block at a time, and she has to use handrails when climbing stairs. The appellant says that she is only able to lift 20 pounds at a time and stand for up to 30 minutes "with supports." The appellant says that all mobility/physical activities take her at least 3 times longer than typical to complete.

Cognitive and emotional functioning: The appellant says that in addition to a lack of motivation, she has difficulty concentrating and gets distracted easily. The appellant reports poor short-term memory and difficulty with written comprehension and expression. The appellant reports that sleep disturbance causes her to have insomnia at night or to sleep all day.

Medical Report
In Section B-*Health History*, Dr. A says that the appellant's main limitation is around her mental health. She has longstanding anxiety and depression. This often limits her functionality, increasing fatigue. Procrastinates regularly, nervous in public setting, it affects her focus and concentration. "

Regarding the appellant's physical functions, Dr. A states in *Health History*, that the appellant "has several secondary conditions which I feel do not affect her functionality." The doctor states that "PVCs are quite common and do not affect most patients' functionality." The doctor states that the appellant's short stature "definitely makes physical work hard to do."

In Section D-Functional skills, Dr. A indicates the appellant can walk 2-4 blocks unaided on a flat surface; climb 5 or more steps unaided; and lift 15-35 pounds. Dr. A checked "no limitation" when asked how long the appellant can remain seated.

Regarding mental functions (questions D-5 and D-6), Dr. A indicates that the appellant has difficulties with communication (comment, "focus, attention, comprehension, expression"). Dr. A checked *yes*, the appellant has significant deficits with cognitive and emotional function in 5 of the 12 areas listed: *Language*, *Memory*, *Emotional disturbance*; *Motivation*, and *Attention/sustained concentration*. The section for comments was left blank.

Assessor Report
Under Section B-2, *Ability to Communicate*, Dr. A checked *poor* for *Speaking* (comment, "difficulty with expression"). Dr. A also checked *poor* for *Reading* (comment, "comprehension reduced"). The doctor indicates *good* ability for *Writing*, and *satisfactory* ability for *Hearing*.

Under section B-3, *Mobility and Physical Ability*, Dr. A indicates that the appellant requires assistance with all 6 functions listed:

Continuous assistance is required for:

- *Walking indoors*
- *Walking outdoors*

Dr. A comments, "pain with mobilizing greater than one block." Walking also takes the appellant significantly longer than typical.

The appellant uses an assistive device for:

- *Climbing stairs*

Dr. A comments, "handrails."

Periodic assistance from another person is required for:

- *Standing*

Dr. A comments, "difficulty after 30 minutes."

Periodic assistance is required for:

- *Lifting*
- *Carrying and holding*

Dr. A comments, “unable greater than 20 pounds.”

The space for other comments was left blank.

In section B-4, *Cognitive and Emotional Functioning*, the assessor is asked to indicate what impacts the appellant’s impairments have on various cognitive and emotional functions. For the 14 areas listed, Dr. A indicates impacts in 6 areas:

- Minimal impact for *Memory*,
- Moderate impact for *Bodily functions*, *Attention/concentration*, and *Language*,
- Major impact for *Emotion*, and *Motivation*.

No impact was indicated for:

- *Consciousness*
- *Impulse control*
- *Insight and judgment*
- *Executive*
- *Motor activity*
- *Psychotic symptoms*
- *Other neuropsychological problems*
- *Other emotional or mental problems*

Daily Living Activities

In the opinion of a prescribed professional (Dr. A), the following information is provided:

<u>Medical Report</u>
In Section B-3, Dr. A checked *no*, the appellant has not been prescribed medications or treatments that interfere with the ability to perform DLA.

<u>Assessor Report</u>
In Section B-1, Dr. A indicates that anxiety/depression, and short stature are the impairments that impact the appellant’s ability to manage DLA.

In Section C-*Daily Living Activities*, Dr. A indicates that the appellant is independent with all areas for 4 of the 8 DLA listed on the form:

- *Basic Housekeeping*: independent with *laundry* and *basic housekeeping*,

- *Meals*: independent with *meal planning*, *food preparation*, *cooking*, and *safe storage of food*,
- *Pay Rent and Bills*: independent with *banking*, *budgeting*, and *pay rent and bills*,
- *Medications*: independent with *filling/refilling prescriptions*, *taking as directed*, and *safe handling and storage*.

Restricted DLA

Dr. A indicates that the appellant needs assistance or takes significantly longer than typical with some areas of 4 DLA:

- ***Personal Care***:
  -*Dressing*: needs continuous assistance and takes significantly longer (comment, "sits to get dressed")
  -*Bathing*: takes significantly longer (comment, "3 times longer')
  -*Toileting*: takes significantly longer (comment, "incontinence")
  -*Transfers (bed)*: takes significantly longer (comment, "3 times longer')
  -*Transfers (chair)*: uses an assistive device (comment, "needs stool") and takes significantly longer.

Dr. A assessed the appellant as independent with the remaining areas of *Personal Care*: *grooming*, *feeding self*, and *regulating diet*.

- ***Shopping***

-needs continuous assistance with *reading prices and labels* (comment, "sight, comprehension")
-needs continuous assistance with *carrying purchases home* (comment, "unable over 20 pounds")

Dr. A assessed the appellant as independent with the remaining areas of *Shopping*: *going to and from stores*, *making appropriate choices,* and *paying for purchases*.

Under *Additional comments* for the above DLA the doctor wrote, "takes her longer to do most physical things given short stature. Some pain as well. Mostly problems with focus/attention. Fatigue, procrastination and motivation limits her functionality."

- ***Transportation***
  -needs periodic assistance and takes significantly longer with *getting in and out of a vehicle* (comment, "takes longer").

Dr. A assessed the appellant as independent with the remaining areas of *Transportation*: *using public transit* and *using transit schedules and arranging transportation*.

The space for additional comments for *Transportation* was left blank.

- ***Social Functioning***
  -needs continuous support/supervision with *able to deal appropriately with unexpected demands* (comment, "anxiety often flares in unfamiliar situations").
  -needs continuous support/supervision with *able to secure assistance from others* (comment, "unable to ask others for help").

Dr. A checked *independent* for the remaining areas: *appropriate social decisions*; *able to develop and maintain relationships* and *interacts appropriately with others*.

Dr. A checked *marginal functioning* when asked to describe how a mental impairment affects the appellant's relationship with her immediate and extended social networks. The doctor did not indicate that support is needed for the appellant to be maintained in the community. *Additional comments* including any safety issues was left blank.

Appellant's information on restrictions to DLA

In the SR, the appellant states that the medications for her PVCs, high blood pressure, and high cholesterol "help me in my daily life." The appellant states that she feels better when she is well rested and while she tends to do things on her "good days" she doesn't know when they will be. The appellant explains that she may cancel appointments due to lack of sleep.

The appellant states that her depression has improved by taking daily anti-depressant medication. She describes making lists to help manage and ease her anxiety but "I still have anxious feelings."

The appellant reports searching for "wheelchair friendly service areas wherever I go" to accommodate her short stature. The appellant explains that she uses a stool to reach the washing machine to do laundry. She says that she tries to do "all or most daily activities (e.g., getting dressed) no matter how long they take me."

In the typed submission (which the advocate helped her prepare), the appellant reports on specific DLA:

Personal Care: the appellant says she has to sit to get dressed, and she suffers from toileting problems due to incontinence. The appellant adds that she uses a stool to sit in a regular chair. "All activities of personal care take me at least 3 times longer than typical to complete."

Shopping: the appellant says that she uses a shopping cart for support, and she is unable to read prices and labels "due to my eyesight and the small print." The appellant says that she is only able to lift "up to 20 pounds at a time."

Transportation: The appellant reports using "the seat and door for support when getting in and out of a vehicle. It takes me 3 times longer than typical to complete."

Social Functioning: The appellant describes getting "anxious/overwhelmed when met with unexpected demands. I am unable to ask others for assistance when needed."

Need for help

Self-Report
The appellant says that she "sometimes gets help to put garbage in the bin or to carry things like garden pots or groceries." The appellant indicates that she mainly has assistance from devices such as stools, handrails, seat/door (in a vehicle), magnifier for reading; and through accommodations for the physically disabled.

Medical Report
In Section B-4, Dr. A checked *yes* when asked if the applicant requires any protheses or aids for their impairment (comment, "stools to help reach").

Assessor Report
In Section A-1, Dr. A checked that the appellant lives alone. Section D-*Assistance provided by other people* was left blank. In Section D-*Assistance provided through the use of assistive devices*, Dr A indicated *Other* (comment, "glucometer"). The doctor checked *no* the appellant does not have an assistance animal.

3. A medical test report, "24 Hour Holter Test Results" dated August 10, 2021, confirming the appellant's PVC symptoms.

4. A requisition from Dr. A dated December 30, 2021, for lab tests for the appellant's diabetes mellitus.

5. An RFR signed by the appellant on June 29, 2022, with documents attached:

-A hand-written submission in which the appellant provides the following additional information:

- she has a "special-sized chair" for sitting at home, also a stool because she cannot

sit for very long on a regular chair “due to back pain and strain.” The appellant says that her legs “hang in the air or I sit on edge of chair only for short periods.”

- public toilets are too high for her. She uses a stool in the bathroom to reach the toilet.
- her chair lowers forward to assist with “transfer off chair.”
- everything takes longer, “chronic back pain daily,”
- she experiences shortness of breath when she walks “approximately half a block from home or half an hour or so in store with a cart for support.” The appellant says that she has chest pain (“heart area”). Her doctor is ordering tests to check for blockages.
- she cannot read small print on labels in the grocery store (she requires bifocals). The appellant says that she has “eye floaters and beginning glaucoma” in her left eye as found (recently) by her eye doctor.
- she uses shopping buggies in stores for support (“depending on how high they are”).
- she is unable to carry groceries in a basket and she can’t buy more than 5 pounds of potatoes or rice without assistance. She also no longer uses a water jug, “only small water bottles.”
- she needs assistance with lifting weight or reaching. “I take regular breaks.”
- if she strains herself, she is in pain “for days, more than the usual back pain for which I take Tylenol extra strength.”
- she has to get in/out of a car slowly and use a small cushion in the car. She sometimes strains or twists her back when getting in/out of a car.
- her medications for high blood pressure and PVCs make her drowsy when taking full doses so she stays in bed to rest/sleep.
- incontinence is an issue mainly when walking, and her diabetes medication causes diarrhea.
- she always uses a shopping buggy “and told the doctor this.”
- she uses handrails, “everything is high but I need support.”
- anxiety and depression make things difficult especially on “bad days.” Her mental health is made worse when she is pointed at in public (mostly by children) due to her short stature. Her anxiety “can be crippling”, she has asked for a referral to Mental Health.

-A letter from the appellant’s advocate to Dr. A dated July 29, 2022, asking the doctor to comment on statements by the applicant. The purpose is to provide the ministry with more detailed information. Dr. A was asked to “agree” or “disagree” to statements in the letter. They provided hand-written answers as follows:

Dr. A indicates:

- "unknown" whether the appellant is only able to walk up to one block before she has to stop and take a break (comment, "patient claims to have to break between blocks. I cannot comment on this as I cannot prove this either way").
- "agree" that the appellant has to use handrails at all times when climbing stairs.
- neither "agree" nor "disagree" was checked regarding whether the appellant is only able to lift up to 5-10 pounds at a time (comment, "she claims she is limited by back and chest pain. She has PVCs. No history of cardiac ischemia or failure").
- "unknown" whether the appellant is only able to sit for up to 15-20 minutes at a time (comment, "I cannot comment on this. She feels her short stature limits her as does back pain. Pain has never been investigated. She sits ok in office for 10 minutes").
- "agree" that the appellant is only able to stand for up to 30 minutes at a time (comment, "she claims she is limited by back pain. She does live independently. Takes regular breaks").

DLA

- "disagree" that the appellant needs continuous assistance/or is unable to read prices and labels (comment, "eyesight 20/25, both eyes in sync"),
- "agree" that the appellant is unable to carry purchases home (over 5-10 pounds),
- "agree" that the appellant is anxious/overwhelmed when met with unexpected demands,
- "agree" that the appellant is unable to ask others for assistance when needed (comment re-social functioning, "anxiety/depression is limiting her"),
- "agree" that dressing, bathing, and toileting take the appellant significantly longer to complete - 3 times longer than typical (comment, "she claims that it takes her longer"),
- "disagree" that transfers (bed and chair), going to and from stores, and getting in/out of a vehicle take the appellant significantly longer – 3 times longer than typical,
- "agree" that the appellant has to sit down to get dressed,
- "disagree" that the appellant needs a stool to get on/off a chair,
- "disagree" that the appellant uses a shopping cart for going to/from stores,
- "disagree" that the appellant uses the seat and door for support when getting in/out of a vehicle.

Additional evidence – written submissions

Subsequent to the reconsideration decision the appellant submitted additional evidence requiring an admissibility determination by the panel under section 22(4) of the *Employment and Assistance Act* (“EAA”). The appellant provided 3 submission packages that consisted of the following documents:

1. *Received at the Tribunal on January 3, 2023:*

- An Exercise Tolerance Test (“ETT”) study report dated September 8, 2022, and dictated by a specialist in Internal Medicine (“Dr. B”). The report states that the appellant has a long history of frequent PVCs (controlled by medication) and a new diagnosis of diabetes. The appellant has been experiencing intermittent shortness of breath for the last year, mostly when she is bending down. The appellant is “only able to walk over a block before she gets shortness of breath.”

  The report lists the appellant’s medical conditions (diabetes, dyslipidemia, frequent PVCs, anxiety/depression, and elevated Body-Mass Index). Dr. B indicates 5 medications that the appellant takes daily.

  The appellant exercised for 4 minutes and 49 seconds during the test, which was stopped when the target heart rate was achieved. The appellant experienced shortness of breath, and no chest pain or pressure. The report indicates that no further work ups are required at this time for ischemia. The appellant would benefit from optimization of her risk factors.

  Further heart function tests will be arranged as well as a repeat lipid profile. The appellant has made “great progress” regarding her diabetes and will be given a new low-dose medication.

- A Medication history print-out from a pharmacy dated December 11, 2022. The print-out lists 7 mediations with 6 that the appellant takes daily.

2. *Received at the Tribunal on January 24, 2023*:

- A letter from the appellant’s Internal Medicine specialist, Dr. B, dated January 20, 2023, and addressed to Dr. A. The letter advises that the appellant requires iron supplements for anemia, to be reassessed after a year.

- Copies of business cards with hand-written notations by the appellant, “heart doctor, eye doctor, surgeon doctor.”

- A ministry *Notice of Deposit* with a hand-written notation by the appellant, "current income, $935 monthly."

- Two prescription receipts from a pharmacy with handwritten notations, "medical costs…prescription for esophagus/ulcer/anemia-related condition…pain reliever and (baby) aspirin required for heart as advised by doctor."

- A prescription written by Dr. B, with the appellant's notation, "stomach shots for diabetes and weight control. Not started. Lengthy program of 129 weeks…For esophagus. medication doubled dose by specialist."

3. *Received at the Tribunal on February 24, 2023*:

- A fax message from the appellant, "update February 21". The appellant states that she is being scheduled for "gastro-endoscope" with related investigations.

1. A prescription receipt from a pharmacy with notations dated February 20, 2023, "pre-surgery procedures…to be scheduled…They have no date as of today."

2. Copies of appointment reminder cards with handwritten notations dated February 23, 2023, "dietitian…diabetes and anemia…diabetes nurse…surgeon (referred for endoscope re- anemia, esophagus blockage issues, pain. Treated currently with [medication]."

3. A photograph of a shopping cart, and 2 additional photos [illegible].

- A fax message from the appellant, with a copy of a letter from the ministry dated February 14, 2023, and a *Health Supplement (supplies) Decision Summary*. The documents indicate that the appellant's application for a diet supplement is denied because the appellant does not have PWD designation.

Admissibility – appellant's additional documents

The ministry had no objections to the appellant's submissions being accepted as evidence. The panel accepts the ministry deposit receipt as part of the appellant's argument for why she requires PWD assistance.

The panel finds that the ETT report and the letter from Dr. B add additional information relating to the severity of the appellant's medical conditions and the restriction with walking. The documents from the pharmacy and the business/appointment cards (with

appellant's notations) add additional information about the appellant's medications and referrals to specialists for various medical conditions. The photograph of the shopping cart relates to the appellant's evidence that she relies on a cart when shopping. The panel admits these documents under section 22(4) of the EAA as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The panel finds that the documents relating to the ministry's denial of a diet supplement are not admissible under the EAA because they are for a different reconsideration or appeal which is not currently before the Tribunal. This panel only has the authority to decide the appeal from the July 8, 2022 reconsideration decision, which found that the appellant is not eligible for PWD designation.

Additional evidence at the hearing

Both parties stated their arguments, and the ministry did not submit any new evidence. The panel will consider arguments in Part F-*Reasons*.

Appellant's evidence at the hearing

In addition to argument, the appellant provided the following information:

- her walking "is even worse with anemia." The diabetes nurse wants the appellant to walk for 10 minutes.
- she has been treated for depression for 4 years, "not 10 years like Dr. A said." The appellant added that over a 2-year period, her medication for anxiety and depression has doubled in dose.
- she is taking 12 pills per day and "has to sell everything" to afford the cost of her medications.
- when asked about her back pain, the appellant said that she has "not technically had a diagnosis" despite complaining about the pain for many years. She believes the pain resulted from an injury to her sacroiliac joint many years ago. The appellant added that her back has never been X-rayed or checked further but the doctor has confirmed arthritis in her hands and knees.
- when asked if she had a psychological assessment or received counselling for her mental health conditions, the appellant said that Dr. A would not refer her to mental health services because they do not think she needs to go to a psychiatrist, counsellor, etc. The appellant explained that Dr. A prescribed anti-depressant medication when the appellant was experiencing grief from the loss of family members. The doctor doubled the medication when the anxiety and depression did not subside. The advocate told the appellant that she can self-refer to Mental

Health Services, but the appellant has not yet done so because she feels anxious about it. The appellant said that she would like to see a counsellor.

Admissibility of oral evidence

The ministry had no objections to the appellant's testimony. The panel finds that the oral submissions provide additional self-report regarding the appellant's physical and mental functioning, medications, and assessments for her physical and mental conditions. The panel admits the testimony under section 22(4) of the EAA as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Appeal Number 2022-0183

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision that found the appellant ineligible for PWD designation was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. The panel's role is to determine whether the ministry was reasonable in finding that the following eligibility criteria in section 2 of the EAPWDA were not met:

- the appellant has a severe mental or physical impairment;
- the impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform 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.

Analysis

Severe mental or physical impairment

Arguments - Appellant

The appellant's position is that her impairments are severe because she has multiple health conditions, both physical and mental, that significantly limit her function. In the RFR submission, the appellant says that her conditions, medications, and short stature combined with her mental health struggles are ongoing and limiting. In the Notice of Appeal, the appellant argues that the information from Dr. A is "inaccurate – over 50% incorrect."

At the hearing, the appellant noted that Dr. A wrote on the forms (in 2 different places) that she could walk 2-4 blocks and just one block. The appellant argues that the ministry was wrong to rely on the 2-4 block rating which is inaccurate.

The appellant argues that Dr. A's information about whether she uses a cart in stores and how much weight she can lift is also wrong because she always uses a buggy, and she can never lift over 5 pounds. The appellant argues that she cannot sit in a chair comfortably because of her short stature.

The appellant submits that the ministry should give more weight to her information over the doctor's reports because Dr. A has not seen her lifting, walking, etc. The appellant argues that it is unfair for the ministry to deny PWD on the word "unknown" which Dr. A

wrote in the letter for the reconsideration when asked if the appellant can only walk a block (before she needs to rest) and sit for 15-20 minutes maximum.

The appellant submits that the ministry "can't expect her to do everything" given her short stature. The appellant notes that she cannot even reach the drop box at the ministry office without someone having to lower it for her. The appellant argues that a stool is an assistive device because she cannot live her life without a stool to reach the washing machine, etc. The appellant argues that her short stature alone, combined with so many medical conditions, makes her life that much more difficult.

The appellant expressed a lot of frustration because in her view, "the ministry chose to believe the doctor and not me." The appellant said that the ministry's decision makes her feel "invalidated, like not having a voice or being respected." The appellant submits that a medical team seeing that she takes 12 pills a day "would know that I can't operate normally."

The appellant expressed that the ministry "does not want to help me" and that makes her feel like giving up. The appellant stressed that her small stature "is a huge issue" because the staff at the ministry office cannot even see her over the counter. The appellant argues that the ministry overlooked the cumulative impact of her conditions and are not "disability minded." The appellant feels that the ministry's denial of the PWD application is "abuse and unfair."

The appellant explained that the doctor agreed with the self-reports when they spoke on the phone, but "then wrote something totally different." The appellant said she did not go back and argue with Dr. A, or complain to the College of Physicians because although she has lost faith in her doctor, they still know about heart disease and can refill her prescriptions, and the clinic knows her family history. The appellant acknowledges that Dr. A's answers "are all over the place." She said that she "may have to start again and choose a new doctor but it's not easy."

Arguments – Ministry

The ministry's position is that the assessments provided by Dr. and the information in the self-reports indicate a moderate rather than severe physical impairment. The ministry argues that the appellant's use of a shopping cart, handrails, and stools does not meet the definition of assistive device in the EAPWDA. The ministry argues that Dr. A's assessments of the appellant's ability to walk, lift, etc. did not confirm a severe physical impairment especially when the Dr. indicates "unknown" and "cannot comment on this" when asked to endorse the appellant's self-reported limitations.

The ministry acknowledges that the appellant experiences limitations in her physical functioning due to back pain. However, the ministry notes Dr. A's information indicating that the appellant lives independently despite mobility taking significantly longer.

Regarding a mental impairment, the ministry acknowledges the significant deficits for emotion and motivation that Dr. A indicated in the MR as well as the appellant's problems with concentration and excessive worry. However, in the ministry's view, a severe mental impairment was not established on the evidence because the information from Dr. A indicated a moderate impact for emotion and motivation, and a minimal impact, or no impact for most areas in the AR. The ministry notes that Dr. A does not describe what supports/supervision the appellant requires to be maintained in the community, despite identifying some significant cognitive/emotional deficits, major/moderate impacts, and communication difficulties.

The ministry acknowledges that the appellant experiences limitations due to anxiety and depression but argues that a severe mental impairment was also not established on the evidence because the appellant was assessed as independent with DLA that would typically be difficult for someone who experiences significant restrictions with their mental functioning; for example, housekeeping, food preparation, paying bills, and managing medications.

Ministry's position on the additional evidence

At the hearing, the ministry argued that the appeal submissions do not include enough medical evidence to confirm a severe impairment of mental or physical functioning. The ministry noted that most of the additional evidence was business cards, and medication information.

The ministry acknowledged that the appellant takes a variety of medications and has reduced exercise tolerance, and that ministry assistance rates are below the poverty line. The ministry noted that financial status is not a criterion for PWD eligibility and recommended that an occupational therapist or chiropractor could spend more time with the appellant to give a more detailed assessment of physical functioning.

Legislative requirement

To be eligible for PWD designation, the legislation (EAPWDA section 2) requires several criteria to be met including the minister being satisfied that the applicant has a severe mental or physical impairment. The ministry found the appellant was not eligible for PWD because not all five criteria were met.

"Severe" is not defined in the legislation but an impairment is defined in the PWD application 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." In the ministry's view, the diagnosis of a serious medical condition does not in itself establish a severe impairment of mental or physical functioning.

The PWD medical reports ask for information on functional skills and abilities and the ministry indicates that it also takes the appellant's information into account. The panel finds that the ministry's assessment of severity based on a fulsome review of daily function is a reasonable interpretation of the legislation.

Mental and physical impairment - specific considerations

To assess the severity of a mental impairment, the ministry considers the extent of any impact on daily functioning as evidenced by limitations/restrictions with mental functions and emotion. The ministry does not only look at the diagnosis or a medical practitioner's comment that the condition is "severe" but considers functional abilities and whether there are restrictions to DLA requiring mental/social functioning including any safety issues. The panel finds that an assessment of severity based on cognitive, emotional, and social functioning is a reasonable interpretation of the legislation.

To assess whether the applicant has a severe physical impairment, the ministry considers information on the degree of restrictions to physical functioning and whether the applicant requires significant help or any assistive devices to manage physical tasks. The panel finds that the assessment of severity based on daily physical functioning is a reasonable interpretation of the legislation.

Panel's decision - mental impairment

The panel finds that the ministry's decision is reasonable because the evidence from both the appellant and Dr. A indicates that the appellant is able to independently manage her daily life despite her struggles with depression and anxiety. There is no doubt that the

appellant is impacted by her mental health conditions. She reports feeling tired and unwell most days due to sleep disturbance which limits her ability to function mentally. Sometimes she stays in bed all day due to fatigue.

The panel accepts that the appellant is easily overwhelmed and anxious and lacks motivation to do things because her energy is low. The appellant's evidence is consistent with Dr. A's information that indicates the appellant has increasing fatigue from depression that "often limits her functionality." The appellant procrastinates regularly and is anxious in public settings (which affects her focus, concentration, and communication). The doctor agrees that depression and anxiety have a major impact on the appellant's motivation, and she is anxious/overwhelmed when faced with unexpected demands.

Despite these impacts, the evidence is that the appellant is managing her daily life by going out in the community on a regular basis to attend medical appointments, pharmacies, the ministry office, etc., and to shop for personal needs. The appellant says that she will cancel appointments due to fatigue, but the evidence is that she follows through on appointments with many specialists, including her doctor, surgeon, "diabetes nurse", etc. Although the appellant experiences "difficulty expressing myself and putting my thoughts into words when speaking to others" she is communicating with professionals independently, either in person or by phone.

At home, the appellant is preparing her own meals and doing laundry despite her fatigue and lack of motivation. The appellant says that the ministry did not take her information into account, but in the record the appellant does not report any safety concerns that stem from her depression, anxiety, fatigue, and lack of motivation. For example, there is no evidence that she is unable to attend to her hygiene despite incontinence. The appellant needs to do things slowly, but the level of functioning indicated by the evidence does not demonstrate a *severe* mental impairment.

The appellant says that her "depression has improved" by taking daily anti-depressant medication. Although she indicates that the dose was doubled in the past, and "I still have anxious feelings" that can be "crippling especially on bad days", there is no indication that her symptoms have worsened. A referral to Mental Health services would be expected in the case of a *severe* mental impairment, but the appellant has not seen a psychiatrist or counsellor despite depression and anxiety affecting her function for at least 4 years.

The appeal submissions list medication for anxiety/depression but do not contain additional information about the appellant's cognitive, emotional, or social functioning. The panel finds that the information submitted for the application and appeal does not establish a severe mental impairment. The requirement for a severe impairment under section 2(2) of the EAPWDA is therefore not met based on mental functioning.

Panel's decision - physical impairment

The panel has considered the evidence in its entirety and finds that the ministry's decision is reasonable. Although the appellant is diagnosed with a number of physical conditions, she is able to walk, lift, sit, carry, etc. independently without the aid of an assistive device as defined in the legislation. While the appellant argues that stools, railings, etc. are devices that she depends on given her short stature, they are not "assistive devices" as defined in section 2(1) of the EAPWDA which requires the item to be designed specifically as an aid for DLA.

The panel acknowledges that there is conflicting evidence from the appellant and Dr. A regarding walking, lifting, standing, and remaining seated, but regardless of whether the appellant can walk 1 block or 4 blocks, or lift 5 pounds or 20 lbs, the evidence indicates a moderate impairment overall. The appellant does household tasks and errands by handling small amounts of weight, taking up to 3 times longer to do things, and using railings, stools, shopping carts, etc. The ministry was reasonable to find that the appellant's impairment is not severe.

The appellant submitted additional evidence including the ETT report from Dr. B. The panel finds that the appeal submissions do not confirm a severe impairment of physical functioning. The ETT report indicates shortness of breath with exertion, but also states that optimization of risk factors can help mitigate problems. The appellant has upcoming appointments with various specialists as her physical impairments are still under investigation. There is no evidence from the "diabetes nurse" or other specialists about current physical functioning.

While the appellant argues that her evidence should be given more weight over her doctor's "inaccurate answers," the panel finds that the ministry was reasonable to consider the opinion of a trained medical professional who states in the MR that the appellant "has several secondary conditions which I feel do not affect her functionality." Dr. A notes that "PVCs are quite common and do not affect most patients' functionality."

The panel finds that the ministry reasonably determined that the requirement for a severe impairment under section 2(2) of the EAPWDA is not met based on physical impairment. The totality of the evidence demonstrates a moderate rather than severe impact on mental and physical functioning.

Restrictions to daily living activities

Arguments - Appellant

The appellant's position is that her DLA are significantly restricted by her many medical conditions. The appellant argues that the combination of medical conditions, short stature, and medication side effects limit her DLA. The appellant maintains and that Dr. A's information "is 50% incorrect." The appellant submits that the ministry should give more weight to her information because the doctor does not see her shopping or doing laundry, etc.

Arguments – Ministry

The ministry's position is that there is not enough evidence from the prescribed professional (Dr. A) to confirm that the appellant's impairments significantly restrict DLA continuously or periodically for extended periods as required by the legislation. The ministry acknowledges that the appellant would encounter some restrictions given her medical history, but found that the assessments by Dr. A indicate a moderate level of restriction.

Legislative requirement

Subsection 2(2)(b)(i) of the EAPWDA requires the ministry to be satisfied that, in the opinion of a prescribed professional, a severe impairment directly and significantly restricts a person's ability to perform DLA either continuously, or periodically for extended periods. This means that restrictions to DLA must be confirmed by the appellant's doctor or one of the practitioners named in the legislation such as a psychologist, occupational therapist, or chiropractor.

The term "directly" means that the severe impairment must cause or result in restrictions to activities. The direct restriction must also be significant. This means that not being able to do DLA without a lot of help from other people, or support from an assistive device will have a large impact on the person's life.

Finally, there is a time or duration factor: the restriction may be either *continuous* or *periodic* under the legislation. Continuous means that the activity must generally be restricted all the time. The ministry views a periodic restriction as significant when it occurs frequently or for longer periods of time; for example, the activity is restricted most days of the week, or for the whole day on the days that the person cannot do the activity without help or support.

The panel views the ministry's interpretation of the legislation as reasonable. Accordingly, where the evidence indicates that the appellant needs periodic assistance to manage an activity, it is appropriate for the ministry to require information on the type and frequency of the help or support that is needed. With that information, the ministry can assess whether the legislative requirement is met.

DLA are defined in section 2(1) of the EAPWDR and are also listed in the MR, with additional details in the AR. Therefore, the doctor or other practitioner completing these forms can indicate which, if any, DLA are significantly restricted by the applicant's impairments either continuously or periodically for extended periods and to provide additional details. It is important to note that the ability to work is not considered a DLA under the legislation.

Regarding how many DLA need to be impacted for the legislative requirements to be met, the BC Supreme Court decision *Hudson* v. *Employment and Assistance Appeal Tribunal* [2009 BCSC 1461] states that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two DLA. Not all DLA need to be affected by the severe impairment.

Panel's decision - restrictions to DLA

The panel finds that the ministry's decision is reasonable. The panel concluded that a severe mental or physical impairment is not established on the evidence. The panel further finds that there is not enough evidence from a prescribed professional to confirm that DLA are significantly restricted by the appellant's depression and anxiety, diabetes, heart arrythmias ("frequent PVCs"), chronic back pain, incontinence, dyslipidemia, elevated Body-Mass Index, iron deficiency anemia, high blood pressure, high cholesterol or other conditions described by the appellant or her doctors. The appellant reports drowsiness and other side effects from her medications, but Dr. A indicates the medications do not interfere with the appellant's ability to perform DLA.

The appellant argues that she is limited in what she can do, but the legislation makes is clear that the opinion on DLA must be provided by the doctor or other medical professional. The appellant did not obtain a new assessment of DLA to provide any different information about her restrictions. The ministry was therefore reasonable to rely on the information from Dr. A. in determining whether reported restrictions are significant.

The panel acknowledges that Dr. A indicates some restrictions to DLA including *continuous assistance* with reading labels and carrying purchases. Dr. A indicates that the appellant takes 3 times longer for personal care activities such as bathing, and transfers (bed). The doctor's evidence for the reconsideration indicates that toileting also takes 3 times longer and the appellant needs to sit to get dressed.

However, the doctor provided some inconsistent information for the reconsideration, indicating that the appellant does not require continuous assistance with *reading prices and labels*, nor does she need any devices/supports to help her with transfers, shopping, or getting in/out of a vehicle. Dr. A also disagreed that those activities take 3 times longer than typical. The appellant did not ask the doctor for additional clarification so there is no explanation for the difference in assessments between the AR and the RFR.

The panel accepts that it "takes [the appellant] longer to do most physical things given short stature. Some pain as well" (AR). The appellant's short stature "definitely makes physical work hard to do"(MR). However, all DLA are performed without an assistive device (as defined in the legislation). The appellant is able to manage her DLA with ordinary adjustments such as sitting down to get dressed. The panel acknowledges that some activities take 3 times longer, but the appellant indicates that she tries to do "all or most daily activities no matter how long they take me."

The appellant provided many submissions on appeal, but none of them contain information from a prescribed professional on restrictions to the specific activities described in the legislation. Dr. B's information addresses the appellant's shortness of breath and restrictions with exercise but there is no information in the ETT report about the appellant's ability to perform regular activities such as personal care, housework and shopping.

Summary

The panel has considered the evidence in its entirety and finds that there is not enough clear and consistent information from a doctor or other prescribed professional to confirm that at least two DLA are significantly restricted continuously or periodically for extended periods as required by the legislation. While Dr. A provided the strongest evidence for *Personal care* and *Social Functioning*, the appellant remains independent with dressing, relating to others, etc. The appellant participates in the community by doing errands and attending appointments on her own. The panel finds that the ministry's decision is reasonable because the criteria in subsection 2(2)(b)(i) of the EAPWDA are not established on the evidence.

Help with daily living activities

Arguments - Appellant

The appellant's position is that she cannot manage her DLA at all without using stools, railings, and other aids or supports for her short stature and physical impairments (especially back pain and arthritis). The appellant maintains that she always needs to use a buggy for shopping. The appellant says that she sometimes has help with taking out the trash and carrying groceries, but she has difficulty asking for help when needed.

Arguments – Ministry

The ministry's position is that the criteria for help are not met because DLA are not significantly restricted. The ministry argues that it could therefore not determine that significant help from other persons, or help from an assistive device, is required.

Legislative requirement

Subsection 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. 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. An "assistive device" is defined in section 2(1) of the EAPWDA as a device specifically 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.

Panel's decision - help with daily living activities

The ministry was reasonable to find that the help criteria were not met. While Dr. A indicates in the MR that the appellant requires "stools to help reach", a stool is a regular piece of furniture and not an "assistive device" under the legislation. The appellant says she needs to use handrails, shopping carts, and car doors for support, but these are also not "assistive devices" under the legislation. While Dr. A confirms the appellant's difficulties in asking for help, the evidence indicates that she is able to complete her DLA without significant help from other people or an assistive device other than a glucometer for her diabetes.

The legislation requires confirmation of direct and significant restrictions to DLA, directly related to a diagnosed mental or physical impairment, as a precondition for needing help to perform DLA. The panel found that the ministry's determination that significant restrictions to DLA were not established on the evidence was reasonable for the reasons stated earlier. The panel therefore finds that the ministry's conclusion that the help criteria under were not met, is a reasonable application of the legislation (EAPWDA ss. 2(2)(b)(ii)) n the appellant's circumstances.

Conclusion

The panel finds that the reconsideration decision is reasonably supported by the evidence. The panel confirms the decision. The appellant met the requirements for age and for the impairment to continue for at least 2 more years but in the ministry's view, the information provided did not confirm a severe impairment that significantly restricts DLA so that the appellant needs help to perform DLA.

The panel finds that these determinations were reasonable because the record establishes moderate restrictions to function and DLA rather than a severe mental or physical impairment. The appellant manages her daily life at a slower pace despite fatigue and low motivation. The appellant is independent with her errands, appointments, and household chores. The appellant is able to relate to others despite her difficulties with unexpected demands and asking for help when needed.

For these reasons, the panel confirms the reconsideration decision. The appellant is not successful with her appeal.

Schedule – 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 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).

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,

APPEAL NUMBER 2022-0183

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 Margaret Koren	
Signature of Chair	Date (Year/Month/Day) 2023/02/28

Print Name Wesley Nelson	
Signature of Member	Date (Year/Month/Day) 2023/02/28
Print Name Erin Rennison	
Signature of Member	Date (Year/Month/Day) 2023/02/28