

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision (the “Reconsideration Decision”) of the Ministry of Social Development and Poverty Reduction’s (the “Ministry”), dated February 17, 2023, 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 determined that the Appellant had met all the required criteria except that, in the opinion of a medical or nurse practitioner, the Appellant’s impairment is likely to continue for at least 2 years.

The Ministry also determined that the Appellant was not one of the prescribed classes of persons eligible for PWD on alternative grounds. As there was no information or argument on this point, the Panel considers it not to be an issue in this appeal.

Part D – Relevant Legislation

EAPWDA - section 2

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) – sections, 2(1), 2.1

A full text of the above-described legislation appears at the end of Part F of this decision.

Part E – Summary of Facts

The information before the Ministry at the time of the Reconsideration Decision included the following:

- the Ministry’s letter to the Appellant, dated January 4, 2023 (the “Application”), denying her application for the PWD designation;
- the Ministry’s Person with Disabilities Designation Denial Decision Summary, dated January 4, 2023, which had initially determined that the Appellant met only the age requirement for a PWD designation;
- the Appellant Application for the PWD designation, which included:
 - the Appellant’s Applicant Information (the “Self Report”), dated July 22, 2022;
 - the Medical Report (“MR”), completed by the Appellant’s doctor, dated October 15, 2022; and
 - the Assessor Report (“AR”), completed by a nurse practitioner, dated October 22, 2022;
- the Appellant’s Request for Reconsideration (“RFR”), which included:
 - a lengthy typewritten note from the Appellant, detailing her disabilities, symptoms, the effects of her disabilities on her life;
 - an updated questionnaire from the nurse practitioner who completed the AR, which addressed the effects of the Appellant’s medical conditions and, in particular the effect the conditions had on her daily living activities “DLAs”; and
 - a letter from a psychiatrist, dated January 19, 2023, which confirmed that the Appellant was diagnosed with “chronic Mental Health disorders, is on medication and needing ongoing supervision and follow-up.”

The Appellant’s Notice of Appeal was filed on February 21, 2023. In the Notice of Appeal, the Appellant wrote that she had started the process during COVID but had relocated without finding a new family doctor or psychiatrist. The Appellant advised that her mental health issues had been going on for over half of her life.

The Application

Of the Self Report, the MR, and the AR, only the MR expressly addresses the issue of the duration of the Appellant’s anticipated impairment.

In Section 2-C of the MR, the doctor was asked whether the Appellant’s impairment was likely to continue for two years or more from today. The doctor did not answer yes or no to that question but wrote the following note:

“uncertain. Needs to get on appropriate medications to help control symptoms.”

Because the Ministry determined, in the Reconsideration Decision, that the Appellant met all but the duration criteria, the remaining information contained in the Self Report, the MR, and the AR will not be summarized here. Specifically, the information in the Self Report, the MR, and the AR satisfied the Ministry that the Appellant had a severe mental impairment.

The Appellant's Submission

Following the Appellant's Notice of Appeal, the Appellant provided a two-page submission (including fax cover sheet), which included a letter, dated March 1, 2023 (the "March 1 Letter"), from the same Nurse Practitioner who completed the AR. Of note, the nurse practitioner, wrote that "the duration of her illness and the severe symptoms are expected to be ongoing over the next 2 years or more. Due to her past history and current situation with managing new medications, counselling and seeing her psychiatrist it is to be expected the duration to be at least 2 years if not longer."

Evidence At The Hearing

At the hearing of the appeal, the Appellant's advocate noted that the Ministry had determined that all the legislative criteria had been met other than that the Appellant's impairment was, in the opinion of a medical or nurse practitioner, likely to continue for at least an additional two years.

The Appellant's advocate noted that the author of the March 1 Letter is a nurse practitioner, one of two classes of prescribed professionals from whom the Ministry requires an opinion in respect of duration. The Appellant's advocate stated that the information in the March 1 Letter confirms that the Appellant also meets the requirement that the Appellant's impairment is likely to continue for a further two years or more.

The Ministry did not object to the admissibility of the March 1 Letter. The Ministry also agreed that the nurse practitioner who wrote the March 1 Letter is a nurse practitioner who is one of two possible prescribed professionals whose opinion on the matter of duration is required under the EAPWDA.

Admissibility of the March 11 Letter

With respect to the admissibility of the March 1 Letter, there was no objection from the Ministry to its admissibility. The information contained in the March 1 Letter was clearly not part of the record at the time of the Reconsideration Decision but it specifically addresses the one requirement that the Appellant was determined by the Ministry to have not satisfied- namely, the anticipated duration of the Appellant's mental impairment. In the circumstances, it is difficult to imagine how the March 11 Letter could be anything other than reasonably required for a full and fair disclosure of all the matters related to the appeal, which is the test for admissibility under section 22(4) of the *Employment and Assistance Act*. As such, the panel finds the March 11 Letter to be admissible.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry was reasonable in its determination that the appellant was not eligible for a PWD designation because the Appellant's impairment is not, in the opinion of a medical or nurse practitioner, likely to continue for at least 2 years. The Ministry determined that the Appellant had met all the other legislative criteria.

Panel Decision

The EAPWDA sets out a number of criteria that need to be satisfied for a PWD designation. These criteria are set out in section 2(2) of the EAPWDA:

- a person must be 18 years of age;
- the Ministry must be satisfied that the person has a severe physical or mental impairment;
- the opinion of a nurse or medical practitioner must be that the impairment is likely to continue for at least 2 years;
- the opinion of a prescribed practitioner must be that the person's daily living activities are directly and significantly restricted continuously or periodically for extended periods; and
- as a result of the person's restrictions, the person requires help to perform daily living activities.

Help is defined as one or more of:

- the use of an assistive device;
- significant help or supervision from another person; or
- an assistance animal.

Although the Appellant was initially found to have met none of the criteria, other than her age, for a PWD designation, the Ministry determined in the Reconsideration Decision that the Appellant met *all* the criteria, other than the expected duration of the Appellant's severe mental impairment.

The MR supported the Ministry's finding on duration in the Reconsideration Decision. In the MR, the doctor did *not* confirm that the Appellant's mental impairment was expected to last two years or more and checked neither the "yes" or "no" boxes in the MR. Instead, the doctor simply noted that the expected duration of the Appellant's impairment was "uncertain."

The AR does not request a prescribed practitioner to give an opinion on the expected duration of an applicant's impairment and depending on the qualifications of the author of the AR, such an opinion may not satisfy the legislative requirements, in any event, as the legislation requires the opinion of a medical or nurse practitioner. Likewise, the Self Report does not specifically address duration and, because it is prepared by an applicant and not a medical or nurse practitioner, an opinion on duration in the Self Report, without other supporting evidence, would not satisfy section 2(2) of the EAPWDA.

While the RFR included an updated questionnaire from the Appellant's doctor and a letter from a treating psychiatrist, neither letter addressed the matter of duration.

In the result, at the time of the Reconsideration Decision, there was no opinion from a medical or nurse practitioner that the Appellant's impairment was likely to continue for two years or more.

The March 11 Letter, however, dealt almost exclusively with the matter of duration. In it, the same nurse practitioner who had previously completed the AR gave the opinion that the Appellant's mental illness and the symptoms from it were likely to continue for two years or more. The March 11 also explained why it was expected that the Appellant's symptoms were expected to last for two years or more.

In the Reconsideration Decision, the Ministry determined that the Appellant's mental impairment is severe. The March 11 Letter is an opinion that the specific impairment that the Ministry had determined to be severe is likely to continue for two years or more. Likewise, the opinion in the March 11 Letter was provided by a nurse practitioner, one of two prescribed categories of professionals referenced in section 2(2) of the EAPWDA.

Conclusion

In view of the information contained in the March 11 Letter, the panel finds that the determination that the Appellant's severe mental impairment was not, in the opinion of medical or nurse practitioner, likely to continue for two or more years was not a reasonable application of the provisions of the EAPWDA in the circumstances of the Appellant. The Appellant is successful in this appeal.

Relevant Legislation***Employment and Assistance for Persons with Disabilities Act*****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).

*Employment and Assistance for persons with Disabilities Regulation***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.

(3) The definition of "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

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).

[en. B.C. Reg. 165/2016, Sch.]

2023-0055

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

Adam Shee

Signature of Chair

Date (Year/Month/Day)

2023/March/24

Print Name

Bill Haire

Signature of Member

Date (Year/Month/Day)

2023/March/25

Print Name

Melissa McLean

Signature of Member

Date (Year/Month/Day)

2023/March/26