

**Part C – Decision Under Appeal**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry). The ministry decided that the appellant did not meet all of the requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* (the Act) for person with disabilities designation (PWD). The ministry found that the appellant met the age requirement, but did not meet the following:

- the appellant has a severe physical and/or mental impairment that is likely to last 2 years or more from the date of the PWD application;
- the appellant has a severe physical and/or mental impairment;
- the appellant's daily living activities are directly and significantly restricted either continuously or periodically for extended periods; and
- because of those restrictions, the appellant needs an assistive device, significant help or supervision from another person, or needs an assistance animal.

The ministry also found that the appellant is not qualified for PWD designation on alternative grounds, which includes: a person who is in palliative care; a person who got At Home Program payments through the Ministry of Children and Family Development; a person who gets or ever got 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 (the Act), section 2*

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

The complete legislation is found at the end of this decision in Appendix A.

**Part E – Summary of Facts****Evidence at the time of Reconsideration**

1. The appellant's PWD application that includes:
  - A Medical Report and an Assessor's report [dated October 16, 2022] completed by the appellant's doctor who has known the appellant since 2006 and had seen the appellant 2-10 times in the past 12 months of the PWD application.
  - The Assessor's Report was done by an office interview with the appellant and file/chart information.
  - The PWD application also included the appellant's Self-Report (SR) dated October 4, 2023.
2. 1-page letter from the appellant's doctor who did the PWD application. The letter said the appellant "has degenerative disc disease and has constant, severe low back pain. Her pain is chronic and there is no curative treatment, unfortunately. She is not able to work due to pain".
3. Request for reconsideration dated March 7, 2023. In it the appellant said the following:
  - "My back started bothering me 10 years ago. I had up to three jobs at once to support my daughters. Now after 43 years of work, my back has gotten worse. I have tried acupuncture, physiotherapy, and nothing works".
  - "Trying to control the pain with two pain relievers Gabapentin and Cyclobenzaprine and upped the doses".
  - "I can't drive on them [the pain relievers]".
  - "I was in hospital in 2021. They gave me Demerol and sent me home".
  - "I got an MRI after that and yes, the disc in my back is getting worse and my doctor has now sent a recommendation to pain clinic. Still waiting for the call".
  - "I am in pain always, especially on my left leg side. I can just wake up and not be able to walk some days".
  - "On top of my back issues, I now have intestine problems. I am now going for an MRI on my intestine. My stomach problems are causing problems as well. I guess getting old, my body just has been through too much".

The information in the PWD application said the following:

***Diagnoses***

In the Medical Report, the doctor diagnosed the appellant with Degenerative Disc Disease (onset 2015) and Osteoarthritis Lumbar Spine (onset 2015).

***Health History***

The doctor said that the appellant "is having constant left lower back pain, which is worse with driving, prolonged sitting or standing. Sometimes it is so bad that she can't get out of bed in the morning. [The appellant] has difficulty getting dressed due to her back pain and has to sit down to get dressed and put her shoes on. She has difficulty working at her very physically demanding job as a construction cleaner as it really aggravates her back pain. The pain can radiate down her legs as well which makes it difficult for her to move".

There have been medications or treatments prescribed to the appellant that will interfere with the ability to perform her daily living activities and will be ongoing as needed.

She has severe constant low back pain.

### ***Degree and Course of Impairment***

The appellant's impairment is likely to last 2 or more years from the date of the PWD application. The doctor said "unknown duration. Steroid spinal injections may provide temporary improvement in her pain".

### ***Physical Impairment***

In the Medical Report, the doctor said the following about the appellant:

- She can walk 2-4 blocks unaided, climb 5+ steps unaided, cannot lift and can remain seated for less than 1 hour.

In the Assessor's Report, the doctor said the following about the appellant:

- She walks indoors and stands independently.
- She takes significantly longer to walk outdoors and climb stairs: "she has to stop to rest often".
- She cannot lift or carry.

In the Self-Report the appellant said the following about her disability:

- She has problems walking, sitting too long, stand for long periods.
- The pain is constant.

### ***Mental Impairment***

In the Medical Report the doctor said the following about the appellant:

- There are no difficulties with communication.
- There are no significant deficits with cognitive and emotional function.

In the Assessor's Report, the doctor said the following about the appellant:

- Speaking, reading, writing and hearing are good.
- The section about cognitive and emotional functioning was left blank.
- In the daily living activities, the section about social function was left blank with the comment: "N/A".

In the Self-Report the appellant did not say anything about a mental impairment.

### ***Daily Living Activities***

In the Assessor's Report, the doctor said the following about the appellant:

- Under personal care the appellant is independent with toileting, feeding self, regulating diet, transfers in/out of a chair. The appellant needs periodic help and takes significantly longer with dressing: "has to sit down". The appellant takes significantly longer with grooming, bathing and transferring in/out of bed.
- Under basic housekeeping, the appellant is independent with laundry and needs periodic help with basic housekeeping.

- Under shopping, the appellant is independent with reading prices/labels, making appropriate choices, and paying for purchases. She needs periodic help with going to/from stores. She needs continuous help with carrying purchases home.
- Under meals, the appellant is independent with meal planning and safe storage of food. She needs periodic help with food preparation and cooking.
- She is independent with all listed tasks under pay rent/bills and medications.
- Under transportation, the appellant is independent with using public transit and using transit schedules and arranging transportation. She needs periodic help with getting in/out of a vehicle.
- The section on social functioning was left blank.

In the Self-Report the appellant said the following about her disability:

- She has to sit to put on shoes and get dressed.
- Sometimes she cannot get out of bed.
- She cannot take a bath or showers anymore.

### ***Help***

In the Assessor's Report, the doctor said the appellant gets help from family and friends. In the medical report the doctor said that no prothesis or aids are needed for her impairment. But in the assessor's report, the doctor said that the appellant uses a cane periodically.

In the Self-Report the appellant did not say anything about needed help from someone else or an assistive device or animal.

### **Evidence on Appeal**

The appellant submitted a Notice of Appeal dated March 16, 2023. In the Notice the appellant said that "I have doctor's note saying I cannot work. There are people driving cars that are on disability".

The panel found that the information in the Notice of Appeal is the appellant's argument.

### **Additional Information**

Before the hearing, the appellant submitted the following information:

- 3-page letter from the Canada Revenue Agency dated July 8, 2022. This letter explains that the appellant is eligible for a Disability Tax Credit.
- 2<sup>nd</sup> PWD application. The 2<sup>nd</sup> Medical Report is from the same doctor as before and is dated March 16, 2023. The 2<sup>nd</sup> Assessor's Report was completed by a registered nurse and was dated May 6, 2023. This was the registered nurse and the appellant's first contact. A 2<sup>nd</sup> self-report dated May 6, 2023.

### ***Diagnoses***

In the Medical Report, the doctor diagnosed the appellant with Degenerative Disc Disease (onset 2014).

### ***Health History***

The doctor said that the appellant “has severe back pain with episodic exacerbations which renders her unable to work, unable to prepare meals, unable to dress herself”.

No medications or treatments have been prescribed to the appellant that will interfere with her ability to complete her daily living activities.

***Duration***

The doctor said that the appellant’s impairment will last 2 or more years from the date of the PWD application: “lifelong, no remedial treatments that have helped her”.

***Physical Impairment***

In the 2<sup>nd</sup> Medical Report, the doctor said the following about the appellant:

- She walks less than 1 block unaided, climbs 5+ steps unaided, cannot lift and can remain seated for less than 1 hour.
- “She has episodic flare ups of her pain during which she is barely able to move for several weeks”.
- “She has severe low back pain present most of the time”.

In the 2<sup>nd</sup> Assessor’s Report, the registered nurse said the following about the appellant:

- Walking indoors needs periodic assistance and can only walk 5-30 minutes maximum. She has a limping gait.
- Continuous assistance is needed with walking outdoor (5-15 minutes maximum due to uneven pavement), climbing stairs (uses handrail as assistive device, uses elevator – avoid stairs due to severe back pain), standing (10 minutes maximum), lifting (5 lbs maximum) and carrying/holding (1-3 lbs for 5-10 minutes).
- “Fatigue, dizziness, poor balance”.

In the 2<sup>nd</sup> Self-Report, the appellant said the following about her disability:

- Her back pain has gotten worse.
- 98% of the time she is in pain. The other 2% of the time she can go outside and sit. But those times are rare.

***Mental Impairment***

In the 2<sup>nd</sup> Medical Report, the doctor said the following about the appellant:

- There are no difficulties with communication.
- There are no significant deficits with cognitive and emotional function.
- The doctor said that daily living activities which are typically connected to mental function are not restricted (personal care, management of medications, management of finances and social functioning).

In the 2<sup>nd</sup> Assessor’s Report, the registered nurse said the following about the appellant:

- Speaking is good. Reading is poor (“2-pages- cannot concentrate due to pain and medication). Writing is satisfactory. Hearing is poor (“lip reads” and “bilateral hearing impairment. Requires hearing test and aids”).
- Major impacts to emotion, impulse control, attention/concentration, motivation and motor activity.

- Moderate impacts to consciousness and other neuropsychological problems.
- All other listed areas of cognitive and emotional function have minimal or no impacts.
- “Goes to bed at 10pm – sleeps 2 hours [illegible] With back pain and anxiety. Sleep interrupted every 2-hours”.

In the 2<sup>nd</sup> Self-Report, the appellant said the following about her mental impairment:

- Since her back pain has gotten worse, depression is setting.
- She no longer enjoys the activities she used to for years.

### **Daily Living Activities**

In the 2<sup>nd</sup> Medical Report, the doctor said the following about the appellant:

- A continuous restriction exists with daily shopping.
- Periodic restrictions exist with meal preparation and basic housekeeping.
- All other listed areas of daily living are not restricted.
- ‘If periodic, please explain’, the comment was “With her flares of back pain, which happens very regularly she is unable to prepare meals or do housework”.
- ‘Provide additional comments’, the comment was “She is severely restricted most of the time”.

In the 2<sup>nd</sup> Assessor’s Report, the registered nurse said the following about the appellant:

- “If sitting on the floor or low bed has difficulty getting up”.
- Personal care: periodic assistance needed with dressing, and it takes 2-3 times long to complete – “difficulty bending putting shoes and socks on. Leaves pajamas on”. Periodic assistance needed with bathing – “unable to step over the side of the bath [illegible]. Periodic assistance needed with toileting – “4-5 days constipation”. All other listed tasks of personal care are completed independently. However, transfers in/out of bed take significantly longer – “5-15 minutes. Slow to manage, lays in bed due to stiffness and pain”. Transfers on/off chair requires assistive device – “pushes off furniture”.
- Basic housekeeping: continuous assistance is needed with laundry and basis housekeeping – “daughter assists to lift carry load, [appellant] folds laundry. Daughter does vacuum, mop, dishes, toilet due to [appellant’s] difficulty with pain”.
- Shopping: continuous assistance is needed with going to/from stores (“daughter escorts [appellant] or goes shopping for [appellant] to lift and carry items”) and with carrying purchases home (“needs assistance [with] over 5lbs”).
- “Supervision when [illegible], daughter assists [appellant] when she becomes dizzy and gets [illegible] and 2 other times [appellant] collapsed from dizzy spell in her house”.
- Meals: continuous assistance with meal planning, and periodic assistance with food preparation and cooking (the comment from the assessor was largely illegible and did not speak to frequency and duration of the help needed). Safe storage of food is done independently.
- Pay rent/bills: periodic assistance with banking and budgeting and needs a chair to complete (the comment from the assessor was largely illegible and did not speak to frequency and duration of the help needed).
- All tasks related to medications are completed independently (the comment from the assessor was largely illegible and did not speak to frequency and duration of the help needed).

- Transportation: independent with getting in/out of vehicle and uses the car handle; continuous assistance is needed with using public transit and periodic assistance is needed with using transit schedules (the comment was largely illegible and did not speak to frequency and duration of the help needed).
- Social functioning: continuous assistance is needed with appropriate social decisions (“Isolates in her trailer; physically and mentally abused by 2 husbands”) and able to secure assistance from others (“Difficulty asking for help”). Periodic assistance is needed with able to develop/maintain relationships (“Avoids relationships due to her trust issues. Good relationship with her 2 daughters. Has not made new friends”) and able to deal with unexpected demands (“difficulty saying no when [illegible]”). There is very disrupted functioning with immediate social network and good functioning with extended social network. The appellant needs “mental health counselling and supports for anxiety and depression and trauma therapy”. Safety issues: “past suicide ideation. Isolated from friends and family [who are in another province]”.

In the 2<sup>nd</sup> Self-Report, the appellant said the following about her disability:

- She uses a walker in the shower.
- She has an extra box spring for her bed so it can be raised.
- She has a raised toilet.
- She uses a crock-pot to cook easy recipes.

### **Help**

In the 2<sup>nd</sup> Medical Report, the doctor said the following about the appellant:

- ‘What assistance is needed’, the comment was “She needs help from another person”.
- No prostheses or aids are needed for the appellant’s impairment.

In the 2<sup>nd</sup> Assessor’s Report, the registered nurse said the following about the appellant:

- Assistance is provided by family (2 daughters) and health authority specialists (chronic pain specialist).
- Daughters “assist with housekeeping, laundry, cooking, shopping, helping her up from the floor, putting shoes/socks on, driving her to hospital when pain flares, [and] social and emotional support”.
- She needs “chronic pain management program and services, home support services, mental health counselling for anxiety and depression, trauma therapy, neurosurgical consult and hearing test and probably hearing aids”.
- Assistive Devices needed: cane, toilet aids, bath aids and an adapted shower – walk-in with seat [illegible]. Hand-held shower head. Cane used with [illegible] issues. Seated wheeled walker and electric scooter, hearing aids, wheelchair and [illegible].
- No assistance is needed by an assistance animal.

In the 2<sup>nd</sup> Self-Report, the appellant did not make any specific comments about the need for help.



### **Admissibility of Additional Information**

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

In this case, the panel determined that additional information submitted before the hearing is information that allows for a full and fair disclosure of all matters related to the decision under appeal and has admitted this information as evidence in accordance with s. 22(4) of the *Employment and Assistance Act*.

The panel notes that 3-page letter from CRA does not provide information about the appellant's medical condition, its severity, its impact on daily living activities or the need for help. The eligibility requirements to obtain a disability tax credit are not explained in the evidence. As such the panel places little weight on the 3-page letter from CRA.

**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 legislation.

**Panel Decision****Severe Impairment**

In the reconsideration decision, the ministry was not satisfied that the information given showed that the appellant has a severe physical or mental impairment. To show that an impairment is severe, the information has to be weighed against the nature of the impairment and how it impacts functioning either physically or mentally. Having a diagnosis of an impairment does not mean that the condition is severe or that the person is qualified for PWD. The information has to show that the impairment, which is caused by a medical condition restricts a person's ability to function on their own or effectively. The ministry has to look at the impairment and see if it impacts daily functioning. The ministry depends on the information in the PWD application and any other information that is given.

The panel also notes that the ability to work is not a consideration for PWD eligibility because the ability work is not a requirement of section 2(2) of the Act and is not listed as a daily living activity.

**Physical Impairment**

The appellant said that her back pain is constant and has gotten worse.

The ministry said that based on the information provided in the PWD application, the appellant does not meet the legislative requirements of severe physical impairment.

In the reconsideration decision, the ministry pointed out what the doctor said about functional mobility in the medical report and assessor's report. That is, the appellant can walk 2-4 blocks unaided, climb 5+ steps unaided, cannot lift and can remain seated for less than 1 hour. The appellant takes significantly longer to walk outdoors and climbs stairs. The ministry concluded that the appellant experiences limitations to physical functioning due to lower back pain and restrictions from lifting and carrying weight. However, the ministry determines that the assessments provided by the medical practitioner and the information provided in the self-report speak to a moderate rather than severe physical impairment.

The panel's task is to determine if the ministry's decision is reasonable. In the case of the appellant, the ability to walk 2-4 blocks and climb 5+ steps unaided, stand and remain seated for less than 1 hour shows a moderate – good level of functioning. The doctor said that the appellant has constant left lower back pain, which is worse with driving, prolonged sitting or standing. The doctor said that the appellant's pain is sometimes so bad that she cannot get out of bed and has to sit down to put on her shoes and get dressed. Yet in the 2<sup>nd</sup> Medical Report the doctor said that the appellant's personal care is not restricted. In the 1<sup>st</sup> Medical Report, the doctor said that dressing requires periodic help and takes significantly longer but failed to indicate the type and frequency of the help needed or how much longer it takes the appellant to

get dressed. Similarly, the doctor failed to explain how much longer it takes the appellant to groom, bath or transfer in/out of bed. The doctor said that sometimes the appellant cannot get out of bed but then failed to say what help is needed or how often. Some limitations would be expected if the appellant experiences back pain. But the evidence does not show that the ability function is impacted in a significant way. As a result, the panel finds that the ministry was reasonable when it found that the appellant does not have a severe physical impairment as is required by Section 2(2)(a) of the Act.

The panel also considered the new PWD application and found that in the 2<sup>nd</sup> Assessor's Report there was a general sense that the appellant's condition has worsened. The appellant said this in her 2<sup>nd</sup> Self-Report but neither the doctor nor the registered nurse specifically said that the appellant's condition is worse now than when the 1<sup>st</sup> PWD application was completed. It is unclear, to the panel, why, in the 1<sup>st</sup> medical report the doctor said that the appellant can walk 2-3 blocks unaided but, in the 2<sup>nd</sup> Medical Report said that the appellant can only walk less than 1 block unaided. The panel found that in terms of physical impairment, with the exception of walking less than 1 block unaided, the 2<sup>nd</sup> Medical Report is more or less identical to the 1<sup>st</sup> medical report. The panel finds that this is evidence that the doctor did not confirm that the appellant's condition is worse now than when the 1<sup>st</sup> PWD application was completed. Furthermore, as the panel already stated, the 1<sup>st</sup> Medical Report shows a moderate level of impairment.

The 2<sup>nd</sup> Assessor's Report provides much more detail about the appellant's mobility and physical functioning. However, no explanation was given as to why it differs from the 1<sup>st</sup> Assessor's Report written by the doctor who has known the appellant since 2014. When looking closer at the 2<sup>nd</sup> Assessor's Report, the registered nurse said that the appellant has fatigue, dizziness and poor balance, but the doctor did not mention any of these things. The registered nurse did not explain how fatigue, dizziness and poor balance is related to the diagnosed condition of degenerative disc disease. The registered nurse did say that poor concentration was due to the appellant's medication but in the 2<sup>nd</sup> Medical Report, the doctor said that the prescribed medication does not interfere with the ability to complete daily living activities. In the 1<sup>st</sup> Medical Report, the doctor said that the medication will make her tired but did not say that they make her confused, dizzy or cause poor balance. The panel finds that the doctor's statements are not consistent with previous statements or with the assessor's statement. Thus, making it difficult to make a decision about severity of impairment.

The registered nurse said that the appellant needs continuous assistance with walking outdoors and the appellant can only do so for 5-15 minutes due to uneven pavement. The panel understands that the appellant may only walk outdoors for 5-15 minutes at a time, but the registered nurse did not explain how uneven pavement is linked to the inability to walk longer than 15 minutes, or how uneven pavement impacts degenerative disc disease. Furthermore, the doctor twice said that walking outdoors is not restricted. The registered nurse said that he appellant needs continuous assistance with climbing stairs. She also said that the appellant uses handrails and avoids stairs by using elevators. The registered nurse did not explain what help is needed from another person if the appellant uses elevators and/or handrails. The doctor twice said that the appellant can climb 5+ steps unaided, but no explanation was given for the difference in opinion from the two professionals. The registered nurse said that the appellant can lift 5 lbs, but the doctor twice said that the appellant cannot lift at all and again no

explanation was given for the difference in opinion. The panel finds that the 2<sup>nd</sup> PWD application lacks sufficient detail and information to meet the legislative requirements.

Given all of the information, the panel finds that the appellant does not have a severe physical impairment. As a result, the panel finds that the ministry was reasonable when it found that the appellant does not have a severe physical impairment as is required by Section 2(2)(a) of the Act.

### Mental Impairment

The appellant said that she feels depressed because her degenerative disc disease causes restrictions and she is unable to enjoy the activities she previously used to.

The ministry said that based on the information provided in the PWD application, the appellant does not meet the legislative requirements of severe mental impairment.

In the reconsideration decision, the ministry pointed out that in the medical report the doctor said that the appellant does not experience any significant deficits with cognitive and emotional functioning. The doctor said that the appellant does not have any difficulties with communication; and noted the level of ability with speaking, reading, writing, and hearing are good. With Social Functioning, in the Assessor Report the doctor does not indicate the requirement any support/supervision to manage any aspects of social functioning. The ministry determines that the information provided does not establish a severe mental impairment.

The panel finds that the analysis by the ministry of the evidence in the 1<sup>st</sup> PWD application was reasonable. The doctor did not diagnosis a mental condition that would cause a mental impairment. The doctor did not identify any deficits or impacts to cognitive or emotional functioning. It was said that there are no difficulties with communication, speaking, hearing, writing, or reading. From this information, it is difficult to say that the appellant has a severe impairment.

The panel considered the 2<sup>nd</sup> PWD application. The doctor did not provide a diagnosis of a mental condition that would cause a mental impairment. The doctor said that there are no difficulties with communication and there are no significant deficits to cognitive and emotional functioning. When considering the doctor's assessment regarding daily living activities, activities that are typically impacted by a mental impairment are said to have no impact. That is, the doctor said there are no restrictions with making decisions about personal activities, care or finances, or relate to, communicate or interact with others effectively . There is a periodic restriction with meal preparation, but the doctor said this restriction is due to flare-up of back pain and did not say it is due to a mental impairment.

In the 2<sup>nd</sup> Assessor's Report, the registered nurse said that the appellant has PTSD from childhood abuse and that the appellant suffered abuse from 2 husbands. However, there is no mention of this from the doctor or the appellant. The registered nurse said that there are major impacts to emotion, impulse control, attention/concentration, motivation and motor activity. However, it is not explained why the appellant is experiencing major impacts in these areas when there is no diagnosed mental condition and the doctor does not agree that there are

impacts to these areas of functioning. Although the registered nurse has identified PTSD, the legislation requires an opinion from a medical or nurse practitioner when determining whether a severe mental or physical impairment exists.

Lastly, the doctor and registered nurse provided very different assessments and opinions regarding social functioning and provided no explanation for the differing opinions.

Given all of the information, the panel finds that the appellant does not have a severe mental impairment. As a result, the panel finds that the ministry was reasonable when it found that the appellant does not have a severe mental impairment as is required by Section 2(2)(a) of the Act.

### Restrictions in the ability to perform Daily Living Activities

Section 2(2)(b)(i) of the Act requires that the minister must be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform daily living activities either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's decision is based on the evidence from prescribed professionals. The term "directly" means that there must be a connecting link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a part related to time or duration – the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended periods. Any examination of periodicity must also include of how frequently the activity is restricted. If a restriction only happens once a year it is less likely to be considered periodic for extended periods than one that happens several times a week. So, in the cases where the evidence shows that a restriction happens periodically, it is okay and right for the ministry to ask for evidence about the duration and frequency of the restriction to be "satisfied" that this legislative criterion is met.

The appellant said that that due to her back pain she cannot get dressed, put on shoes/socks without sitting, she cannot prepare meals and cannot get out of bed at times.

The ministry said that it is not satisfied that the information in the PWD application shows that the impairment directly and significantly restricts daily living activities continuously or periodically for extended periods.

In its reconsideration decision, the ministry points out that the doctor said that the appellant has been prescribed Flexeril and Tylenol 3 for pain that can make her tired and interfere with the ability to perform daily living activities. The doctor notes that periodic assistance is needed to manage the following aspects of daily living activities:

- Basic housekeeping.
- Going to and from stores.
- Food preparation.
- Cooking.
- Getting in and out of a vehicle.

The doctor notes that the appellant takes significantly longer than typical to manage the following daily living activities:

- Grooming.
- Bathing.
- Transfers in and out of bed. (Sometimes unable to get out of bed due to pain.)

The doctor indicated the need for require periodic assistance and take significantly longer than typical to manage dressing.

The ministry acknowledges that there are certain limitations resulting from lower back pain and that the appellant requires periodic assistance with basic housekeeping, going to and from stores, food preparation, cooking, getting in and out of a vehicle, and dressing. Further the doctor indicated sometimes the appellant is unable to get out of bed due to pain. However, the frequency and duration of these periods are not described to determine if they represent a significant restriction to the overall level of functioning that is for an extended period. Additionally, the doctor indicated that the appellant takes significantly longer than typical to manage dressing, grooming, bathing, and transferring in an out of bed. However, how much longer than typical has not been described as requested in the PWD application to determine if they represent a significant restriction to the overall level of functioning. The ministry finds the assessments provided by the doctor are indicative of a moderate level of restriction. The information provided by the doctor does not establish that a severe impairment significantly restricts daily living activities continuously or periodically for extended periods.

The panel finds that the ministry analysis of the evidence and findings based on the evidence to be reasonable. That is, as pointed out by the ministry, the doctor failed to give information to satisfy the legislative requirements. The panel finds that without information about the frequency and duration of the restriction or how much longer than typical it takes the appellant to complete specific tasks, it is difficult to determine if the legislative criteria was met. As a result, the panel finds that the ministry was reasonable when it found that the appellant does not have a severe mental impairment that directly and significantly restricts the ability to perform daily living activities, as is required by Section 2(2)(b) of the Act.

The panel considered the information in the 2<sup>nd</sup> PWD application. In the 2<sup>nd</sup> Medical Report, the doctor said that the appellant's back pain renders her unable to prepare meals or dress herself. The doctor said that that appellant has "episodic flares of her pain during which she is barely able to move for several weeks". However, the doctor did not say how often the flare ups occur.

The doctor said that there are periodic restrictions to meal preparation and basic housekeeping and continuous restriction to daily shopping. All other listed activities of daily living are not restricted including personal care even though it was said that the appellant cannot dress herself without sitting down. When asked to explain the periodic restriction, the doctor said, "With her flares of back pain, which happens very regularly she is unable to prepare meals or do housework" and "She is severely restricted most of the time". The panel finds that the information that the doctor provided is vague and general. That is, the doctor did not quantify the terms 'regular' and 'most of the time'. The panel finds that when asked to specify what help is needed, the doctor again provided a vague response and did not specify what help is needed, how often or for how long.

The panel considered the 2<sup>nd</sup> Assessor's Report and found that the registered nurse provided enough information to link degenerative disc disease to the specified restrictions. However, she failed to provide enough or, at times, any details about the frequency or duration of the help needed with daily living activities that needed periodic assistance. For example, the registered nurse said that the appellant needs periodic assistance with banking, budgeting, using transit schedules, dressing, bathing, and toileting but did not say. Without this information it is difficult to determine if the restriction is significant and periodic. The registered nurse said that all tasks related to basic housekeeping are restricted continuously, as are 2 of 5 tasks related to shopping, 1 of 4 tasks of under meals, and 1 of 3 tasks of under transportation. However, the legislation requires that at least two daily living activities be directly and significantly restricted by a severe impairment continuously or periodically for extended periods. In this case, only one activity of daily living is restricted.

The panel has already noted that the opinions provided by the doctor and registered nurse regarding social functioning making it difficult to make a decision about social functioning.

Given all of the information, the panel finds that the appellant does not have a severe mental or physical impairment which directly and significantly restricts the ability to complete daily living activities. As a result, the panel finds that the ministry was reasonable when it found that the appellant is not directly and significantly restricted in the ability to complete daily living activities as required by section 2(2)(b) of the Act.

#### Help to perform Daily Living Activities

Section 2(2)(b)(ii) of the Act requires that, *because of direct and significant restrictions in the ability to perform daily living activities*, a person needs help to perform those activities. Help is defined as the need for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform daily living activities.

The 2<sup>nd</sup> PWD application indicated that the appellant needs help with her daily living activities and that his help is provided by her 2 daughters and health authority professionals.

The ministry said that because it decided that daily living activities are not significantly restricted, it cannot find that significant help is needed from other persons or a device.

Given that a direct and significant restriction with daily living activities is a prerequisite of the need for help and because the panel found that the ministry was reasonable in its decision that direct and significant restrictions in the appellant's ability to perform daily living activities have not been established, the panel also finds that the ministry reasonably concluded that it cannot be determined that the appellant requires help to perform daily living activities as required by section 2(2)(b)(ii) of the Act.

#### Conclusion

The panel finds that the ministry's reconsideration decision, which found that the appellant was not eligible for PWD designation, was reasonably supported by the evidence and is a

reasonable application of the legislation, and therefore confirms the decision. The appellant is not 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*

2023-0082

**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: 2023/05/25

Print Name  
Jennifer Armstrong

Signature of Member

Date: 2023/05/25

Print Name  
Peter Mennie

Signature of Member

Date: 2023/05/25