

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 and duration requirements, but did not meet the following:

- 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 received 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

The appellant's PWD application that includes:

- A Medical Report and an Assessor Report dated February 8, 2022. The reports were completed by the appellant's doctor who has known the appellant since November 2020. The doctor has seen the appellant 11 or more times prior to completing the PWD application. The Assessor Report was completed by an office interview with the appellant and file/chart information. The PWD application also included the appellant's self-report dated February 24, 2022.
- A report from an Ophthalmologist dated September 3, 2022. The report confirms that the appellant has "has a right vitreous hemorrhage - secondary to proliferative diabetic retinopathy".
- Blood test result dated December 8, 2021. The report indicates that the appellant hemoglobin A1c is at 9.3 which is abnormal.
- Request for Reconsideration, dated December 22, 2022, which indicated, in part, the following:
 - "I have medical complications from diabetes such as neuropathy in my legs, feet, elbows, arms which affects daily life and limits self-care and challenges being accomplished.
 - I suffer from RVO and broken blood veins in my eyes which limit and affect my balance, dexterity, walking, reading, writing and function. Everyday deal with swollen legs, arms, feet, hand and need equipment

and tools to attempt any sense of mobility. Without these things mobility will get even worse.

- Can't walk, stand or sit for too long but have aids from OT but they're only on loan but covered on disability. I use bed aid, toilet aids, walking aids.
- Back/spine issues, restless sleep apnea.
- I am also limited and withdrawn as a result of all my medical issues and can't function due to health issues, driving, recalling information, activities, work, events and as a result of sugar management, eating limited.
- I am asking the ministry to be compassionate as I navigate all my issues I'm facing in life, from my medical issues to taking care day to day. I'm trying my best to better myself and be a productive member of society and if I can primarily focus on health and wellness then I can try my best.
- To function and succeed I need the support and tools necessary, and these are funded and approved on disability, like my toilet seat and grab bar and bed bar as well as cane and walking aids, orthotics, wraps, brace, eyewear and all other medical aids needed in the future.
- I think the ministry decision was incorrect because they haven't met me on a personal level and seen my day-to-day life on top of myself care and personal life or seen how things are affecting my wellbeing or quality of life as I need support and assistance to achieve somewhat independence".

The information in the PWD application said the following:

Diagnoses

In the Medical Report, the doctor diagnosed the appellant with Diabetes (onset 2020), Diabetic Retinopathy (onset Sept 2021), Chronic Venous Insufficiency (onset Oct 2021), and Sleep Apnea – query (onset Feb 2022).

Health History

The doctor said the following about the appellant's condition:

- “Diabetes: Unfortunately, [the appellant’s] poor diabetes control has yielded in complication including retinopathy and neuropathy.
- He is in the process of being work up for possible coronary artery disease.
- The difficulty in achieving control of blood sugar has imposed difficulties on his daily life. Example: Need for regular check-ups of BS (blood sugar), risk of hypoglycemia etc.
- Diabetic Retinopathy: Unfortunately, due to poor glucose control he has developed diabetic retinopathy (right eye) affecting his vision and his ability to drive and manage IADLS.
- Chronic Venous Insufficiency: chronic bilateral leg swelling and recurrent cellulitis in the context of edema. This contributes to difficulty in walking and managing his daily functions”.

Degree and Course of Impairment

The appellant's impairment is likely to last 2 or more years from the date of the PWD application.

Physical Impairment

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

- He can walk 2-4 blocks unaided and climb 2-5 steps unaided.
- He can lift 5-15lbs and can remain seated for 2-3 hours at a time.

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

- There are “issues with walking and transportation”.
- He takes significantly longer to walk outdoors.
- He is independent with walking indoors, climbing stairs, standing, lifting and carry/holding.

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

- “I have medical complications from diabetes.
- Neuropathy – legs, hands, feet, elbows.
- Broken blood veins in eyes which impacts eyes and function.
- Swollen legs and arms/feet/hands.
- Can’t walk, stand, sit for too long.
- Have lazy eyes; left side is worse.
- IBS Symptoms, acid issues, sugar issues and fatigue.
- Back/spine issues, restless, sleep apnea”.

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.
- There are no restrictions with social functioning, or personal care or financial management.

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

- Speaking, reading, writing and hearing are satisfactory.
- There are no impacts to any listed areas of cognitive and emotional functioning.
- In the daily living activities, there are no restrictions or need for help with social functioning, personal care, meals, shopping, medications or paying rent/bills.

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

Daily Living Activities

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

- There are no restrictions to all listed areas of daily living except mobility outside the home and use of transportation: comment: “He needs assistance with mobility outside home and assistance with transportation”. *It is noted that the doctor did not indicate if these areas of daily living are restricted continuously or periodically.

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

- All listed tasks for all listed daily living activities are completed independently.
- “Given poor control of blood sugar levels and need for insulin he requires close monitoring and is at risk of hypoglycemia. Above in association with microvascular complications of his diabetes (diabetic retinopathy) is affecting his ability to function independently in his daily life and is unable to sustain an occupation”.

In the Self-Report the appellant did not say anything about his daily living activities:

- “My diabetes and other body conditions limits my daily life.
- Hard to function fully and take care of myself.
- Stops me from working a normal demanding job where I would need to perform rigorous tasks.
- Keeps me from full participation with any number of tasks.
- Makes me withdrawn from daily, weekly, monthly, yearly events, activities and life.
- Restless sleep cycles and difficulty recalling information of lists and tasks.
- Can’t drive due to dexterity and eye issues.
- Sore body/back pain affecting my walking and living and working”.

Help

In the Medical Report the doctor said that orthotics and compression stockings are required for the appellant’s impairment.

In the Assessor Report, the doctor said the appellant gets help from family and “he needs assistance for mobility outside home in terms of transportation given his visual issues in the context of diabetes and chronic venous insufficiency”.

The doctor also said that the appellant requires custom made orthotics and compression stockings, and splints. The appellant does not require the assistance of an assistance animal.

In the Self-Report the appellant did not specifically state which help is needed (other than transportation) and who provides it. He did indicate that he requires grab bars and walking aids (such as a cane).

Evidence At Appeal

A Notice of Appeal was submitted on January 16, 2023. In it the appellant stated that, "I have severe diabetes. I can't see properly. I can barely read. I need assistance reading and managing stuff. I can't walk unassisted. I have Neuropathy. I have - in my feet and in my legs - I'm trying to get orthotics. I'm trying to get wraps for my legs to get the swelling down so I can walk. I don't require a walker right now, but a cane would be good. At home I have an OT that left an arm thing to get out of bed, bathroom lift, commode chair and other support stuff to walk around - which are on loan until I get disability. All the stuff in the community will be covered - a lot of benefits that I need”.

Evidence At the Hearing

At the hearing, the appellant's witness stated, in part, the following about the appellant:

- He gets tired quicker, and his body is deteriorating.
- He has his eye lasered once every few months.
- His legs swell with walking especially when climbing stairs.
- His feet get sore due neuropathy.
- Diabetes has left his body brittle.
- For these reasons he would not be able to work.
- The witness lives on in the same home but different floor as the appellant. Currently she does not need to help the appellant with day-to-day activities.
- He can manage his daily living activities because he knows the layout of the home and is able to function and care for his young child.
- The witness does provide childcare at times to give the appellant a break.
- The appellant cannot get up from the sofa.

At the hearing, the appellant stated, in part, the following:

- The doctor made statements to the appellant when completing the PWD application but did not transfer that information onto the PWD application.
- He has been waiting for the doctor to get in touch with him so he could provide updated information to this appeal. However, the doctor has not been in touch.
- The restrictions he experiences with daily living activities were not clearly indicated in the application.
- He uses bed rails and commode, and cannot function without them.

- He needs compression stockings and wraps to reduce the swelling in his legs and feet.
- When his legs swell, walking is painful.
- He cannot drive or read due to his eye for which he receives laser treatments every few months.
- His condition is worse now than when the PWD application was completed in March 2022.
- He is due for another eye appointment. These treatments help but his condition is deteriorating and will never get better.
- It would be easier to take care of his child if he had more benefits which he would have with PWD designation.
- He takes care of his feet on a daily basis but without the necessary medical supplies it is difficult to keep the swelling down or manage the pain.

At the hearing, the ministry relied on its reconsideration decision.

Admissibility of Additional Information

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

The panel found that the appellant's Notice of Appeal and testimony at the hearing provided additional detail or disclosed information that provides a full and fair disclosure of all matters related to the decision under appeal. The panel has admitted this new information as being in accordance with s. 22(4) of the

Employment and Assistance Act. An analysis of each is provided in the panel's decision.

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 showed that the appellant has a severe physical or mental impairment. The ministry is of the opinion that 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 a medical condition does not mean that the impairment 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 finds that the ministry's approach to determine severity is reasonable.

The panel also notes that the ability to work is not a consideration for PWD eligibility because the ability to 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 complications from diabetes has led to neuropathy and the inability to walk, climb stairs, stand or sit too long. It also impacts his vision due to retinopathy.

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 the appellant's physical functioning as indicated in the Medical Report by the doctor (he can walk 2-4 blocks unaided, climb 2-5 steps unaided, lift 5-15lbs and remain seated for 2-3 hours). The ministry also pointed out that in the Assessor's Report the doctor indicated that the appellant independently walks indoors, climb stairs, stands, lifts and carry/holds but takes significantly longer to walk outdoors. The ministry pointed out that the doctor did not indicate how much longer the appellant takes to walk outdoors. The ministry concluded that the appellant experiences limitations to physical functioning due to edema in both legs. However, the assessments provided by the doctor 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, his physical functioning, as described in the Medical and Assessor Report, and in the narrative provided, indicates moderate to good physical functioning. In the Assessor Report, the doctor stated that the appellant takes significantly longer to walk outdoors and "needs assistance for mobility outside home in terms of transportation given visual issues in the context of diabetes and

chronic venous insufficiency”. The doctor did not indicate how much longer it takes the appellant to walk outdoors. The appellant also did not provide this information at the hearing or provide any additional information from a prescribed professional. Also, it was unclear why assistance is necessary with mobility outdoors if the appellant can walk 2-4 blocks unaided, climb 2-5 steps and walk indoors, climb stairs and stand independently. The panel also considered the ophthalmologist’s report and blood test report and found that neither gives any information regarding the appellant’s physical functioning and mobility. The appellant stated that his legs and feet swell to the point where walking is painful. The doctor indicated that the appellant’s medical condition “contributes to difficulty in walking and managing his daily functions”. However, as mentioned, the doctor also indicated that the appellant can walk 2-4 blocks unaided. The panel finds that it is difficult to decide with this unclear information.

As a result, the panel finds that there is insufficient information to determine that the appellant has 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 did not argue that he suffers from a mental impairment.

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 satisfactory. 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 all of the evidence was reasonable. The panel notes that the doctor did not diagnose 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. The ophthalmology report and lab report do not reference a mental health issue. From this information, it is difficult to find that the appellant has a severe mental impairment.

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. So, in the cases where the evidence shows that a restriction happens periodically, it is appropriate for the ministry to ask for evidence about the duration and frequency of the restriction to be "satisfied" that it is for extended periods.

The appellant said that that due to the complications of his diabetes, he is unable to function day-to-day.

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 pointed out that the doctor said that the appellant has not been prescribed any medications or treatments that interfere with his ability to perform his daily living activities. The ministry pointed out that in the Medical Report, the doctor said that the appellant has restrictions to mobility outside the home and use of transportation. The ministry pointed out that in the Assessor Report, the doctor said that the appellant manages all of his daily living activities independently. The ministry concluded that the frequency and duration of the help required with transportation and mobility outdoors has not been described to determine if they represent a significant restriction to the overall level of functioning; especially since the medical practitioner has indicated the ability to walk to 2 to 4 blocks unaided on a flat surface, and walk independently outdoors but take longer than typical. The information provided by the medical practitioner 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 to mobility and use of transportation, it is difficult to determine if the legislative criteria was met. Furthermore, in the Assessor Report, the doctor indicated that appellant independently performs all listed tasks of daily living. The doctor stated that the appellant's medical conditions is "affecting his ability to function independently in his daily life". However,

the same doctor stated that the appellant independently completes all listed tasks in all listed areas of daily living. The appellant stated that he cannot function without supports. However, the witness stated that the appellant manages his daily living activities on his own and cares for his young child. Again, the panel finds that it is difficult to get a clear picture with unclear information.

The panel also considered the information provided by the appellant in the self-report, request for reconsideration and at the hearing. Particularly, the appellant stated that he cannot transfer in/out bed without assistive devices. However, in the Assessor Report, the doctor indicated that this task is completed independently. Furthermore, the legislation specifically requires that information regarding restrictions to daily living activities must come from a prescribed professional.

As a result of all of the above, the panel finds that the ministry was reasonable when it found that the appellant does not have a severe physical or mental impairment that directly and significantly restricts the ability to perform daily living activities.

Therefore, the panel finds that the ministry was reasonable when it found that there is not enough information to establish that the appellant is 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 appellant stated that he needs a cane, commode, grab bars and orthotics. The doctor indicated that help is provided by family and that the appellant needs orthotics and compression stockings.

Direct and significant restrictions with daily living activities are a prerequisite of the need for help. The panel previously 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. Therefore, 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*

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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: 2023/06/29

Print Name

Bill Haire

Signature of Member

Date: 2023/06/29

Print Name

Robert Kelly

Signature of Member

Date: 2023/06/29