

**Part C – Decision Under Appeal**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“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* 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 (“Act”), section 2*

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

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

**Part E – Summary of Facts**

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the Employment and Assistance Act.

The Appellant's PWD application that includes:

- A Medical Report dated September 2, 2023 and an Assessor Report dated September 12, 2023. The reports were completed by the Appellant's doctor who has known the Appellant for over 20 years. The doctor has seen the Appellant 2-10 times prior to completing the PWD application. The Assessor Report was based on an office interview with the appellant and file/chart information.
- The PWD application also included the Appellant's self-report dated September 18, 2023. The self-report was left blank.
- Request for Reconsideration, dated December 10, 2023, which indicated, in part, the following:
  - She is suffering in silence.
  - The anxiety and depression are stopping her from living a normal life.
  - She barely showers or does daily self-care.
  - She has lost interest in everything. A lack of motivation and depression prevents her from doing anything.
  - Doing laundry and cleaning are the most difficult to do.
  - Post surgery, she continues to experience permanent numbness in her lower back, buttocks down to the tip of her toes.
  - A description of her trauma and childhood abuse.
  - A description of her addiction history.
  - A description of her work history.
  - A description of her relationship history concerning the birth of her children.
- Letter of support from the director of the complex trauma and addiction recovery program the appellant attends. The letter provides a description of the program, the demands of the program and the appellant's commitment to recovery.

\*The panel notes that this letter of support does not speak to the appellant's impairment, functional ability, ability to perform daily living activities and need for help with daily living activities.

The information in the PWD application including the following:

***Diagnoses***

In the Medical Report, the doctor diagnosed the Appellant with Depression (onset January 2009), Generalized Anxiety Disorder (onset June 2008) and back pain post herniation (onset December 2014).

### ***Health History***

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

- "Longstanding anxiety and depression, partially responding to medications. Moderate to severe currently with exacerbation from emotional trauma".
- "L5/S1 discectomy December 2015. Residual lower back pain with episodic radicular symptoms".
- The Appellant has not been prescribed medication that interferes with the ability to perform daily living activities.
- The Appellant does not require any prosthesis or aids for her impairment.

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

The Appellant's impairment is likely to last 2 or more years from the date of the PWD application and commented: "Anticipate ongoing challenges with mental health, anticipated to be lifelong. Medication, counselling, social support can mitigate severity but has not been able to achieve remission".

### ***Physical Impairment***

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

- She can walk 4 blocks unaided on a flat surface, climb 5+ steps unaided, lift 15 to 35 lbs. and remain seated less than 1-hour.
- "Restriction to lifting related to chronic back pain".

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

- Can independently manage Walking indoors/outdoors, climbing stairs and standing.
- Periodic assistance from another person is needed and it takes significantly longer to manage lifting ("limited to 20lbs or less during exacerbation back pain) and carrying/holding ("requires assistance with lifting and carrying and holding").

### ***Mental Impairment***

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

- There are not difficulties with communication.
- There are significant deficits with cognitive and emotional function in the areas of executive function, memory, emotional disturbance, motivation, motor activity, and attention/sustained concentration.

- “Depression/anxiety impacts concentration and focus. Struggles with motivation, organization, time management. Reduced adaptability. Reduced distress tolerance”.

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

- Speaking, writing and hearing are good. Reading is satisfactory as the Appellant “struggles with concentration at times”.
- For cognitive and emotional functioning, there are major impacts in the areas of emotion, attention/concentration, and motivation. There are moderate impacts in the areas of bodily function, impulse control, executive and memory. All other listed areas of cognitive and emotional functioning have no or minimal impacts.
- “Struggles with sleep, less attention to grooming, hygiene, significant anxiety with low mood affecting concentration executive function, adaptability, distress tolerance”.

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

In the Medical Report, the doctor said that treatments and medications that would interfere with the ability to perform daily living activities have not been prescribed to the Appellant.

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

- The Appellant independently performs all listed tasks of Meals, Pay Rent/Bills, Medications and Transportation.
- Under the Daily Living Activity of Personal Care, the Appellant performs all listed task independently except grooming and bathing which takes significantly longer to complete; “slower to complete these tasks, less attentive to grooming, appearance than previous”.
- Under the Daily Living Activity of Basic Housekeeping, laundry and basic housekeeping take significantly longer to complete; “takes longer than others due to reduced energy, scheduling challenges and motivation”.
- Under the Daily Living Activity of Shopping, all tasks are completed independently except going to/from stores (“Takes longer. Avoids if possible. Requires assistance when anxiety worse or back pain is exacerbated”) and carrying purchases home (“requires assistance with lifting, carrying and holding”). Both of these tasks take significantly longer to complete and require periodic assistance from another person.
- Under the Daily Living Activity of Social Functioning, all tasks are completed independently except the ability to deal appropriately with unexpected demands which requires periodic support and supervision.

- The Appellant has good functioning with immediate social networks and marginal functioning with extended social networks.
- “In general, reduced attention to grooming/bathing. Takes longer lacks motivation and energy to attend to these tasks”.
- “Laundry and housekeeping takes longer related to back pain. Requires frequent breaks. Motivation, organization and planning also affect time spent on these tasks”.
- “With exacerbations of back pain requires help with heavier purchases. In general, takes longer to travel to and from store”.

### **Help**

In the Medical Report the doctor said that the Appellant does not require any prostheses or aids for her impairment.

In the Assessor Report, the doctor said the Appellant:

- Requires help with counselling and child-care.
- Help with daily living activities is provided by family, friends and health authority professionals.
- Assistance is not required by an assistive device or assistance animals.

### **Evidence At Appeal**

A Notice of Appeal was submitted on December 19, 2023, which stated that the Appellant needs help to be her best for her children, she suffered from severe anxiety most of her life plus depression, and her back numbness is a disability.

The panel found that the Notice of Appeal is the Appellant’s argument and accepted it accordingly.

### **Evidence Prior to the Hearing**

Prior to the hearing, the Appellant submitted a letter from her doctor, dated August 3, 2023. The letter stated that the Appellant “has an underlying medical condition which is chronic in nature but can fluctuate in severity. In January 2022 her condition worsened such that her ability to care for her children was impacted. This continues to be the case at the present time”.

### **Evidence at the Hearing**

The Appellant relied on her submissions and the Ministry relied on its reconsideration decision.

**Admissibility of Additional Information**

A panel may consider evidence that is not part of the record that 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 August 3, 2023 letter from the doctor 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*.

The panel found that the August 3, 2023 letter from the doctor did not provide enough detail. That is, in the letter the doctor did not specify what medical condition chronic in nature, what degree does it fluctuate or to what degree has it worsened. The doctor also did not specify how the Appellant's ability to care for her children was impacted. As such the panel places little weight on the August 3, 2023 letter from the Appellant doctor when making its determination in this case.

**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 she suffers from numbness and chronic pain due to herniated discs and repair.

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 and the narrative indicated by the doctor in the Medical Report. The Ministry noted the Appellant's mobility and physical functioning as indicated in the Assessor's Report. The Ministry also noted the appellant's self-report as indicated in the request for reconsideration.

The Ministry acknowledged that the Appellant experiences chronic pain due to L5/S1 herniated discs and repair. However, it concluded that the range of functional skills,



mobility and physical abilities do not suggest a severe degree of impairment. The Ministry concluded that at this range, the Appellant can complete basic daily functional requirements independently. While it is reported that the Appellant takes more time lifting, carrying and holding, the additional time is not reported, and the Ministry cannot confirm whether this suggests a significant limitation. The Ministry noted that it is reported that periodical assistance is required with lifting, carrying, and holding during exacerbations of back pain, the frequency and duration of these exacerbations was not reported. The Ministry notes that being independent in lifting up to 20 pounds does not suggest a severe impairment. The Ministry determined that, based on the information provided, the Appellant does not have a severe physical impairment.

The panel's task is to determine if the Ministry's decision is reasonable. In the case of the Appellant, she can function in her physical and mobility tasks. That is, according to the doctor, she can walk 4+ blocks unaided and climb 5+ steps lift about 15lbs and remain seated for less than 1 hour. In the Assessor's Report the doctor said that the Appellant needs periodic assistance with lifting and carrying/holding but can independently walk indoors/outdoors, climbing stairs and standing. The doctor did not provide an explanation as to how often assistance is needed or how much longer it takes the Appellant to lift or carry/hold. Making a determination without such information would be difficult. The information that is provided suggests a moderate level of physical functioning and therefore the legislative criteria has not been met.

As a result, the panel finds that the information provided does not establish 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 argued that her generalized anxiety prevents her from functioning.

The Ministry argued 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 the doctor's narrative and report of the Appellant's cognitive and emotional deficits as indicated in the Medical Report. The Ministry also pointed out the doctor's narrative and report of the impacts to the Appellant's cognitive and emotional functioning as indicated in the Assessor's report.

The Ministry noted that regarding the daily living activities related to making decisions about personal activities (i.e. making appropriate choices while shopping, paying for purchases), care (i.e. personal care, meals, medication management), and finances (i.e. reading prices and labels, paying for purchases, paying rent and bills), as well as social functioning, the Appellant is independent in almost all aspects of these tasks, and does not require assistance/support/supervision or additional time.

The Ministry acknowledged that the Appellant experiences limitations to cognitive and emotional functioning due to depression and anxiety. However, it determined that this does not appear to severely impair her mental function. The Appellant is independent in almost all activities related to a severe mental impairment, including personal activities, care, finances, and social functioning. The Ministry determined that, based on the information provided the Appellant does not have a severe mental impairment

The panel considered the information in the PWD application and the Ministry's reconsideration decision. The panel finds that the Ministry failed to provide a full analysis of the evidence presented by the doctor. Though the Ministry listed everything the doctor checked off or wrote, the Ministry made no comments on how that information was considered in its decision. For example, the doctor indicated that the Appellant has "Depression/anxiety impacts concentration and focus. Struggles with motivation, organization, time management. Reduced adaptability. Reduced distress tolerance" and "Struggles with sleep, less attention to grooming, hygiene, significant anxiety with low mood affecting concentration, executive function, adaptability, distress tolerance". The doctor indicated that there are significant deficits in the areas of executive, memory, emotional disturbance, motivation, motor activity and sustained attention/concentration. The doctor indicated that there is a major impact to emotion, attention/concentration and motivation. The Ministry did not state whether it considered this information in its determination regarding severity of a mental impairment. Instead, the Ministry relied only on the ability to complete daily living activities to determine severity of a mental impairment.

Though assessing the ability to perform daily living activities is reasonable to determine whether a medical condition is severe, the evidence provided by the Appellant, and her doctor, must be given significant weight unless there is a legitimate reason not to do so. In this case, the panel finds that by neglecting to consider some of the information provided by the doctor the Ministry did not place significant weight on it. The Ministry also failed to state a legitimate reason to exclude the doctor's narrative or checked boxes. Additionally, the evidence from the doctor must be read in its entirety and in a broad way. In this case, the Ministry has not provided a reason to believe that the doctor's evidence

was considered in its entirety or in a board way. Relying solely on the ability to perform daily living activities to make a determination of severe impairment fails to consider the medical evidence submitted by the doctor, whose opinion is required by the legislation. Thereby, the Ministry failed to interpret the evidence with a benevolent purpose in mind.

For these reasons, the panel finds that the Ministry was not 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 argued that that due to complications from her medical conditions she is unable to function and complete her daily living activities.

The Ministry argued 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 stated that the doctor provided an assessment of daily living activities in the Medical Report. The panel finds that in the PWD application, the Medical Report dated September 2, 2023 did not provide an assessment of the Appellant's ability to perform daily living activities and is not required to do so. Instead, the doctor provided this information in the Assessor's Report dated September 12, 2023 as is instructed by the PWD application.

In the reconsideration decision, the Ministry noted the assessment and narrative provided by the doctor in the Assessor's report. The Ministry pointed out that some tasks of daily living require periodic assistance and/or take significantly longer to complete. The Ministry pointed out that the additional time needed was not reported. Therefore, it cannot confirm that the Appellant is significantly restricted in these areas. Further, some of the narrative does not suggest a direct link to the medical conditions (i.e. Scheduling difficulties) or suggest an impairment (less attentive to appearance than previous).

The Ministry noted that the doctor stated that with Shopping, the Appellant requires periodic assistance with going to/from stores and carrying purchases home. However, it is not clear how often, or for how long assistance is required. Further, it is not clear that a periodic restriction with two tasks of this daily living activity (shopping) suggests a significant overall restriction periodically for extended periods.

The Ministry noted that the doctor stated that the Appellant requires periodic support / supervision dealing appropriately with unexpected demands. However, the frequency and duration of this support was not reported, and the Ministry cannot confirm that the Appellant requires support periodically for extended periods. Further, it is not clear that the Appellant is significantly restricted in social functioning, given that she is independent in all other aspects of social functioning.

The Ministry concluded that there is not enough evidence to confirm the Appellant has a severe impairment that, in the opinion of a prescribed professional, significantly restricts the ability to perform daily living activities continuously or periodically for extended periods. Therefore, the legislative criteria have not been met.

The panel disagrees with the Ministry's assertion that the doctor did not suggest a direct link to the Appellant's medical condition. That is, the doctor clearly indicated that the Appellant is slower to complete tasks related to personal care which is directly speaks to her lack of motivation and energy. This is also true of the comments provided under basic housekeeping.

However, the panel finds that the Ministry analysis of the evidence and findings based on the evidence to be reasonable. Though the Assessor's Report provides information about the Appellant's inability to perform some of her daily living activities independently or that she requires more time to complete those activities, the doctor failed to provide enough information to meet the legislative requirements. Specifically, the doctor failed to indicate how much longer it takes the Appellant with personal care, basic housekeeping or shopping. Similarly, the doctor failed to indicate the frequency and duration of the help

needed with shopping or ability to deal appropriately with unexpected demands. Without this information it is difficult to determine if the mentioned tasks take *significantly* longer to complete or that the appellant is restricted in her daily living activities periodically for *extended periods*.

For these reasons, 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 due to her medical condition she needs help with her daily living activities.

The Ministry argued that since the legislative requirements regarding direct and significant restriction to daily living activities was not met, the need for help cannot be met.

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*



2023-0393

**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: 2024/01/31

Print Name

Gordon Thompson

Signature of Member

Date: 2024/01/31

Print Name

Janet Ward

Signature of Member

Date: 2024/01/31