

**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 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, duration requirements and that he has a severe mental impairment. However, he did not meet the following:

- 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 October 3, 2023. The reports were completed by the Appellant's doctor who has known the Appellant for 2 months. 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, file/chart information, a psychological assessment and information from an intake with community mental health services. The PWD application also included the Appellant's self-report dated August 11, 2023 which was left blank.
- Psychological Assessment dated June 12, 2023 completed by the Appellant's psychiatrist.
- A 1-page report from the Appellant's dermatologist dated September 28, 2023.
- 2-page blood panel report dated August 11, 2023.
- Request for Reconsideration, dated April 5, 2023, which indicated, in part, the following:
  - Frustration with not having a diagnosis for his mental health issues or the root cause of this mental health issues.
  - Description of the Appellant's struggles with mental health (such as daily forgetfulness).
  - Quality of life is in jeopardy and worsening.

The information in the PWD application including the following:

***Diagnoses***

In the Medical Report, the doctor diagnosed the Appellant with Mood Disorder (onset 2021), Anxiety (onset June 2023), Substance Related Disorder (onset June 2023) and Diabetes (onset 20 years ago).

***Health History***

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

- In 2021 the Appellant was diagnosed with persistent depressive disorder and substance induced mood disorder. Since then, he has had many hospitalizations.
- This has affected his functional ability and social relationships.
- He is taking medication that interfere with his ability to perform his daily living activities as he reports feeling numb when taking it.

- At this time, it is unknown how long the Appellant will take the medication and it could be for long term.
- He does not require any prosthesis or aids for his 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 the doctor stated that "duration not known, there is treatment that could help the [Appellant] and that could minimize the impairment".

### ***Physical Impairment***

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

- He can walk 4 blocks unaided on a flat surface, climb 5+ steps unaided, lift without limitation and remain seated without limitation.

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

- He can independently manage all listed areas of mobility and physical ability, such as walking indoors/outdoors, climbing stairs, standing, lifting and carrying/holding.

### ***Mental Impairment***

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

- There are difficulties with communication for cognitive reasons.
- There are significant deficits to cognitive and emotional function in the areas of executive function, memory, psychotic symptoms, emotional disturbance, motivation, impulse control, motor activity and attention/sustained concentration.
- "mood disorder and substance related disorder is affecting his functional skills".

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

- Speaking, reading, writing and hearing are good.
- There are moderate impacts to the following areas of cognitive and emotional functioning: emotion, impulse control, insight/judgement, attention/concentration, executive, memory, motivation, motor activity, language, psychotic symptoms and other neuropsychological problems.
- The doctor indicated that these findings were indicated on the psychological and outpatient therapist assessments.
- All listed areas of social functioning were not assessed.
- The Appellant has very disrupted functioning with immediate and extended social networks.
- "The [Appellant] need[s] frequent follow-up with his psychiatrists and take medication as prescribed".

- “[The Appellant] has been seen by [community mental health and substance use] once and after [he] contacted his psychiatrist, it appears that he did not attend the follow-up appointment with his psychiatrist”.

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

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

- All listed tasks for all listed daily living activities are completed independently, except: all listed areas of social functioning which was left blank with a note stating “not assessed”; pay rent/bills was left blank and basic housekeeping was left blank with the note “unknown” next to it.

### ***Help***

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

In the Assessor Report, the doctor said the Appellant:

- Lives alone.
- It is unknown who provides assistance or whether it is provided.
- Assistance is not required from an assistance animal.
- Assistance from an Assistive Device is not required.

### **Evidence At Appeal**

A Notice of Appeal was dated December 19, 2023 and stated, in part, the following:

- “My condition has been deteriorating greatly”.
- He has visited his psychiatrist and professional and has been given more medication which makes it tough to function.

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

An undated submission from the Appellant, in part, contained the following information:

- He has a continuous battle with mental health.
- He has had numerous consultations with health professionals and still has a diagnosis of ‘unspecified mental health issues’.
- There has been no diagnosis of depression or anxiety.
- He spends a great portion of his day just looking for things that sometimes are in his hand.
- He has had no progress in the last decade and is sad.

- He described his frustration with his health care professionals and the lack of results that he has experienced.

The panel found that the undated submission is the Appellant's argument and accepted it accordingly.

### **Evidence At the Hearing**

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

- The Appellant reviewed the information in the Assessor's report under section C-4, which he said impacts his daily living activities.
- The Ministry has overlooked this evidence, which is a human rights and civil liberties issue.
- Due to the listed major impacts to his cognitive and emotional functioning, he cannot function in this daily life.
- The questions on the PWD application were not discussed with him when the doctor completed the forms.
- His days blend.
- He rents a room in a house with a shared kitchen and washroom.
- He is able to do his laundry when he remembers to do so.
- He uses Instacart for his shopping.
- He can pay his rent and bills on his own.
- He can plan and prepare his own meals.
- He can have his medications refilled and delivered to him.
- He can manage public transportation on his own.
- His personal care is neglected. He can go days without bathing or grooming and it can be difficult to manage.
- He does not have family support. He finds it difficult to reach out for help from friends. He is isolated.
- He did not have an advocate to assist with the PWD application and appeal process.
- If awarded PWD designation he will have access to a bus pass which will make his life easier.
- His diabetes is getting worse.
- He acknowledged that in the Assessor's report, section C-4 and section D contradicts one another.
- The Appellant described the ill treatment he has received from the Ministry and the health care system in general.
- On October 3, 2023, his doctor completed a form 4 in an attempt to have him committed to a psych-ward in the hospital. Therefore, the information the doctor

provided is not reliable. \*The panel notes that the Appellant did not provide any supporting documentation in this regard.

At the hearing, the Ministry relied on its reconsideration decision. At the hearing, the panel questioned the Ministry whether it was aware that some prescribed professionals (specifically medical doctors) will not complete the PWD applications and if such professionals have the obligation to complete the PWD application.

On February 8, 2024, after the hearing was complete, the Ministry responded to the above questions. The Ministry stated that "The Ministry is unable to answer the questions posed by the panel as they are outside the scope and expertise of the Ministry".

\*The panel notes that the psychological assessment, report from the dermatologist and the blood panel report do not contain any information regarding the Appellant's functional skills, ability to complete daily living activities or the need for help in completing daily living activities. Similarly, the Appellant's request for reconsideration, notice of appeal, and undated submission do not contain any information about the Appellant's ability to complete daily living activities or the need for help in completing daily living activities.

### **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 undated submission from the Appellant and testimony the Appellant offered 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*.

The panel found that information provided by the Ministry in response to the panel's questions 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*.

**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 satisfied that the information showed that the Appellant has a severe physical or mental impairment. Therefore, it is not necessary for the panel to make a determination regarding severe impairment.

**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. In 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 his mental health condition he is unable to function and complete 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 pointed out that the doctor said that the Appellant is prescribed medication that interferes with the ability to perform daily living activities. The doctor indicated that the Appellant can independently manage all aspects of daily living activities, and it is unknown if the Appellant can manage basic housekeeping



and pay rent/bills. The Ministry noted that the additional information provided with the PWD application containing the psychiatric assessment, dermatology consult report, and lab work results do not speak to limitations/restrictions in the ability to perform daily living activities, or the help that is required with daily living activities.

The Ministry stated that considering the medical history, it is reasonable to expect that the Appellant would encounter some restrictions to the ability to perform daily living activities and require assistance as a result. However, the Ministry finds there is not enough evidence to confirm that the Appellant's impairment significantly restricts the ability to perform daily living activities continuously or periodically for extended periods in the opinion of a prescribed professional. Therefore, the legislative criteria have not been met. The Ministry concluded that 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. Though in the medical report the doctor stated that the Appellant's functioning is affected by medication and repeatedly stated that functional skills are affected by mood disorder and substance use disorder, the doctor also indicated that there is no impact in the ability to perform daily living activities. The doctor did not explain how functional skills are impacted and instead referred to the psychological assessment which did not mention how the Appellant's functional skills or ability to perform daily living activities are impacted or the areas in which the impacts occur. The panel further considered the Appellant's diagnosis of a severe mental impairment and noted that the doctor did not indicate the causal link between the Appellant's severe mental impairment and the ability to perform daily living activities.

The panel considered the assessment from the psychiatrist as well. This assessment provided more detail and insight into the Appellant's medical condition and challenges. However, it falls short of providing enough information to meet the legislative requirements. For example, the psychiatrist indicated that the Appellant has low mood, low energy and poor concentration. However, the information from the psychiatrist does not mention how low mood, low energy and poor concentration impact the Appellant's ability to perform his daily living activities and whether the impacts to the ability to perform daily living activities are continuous or periodic for extended periods.

The panel considered the Appellant's testimony at the hearing. The Appellant indicated that he struggles with personal care and does not have social relations but is able to complete all other listed tasks of daily living. The Appellant did not indicate whether the

struggles he has with personal care and social relations is continuous or periodic for extended periods and this information was not confirmed by either the doctor or the psychiatrist or another prescribed professional as is required by the legislation.

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 to perform daily living activities.

The Appellant stated that due to his mental health conditions he requires help with his daily living activities.

The Ministry argued that since the evidence did not establish that the Appellant is directly and significantly restricted in performing his daily living activities either continuously or periodic for extended periods, it cannot be determined that he requires help with such activities.

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: 2024/02/08

Print Name

Diane O'Connor

Signature of Member

Date: 2024/02/09

Print Name

Edward Wong

Signature of Member

Date: 2024/02/09