

**Part C – Decision Under Appeal**

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development and Poverty Reduction (“Ministry”) dated April 18, 2024. 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, 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 Assessor's Report dated January 13, 2024 which was completed by the Appellant's doctor who has seen the Appellant 2-10 times in the last 12 months of the PWD application. The doctor had known the Appellant since April 2018. The Assessor's Report was completed with an office interview, and file/chart information.
- A Self-Report completed by the Appellant on January 18, 2024. In it the Appellant stated that "I feel very much pain and discomfort in sleeping. My right leg has gone through a serious surgery. I can't stand for long and can't walk for long. Too much pain in leg and right hip specially when go to washroom and use toilet. Spikes comes in both hips sometimes while sleeping and sitting. When I use pain killers its good if I miss my medications then pain comes again and I can't even stand. My right hip bone bothers me too much and knee pain".

Request for Reconsideration dated March 25, 2024.

Questionnaire for the Appellant's doctor dated March 25, 2024. The doctor was asked to either agree or disagree to the following statements about the Appellant:

- Walking takes 10 times longer and he can walk little more than a block.
- He needs help with shopping because he can lift only 8lbs.
- He cannot climb more than 4-5 stairs.
- He is unable to use public transportation and needs someone to drive him to the bank, appointments and to pick up medications.

The Appellant's doctor disagreed with each of the above statements and stated that the Appellant "definitely has limitations, but they are not as grave as mentioned here. Physical Examination, lab reports and imaging examination does not support these statements".

***Diagnoses***

In the Medical Report, the doctor diagnosed the Appellant with diabetes mellitus (onset: yeas ago) and post operative pain right hip (onset: years ago).

***Health History***

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

- Pain in his right hip area hinders walking.

- Medications and/or treatments that interfere with the ability to perform daily living activities have not been prescribed.
- No prostheses or aid are required for the 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. The doctor stated the impairment is long term and there are no remedial treatments to resolve or minimize the impairment.

***Physical Impairment***

The Medical Report, indicated the following about the Appellant:

- Can walk 1-2 blocks unaided on a flat surface.
- Can climb 2-5 steps unaided.
- Cannot lift.
- Can sit without limitation.

The Assessor's Report indicated the following about the Appellant:

- Walking indoors and standing are performed independently.
- Walking outdoors and climbing stairs takes significantly longer.
- Lifting and carrying/holding require continuous assistance from another person.

***Mental Impairment***

The Medical Report indicated the following about the Appellant:

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

The Assessor Report indicated the following about the Appellant:

- Speaking, reading, writing, and hearing are good.
- There are no impacts on daily functioning with cognitive and emotional functioning.
- All listed tasks of social functioning are performed independently.
- There is good functioning with immediate and extended social networks.

***Daily Living Activities***

The Assessor Report said the following about the Appellant:

- All listed tasks under all listed areas of daily living activities are performed independently.

***Help***

The Medical Report indicated that there is no requirement for any prostheses or aids for the Appellant's impairment.

The Assessor's Report indicated that the Appellant lives with family, friends or caregivers, and assistance is provided by family. No assistance is provided through the use of Assistive Devices or Assistance Animals.

### **Evidence At Appeal**

A Notice of Appeal was submitted on April 23, 2024. The document was not entirely legible. However, the following was legible, "both hip surgery ... in 2013. [The Appellant] cannot sit or stand for....work".

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

### **Additional Evidence**

Prior to the hearing the Appellant submitted the following:

- July 7, 2016, X-ray report with views of the pelvis, right hip and right knee.
- Confirmation of an orthopaedic consultation dated July 12, 2016.
- Consultation referral form dated February 1, 2016.
- December 11, 2015, X-ray of the left hip and right knee.
- January 5, 2016, X-ray of the pelvis, hips, tibia and fibula.
- December 11, 2015, blood work results.
- October 30, 2015, letter from the Appellant's doctor (different from the doctor who completed the PWD application). This letter indicated that the Appellant is under treatment for diabetes, anxiety, depression and leg and hip injury.

### **Evidence at the Hearing**

At the hearing the Appellant submitted the following information:

- He cannot work due to his pain.
- He cannot walk or stand for long and the doctor confirmed this.
- His right hip and knee still have pain. His left hip has plate inserted in it and for these reasons he cannot work.
- His family helps him with daily living activities. There is no outside help other than his medications being delivered to him.
- His family does the housework, meal preparations and occasionally drives him to the store to shop for personal items.
- He looks after his personal hygiene without help but it takes him longer than typical.

When asked the Appellant stated the following:

- He is uncertain whether the doctor is aware that help is provided by the family.
- His diabetes has no impact on his functioning other than he has low energy.
- His doctors from another province from 2003-2018 have a better understanding of his condition. The additional information is from them. The current doctor, who completed the PWD application, does not know him well.
- The Appellant described his daily routine which entails walking for 15 minutes or so, watching TV, resting or napping, eating meals, and going out with family for a drive or shopping.
- He can prepare his afternoon tea otherwise his family will do it for him.
- His only medications are for the diabetes and pain.
- He lives with his family.
- The doctor did not interview him for the PWD application. He dropped off the application to the doctor and collected it a few days later.
- His family usually does all the shopping.

At the hearing the Ministry relied on its Reconsideration Decision. The Ministry added the following:

- The PWD application must be completed by a medical practitioner and prescribed professionals that are registered in BC. The Assessor's report can be completed by another professional such as a social worker, registered nurse, physiotherapist or chiropractor.
- The Appellant's additional information was reviewed. The new information is older than the information in the PWD application.

### **Admissibility of Additional Evidence**

The Ministry did not object to the admission of any additional information the Appellant submitted.

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 evidence submitted prior to the hearing provided additional detail or disclosed information that is required for a full and fair disclosure of all matters related to the decision under appeal. The panel has admitted this new information in accordance with s. 22(4) of the *Employment and Assistance Act*. However, the panel places little weight on these documents as they are from 2015 and 2016, there is no

interpretation of the test results, and they do not speak to his ability to perform daily living activities or whether help was required to perform daily living activities, which are at issue on this appeal.

**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 argued that his right hip and knee pain is severe and impacts his mobility and ability to function.

The Ministry concluded that, based on the information provided in the original Application and Request for Reconsideration, the Appellant does not have a severe physical impairment.

In the Reconsideration Decision, the Ministry noted the narrative provided by the doctor and that the doctor stated that the Appellant does not require any aids for his impairment and no treatments have been prescribed which interfere with the Appellant's ability to perform his daily living activities. The Ministry noted the Appellant's physical functioning skill as indicated by the doctor and listed above. The Ministry also noted the Appellant's mobility and physical functional ability as indicated in the Assessor's report and listed above.

The Ministry found that it is unable to determine why the Appellant would be unable to perform any lifting given the diagnoses. Additionally in the questionnaire prepared by the advocate, the Appellant indicated that he could lift up to 8 lbs. While the Appellant may be unable to perform heavy lifting without help, the Ministry found that the Appellant can perform a wide range of activities with this limitation.

The Ministry found that the Appellant experiences chronic pain and takes longer walking and climbing stairs. However, the doctor indicated he does not agree that the Appellant takes 10 times longer. As the doctor has not indicated how much extra time is needed to walk and climb stairs, the Ministry is unable to establish that the extra time needed represents a severe impairment of physical functioning.

The Ministry also concluded that since the Appellant can walk 1-2 blocks, climb 4-5 stairs and lift to 8lbs and there is no indication of rest needed upon exertion, the Ministry determined that the Appellant can function independently for a reasonable duration. Therefore, the physical impairment is more of a moderate one. The Ministry determined that, based on the information provided in the original PWD application and Request for Reconsideration, 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, he can function in his physical and mobility tasks. That is, the Medical Report indicated that he could walk 1-2 blocks unaided on a flat surface, climb 2-5 steps unaided, he is unable to lift and can remain seated without limit. The Assessor's report is similar in that the doctor has indicated there that walking indoors and standing are performed independently. The doctor also indicates that continuous assistance is required with lifting, and carrying/holding, and it takes significantly longer to walk outdoors and climb stairs, but there is no indication how much longer these activities take. The panel notes that though continuous assistance is required with lifting and carrying/hold, the doctor did not provide any information or analysis relating this restrict to the diagnosis of Diabetes Mellitus or the post operative hip pain.

The questionnaire prepared by the advocate also did not support the Appellant's contention as the doctor disagreed with all the statements the advocate prepared on behalf of the Appellant. Similarly, the additional evidence provided prior to the hearing did not support the Appellant's argument as the documents did not provide an analysis of the test results or indicate how the Appellant's condition restricts mobility and physical functioning.

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) of the Act.

### *Mental Impairment*

The Appellant argued that he is anxious and depressed.

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.

The Ministry noted that the doctor did not provide a diagnosis of a mental health condition, or brain injury, and the doctor did not indicate significant deficits to the Appellant's cognitive and emotion function. The Ministry noted that the Assessor's Report did not identify any impacts to daily cognitive and emotional functioning. There are no difficulties with communication or social functioning. Therefore, the Ministry determined it cannot confirm a severe mental impairment.

The panel's task is to determine if the Ministry's decision is reasonable. In the case of the Appellant, there is not enough evidence from the doctor or other medical practitioner to support a finding of a mental health condition or brain injury. The doctor did not provide a diagnosis of a mental health condition. The additional evidence made no indication of a mental health condition. The evidence that was submitted indicates that the Appellant can make decisions about personal activities, care or finances and he can relate to, communicate or interact with others effectively.

As a result, the panel finds that the information provided does not establish that the Appellant has 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) 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 his medical conditions he is unable to function and complete his 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 the Reconsideration Decision, the Ministry noted that in the Medical Report it was indicated that treatments that would interfere with the Appellant’s ability to perform daily living activities has not been prescribed. The Ministry noted that in the Assessor’s Report, it was indicated that the Appellant independently performs all of the listed tasks of all daily living activities indicated in the legislation. The Ministry also noted that the Appellant has good functioning with his immediate and extended social networks. The Ministry noted that the Appellant indicated that he needs help with shopping and transportation, and that the Appellant’s doctor did not agree with this assessment.

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

The panel finds that the Ministry analysis of the evidence and findings based on the evidence is reasonable. The evidence demonstrates that the Appellant independently performs all listed task under each of the listed daily living activities. The evidence from the prescribed professional directly demonstrates that the Appellant does not require any assistance from another person to perform any of his daily living activities even though he requires continuous assistance with lifting and carrying/holding and takes significantly longer with walking outdoors and climbing stairs.

The panel considered the Appellant’s testimony at the hearing. The panel found that the information provided by the Appellant added detail and clarity to what he previously indicated. However, the information provided by the Appellant at the hearing is not supported by the prescribed professional. The legislation requires that the ability to

perform daily living activities must be based on the assessment from the prescribed professional (which in this case is the doctor). The panel notes that the doctor who completed the PWD application was given an opportunity to corroborate the Appellant's contention by way of the advocate-prepared questionnaire but did not do so and in fact disagreed with the Appellant regarding his impairment and ability to complete activities of daily living.

As a result, 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 daily living activities as is 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 his medical condition he needs help with 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 had 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*.

2024-0152

**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: 2024/05/16

Print Name

Simon Clews

Signature of Member

Date: 2024/05/17

Print Name

Bill Farr

Signature of Member

Date: 2024/05/17