

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 ("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 Report dated May 5, 2024 which was completed by the Appellant's doctor. The doctor has seen the Appellant 2-10 times and has known the Appellant for 1 year prior to completing the PWD application. The Assessor Report was completed through an office interview with the Appellant.
- The PWD application also included a Self-Report that the Appellant completed on April 30, 2024. In part, the Self-Report stated the following: a) he previously received electrical shock that resulted in amputation of two fingers on the left hand; b) he also had a previous heart attack that resulted in heart failure; c) he found out that two of his coronary arteries are blocked; and d) he has hypertension, diabetes mellitus, and high cholesterol.
- Request for Reconsideration, dated June 17, 2024, which in part stated the following: a) he is an older person with many chronic diseases that affect life and mobility; b) he has blocked coronary arteries, had a heart attack and has heart failure; c) these conditions prevent him from walking more than 10 feet; d) he has severe DM, hypertension, and high cholesterol; e) he has high S.K which reflects impaired renal function; f) he cannot climb stairs or lift heavy objects, and he gets tired easily and needs to take breaks; and g) he has two amputated fingers.

Diagnoses

In the Medical Report, the doctor diagnosed the Appellant with Myocardial Infarction (onset: April 2020), Heart Failure (onset: September 2023), Diabetes Mellitus (onset: May 2014), and Finger Amputation on Left Hand (onset: 1984).

Health History

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

- Heart failure – excessive fatigue, short of breath with walking, difficulties going uphill and heart ejection function is 30-40%.
- Diabetes causes fatigue.
- Heart medication causes fatigue.
- Left hand finger amputation - difficulty with grabbing and lifting.
- Unfit for work.
- His medications cause fatigue which interferes with the ability to perform daily living activities. The medication's anticipated duration is indefinite.
- The Appellant does not use prostheses 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.

Physical Impairment

The Medical Report indicated the following about the Appellant:

- Can walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, can lift 5-15lbs and can remain seated for 1-2 hours.

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

- He can stand independently.
- He takes significantly longer to climb stairs (3 times longer than normal).
- He takes significantly longer to walk indoors (gets short of breath).
- He takes significantly longer to walk outdoors (needs to take breaks).
- He requires continuous assistance with lifting and carrying/holding (able to do minimal lifting and carrying).
- "Difficulties walking, carrying, lifting".

Mental Impairment

The Medical Report indicated the following about the Appellant:

- There are no difficulties with communication.
- The section regarding significant deficits with cognitive and emotional function was left blank by the doctor.

The Assessor Report indicated the following about the Appellant:

- Speaking, reading, writing and hearing are satisfactory.
- There are no impacts on daily functioning with cognitive and emotional functioning.

Daily Living Activities

The Assessor Report said the following about the Appellant:

- Under Personal-Care, all listed tasks are performed independently.
- Under Basic Housekeeping all listed tasks require continuous assistance.
- Under Shopping, all listed tasks are performed independently except carrying purchases home ("needs help with carrying/lifting").
- Under Meals, all listed tasks are performed independently except food preparation which requires periodic assistance and cooking which requires continuous assistance ("gets tired from standing, difficulties with chopping, holding etc.").
- Under Pay Rent/Bills, all listed tasks are performed independently.
- Under Medications, all listed tasks are performed independently.

- Under Transportation, all listed tasks are performed independently.
- Under Social Functioning, all listed tasks are performed independently and the Appellant has good functioning with immediate and extended social networks.

Help

The Medical Report did not indicate that help was needed.

The Assessor Report said the following about Appellant:

- Family provides assistance.
- Assistance is not provided through the use of an assistive device.
- Assistance is not provided through the use of an assistance animal.

The Assessor Report also stated the following about the Appellant under Additional Information:

- Significant history of heart disease.
- Previous heart attack.
- Now has blocked coronary arteries and heart failure.
- Diabetes requires regular monitoring, results in fatigue, and tires easily from basic activities.

Evidence At Appeal

A Notice of Appeal was submitted on July 11, 2024 which stated that “Because I’m really sick & this isn’t now. My diseases are chronic. I always feel tired and weak. I don’t feel I can work ever”.

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

Evidence at the Hearing

At the hearing, the Appellant reiterated his statements from the Request for Reconsideration and Notice of Appeal. He also stated, in part, the following:

- The Ministry has not treated him as others even though he is not well.
- He had stent surgery. His arteries were blocked. Now some are open, and some remain blocked.
- Two fingers from his left hand have been amputated. This makes it difficult to eat. He is embarrassed about his hand and hides it from others.
- He has issues with blood pressure, diabetes and cholesterol.
- He cannot walk much. He must stop, sit for 5 minutes or so and then go on. It’s painful and difficult.

- Climbing stairs is difficult. He has to stop to take breaks.
- He has back pain and cannot lift much. When shopping he cannot carry more than 1-2 kg of groceries.

When questioned, the Appellant stated the following:

- He agrees with the doctor's Medical Report but when he walks or climbs stairs he must rest. He used to smoke but quit which has allowed him to walk more.
- Lifting is difficult.
- He receives assistance with meal preparation and chores from his wife. His wife normally does the housework as wives do and he helps with whatever he can.

At the hearing, the Ministry relied on its Reconsideration Decision.

Part F – Reasons for Panel Decision

The purpose of the Panel is to review and assess whether the Ministry's Reconsideration Decision satisfied a standard, or benchmark, of reasonableness - even if the Panel might disagree with the outcome. The standard applied is whether the applicable laws were reasonably applied and whether the evidence was also reasonably applied in the circumstances.

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 evidence 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 has 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 stated that his medical conditions cause restrictions with mobility and functioning.

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

In the Reconsideration Decision, the Ministry noted the Appellant's functional skills as indicated in the Medical Report and Assessor Report. The Ministry concluded that the doctor explained that it takes 3 times as long as typical to climb stairs and walk indoors/outdoors. The doctor also indicated that the Appellant requires continuous assistance lifting, carrying and holding. However, taking significantly longer is not in itself a determination of a severe condition. It has been reported that the Appellant needs continuous assistance to lift, carry and hold objects. However, the doctor indicated that the Appellant is able to walk 4+ blocks, climb 5+ stairs unaided, lift 5-15 pounds, and remain seated for 1-2 hours. The Ministry acknowledged that the Appellant experiences deficits with physical functioning due to the impairments. However, the impact on his daily functioning is assessed as moderate.

The Ministry found that the information provided did not support a severe physical impairment. The Ministry determined that, based on the information provided in the original 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 4+ blocks unaided on a flat surface, climb 5+ steps unaided, he is able to lift 5-15 lbs and can remain seated for 1-2 hours. The Assessor Report indicated that the Appellant can independently stand, needs continuous assistance to lift, carry and hold and takes longer to walk indoors/outdoors and climb stairs (3 times more than normal).

At the hearing, the Appellant indicated that he walks and climbs stairs but needs to rest. He also indicated that he lifts 1-2 kg of groceries. The Panel finds that the information provided with the PWD application and at the hearing does not establish that the Appellant has a severe physical impairment as he can function in all areas most of the time. The need for rest when walking or climbing stairs and taking 3 times longer to walk or climb stairs is not indicative of a severe physical impairment because the Appellant is still able to function independently in these areas. The ability to lift 1-2 kg also is not indicative of a severe impairment because the Appellant is able to lift some weight independently. The Panel notes that at the time of Reconsideration and the hearing, the Appellant did not submit additional information from a medical practitioner or prescribed professional.

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 did not argue that he has a mental impairment.

The Ministry argued that based on the information provided in the PWD application, the Appellant does not meet the legislative requirement of a 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, the Panel finds that there is not enough evidence from the doctor or any other medical practitioner to support a finding of a severe mental health condition or brain injury. The doctor did not provide a diagnosis of a mental health condition. The doctor did not indicate that there are significant deficits to cognitive and emotional functioning. 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. The Panel notes that at the time of Reconsideration and the hearing, the Appellant did not submit additional information from a medical practitioner or prescribed professional.

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 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 the narrative provided by the doctor in the Assessor Report. The Ministry also noted that the doctor indicated that the Appellant can independently perform:

- Personal Care: dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed, transfers on/off chair .
- Shopping: going to/from store, reading prices and labels, making appropriate choices, paying for purchases.
- Meals: meal planning, safe storage of food.
- Paying rent and bills: banking, budgeting, paying rent and bills.
- Medication: filling/refilling prescriptions, taking as directed, safe handling and storage.
- Transportation: getting in/out of a vehicle, using public transit, using transit schedules/arranging transportation.
- Social Functioning making appropriate social decisions, developing / maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.

The Ministry noted that the doctor indicated that the Appellant needs continuous assistance from another person to do: Basic Housekeeping (“Family looks after these activities.”); Shopping: carrying purchases home; and Meals: cooking (“Gets tired standing. Difficulties chopping, holding, etc.”). The Ministry noted that the doctor indicated that the Appellant needs periodic assistance from another person to do: Meals: food preparation.

The Ministry concluded that the doctor indicated that the Appellant has continuous or periodic restrictions in some daily living activities. However, it is not clear why this degree of restriction is present given the functional abilities already indicated. Although it is noted that the Appellant gets some help from family for basic housekeeping, this only confirms assistance is received from others; it does not establish why the Appellant would not be able to perform these tasks on his own. In addition, the Appellant is reported as being independent in a majority of daily living activities and is independent in all areas of social functioning.

The Panel finds that the Ministry analysis of the evidence and findings based on the evidence is reasonable. The Panel considered the assessment by the doctor in the PWD application of independence with almost all of the daily living activities, and the lack of information regarding the causal link between a physical or mental impairment and a restriction to perform some daily living activities either continuously or periodically for extended periods. For example, the doctor did not explain how the Appellant's medical restriction restricts his ability to perform basic housekeeping if he can walk 4+ blocks, climb 5+ stairs, stand independently and lift from 5-15 lbs. Also, insufficient additional or supporting information was provided from a prescribed professional at appeal to support the Appellant's position.

At the hearing, the Appellant indicated that assistance is required with meal preparation and basic housekeeping. He also indicated that his wife typically completes these tasks as wives do and he helps with whatever he can. The doctor indicated that the Appellant gets tired from standing when preparing meals. However, the doctor also indicated that the Appellant is independent with standing. It is unclear why the Appellant would be tired from standing when cooking if he can stand independently, walk 4+ blocks and climb 5+ stairs. With basic housekeeping the doctor indicated that the family looks after these tasks and did not indicate how the Appellant's medical condition restricts the ability to complete these tasks and what help is needed. The Panel finds that the evidence establishes that assistance provided with meal preparation and basic housekeeping is not entirely due to a physical restriction the Appellant experience but also due to the division of household tasks along traditional roles. The Panel finds that needing continuous assistance with one listed task of one daily living activity (Shopping: carry purchases home) is insufficient to meet the legislative requirements. The Panel finds that the evidence provided by the doctor does not describe or indicate that a severe impairment restricts the Appellant's ability to perform daily living activities either continuously or periodically for extended periods. At the hearing, the Appellant agreed with the doctor's assessment.

As a result, the Panel finds that the Ministry was reasonable when it found that the Appellant does not have a severe physical 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 from others to perform his daily living activities.

In the Reconsideration Decision the Ministry noted that the doctor reported that the Appellant receives assistance from his family. However, 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. The Panel also finds that the Ministry did reasonably conclude 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. The Panel 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*.

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: 2024/08/01

Print Name

Mimi Chang

Signature of Member

Date: 2024/08/01

Print Name

Bill Haire

Signature of Member

Date: 2024/08/01