

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated September 29, 2022 which held that the appellant was not entitled to designation as a Persons with Disabilities.

The ministry determined that the appellant met four of the five legislative criteria: age, severe impairment, direct and significantly restricted daily living activities, and assistance required with daily living activities as a result of significant restrictions.

The ministry determined that the appellant did not meet the legislative criteria of duration.

Part D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Act (EAPWDA) section 2;

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), sections 2 and 2.1

Part E – Summary of Facts

The information before the ministry at reconsideration included:

1. The appellant is at least 18 years of age.
2. The appellant requires crutches/cane for off loading, is not able to walk more than 1 block without aid, requires continuous assistance with lifting, carrying, and holding items, and is unable to stand or walk unrestricted due to pain.
3. The appellant has a continuous restriction with the daily activities of personal care, meal preparation, basic housework, daily shopping, mobility, and use of transportation.
4. The appellant requires periodic assistance with many other activities of daily living.
5. The appellant requires assistive devices or the help of another person to perform the significantly restricted daily living activities.

The hearing was conducted in writing.

The appellant provided information prior to the hearing. It was a letter signed by a medical doctor confirming that the appellant's "disability will last for another 2 years".

The ministry responded to that additional information in writing. The ministry stated: "The ministry has reviewed the written submission for tribunal provide by [the appellant] The ministry is satisfied this meets the duration criteria under section 2(2)(a) of the Employment and Assistance for Persons with Disabilities Act. The ministry submits that this information, when considered in conjunction with the information provided at Reconsideration, meets the persons with disabilities (PWD) designation criteria."

The panel determined it was appropriate to admit this information provided by the appellant and the ministry under section 22(4) of the *Employment and Assistance Act* because the panel considers it reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part F – Reasons for Panel Decision***Introduction***

The issue at appeal is whether the ministry decision dated September 29, 2022, which denied the appellant designation as a Persons with Disabilities because the ministry was not satisfied the appellants impairment would continue for two years or more, was reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstance.

The ministry determined that the appellant met four of the five legislative criteria: age, severe impairment, direct and significantly restricted daily living activities, and assistance required with daily living activities as a result of significant restrictions.

Summary of The Relevant Legislation

The Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 2 authorizes the ministry to designate a person as a person with disabilities if the minister is satisfied that specific criteria are met.

Those criteria are:

1. The person has reached 18 years of age.
 2. The person suffers from a severe mental or physical impairment.
 3. The impairment is likely to continue for two years or more.
 4. The impairment directly and significantly restricts daily living activities.
- and,
5. The person requires help with daily living activities because of restrictions created by the impairment.

The Employment and Assistance for Persons with Disabilities Regulation provides a definition of daily living activities.

Criteria 1: The Person has reached 18 years of age

The ministry found the person had reached 18 years of age.

This criterion is reasonably supported by the evidence.

Criteria 2: The Impairment is likely to continue for two years or more

The appellant provided a letter signed by a medical doctor confirming that the appellant's "disability will last for another 2 years". In its written submission to the tribunal, the ministry found the impairment was likely to continue for two years or more.

While the ministry was reasonable in determining that this criterion was not met at the time of the Reconsideration Decision, however, in light of the evidence submitted at the hearing the

panel finds that the ministry's decision on this criterion is no longer reasonably supported by the evidence.

Criteria 3: The impairment is severe

Information from the appellants medical practitioner and physiotherapist support that the appellant has a severe impairment. The ministry found the impairment was severe.

This criterion is reasonably supported by the evidence.

Criteria 4: The impairment directly and significantly restricts daily living activities

The information from the medical report and assessor report indicates the appellant's impairment directly and significantly restricts daily living activities. The ministry found the appellant's impairment directly and significantly restricts daily living activities.

This criterion is reasonably supported by the evidence.

Criteria 5: The person requires help with daily living activities

The information from the medical report indicates that the appellant requires the assistive devices of a walker, wheelchair and cane and the significant help or supervision of family or a housekeeper. The ministry found the appellant requires help with daily living activities.

This criterion is reasonably supported by the evidence.

The Panel's Decision

As previously stated, at reconsideration the ministry determined that the appellant met four of the five legislative criteria: age, severe impairment, direct and significantly restricted daily living activities, and assistance required with daily living activities as a result of significant restrictions.

The panel has determined that the evidence reasonably supports that the appellant satisfies all legislative criteria for designation as a Person with Disabilities. The panel notes that the ministry, in its written submission agrees that all legislative criteria have been met and that the appellant "meets the persons with disabilities (PWD) designation criteria".

To be clear: **the panel rescinds the ministry decision** of September 29, 2022 finding that the appellant did not meet all of the legislative criteria for designation as a Person with Disabilities.

Extracts of the Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

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).

Employment and Assistance for Persons with Disabilities Regulation

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.

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
Trevor Morley

Signature of Chair

Date (Year/Month/Day)
2022/Nov/17

Print Name
Elaine Jefferey

Signature of Member

Date (Year/Month/Day)
2022/Nov/17

Print Name
Wesley Nelson

Signature of Member

Date (Year/Month/Day)
2022/Nov/17