

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“ministry”) dated December 20, 2022, in which the ministry denied the appellant designation as a person with disabilities (“PWD”) under the Employment and Assistance for Persons with Disabilities Act (“EAPWDA”). The ministry found that the appellant met the requirements for age (over 18) and duration (impairment to continue for at least 2 years) but was not satisfied that:

1. the appellant had a severe mental or physical impairment;
2. the appellant’s impairment significantly restricted his ability to perform daily living activities; and
3. the appellant required significant help or supervision of another person to perform daily living activities restricted by his impairment.

The ministry also found that the appellant is not in one of the prescribed classes of people who may be eligible for PWD designation on the alternative grounds set out in section 2.1 of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”). As there was no information or argument provided for PWD designation on alternative grounds, the panel considers that matter not to be at issue in this appeal.

Part D – Relevant Legislation

EAPWDA, section 2
EAPWDR, section 2

Full text of the legislation is provided in the Schedule of Legislation after the reasons.

Part E – Summary of Facts

The hearing took place by teleconference. The appellant did not attend the hearing. The panel confirmed that the appellant had been notified of the date, time, and place of the hearing at least 2 business days before the hearing, as required under section 85(2) of the Employment and Assistance Act. After that confirmation, the panel waited approximately 15 minutes for the appellant to join the hearing, and the Tribunal attempted to contact the appellant, who was not available by telephone. The hearing proceeded in the absence of the appellant.

Evidence before the Ministry at Reconsideration:

The appellant is over 18 years of age. In support of his application, the appellant submitted a medical report completed by his doctor, an assessor report completed by a social worker, and the appellant's self-report.

For the reconsideration, the appellant provided letters from the appellant's parent and grandparent, as well as a two page handwritten submission in Section 3 of the Request for Reconsideration form.

Medical Report:

The doctor states that the appellant has been their patient since 2009, and they have seen the appellant between two and ten times in the past twelve months.

Diagnoses:

The doctor lists diagnoses of Post Traumatic Stress Disorder (onset 2008), Attention Deficit Hyperactivity Disorder (onset March 2022) and mechanical back pain (onset unknown).

Health History:

The doctor indicates that the appellant has a significant history of trauma. The appellant was admitted to hospital in 2010 due to suicidal ideation and intent and described struggles with school due to mental health symptoms. The doctor notes a diagnostic questionnaire score indicating severe anxiety. The doctor also notes that the appellant has a negative self-concept and has frequent conflicts with family members.

Degree and Course of Impairment:

The doctor indicates that the impairment is likely to continue for two years or more.

Functional Skills:

The doctor indicates that the appellant experiences pain in his back with lifting. The doctor notes no difficulties with communication, but significant deficits in cognitive and emotional function in the following areas:

- *emotional disturbance (e.g., depression, anxiety)*
- *motivation (loss of initiative or interest)*
- *impulse control*
- *attention or sustained concentration.*

Daily Living Activities:

The doctor indicates that the impairment directly restricts the appellant's ability to perform daily living activities. They indicate continuous restriction in personal self care and social functioning (daily decision making; interacting, relating and communicating with others), and periodic restriction in meal preparation, basic housework, daily shopping, mobility outside the home, and management of finances.

The doctor provides additional detail of the restrictions in daily living activities as follows:

- *Personal self care:* reduced frequency of shaving and showering, and decreased motivation to do either; wears the same clothes "for days on end"; does laundry less often and does not put away clean clothes
- *Meal preparation:* eats "when food is available"; "may not eat almost anything for 1-2 days" then overeats; does not routinely buy groceries and sometimes must rely on family for food
- *Basic housework:* lets dishes and garbage pile up, does some cleaning "when it's at its worst" but waits until his energy level has increased to do housework; lacks motivation to complete housework
- *Daily shopping:* his driver's licence has been suspended so he only goes shopping when he can get a ride to the store
- *Mobility outside the home:* his ability to climb ladders is limited due to back pain
- *Management of finances:* low income; he will panic and borrow money from family and friends but be unable to repay it; his mother drove him to the bank once and he became very anxious

- *Social functioning*: easily annoyed and irritable at family gatherings; has “bad days” when he does not want to talk to people because he can be “triggered emotionally by external factors”; feels overwhelmed and hostile with unexpected demands.

Additional Comments:

The doctor identifies “previous high risk substance use behaviors”.

Assessor Report:

The Assessor Report was completed by a social worker who met with the appellant once. The report was based on the office interview with the appellant and “file/chart information”, apparently through the office of the family doctor, although the specific file/chart information is not identified in the report.

Mental or Physical Impairment

The social worker identifies mood changes, nightly sleep disturbance due to nightmares, irregular sleep patterns of being awake for three days, then sleeping for three days. The social worker also notes “constant back pain limits all activities.”

Mobility and Physical Ability

The social worker indicates that the appellant takes significantly longer than typical when walking outdoors but does not describe how much longer. They also indicate that the appellant either needs continuous assistance, or is unable, to lift, and comments that, “when attempting to lift anything” the appellant has back pain or his back “completely gives out.”

Cognitive and Emotional Functioning

The social worker indicates that the appellant’s mental impairment has a major impact in three areas:

- *Bodily functions (e.g. eating problems; toileting problems; poor hygiene; sleep disturbance)*
- *Emotion (e.g., excessive or inappropriate anxiety; depression, etc.)*
- *Motivation (e.g., lack of initiative; loss of interest)*

and moderate impact in six areas:

- *Consciousness (e.g., orientation; alert/drowsy; confusion)*

- *Impulse control (e.g. inability to stop doing something or failing to resist doing something)*
- *Insight and judgement (e.g. poor awareness of self and health condition(s); grandiosity; unsafe behavior)*
- *Attention/concentration (e.g. distractible; unable to maintain concentration; poor short term memory)*
- *Other neuropsychological problems: specified ADD in family*
- *Other emotional problems (e.g., hostility): specified that, when in a threatening situation, the appellant becomes hostile and will escalate to protect himself physically; lost his driver's licence due to "lack of control drug use."*

Daily Living Activities

In *Part C – Daily Living Activities*, the social worker indicates that the appellant is independent for all areas of daily living activities listed under *Personal Care* except *Regulating diet*, where they indicate the appellant needs continuous assistance from another person or is unable to do. Under *Basic Housekeeping* they indicate the appellant needs continuous assistance or is unable to do laundry and basic housekeeping. The social worker states that the appellant's parent and grandparent do those daily living activities for him, while the appellant lacks the motivation to do those daily living activities. Under *Shopping* the social worker indicates that the appellant is independent except for *Reading prices and labels* and *Making appropriate choices*, commenting that the appellant "lacks control during depressive episodes" and is "driven by impulse", with the example that, even with food readily available at home, the appellant will leave to get other food that he wants.

The social worker indicates that the appellant is independent for all areas of the daily living activities listed under *Pay Rent and Bills*, *Medications* and *Transportation*. Under *Meals* they indicate independent for *Meal planning* and *Food preparation* but say that the appellant needs periodic assistance from another person for *Cooking* and *Safe storage of food (ability, not environmental circumstances)*.

Under *Social Functioning* the social worker indicates the appellant is independent for *Appropriate social decisions (incl. avoiding situations dangerous to self or others, good social judgement)* but commented that the appellant is hypervigilant and aware. They state that the appellant needs continuous support or supervision to deal appropriately with unexpected demands, commenting that the appellant becomes overwhelmed and hostile. They indicate that the appellant needs periodic support or supervision to secure

assistance from others, commenting that the appellant needs constant motivation or “push”.

The social worker states that the appellant has *“marginal functioning – little significant participation/communication; relationships often minimal and fluctuate in quality”* with his immediate social network, but good functioning with his extended social network.

Under *Assistance provided by other people* the social worker indicates that help for daily living activities is provided by family and friends. They comment that “family support sustains him”.

Appellant's Self-report

The appellant describes his disability as “PTSD, anxiety, mood disorders, depression, insomnia, suicidal, addiction/substance abuse issues, self harm, maybe ADHD”. He describes either constant “fight or flight” mode or being unable to get out of bed for days and says that “there is no middle”. He describes struggling to keep himself together and says that his family takes him to see his doctor and get medications. He gets anxiety “from just the daily things”, then gets verbally aggressive and threatens to harm himself or others. He describes being diagnosed with PTSD when he was nine years old, after being hospitalized for attempted suicide because of trauma. He describes the PTSD as “out of control” after he was subjected to a physical attack in 2020.

Letter from Appellant's Parent, November 17, 2022

The appellant's parent provided a four page handwritten letter. They confirm the appellant's medical history of abuse as a child, and hospitalization for psychiatric issues after a suicide attempt when he was eight years old. They relate a long history of insomnia, depression, anxiety, self harm, suicidal ideation, volatile mood and “hyper focussing on [personal] safety”. The appellant was assaulted in 2020, and since then the parent describes the appellant's violent outbursts, inability to sleep and pacing the home for days, manic behavior followed by deep depression when the appellant did not get out of bed, eat, or shower for eleven days. The parent says that they and the appellant's grandparent have shared the responsibility of caring for the appellant. They say that the appellant has been prescribed medication for PTSD, insomnia, and nightmares, but has not yet found an effective medication to treat depression.

The appellant's family ensures that he gets to doctor appointments, although that is extremely difficult when the appellant is in a depressive state. The family also manages

the appellant's medications to make sure he takes them. They make sure he eats and showers and try to make sure he is not taking illicit drugs.

The parent says that the appellant does not shop or cook for himself due to depression, not due to lack of transportation or insufficient finances, as the social worker seems to suggest. The appellant cannot keep relationships due to being "volatile and erratic". The parent has taken control of the appellant's finances, including making sure his rent is paid, because he cannot manage his own finances responsibly.

The parent maintains that the appellant has been diagnosed with PTSD, anxiety, suicidal ideation and suicide attempts, depression, and ADHD. They say that the appellant has a serious mental health disability.

Letter from Appellant's Grandparent, undated

The grandparent says that they have a close relationship with the appellant and have observed his mental health struggles for many years. They state that the appellant has never recovered from PTSD resulting from childhood trauma, which included hospitalization for psychiatric observation after a suicide attempt at the age of 9. They observe the appellant becoming more anxious, depressed and "negatively hyper-focused" to the point where the police became involved.

The grandparent confirms that, along with the appellant's parent, they have helped the appellant with rent, buying groceries, doing laundry, and driving him to and from medical appointments. They maintain that the appellant "lacks the emotional and psychological ability and financial means to attend to those tasks on his own." They see the appellant's extreme changes in mood, excessive anxiety, serious sleep deprivation/disruption, low energy, no ability to concentrate, deep sadness, and guilt at being a burden on his family. He stays in bed for days at a time, during which time he does not answer his phone, does not eat, does not attend to personal hygiene, and is extremely depressed and expressing suicidal thoughts.

The grandparent says that the social worker spent thirty-five minutes with the appellant to complete the Assessor Report. The grandparent does not believe that the Assessor Report shows the appellant's true mental health status and ability to function in daily living activities. In their experience, the appellant would be reluctant to disclose the full extent of his mental health condition to someone he had just met. They state that the appellant is wholly dependent on others for all the tasks listed under *Basic Housekeeping* and *Shopping* on the Assessor Report.

Request for Reconsideration form

The Request for Reconsideration, Section 3, *Reason for Request of Reconsideration* is signed by the appellant but written in the third person and appears to have been written by the appellant's parent. Most of Section 3 is argument that will be addressed in the Reasons. It repeats the appellant's history of abuse and diagnosis with PTSD, exacerbated by a physical assault in 2020, and states:

- The appellant has been prescribed medication to suppress traumatic nightmares, so far without success
- The Assessor Report does not reflect what the appellant said to the social worker or what the family doctor has stated
- The appellant's parent and grandparent make sure the appellant's rent is paid from his account each month, otherwise, when he is suicidal, the rent money disappears, and his family must go into debt to help him financially. As a result, they have taken full control of his banking.
- The appellant cannot manage his medications on his own. His family takes his prescriptions to be filled and makes sure he takes his medication.
- They disagree that the appellant has no psychotic symptoms, pointing to his medical treatment and hospital admissions as evidence

The family doctor is exploring bipolar disorder, borderline personality disorder and other conditions, but needs to address sleep and depression issues first.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, in which the ministry found the appellant to be ineligible for PWD designation under the EAPWDA, was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances. The ministry found that the appellant met the requirements for age (over 18) and duration (impairment to continue at least two years) but was not satisfied that:

- the appellant has a severe mental or physical disability;
- the appellant's impairment, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods; and
- as a result of restrictions caused by the impairment, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform daily living activities.

Appellant's Position:*Severe Mental or Physical Impairment*

The appellant maintains that he has a severe mental disability. He has been diagnosed with PTSD and Attention Deficit Disorder, and describes symptoms of depression, anxiety, insomnia, manic episodes, self-destructive behavior, and suicidal ideation. He describes having significant cognitive and emotional impairment that leaves him in either a state of inertia where he has no energy or motivation to do anything but lie in bed for days on end, or in "fight or flight mode" where he is extremely anxious, easily provoked to hostility and has little or no impulse control. His doctor is investigating other diagnoses but must find ways to manage the more problematic overlying symptoms first.

The appellant's submissions focussed on severe mental impairment. However, the appellant's doctor and social worker also indicate that the appellant has mechanical back pain with related impairment.

Restrictions on Daily Living Activities

The appellant says that, as a result of having a mental disability, he is significantly restricted in daily living activities, specifically:

- during depressive episodes he does not get out of bed to eat, dress, or wash for days

- he cannot manage his money to consistently pay rent or buy food
- he cannot regulate his diet, shop for food, or prepare meals on his own
- he struggles to obtain and take his medication consistently
- he does not keep his house clean because he lacks motivation and energy
- he cannot maintain social and family relationships.

The assessor maintained that the appellant's back pain "constantly limits all activities."

Help with Daily Living Activities

The appellant says that, because of mental disability, he needs constant help from his family to manage the daily living activities that he cannot carry out on his own.

Ministry's Position:

Severe Mental or Physical Impairment

The ministry acknowledges the appellant's diagnoses, the doctor's evidence of significant deficits in cognitive and emotional functioning and the social worker's evidence of major impacts to daily cognitive and emotional functioning. However, the ministry maintains that these deficits and impacts are not severe, arguing that the appellant is independent in "almost all" activities relating to decision making about personal care and finances, and most assessed areas of social functioning.

While the letters from the appellant's parent and grandparent provide additional information, the ministry says that their information is not confirmed by the doctor or the social worker, and therefore the ministry cannot rely on family members' evidence to confirm a severe impairment. The ministry points to conflicting information between the medical and assessor reports, where the social worker identifies fewer deficits and less severe impacts.

The ministry maintains that the appellant does not have a severe physical impairment. They point out that the doctor does not report any limitations in physical function. While the social worker says that the appellant takes longer walking outdoors, they do not provide any details, and while they say the appellant needs continuous assistance with lifting, they say the appellant does not need help carrying purchases home from shopping. The ministry also points out that the appellant's family do not identify severe physical impairment in the letters they have provided.

Restrictions on Daily Living Activities

The ministry acknowledges that the appellant has some restrictions in daily living activities but takes the position that, while the appellant delays completing tasks related to personal care, meals, housekeeping, or shopping, he does complete all these activities eventually. They maintain that the doctor does not suggest the appellant needs significant assistance from others to complete those tasks. They also argue that, while the appellant has some limits in social functioning, he is still able to function in the community for purposes of managing finances, medication management and mobility outside the home.

While the ministry acknowledges the social worker's evidence about assistance required for daily living activities, the ministry maintains that the social worker has not provided information about the frequency and duration of that assistance. Therefore, the ministry says that it cannot determine that the appellant is restricted in those activities periodically for extended periods. Where the social worker indicates that the appellant needs continuous help with housekeeping, the ministry says that the doctor's narrative suggests that the appellant can complete those tasks after waiting until he has enough energy. The ministry also points out that the appellant is reported to be "independent in most areas" of daily living activities as listed on the application form.

The ministry also argues that some of the appellant's restrictions, such as being unable to buy food or pay rent, are due to financial limitations rather than a mental impairment.

Help with Daily Living Activities

The ministry says that, because it was not established that daily living activities are significantly restricted, it cannot determine that the appellant requires significant help to perform those activities.

Panel Decision:

To find a person eligible for PWD designation under the EAPWDA, the ministry must be satisfied that the appellant has met all the requirements in section 2 of the legislation. In this case, the ministry was not satisfied that:

1. the appellant had a severe mental or physical impairment;
2. in the opinion of a prescribed professional, the impairment directly and significantly restricted the appellant's ability to perform daily living activities;
3. as a result of those restrictions, the appellant requires help to perform those activities.

Severe Mental or Physical Impairment

In the application, and at reconsideration, the appellant and his family members focused on severe mental impairment, rather than severe physical impairment.

With respect to physical impairment, the doctor has diagnosed mechanical back pain. They indicate that the appellant experiences back pain with lifting, is limited in his ability to climb ladders safely, and “when his back pain is increased he also prefers not to talk to people.” The social worker indicates that “constant back pain limits all activities” and “when attempting to lift anything his back causes pain or completely gives out.” The social worker also indicates that the appellant “takes significantly longer than typical” to walk outdoors but does not provide details or indicate a connection between back pain and any difficulty walking.

The panel notes that neither the appellant, nor the evidence from his parent or grandparent mention physical impairment in their description of the appellant’s symptoms and restrictions. Regarding the effects of back pain, the doctor identifies only a limitation in climbing ladders safely and a reduced capacity to engage with others when in pain. The panel finds that the ministry was reasonable in its determination that the information provided does not establish a severe physical impairment.

However, the panel finds that the ministry’s determination that there was no severe mental impairment is not reasonably supported by the evidence.

The doctor has diagnosed PTSD, following “significant history of trauma,” and ADHD. They describe symptoms of severe anxiety, sleep disturbances due to nightmares, suicidal ideation, decreased motivation and lack of energy. The doctor also states that the appellant has significant deficits with cognitive and emotional function, in the areas of emotional disturbance (depression and anxiety), motivation, impulse control and attention or sustained concentration.

The social worker confirms mood changes and nightly sleep disturbances due to nightmares and adds that the appellant has irregular sleep patterns of being awake for three days, then sleeping for three days. The social worker also lists major and moderate impacts on cognitive and emotional functioning.

The appellant and his family members explain his disability with terms such as depression, insomnia, bipolar disorder, and manic behavior, which are not listed as diagnoses by the

doctor. Family members observe the appellant in a state of deep depression when he may not get out of bed, bathe, change his clothes or eat, for days. Deep depression may be followed by days of manic behavior and lack of impulse control. The panel finds that their descriptions address the appellant's experience and his family's observation of his symptoms and can be considered when determining the severity of the appellant's mental impairment as diagnosed by the doctor. Evidence of an appellant and his family members can be particularly helpful when a reconsideration decision apparently identifies inconsistencies between a Section 2 Medical Report and a Section 3 Assessor Report.

The ministry determined that there was insufficient evidence from prescribed professionals that appellant had a severe mental impairment. The ministry noted that the doctor identified significant deficits in cognitive and emotional functioning, and the social worker identified three major and six moderate impacts in those areas. However, the ministry concludes that these deficits are not a severe impairment, based on the social worker's indication that the appellant is independent in personal care, meal planning, medication management, paying for purchases, paying rent and bills, and "most aspects of social functioning."

The panel finds that the ministry failed to give sufficient weight to the evidence of the doctor that the appellant has significant deficits in cognitive and emotional function. Further, the panel finds that the ministry failed to give sufficient weight to the evidence of the social worker that the appellant's mental impairment has a major impact on bodily functions, emotion, and motivation, and moderate impact on consciousness, impulse control, insight and judgment and attention/concentration, combined with ADD and hostility. The evidence of the appellant and his family members provides further detail in support of the doctor's opinion and the social worker's evidence. These impairments are significant and there is no evidence that they are offset or minimized by the other areas of functioning mentioned by the ministry, such as the ability to speak, read, write, or hear.

The panel notes that it is possible to conclude that there are inconsistencies between the medical and assessor reports, as they describe the appellant's ability to manage activities of daily living. However, where there is a discrepancy, the panel finds that greater weight must be given to the evidence of the doctor, who has treated the appellant since 2009, and therefore has greater knowledge and understanding of the appellant's condition than the social worker, who spoke to the appellant once for thirty-five minutes. The panel also notes the appellant's grandparent's observation that the appellant would be less forthcoming about his difficulties when speaking to someone he has just met. The panel also finds that significant weight should be given to the evidence of the appellant's family members, where that evidence provides further detail and is consistent with the doctor's

evidence, and to both of those sets of evidence when reviewing the report of the social worker.

The panel finds that the evidence of the doctor, the social worker, the appellant, and his family members is consistent in establishing a severe mental impairment. The panel finds that the ministry's determination that the appellant does not have a severe mental impairment is not reasonably supported by the evidence.

Restrictions to Daily Living Activities

Under section 2(2)(b)(i) of the EAPWDR, if the ministry is satisfied that a person has a severe mental or physical impairment, the ministry must also be satisfied that, in the opinion of a prescribed professional, the appellant's ability to perform daily living activities is directly and significantly restricted by the severe impairment, either continuously or periodically for extended periods. Not all daily living activities must be directly and significantly restricted. However, in *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2009 BCSC 1461, the court stated that "there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two daily living activities."

Under section 2(1)(b) of the EAPWDR, for a person who has a severe physical or mental impairment, "daily living activities" means:

- prepare own meals;
- manage personal finances;
- shop for personal needs;
- use public or personal transportation facilities;
- perform housework to maintain the person's place of residence in acceptable sanitary conditions;
- move about indoors and outdoors;
- perform personal hygiene and self-care;
- manage personal medication.

For a person with a severe mental impairment, the definition of "daily living activities" includes:

- make decisions about personal activities, care or finances; and
- relate to, communicate or interact with others effectively.

The panel notes that the doctor indicates the appellant has significant deficits in cognitive and emotional functioning, in particular emotional disturbance, motivation, impulse

control and attention or sustained concentration, which have an impact on daily living activities in general.

The categories of daily living activities listed in the medical and assessor reports do not match the legislation exactly. However, the panel finds that the doctor has identified the following significant restrictions in daily living activities listed in the legislation, with additional details provided by the appellant and his family members, as follows:

- prepare own meals: restriction is periodic; doctor states the appellant does not buy groceries, prepare or eat food regularly on his own initiative, sometimes not eating for days, then overeating; family members report that he does not shop or cook due to depressive symptoms, including not getting out of bed for days
- manage personal finances: restriction is periodic; doctor indicates the appellant cannot manage his own money, driven by panic and impulse; family members have taken over his banking to make sure his rent is paid
- perform housework to maintain the person's place of residence in acceptable sanitary conditions: restriction is periodic; doctor states the appellant lets garbage and dishes pile up and only cleans when it is at its worst, lacking motivation and energy; family members clean his house and do his laundry
- perform personal hygiene and self-care: restriction is continuous; doctor states the appellant does not care if he shaves or showers, and wears the same clothes for days on end; family members do his laundry, make sure he eats and showers, take him to the doctor, get his medication for him and make sure he takes it (the panel notes that the doctor indicates the appellant is not restricted in managing medications)
- make decisions about personal activities, care, or finances: restriction is continuous for daily decision making and personal self care, and periodic for management of finances; doctor describes the appellant's panic and anxiety around money management; family members report that they have had to take control of the appellant's finances to make sure that his rent is paid, they drive him to and from doctor's appointments and try to make sure he is not taking illicit drugs
- relate to, communicate or interact with others effectively: restriction is continuous; doctor indicates the appellant feels overwhelmed and hostile when faced with unexpected demands and reports being "easily annoyed and irritable" with family; family members report poor impulse control, volatile mood and violent outbursts

The social worker confirms that the appellant's mental impairment has a major impact on bodily functions, emotion, and motivation. They identify a moderate impact on consciousness, impulse control, insight and judgement, attention/concentration, and note

attention deficit disorder and other emotional problems, specifically hostility in a threatening situation. The social worker supports the evidence of the doctor and family members about significant impairments in the following areas:

- prepare own meals: appellant needs continuous assistance, or is unable, to regulate his diet, needs periodic assistance for cooking and safe storage of food
- perform housework to maintain the person's place of residence in acceptable sanitary conditions: appellant needs continuous assistance, or is unable, to perform basic housekeeping and laundry
- make decisions about personal activities, care, or finances: for shopping, appellant "lacks control during depressive episodes" and is impulse driven
- relate to, communicate or interact with others effectively: appellant needs continuous support or supervision to deal with unexpected demands, and becomes overwhelmed and hostile; needs periodic support or supervision, in the form of constant motivation or "push", to secure assistance from others; has marginal functioning with his immediate social network.

The social worker provides some information that does not appear to be consistent with the opinion of the doctor in the medical report, the appellant's self-report, or the observations of family members. The social worker says that the appellant is independent in all aspects of personal care listed on the form (except regulating diet), paying rent and bills, medication, meal planning, food preparation. They are also inconsistent within the form – for example, indicating that the appellant is independent in developing and maintaining relationships and interacting appropriately with others, and at the same time stating that he has marginal functioning with his immediate social network; stating that he is independent in making appropriate social decisions, but lacks control during depressive episodes and is driven by impulse. These contradictions may be, in part, a function of the way the application form frames questions, rather than contradictory opinions of the assessor. The panel finds that it is not reasonable in the circumstances to place greater weight on those perceived contradictions, than on the evidence of the doctor, who has spent more time with the appellant over a longer period, and whose evidence is consistent with the evidence of appellant's family members and the appellant's self-report. In any event, the panel finds that the social worker also confirms significant restrictions in two or more daily living activities, as indicated above.

The panel notes the ministry's argument in the reconsideration decision, that the appellant is delayed in completing daily living activities but can complete them eventually. At the hearing, in answer to a question from the panel, the ministry indicated that if the appellant was unable to perform daily living activities because he could not get out of bed for three days, they would consider that to be a delay rather than an inability. The panel

finds that description of the appellant's impairment to be unreasonable. The panel finds that, when the appellant cannot get out of bed for days due to a mental disability, he is not merely delayed in completing activities; the person's ability to perform daily living activities is directly and significantly restricted for that period.

Lastly, the panel notes that, in the reconsideration decision, the ministry emphasizes activities of daily living that are not affected by this appellant's mental impairment, referring to a "vast majority" of aspects of daily living activities as listed in the application form, that the ministry says the appellant can perform without restriction. The legislation requires that the ministry be satisfied that the appellant's ability to perform daily living activities is directly and significantly restricted, either continuously or periodically for extended periods. As previously noted, following *Hudson* and the criterion in the legislation, if two or more daily living activities are significantly restricted, it does not matter if other daily living activities are not restricted – that criterion has been met.

Considering all of the evidence, the panel finds that the appellant is significantly restricted in the following daily living activities, either continuously or periodically for extended periods, as a result of a severe mental impairment:

- prepare own meals
- manage personal finances
- perform housework to maintain the person's place of residence in acceptable sanitary conditions
- perform personal hygiene and self-care
- make decisions about personal activities, care, or finances
- relate to, communicate or interact with others effectively.

Therefore, the panel finds that the ministry's conclusion that it was not satisfied that the appellant had a severe impairment that directly and significantly restricts his ability to perform daily living activities is not reasonably supported by the evidence.

Help with Daily Living Activities

Under section 2(2) of the EAPWDA, confirmation of direct and significant restrictions to daily living activities is a precondition for the determination that, because of those restrictions, the person requires help to perform those activities. In its reconsideration decision, the ministry stated that, as it had not been established that the appellant's daily living activities were significantly restricted, it could not be determined that the appellant needed help to perform daily living activities.

The evidence shows that the appellant's daily living activities are significantly restricted by severe mental impairment, and therefore the next question is whether, in the opinion of a prescribed professional, the appellant requires help to perform those activities as a result of the impairment.

The doctor confirms that the appellant needs help from family to prepare meals, manage personal finances, shop for personal needs, and perform housework to maintain the appellant's place of residence in acceptable sanitary condition. The appellant's parent and grandparent say that they provide almost continuous help in those areas. The panel finds that the appellant requires the significant help or support of another person to perform those daily living activities.

Conclusion:

The panel finds that the ministry's reconsideration decision was not reasonably supported by the evidence. The information before the ministry at the reconsideration established that the appellant meets all the criteria for PWD designation.

The panel rescinds the reconsideration decision. The appellant is successful in the appeal.

Schedule – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

Persons with disabilities

s. 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

s.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.

(3) The definition of "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

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
Susan Ferguson

Signature of Chair

Date (Year/Month/Day)
2023/01/21

Print Name
Kent Ashby

Signature of Member

Date (Year/Month/Day)
2023/01/21

Print Name
Daniel Chow

Signature of Member

Date (Year/Month/Day)
2023/01/21