

### **Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) decision dated February 27, 2023, denying persons with disabilities (PWD) designation.

The Ministry found the Appellant met the age (over 18) and duration (likely to last more than two years) requirements. However, the Ministry found the Appellant did not meet the requirements for:

- severe mental or physical impairment
- significant restriction on the ability to perform daily living activities
- needing significant help to perform daily living activities.

The Ministry found the Appellant was not one of the prescribed classes of persons eligible for PWD on alternative grounds. As there was no information or argument on this point, the Panel considers it not to be an issue in this appeal.

### **Part D – Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Act (Act), s. 2*  
*Employment and Assistance for Persons with Disabilities Regulation (Regulation), s. 2*  
*Employment and Assistance Act (EAA), s. 22(4)*

**Part E – Summary of Facts**Evidence Before the Ministry at Reconsideration:

The information the Ministry had at the time of the decision included:

- Medical Report and Assessor Report, completed by a General Practitioner (“Doctor”)
- 3 page typed statement from the Appellant.

Medical Report:

The Doctor states that the Appellant has been their patient for 6 months, and they have seen her 11 or more times.

Diagnosis:

The Doctor diagnoses Post Traumatic Stress Disorder, onset January 2015.

Health History:

The Doctor states that the Appellant “displays personality traits of Trauma, having ended up on the streets. After losing her own home, drivers licence and career in the Profession of Social Work.” They indicate that the Appellant has been prescribed anti-depressants which interfere with her ability to perform daily living activities. They also indicate that the Appellant requires a knee brace for her impairment. The impairment is expected to be “lifelong,” and recommended treatments are “therapy and exercise.”

Functional Skills:

The Doctor indicates that the Appellant can walk 4+ blocks, climb 5+ stairs, lift 7 to 16 kg. and can remain seated 1 to 2 hours.

They indicate that the Appellant has cognitive difficulties with communication. They also indicate significant deficits in cognitive and emotional function, in the areas of emotional disturbance and motivation.

Daily Living Activities:

The Doctor indicates that the impairment directly and continuously restricts the Appellant’s ability to perform all of the daily living activities listed on the form. The Doctor does not provide any further explanation of those restrictions.

Additional Comments:

The Doctor states that the Appellant was hospitalized “numerous occasions on [the onset] of her condition.”

Assessor Report:Mental or Physical Impairment:

The Doctor states that the Appellant’s mental or physical impairment is “Trauma.”

***Ability to Communicate:***

The Doctor indicates that the Appellant's ability to communicate is good.

***Mobility and Physical Ability:***

The Doctor indicates that the Appellant needs periodic assistance from another person for all areas listed on the form. The Doctor does not provide any explanation of the assistance required.

***Cognitive and Emotional Functioning:***

The Doctor indicates that the Appellant's mental impairment has a major impact on memory, motivation, and motor activity. They indicate moderate impact on bodily functions, consciousness, insight and judgement, attention/concentration, executive function, language and psychotic symptoms. They also indicate moderate impact on "other neuropsychological problems" and "other emotional or mental problems." They do not give details of those other problems.

The Doctor does not provide any further comments or details of the impact of the impairment on any of the areas of cognitive and emotional functioning.

***Daily Living Activities:***

The Doctor indicates that, due to the impairments, the Appellant needs periodic assistance from another person for:

- laundry and basic housekeeping
- shopping: going to and from stores, making appropriate choices, paying for purchases and carrying purchases home
- meals: food preparation and cooking
- pay rent and bills: banking
- transportation: getting in and out of a vehicle, using public transit
- social functioning: dealing appropriately with unexpected demands, securing assistance from others.

The Doctor does not provide any description of the type and amount of assistance needed.

The Doctor also indicates that the Appellant's mental impairment impacts her relationship with her immediate and extended social networks, where she has marginal functioning.

***Assistance Provided for Applicant:***

The Doctor indicates that the Appellant's family, friends, and community service agencies provide the help the Appellant requires for daily living activities. The Doctor does not describe the help required or received.

***Appellant's Statement:***

The Appellant chose not to complete the Self Report section of the application but provided a 3 page typed statement with the Request for Reconsideration. The Appellant states:

- she relocated to British Columbia from another province
- she does not have a physical impairment, her impairment is "severe Trauma based"

- seven years ago, when she was in the other province, she was assaulted and struck six times in the face and head
- she was hospitalized six times in a couple of years.

Additional Evidence:

At the hearing, the Appellant said:

- until she was assaulted seven years ago, she was employed, had a house and a car, but since the assault she has been living on the streets and receiving income assistance benefits
- she has tried to return to work three or four times since then, without success
- she is not taking any medication or receiving therapy; she does not agree with medication
- she is not physically unable to do anything
- she was assaulted again one year ago
- she disagrees with the Doctor's statements about her life skills and thinks there was some miscommunication
- she does not "need [her] hand held" or "people to do this or that," her impairment is mental, not physical
- she is not anti-social; she sees herself as positive, happy, and cheerful
- she goes to the gym
- she is very godly, and her religious faith is everything to her
- she has no friends or relationships
- her family does not speak to her because of things she has written in emails or online, but they do not understand her situation; her mother has recently been in contact with her again in the past year

Admissibility of Additional Evidence:

The Ministry did not object to the additional oral evidence of the Appellant.

The Appellant's oral evidence provides further information about her medical condition, her functioning day-to-day and her relationships with others. The Panel finds that the additional evidence is reasonably required for the full and fair disclosure of all matters in the appeal. Therefore, the Panel finds that the additional evidence is admissible under EAA s. 22(4).

**Part F – Reasons for Panel Decision**

The issue on appeal is whether the Ministry's decision denying the Appellant PWD designation is reasonably supported by the evidence or is a reasonable application of the legislation. The Ministry found the Appellant met the age (over 18) and duration (likely to last more than two years) requirements. However, the Ministry found the Appellant did not meet the requirements for:

- severe mental or physical impairment
- significant restriction on the ability to perform daily living activities
- needing significant help to perform daily living activities.

**Appellant's Position:**

The Appellant says that she has a severe mental impairment due to severe trauma suffered in an assault seven years ago, compounded by a further assault one year ago. She says that the injuries she sustained were serious and resulted in multiple hospitalizations. She says she does not have a severe physical impairment. She is very frustrated by the Ministry application process and does not understand why her severe injuries do not qualify her for PWD designation.

**Ministry Position:**

The Ministry maintains that the Appellant does not have a severe physical impairment, and her mental impairment is moderate, rather than severe. They say that the Doctor does not provide enough detail in the Medical and Assessor Reports for the Ministry to determine the extent of the Appellant's mental impairment. The Ministry also says that, while the Doctor indicates that the Appellant is continuously restricted in all daily living activities, without more explanation from the Doctor, the Ministry cannot confirm that the restriction is significant, and directly caused by the mental impairment. The Ministry says that, as the information provided does not indicate direct and significant restrictions in daily living activities, the Ministry also cannot determine that the Appellant needs significant help with restricted activities.

**Panel Decision:*****PWD Designation – Generally***

The legislation provides the Ministry with the discretion to designate someone as a PWD if the requirements are met. In the Panel's view, PWD designation is for persons who have significant difficulty in performing regular self-care activities. If the inability to work is the major reason for applying for PWD designation, the Panel encourages the applicant to speak to the Ministry about other potential programs such as Persons with Persistent Multiple Barriers to Employment (PPMB) or explore federal government programs such as Canada Pension Plan disability benefits.

Some requirements for PWD designation must have an opinion from a professional, and it is reasonable to place significant weight on these opinions. The application form includes a Self

Report. It is also appropriate to place significant weight on the Self Report and evidence from the Appellant, unless there is a legitimate reason not to do so. In this Appeal, the Appellant chose not to complete the Self Report, but she provided a written statement, which the Panel accepts as a Self Report.

The Panel will review the reasonableness of the Minister's determinations and exercise of discretion.

### *Severe Mental or Physical Impairment*

"Severe" and "impairment" are not defined in the legislation. The Ministry considers the extent of any impact on daily functioning as shown by limitations with or restrictions on physical abilities and/or mental functions. The Panel finds that an assessment of severity based on physical and mental functioning including any restrictions is a reasonable application of the legislation.

A medical practitioner's description of a condition as "severe" is not determinative. The Minister must make this determination considering the relevant evidence and legal principles.

The Panel has reviewed the Medical and Assessor Reports completed by the Doctor, and notes that, while they have ticked almost all the available boxes on the form, there is very little detail, explanation or comment provided, to give a clear picture of the Appellant's impairment.

#### *1. Physical Impairment:*

The Appellant says that she does not have a physical impairment and is not asking for PWD designation on that basis. While the Doctor states that the Appellant needs a knee brace for her impairment, they do not provide a diagnosis of any physical condition.

The Panel finds that the Ministry was reasonable in its determination that the Appellant does not have a severe physical impairment.

#### *2. Mental Impairment:*

The Appellant describes severe head and neck injuries from an assault in 2015, with life-changing consequences. She was hospitalized six times in the years following the assault and continues to suffer the effects.

The Doctor diagnoses Post-Traumatic Stress Disorder, with significant deficits in cognitive and emotional functioning. They indicate that the mental impairment has a major or moderate impact on every area of cognitive and emotional functioning listed on the Assessor Report.

The Appellant has gone from being employed and living in a stable situation, to living on the street since the first assault. She reports having no friends, and no relationships with anyone in her extended family, except her mother, who has recently resumed contact with her. The Doctor confirms that she has only marginal functioning in her relationships with her immediate and extended social networks.

The Panel finds that, based on the Doctor's assessment in the Medical and Assessor Reports, and the Appellant's evidence at the hearing, the Appellant has a severe mental impairment due to Post-Traumatic Stress Disorder. Therefore, the Panel finds that the Ministry was not reasonable in its determination that the information provided does not indicate a severe mental impairment.

However, a severe mental or physical impairment is only one of the criteria under the Act. A serious medical condition can represent a severe impairment, without directly and significantly restricting the person's ability to perform the daily living activities listed in the legislation, or without the person needing help to perform those activities.

*Restrictions to Daily Living Activities (Activities):*

A prescribed professional must provide an opinion that the applicant's impairment restricts the ability to perform the daily living activities ("Activities") listed in the legislation. Those Activities are:

- 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 condition
- Move about indoors and outdoors
- Perform personal hygiene and self care
- Manage personal medication.

For a person who has a severe mental impairment, Activities also include:

- Make decisions about personal activities, care, or finances
- Relate to, communicate, or interact with others effectively.

At least two Activities must be restricted in a way that meets the requirements. Not all Activities, or even the majority, need to be restricted.

The restrictions to Activities must be significant and caused by the impairment. This means that the restriction must be to a great extent and that not being able to do the Activities without a lot of help or support will have a large impact on the person's life.

The restrictions also must be continuous or periodic. Continuous means the activity is generally restricted all the time. A periodic restriction must be for extended periods meaning frequent or for longer periods of time. For example, the activity is restricted most days of the week, or for the whole day on the days that the person cannot do the activity without help or support. To figure out if a periodic restriction is for extended periods, it is reasonable to look for information on the duration or frequency of the restriction.

The Activities that are considered are listed in the Regulation. The Medical Report and Assessor Report also have activities that are listed, and though they do not match the list in the

Regulation exactly, they generally cover the same activities. The Medical Report and Assessor Report provide the professional with an opportunity to provide additional details on the applicant's restrictions. The inability to work and financial need are not listed as Activities and are only relevant to the extent that they impact listed Activities.

The information about Activities provided by the Doctor in the Medical and Assessor Reports is inconsistent and difficult to reconcile with the mental impairment they have identified. In the Medical Report, the Doctor indicated that the Appellant is continuously restricted in all Activities listed in on the form, with no explanation of how Post-Traumatic Stress Disorder affects Activities such as meal preparation, mobility inside and outside the home, use of transportation and doing laundry. The Doctor's only comment ("Mobility, Mental, physical and Cognitive") does not help the Ministry or the Panel understand the connection with the impairment, or the extent of any restriction. Similarly, in the Assessor Report, the Doctor indicates that the Appellant needs periodic assistance from others for most or all aspects of Activities such as basic housekeeping, shopping and transportation, with no explanation of the connection to the mental impairment. Nor does the Doctor describe the type or amount of assistance required, which might have helped the Ministry and the Panel understand how Post-Traumatic Stress Disorder directly restricts the Appellant's ability to perform Activities, and whether that restriction is significant.

While the Doctor has ticked all the boxes to indicate that every Activity is restricted by the impairment, it is not apparent how Post-Traumatic Stress Disorder restricts the Appellant's ability to perform those Activities. The Appellant was not able to provide additional details, and in fact tended to deny those restrictions. Without a clear explanation, or an obvious connection to the impairment, the Panel finds that the Ministry was reasonable in its determination that the information in the Medical and Assessor Reports was not sufficient to determine a direct and significant restriction in the ability to perform Activities.

*Help Required:*

A prescribed professional must provide an opinion that the person needs help to perform the restricted Activities. Help means using an assistive device, the significant help or supervision of another person, or using an assistance animal to perform the restricted Activities. An assistive device is something designed to let the person perform restricted Activities.

The Doctor did not provide any details of help the Appellant may need or receive. At the hearing, the Appellant insisted that she does not need or receive any help. In any event, as the Panel has found that the Ministry was reasonable in determining that there was not enough evidence to confirm that Appellant was directly and significantly restricted in her ability to perform Activities, the Panel finds that the Ministry was also reasonable in determining that it could not find that the Appellant needs help to perform those Activities.

*Comments:*

The Panel noted at the hearing that the Appellant tries hard to present herself as a positive, cheerful, and independent person, which may make it difficult for her to also provide information about restrictions in Activities and the need for help. The Panel heard the Appellant's frustration



with her repeated applications for PWD designation, and the challenges with understanding the Ministry's requirements. The Panel would encourage the Appellant to consider applying again, perhaps with the help of an advocate, if she can obtain evidence from a Doctor or Nurse Practitioner, that identifies and explains a significant restriction on Activities that is caused by the impairment, and the significant help the Appellant may need to perform those Activities.

Conclusion:

While the Panel finds that the Ministry was not reasonable in finding that the Appellant does not have a severe mental impairment, the Panel finds that the Ministry's decision that the Appellant did not meet the remaining criteria:

- significant restriction on the ability to perform daily living activities and
- needing significant help to perform daily living activities

was reasonably supported by the evidence.

The Panel confirms the Ministry's decision to deny the Appellant PWD designation. The Appellant is not 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.

### Employment and Assistance Act

s. 22 (4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

APPEAL NUMBER 2023-0067

**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)  
2023/03/24

Print Name  
Anil Aggarwal

Signature of Member

Date (Year/Month/Day)  
2023/03/24

Print Name  
Katherine Wellburn

Signature of Member

Date (Year/Month/Day)  
2023/03/23