

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated November 1, 2022, which held that the appellant did not meet 4 of the 5 statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement, but was not satisfied that:

- the appellant has a severe physical and/or mental impairment that is likely to last 2 years or more from the date of the PWD application;
- the appellant has a severe physical and/or mental impairment;
- the appellant's daily living activities are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and
- as a result of those restrictions, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

In addition, the ministry found that it had not been demonstrated that the appellant is one of the prescribed classes of persons who may be eligible for PWD designation on alternative grounds, which includes: a person who is enrolled in palliative care; a person who has at any time been determined eligible for At Home Program payments through the Ministry of Children and Family Development; a person who has at any time been determined eligible by 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

Part E – Summary of Facts**Evidence at the time of Reconsideration**

- The appellant’s PWD application comprised of:
- A Medical Report [dated May 2, 2022] completed by the appellant’s General Practitioner (the Doctor), who had known the appellant for less than 1 year and had seen the appellant 2-10 times in the past 12 months of the PWD application.
- An Assessor Report [dated May 2, 2022], which was also completed by the appellant’s Social Worker. The approaches and sources used to complete the AR were an office interview with the appellant and file/chart information.
- The appellant’s Self-Report dated April 22, 2022.
- Request for Reconsideration dated February 3, 2023, which stated, “adding Supreme Court judgement that is binding on PWD determination and psychiatric report with more information for consideration”. NOTE: No such information was submitted at the time of reconsideration.

Diagnoses

In the medical report, the doctor diagnosed the appellant with anxiety disorder (onset: September 2021).

In the assessor’s report , the social worker diagnosed the appellant with PTSD, ADHD, and chronic depression and anxiety (duration not specified).

Health History

In the medical report, the doctor stated the following:

- “Patient is involved in a court dispute regarding his child custody. This has induced certain degree of anxiety for him”.
- Answering yes to the question “does the applicant require any prostheses or aids for his/her impairment?” Comment: “antianxiety medication” and duration of the medications is “about 6 months from today”.

Duration

In response to ‘is the impairment likely to continue for 2 years or more from today’, the doctor indicated ‘No’ and commented “Duration is 6 months from today. Treatment included antianxiety medication and counselling”.

Physical Impairment

In the medical report, the doctor indicated the following about the appellant:

- He can walk 4+ blocks and climb 5+ steps unaided, and lift and remain seated without limitation.

In the assessor’s report, the social worker indicated the following about the appellant:

- Can independently walk indoor/outdoor, climb stairs, stand, lifting and carrying/holding.

In the self report, the appellant made no mention of any physical impairment or challenges.

Mental Impairment

In the medical report, the doctor indicated the following about the appellant:

- There are no difficulties with communication.
- There are no significant deficits with cognitive and emotional functioning.
- The daily living activities of social functioning is periodically restricted, with the comments: "Patient complains at severe anxiety. This can affect his social interaction for a while".
- In response to 'provide additional comments regarding the degree of restriction', the doctor stated, "He might not be able to focus on his daily activities".
- "Patient needs a temporary break".

In the assessor's report, the social worker indicated the following about the appellant:

- Speaking, reading, writing, and hearing are good.
- In terms of cognitive and emotional functioning, there are major impacts to bodily function, emotion, motor activity, and other emotional or mental problems (Note: other problems were not specified). There are moderate impacts to impulse control, insight/judgment, executive and psychotic symptoms. All other listed areas in this category have either minimal or no impacts.
- All listed tasks under Social Functioning require periodic assistance. There is marginal functioning with immediate social networks (comment: "traumatic family [illegible], no contact other than with son") and very disrupted function with extended social networks (comment; "no contact with or support from local friends, family or community").
- "Please note risk of self-harm".
- [Note: the type, duration and frequency of the periodic assistance required was not specified].

In the self report, the appellant responded as follows to 'please describe your disability':

- "Anxiety, depression and PTSD. Due to family violence by ex and MCFD. Also had learning disabilities in school and am being tested for ADHD".

Daily Living Activities

In the medical report, the doctor indicated the following about the appellant:

- No medications that interfere with the ability to perform daily living activities have been prescribed.
- As previous indicated social functioning was indicated as periodically restricted.
- All other listed areas of daily living activities were left blank.

In the assessor's report, the social worker indicated the following about the appellant:

- All tasks under personal care, and transportation are performed independently.
- All other daily living activities are performed independently with the following tasks taking significantly longer to complete: laundry, basic housekeeping, reading prices and labels, making appropriate choices, meal planning, budgeting, pay rent/bills, taking medications as directed.
- Restrictions to social functioning were previously indicated under mental impairment.
- The cause for taking significantly longer with some tasks is due to the appellant's experience of low motivation and poor focus that are secondary to depression and anxiety.

- “He could benefit from psychological therapy, vocational rehabilitation, group therapy, and outreach support”.
- “[the appellant] struggles with focus and concentration challenges, fluctuating motivation. He would benefit from an occupational therapy assessment to determine he capacity in daily living activities”.

In the self report, the appellant did not indicate that he experiences any restriction in performing his daily living activities independently.

Help

In the medical report, the doctor indicated the following about the appellant:

- Requires no prostheses or aids for the impairment.

In the assessor’s report, the social worker indicated the following about the appellant:

- He lives with family (son).
- Health Authority Professionals and Community Service Agencies provide assistance.
- The section ‘assistance provided through the use of assistive devices’ was left blank.
- Assistance provided by assistance animals was indicated as ‘no’.

In the self report, the appellant did not indicate that help is required with performing daily living activities.

Evidence on Appeal

In the Notice of Appeal signed and dated February 9, 2023, the appellant stated, “I feel that the Ministry didn’t follow the provincial legislation with the disability and finding decision in the supreme court of Canada in the Hudson decision that if there is a discrepancy it should go in the favour of the applicant. You can find my additional evidence in the reconsideration package”.

The panel found that the information in the notice of appeal consists of the appellant’s argument and does not require an admissibility determination.

Evidence prior to the Hearing

Prior to the hearing the appellant submitted a 54-page submission consisting of the following information:

- The request for reconsideration dated February 3, 2023;
- June 29, 2022 letter from the ministry advising the appellant of the PWD denial;
- The original PWD denial with some sections underlined and handwritten reference to Hudson v. EAAT.
- The appellant’s original PWD application consisting of the medical report, assessor’s report and self-report.
- Certification of Authorization to Collect Information – PWD dated April 21, 2022.
- 1-pg document entitled ‘PWD Eligibility Criteria: Judicial Review Sets Standards’. This document contains excerpts from the Hudson v. EAAT, 2009 Judicial Review decision.
- 3-page case notes from the appellant’s psychiatrist dated January 16, 2023. These case notes provide a list of the appellant’s current medications, a brief mental health history from elementary school years, results of the mental status exam, diagnostic impression,

assessment, and treatment plan. The assessment focused on the appellant's ADHD and, in part, stated that the appellant met the criteria for an ADHD diagnosis, that he experiences poor focus, is easily distracted for no apparent reason, poor task initiation, poor organization, poor time management, procrastination, poor concentration and is functionally impairing and chronic. There are no acute safety concerns.

- A new medical report completed by the same psychiatrist who completed the January 16, 2023 case notes. This medical report contained the following information.

Diagnoses

In the new medical report, the psychiatrist diagnosed the appellant with Major Depressive Disorder (onset 1992), Anxiety Disorder with Posttraumatic Stress (onset 1992), ADHD (onset 1984) and Obsessive-Compulsive Symptoms (onset 2018).

Health History

- The appellant "is currently significantly impaired by depression, anxiety, PTSD symptoms which are now magnifying previously existing, ADHD symptoms".
- Medications and treatments that interfere with the ability to perform daily living activities have not been prescribed.
- No prostheses or aids are for the impairment.

Duration

In the new medical report, the psychiatrist stated the following about the appellant:

- The impairment is likely to continue for 2 or more years from the date of the medical report.
- "It is difficult to predict how long depression, PTSD, OCD, and other anxiety disorders may last – but [the appellant] has had chronic symptoms worsening for at least 2 years. We are working on treatment but this takes time".

Physical Impairment

In the new medical report, the psychiatrist indicated the following about the appellant:

- Can walk 4+ blocks and climb 5+ steps unaided, lift without limitation and remain seated for less than 1 hour.

Mental Impairment

In the new medical report, the psychiatrist indicated the following about the appellant:

- There are difficulties with communication in the area of cognitive – "disorganization in thinking and wording secondary to executive functioning difficulties".
- There are significant deficits to cognitive and emotional functioning in the areas of executive, memory, emotional disturbance, attention/sustained concentration.

Daily Living Activities

In the new medical report, the psychiatrist indicated the following about the appellant:

- There are periodic restrictions with performing personal care, meal preparation, basic housekeeping, daily shopping, management of finances, and social functioning.

- In response to 'If periodic, please explain' the psychiatrist stated "can have difficulties with self-care, making meals, housework etc. Secondary to depression symptoms and motivation, also poor organization".
- In response to 'If social function is impacted, please explain', the psychiatrist stated, "executive functioning difficulties, compounded by depression and anxiety, difficulties in problem solving and interacting with others".
- The psychiatrist did not provide a response to 'Please provided additional comments regarding the degree of restriction'.
- The psychiatrist did not provide a response to 'What assistance does your patient need with Daily Living Activities?'.
- "Some days he cannot leave the house and other days takes hours to get anything done, because of his symptoms".

Evidence at the Hearing

At the hearing, the appellant stated, in part, the following

- The new information speaks to duration, severity and daily living activities. The psychiatrist provided diagnoses that is consistent with the Diagnostic Statistical Manual – 5 (major depression).
- The information in the new medical report is more persuasive and thorough because it is provided by a specialist in psychiatry and not a general practitioner. Therefore, it is more accurate.
- There is no physical impairment .
- The reconsideration decision did not consider the information from the social worker.
- His daily living activities are moderately impacted.
- The doctor's information was given more importance but it is contradictory.
- The new medical report relates to the long-term aspect and severity of the anxiety and depression and PTSD.
- The doctor is limited in the knowledge of psychiatry and did not consider the appellant comments regarding PTSD and ADHD.
- The doctor thought the PWD application was about the ability to work.
- The social worker's assessment was thorough.
- In terms of help, he is isolated from family or community supports so he has no help. With an on-going battle with his ex-partner, community supports get pushed away even further.
- When asked to describe what periodic assistance looks like, the appellant stated that he needs help daily due to his anxiety, depression, ADHD and PTSD.
- When completing tasks they take longer and at times they do not get done.
- His time with the psychiatrist is limited, so its mainly the time is used as a check-in and medication management.

The appellant argued that pursuant to Hudson v. EAAT, this appeal should go in his favour.

The appellant argued that:

- a) "The ordinary meaning of the plural 'activities' ... dictates that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two

daily living activities.” There is no statutory requirement that more than two daily living activities be restricted.

- b) An application is sufficient if: i). Either the medical practitioner or the assessor confirms that a person’s severe impairment directly and significantly restricts their ability to perform daily living activities. There is no statutory requirement for confirmation from both; or ii). The medical practitioner and the assessor’s evidence, when read together, confirm that a person has a severe impairment that directly and significantly restricts their ability to perform daily living activities. There is no statutory basis for reading Parts 2 and 3 of the PWD application discretely.
- c) The evidence of the physician and assessor must be read in their entirety and in a broad way. Even if the physician or assessor does not tick a specific box on the PWD application form, his or her evidence must be reviewed in full, including narrative portions, to see if eligibility confirmation can be found elsewhere.
- d) Significant weight must be placed on the evidence of the applicant, unless there is a legitimate reason not to do so.
- e) Any ambiguity in the interpretation of the Employment and Assistance for Persons with Disabilities legislation must be resolved in favour of the applicant.

At the hearing the ministry relied on its reconsideration decision. The ministry representative also provided her views on the new medical report. The ministry’s conclusion was that when the narrative is considered, the new medical report provided information that meets the legislative requirements for PWD designation. The ministry was satisfied that duration had been met, that a severe mental impairment had been established and this is consistent with the assessor’s report, that the appellant’s daily living activities are directly and significantly restricted due to his severe mental impairment, and that as a result he requires significant help.

When being asked by the panel to identify the evidence which indicates that the appellant has met the last criterion (i.e. the criterion that help is required to perform DLA), the ministry representative was unable to identify any particular information or evidence which demonstrates that help is required, and simply stated that overall the MR seems to suggest that all requirements have been met.

When asked the ministry stated that the information regarding mental impairment and daily living activities in the medical report and assessor’s report was contradictory. The stated that when assessing contradictory information, more weight is placed on the evidence from the medical practitioner. Further any new information could also have weight depending on the medical practitioner’s specialty.

Admissibility of Additional Information

The ministry did not object to the admission of the information submitted prior to the hearing.

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.

In this case, the panel determined that the 54-page submission (which does contain duplicate copies of information that was previously a part of the appeal package) is information that allows for a full and fair disclosure of all matters related to the decision under appeal and has admitted this information as evidence in accordance with s. 22(4) of the *Employment and Assistance Act*. Specifically, the new medical report, which is completed by a mental health specialist, is necessary to fully understand the appellant's condition.

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 applicable enactment in the circumstances of the appellant. The ministry found that the evidence does not establish that the appellant has a severe mental or physical impairment that will last 2 years or more and does not establish that his daily living activities are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person.

The relevant legislation can be found in Appendix A.

Panel Decision

The appellant argued that due to his disabilities he is unable to work or find alternative work. The panel finds that employability is not a consideration for eligibility for PWD designation because employability is not a criterion in section 2(2) of the Act nor is it listed among the prescribed daily living activities in section 2 of the Regulation.

Duration

The appellant argued that the ministry failed to consider the medical report and assessor's report in their entirety because when read together, the medical report and assessor's report confirm duration. The appellant argued that per the *Hudson* decision the ministry must consider both the medical report and assessor's report. The appellant also argued that the psychiatrist has confirmed duration.

The ministry argued that the duration has not been confirmed by a medical practitioner or nurse practitioner as required by the legislation.

In the reconsideration decision the ministry noted that the doctor indicated 'No' to whether the condition is likely to last for 2 or more years from the date of the PWD application. The doctor stated, "Duration is about 6 months from today".

The appellant argued that per *Hudson*, the evidence of the physician and assessor must be read in their entirety and in a broad way. This includes reading the narrative to see if confirmation can be found elsewhere. In this case, the doctor explicitly states that the duration of the impairment is about 6 months. The panel finds that this statement cannot be construed to

mean 2 years or more. In the assessor's report, the social worker makes no reference to duration and therefore a confirmation of duration cannot be found elsewhere. Furthermore, though the Hudson requires a full and broad reading of the information, the consideration of the evidence cannot contravene the legislative requirements. Section 2(2)(a) of the Act indicates that the ministry relies on the opinion of a medical or nurse practitioner to confirm that an impairment is likely to continue for at least two years. In this case, the assessor's report is not completed by a medical or nurse practitioner and is completed by a social worker. Therefore, according to the legislation, the social worker's information cannot alone confirm duration. Given this, the panel finds that the ministry's conclusion that the doctor did not confirm that the duration of the appellant's impairment was reasonable when it was made on reconsideration.

In the new medical report, in response to the same question, the psychiatrist checked off the 'yes' box and stated "It is difficult to predict how long depression, PTSD, OCD, and other anxiety disorders may last – but [the appellant] has had chronic symptoms worsening for at least 2 years. We are working on treatment but this takes time". The panel finds that even when considering the psychiatrist's narrative the issue of duration is still unclear. However, because the psychiatrist checked off the box indicating that duration is 2 or more years, the panel finds that the legislative requirement for duration can be interpreted as having been met. This was echoed by the ministry at the hearing.

Considering all the admissible evidence, the panel finds that in light of the new evidence available on appeal, the ministry was not reasonable in its determination that the duration criterion was not met.

Severe Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical or mental impairment. Determining a severe physical or mental impairment requires weighing the evidence provided against the nature of the impairment and its reported functional skill limitations. A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. An "impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively. To assess the severity of an impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning.

Physical Impairment

The appellant did not argue that he suffers from a physical impairment.

The ministry argued that based on the information provided in the original PWD application and request for reconsideration the appellant does not meet the legislative requirements of severe physical impairment.

In the reconsideration decision, the ministry noted that the functional skills as indicated in the medical report by the doctor and the mobility and physical abilities as indicated by the social worker in the assessor's report and concluded that based on the information provided, the ministry could not determine that the appellant has a severe physical impairment. The panel finds that the ability to walk 4+ blocks unaided on a flat surface, climb 5+ steps unaided, having no limitations on how much weight can be lifted and having no limitation on how long the

appellant can remain seated is not indicative of a severe physical impairment. Furthermore, the doctor did not diagnose the appellant with a physical impairment. In the assessor's report, the social worker stated that the appellant is independent with walking indoors, walking outdoors, climbing stairs, standing, lifting and carrying and holding.

When considering the new medical report, the panel's finding does not change. That is the psychiatrist confirmed the doctor and social worker's opinion by indicating that the appellant can walk 4+ blocks unaided on a flat surface, climb 5+ steps unaided, can lift without limitation and can remain seated for less than 1 hour. The inability to remain seated for less than 1 hour is not indicative of a physical severe impairment.

Given the overall assessments of the appellant's functional ability, mobility and physical ability in the PWD application and additional information provided at appeal from a prescribed professional, the panel finds that the ministry was reasonable in its determination that the evidence does not support a finding that the appellant suffers from a severe physical impairment and that the legislative criteria outlined in Section 2(2) of the Act have not been met.

Mental Impairment

The appellant argued that the ministry failed to consider the medical report and assessor's report in their entirety because when read together, the medical report and assessor's report establish a severe mental impairment. The appellant argued that per the *Hudson* decision the ministry must consider both the medical report and assessor's report. The appellant also argued that the psychiatrist has established a severe mental impairment.

The ministry argued that based on the assessments provided in the PWD application, a severe impairment of mental functioning has not been established.

In the reconsideration decision, the ministry noted that, in the medical report, the doctor indicated that the appellant has no difficulties with communication and no significant deficits with cognitive and emotional function. The doctor indicated that all daily living activities are performed independently except social functioning which requires periodic assistance. However, when asked to explain the periodic restriction, the doctor stated "Patient complains at severe anxiety this can affect his social interaction for a while. He might not be able to focus on his daily tasks". The panel finds that having no difficulties with communication and no significant deficits with cognitive and emotional function is not indicative of a severe mental impairment. Although the doctor indicated that appellant is restricted with social functioning, the doctor did not provide any information to explain the duration and frequency of the restriction. Without such information making a determination that the daily living activities is restricted periodically is difficult. For example, the doctor indicated that the appellant's social interaction is affected for 'a while' without providing an explanation as to what 'a while' means.

The ministry noted that in the assessor's report, the social worker indicated that the ability to speak, hear, read and write are all good. With cognitive and emotional functioning, the social worker indicated that there are major impacts (namely to bodily functions, emotions, motor activity and other emotional/mental problems) and moderate impacts (namely to impulse control, insight/judgement, attention/concentration, executive and psychotic symptoms). The

social worker indicated that all task under the daily living activities of Social Function required periodic assistance. However, all other daily living activities typically associated with a mental impairment were performed independently. That is, make decisions about personal activities, care or finances. The social worker did indicate that some tasks of these daily living activities take significantly longer to complete, such as meal planning, budgeting and taking medication as directed. However, the social worker did not explain or provide any details as to how much longer these actives take to complete. Without such information making a determination that the daily living activities is restricted periodically for extended periods is difficult. The social worker stated that the appellant lives with complex PTSD and chronic anxiety and depression but failed to demonstrate how it impacts the appellant's daily functioning. The panel also considered the appellant's self report and found that it did not provide information regarding his mental functioning. At the hearing, that appellant did not provide any information regarding his mental functioning and focused on his diagnosis.

Given this evidence in the medical report and assessor's report, the panel finds that, at reconsideration, the ministry was reasonable its determination that the appellant does not have a severe mental impairment.

In the new medical report, the psychiatrist diagnosed the appellant with Major Depressive Disorder, Anxiety Disorder with Posttraumatic Stress, ADHD and Obsessive-Compulsive Symptoms. The psychiatrist indicated that the appellant has difficulties with communication and the cause is 'cognitive', and added that the appellant experiences "disorganization in thinking and wordfinding, secondary to executive functioning difficulties". The psychiatrist indicated that the appellant has significant deficits to cognitive and emotional function in the areas of executive, memory, emotional disturbance and attention/concentration. This information is consistent with that of the social worker. The psychiatrist also indicated that the appellant has periodic restriction with personal care, meal preparation, daily shopping, basic housework, management of finances and social functioning. The panel considered the psychiatrist's narrative as well, namely that the appellant can have difficulties with self-care, making meals, housework, and this is secondary to depression symptoms and motivation, also poor organization. The psychiatrist established that the appellant's mental impairment has an impact on his functioning. With this new information, combined with that of the social worker, the panel finds that the evidence is sufficient for the ministry to be reasonably satisfied that the appellant has a severe mental impairment.

Given the overall assessments of the appellant's mental, cognitive and emotional ability and functioning in the PWD application and the additional information provided at appeal from a prescribed professional, the panel finds that the ministry was not reasonable in its determination that the evidence does not support a finding that the appellant suffers from a severe mental impairment.

Restrictions in the ability to perform Daily Living Activities

Section 2(2)(b)(i) of the Act requires that the minister 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 determination as to whether or not it is satisfied that the legislative criteria are met, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration – the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended periods. Any analysis of periodicity must also include consideration of how frequently the activity is restricted. All other things being equal, a restriction that only arises once a year is less likely to be significant than one that occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

The appellant argued that his restriction to perform daily living activities is daily due to his anxiety, ADHD and PTSD. Daily living activities take longer or get missed.

In the reconsideration decision, the ministry noted that the information provided in the medical report and assessor's report and concluded that it is not satisfied that the information provided establishes that the impairment directly and significantly restricts daily living activities continuously or periodically for extended periods.

The ministry acknowledged that the appellant has certain limitations resulting from concentration, focus, and motivation and take significantly longer than typical managing laundry, basic housekeeping, reading prices and labels, making appropriate choices when shopping, meal planning, budgeting, paying rent and bills, and taking medications as directed. However, the ministry stated that how much longer it takes to manage these daily living activities has not been described as requested in the PWD application in order to determine if they represent a significant restriction to the overall level of functioning.

In the medical report, the doctor indicated that the appellant is restricted with social functioning and all daily living activities were left blank. However, the panel finds that the doctor did not provide sufficient information to link the appellant's anxiety disorder to the inability to function socially other than to say "Patient complains at severe anxiety. This can affect his social interaction for a while". When asked about the degree of the restriction, the doctor stated, "He might not be able to focus on his daily tasks". The panel finds that this information is insufficient to satisfy the legislative requirement and without information regarding the type and frequency of assistance required, it is difficult to make the determination that a severe impairment directly and significantly restricts a daily living activity.

In the assessor's report, the social worker indicated that all listed tasks under all listed daily living activities were performed independently except social functioning. Every listed task under social functioning was indicated to require periodic assistance. While both the doctor and social worker indicate that social functioning is periodically restricted, neither provided information regarding the type and frequency of the assistance required. Therefore, the panel cannot determine if the appellant's requirement for assistance is periodically for extended periods as is required by the legislation.

The social worker also indicated that several tasks listed under the daily living activities take significantly longer to complete. These tasks include laundry, basic housekeeping, reading prices/labels, making appropriate choices, meal planning, budgeting, paying rent/bills, and taking medication as directed. However, the social worker failed to provide any information that describes how much longer it takes the appellant to complete the above tasks. Without information about how long each task takes to complete, it is difficult to determine if the task takes significantly longer.

The panel considered the appellant's self report and testimony at the hearing. The appellant did not quantify how much longer it takes him to complete the above-mentioned tasks or indicate the type and frequency of the periodic restrictions. As such, the panel finds that the evidence provided by the doctor and social worker did not establish that a severe impairment restricts the appellant's ability to perform his daily living activities either continuously or periodically for extended periods.

In the new medical report, the psychiatrist indicated that the appellant has periodic restrictions with personal care, meal preparation, basic housework, daily shopping, management of finances and social function. The psychiatrist indicated that "Some days he cannot leave the house and other days takes hours to get anything done, because of his symptoms". The panel finds that this information does not sufficiently indicate that personal care, meal preparation, basic housework, daily shopping and management of finances is restricted periodically for extended periods. The psychiatrist did not define the how many days is 'some days' or how many hours it takes for the appellant to get anything done. That is, the psychiatrist did not provide information regarding the type and frequency of the restriction. When given the opportunity to explain the appellant's restrictions, the psychiatrist stated "can have difficulties with self-care, making meals, housework etc. Secondary to depression symptoms and motivation, also poor organization".

With social function, when given the opportunity to explain the restrictions to social functioning, the psychiatrist stated, "executive functioning difficulties, compounded by depression and anxiety, difficulties in problem solving and interacting with others". Although this describes the challenges the appellant faces, it does not explain the frequency of the restriction. Therefore, it cannot be determined if the restriction is periodically for extended periods as required by the legislation.

The ministry representative indicated that with the new medical report, the appellant meets the requirement for daily living activities. However, the panel notes that the ministry representative did not comment on the fact that the psychiatrist did not provide information regarding the duration and frequency of the restriction the appellant faces. The legislation clearly indicates that the direct and significant restriction to daily living activities must be in the opinion of a prescribed professional and the prescribed professional must indicate if the restriction is continuously, or periodically for **extended periods**. As indicated previously any analysis of periodicity must also include consideration of how frequently the activity is restricted. All other things being equal, a restriction that only arises once a year is less likely to be significant than one that occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this

legislative criterion is met. At the hearing, the panel finds the ministry representative's analysis fell short of this standard.

The panel finds that, even when seen in the most broad sense, this information together with the social worker's information does not satisfy the legislative requirement of periodic for extended periods and there is no ambiguity in the interpretation of the legislation.

Given the evidence as a whole, the panel finds that the ministry reasonably concluded that the evidence does not establish that an impairment significantly restricts daily living activities continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the Act.

Help to perform Daily Living Activities

Section 2(2)(b)(ii) of the Act requires that, *as a result of direct and significant restrictions in the ability to perform Daily Living Activities* a person requires help to perform those activities. Help is defined in subsection (3) as the requirement 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 indicated that help is required but he does not have access to it from family or friends as he is isolated from them.

The ministry argued that as it has not been established that daily living activities are significantly restricted (criterion 4), it cannot be determined that significant help is required from other persons or a device.

Given that confirmation of direct and significant restrictions with daily living activities is a precondition of the need for help criterion and because the panel found that the ministry reasonably determined 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 reasonably concluded that it cannot be determined that the appellant requires help to perform daily living activities as required by section 2(2)(b)(ii) of the Act.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was reasonably supported by the evidence and is a reasonable application of the applicable enactment, and therefore confirms the decision. The appellant is not successful on appeal.

Appendix A

The criteria for being designated as a PWD are set out in Section 2 of the Act 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*

Appeal Number 2023-0043

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: 2023/03/15

Print Name

Mimi Chang

Signature of Member

Date: 2023/03/15

Print Name

Warren Fox

Signature of Member

Date: 2023/03/15