

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 January 12, 2023, which held that the appellant did not meet 3 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 and has an impairment that is likely to last 2 years or more from the date of the PWD application; but was not satisfied that:

- 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 daily living activities.

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 and an Assessor's Report [both dated September 7, 2022], completed by the appellant's general practitioner, who had known the appellant for 11 years and had seen the appellant 2-10 times in the past 12 months of the PWD application. The medical report and assessor's report were completed by an office interview with family/friends/caregivers.
- The PWD application also included the appellant's Self-Report dated August 24, 2022.
- Request for Reconsideration dated December 30, 2022 which stated that the appellant disagrees with the decision.

Diagnoses

In the medical report, the general practitioner diagnosed the appellant with depression and generalized anxiety (onset 2000), alcohol disorder-substance use (onset 2013), borderline personality disorder (BPD) (onset 2013) and possible attention deficit disorder (ADD).

Health History

In the medical report, the general practitioner stated the following about the appellant:

- Moderately severe depression and anxiety – prevents her from focusing and concentrating on daily tasks. Has interrupted sleep leading to fatigue and difficulty coping. All of these factors affect the ability to maintain stable relationships and employment.
- Moderately severe alcohol use disorder – binge drinking affects her ability to care for herself following an episode of drinking. She does not drink or use drugs when she has care of her son.
- Intermittent use of cocaine affects ability to function.
- She has been diagnosed with borderline personality disorder but has received counselling for this and it does not have as much effect on her functioning as the substance use and anxiety disorder.
- As a result of all of the above she has difficulty keeping herself organized and maintaining relationships which severely affects her ability to function most days.
- She has worked hard to try and manage her multiple issues, but has not had success to date
- She has not been given medication or treatment that interferes with the ability to perform daily living activities.
- The appellant does not require any prostheses or aids for her impairment.

Degree and Course of Impairment

In the medical report, the general practitioner indicated that the appellant's impairment is likely to continue for two or more years from the date of the application. Comment: the appellant "continues to try and work on her problems but we anticipate any meaningful recovery is years away".

Physical Impairment

In the medical report, the general practitioner indicated the following about the appellant:

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

In the assessor's report, the general practitioner indicated the following about the appellant:

- She can independently perform walking indoors/outdoors, climbing stairs, standing, lifting and carrying/holding.

In the self-report, the appellant indicated that she suffers from premenstrual dysphoric disorder (PMDD) which leaves her unable to move physically or function for 3-5 days of the month, every month. She also indicated that she has thyroid disease which leaves her fatigued all the time.

Mental Impairment

In the medical report, the general practitioner indicated the following about the appellant:

- There are significant deficits with cognitive and emotional functioning in the areas of executive, memory, psychotic symptoms, emotional disturbance, motivation, impulse control and attention/sustained concentration.

In the assessor's report, the general practitioner indicated the following about the appellant:

- Speaking, reading, writing and hearing are good. Comment: "difficulty with communication is episodic depending on substance use and mental state".
- Under cognitive and emotional functioning, there are major impacts to emotion, impulse control, attention/concentration and executive. There are moderate impacts to consciousness (intermittent), insight/judgement, memory and motivation. All other listed areas in this category have minimal or no impacts.

In the self-report, the appellant indicated that following:

- She experiences anger, irritability, depression, anxiety, borderline personality disorder, post-partum depression and attention deficit disorder (ADD).
- She is in a constant state of worry and hyper-activity.
- She feels a constant stream of overwhelming thoughts and unexplainable behaviours and destabilizing mood swings.
- She is isolated and traumatized physically, emotionally and mentally.
- She is unable to focus, feels completely overwhelmed and unable to function.

Daily Living Activities

In the medical report, the general practitioner indicated the following about the appellant:

- The daily living activities of personal care, management of medications, and basic housework are periodically restricted.
- Social functioning is periodically restricted. Comment: "often has to drink alcohol prior to participating in social settings".
- All other areas of daily living activities are not restricted.
- Comments: "function is significantly more impaired when using alcohol and/or drugs" and "restrictions are significant and effect daily functioning most days".

In the assessor's report, the general practitioner indicated the following about the appellant:

- All listed tasks under all listed daily living activities are performed independently except under the daily living activities of pay rent and bills, the tasks of budgeting and pay rent/bills requires periodic assistance. Comment: [the appellant] "has some financial stress as a result of her illness".
- Next to the daily living activities of personal care, the general practitioner commented "has difficulty with self-care at times".
- Next to the daily living activities of basic housekeeping, the general practitioner commented "has difficulty maintaining home independently".
- Comment: [the appellant] "is largely independent, but when her anxiety flares and she is using substances and alcohol her ability to function is impaired. This makes it difficult to maintain relationships and employment. It also makes it difficult to pursue treatment for her conditions".
- Under Social Functioning, 3 of the 5 listed tasks require periodic assistance (able to develop and maintain relationships, able to deal appropriately with unexpected demands and able to secure assistance from others). Comment: "ministry of child and family services". There is very disrupted functioning with immediate and extended social networks.
- In response to what supports are required in the community, the general practitioner wrote "substance use treatment options and women's support".

In the self-report, the appellant stated due to her physical and mental state:

- she misses appointments, forgets to pay bills, reply to important emails, lose and misplace things like phones, keys, wallet, important papers and is unable to focus on daily tasks.
- She has no financial or emotional support.
- She has figured out the steps to retrain her brain regarding ADD and BPD.
- She is always either trying to find things, organize things or find a way to make money. She cannot focus on her health or well-being.
- She cannot commit to anything for more than 1 year including relationships and friendships.

Help

In the medical report, the general practitioner indicated the following about the appellant:

- Requires no prostheses or aids for her impairment.

In the assessor's report, the general practitioner indicated the following about the appellant:

- Help with DLA is provided by family and community services agencies.
- 'Assistance provided through the use of Assistive Devices': "n/a".
- 'Assistance provided by assistance animals' – "no".

In the self-report, the appellant did not indicate that she requires help with daily living activities.

Evidence at Appeal

Notice of Appeal dated January 24, 2023, which stated, "I struggle with ADHD, depression, anxiety, BPD, and substance abuse. I am not able to seek the proper help and care as I cannot

maintain a steady job or life schedule as well as being a part time single parent on a limited budget has added to my mental health issues”.

The panel considers the notice of appeal to be part of the appellant’s argument and admitted it as such.

Evidence at the Hearing

The appellant did not attend the hearing.

The appellant previously requested two adjournments to obtain an advocate which were granted. These two adjournments led to lengthy extensions. At the second adjournment request, the appellant had an advocate present and was advised that a third adjournment is not likely. The appellant requested a third adjournment which was denied. Moments prior to the hearing the panel was advised by the Tribunal that the appellant stated that they wished to dismiss the appeal. However, prior to the hearing the Tribunal had not received the required paperwork from the appellant and the hearing proceeded without the appellant.

At the hearing, the ministry relied on its reconsideration decision. In response to questions, the ministry stated the following:

- Persons with persistent multiple barriers is a designation that the appellant can apply for and the requirements are not as stringent as the requirements for PWD.
- It is not clear how often the appellant engages in substance use; it does not seem to impact the appellant’s ability to perform daily living activities and it seems to be under control because the appellant does not use when her child is in her care.
- The ministry determined that the appellant does not suffer from a severe mental impairment because any impacts to cognitive and emotional functioning do not impact the appellant’s ability to complete daily living activities typically related to mental health. There is not enough information regarding type and frequency of the periodic restrictions the appellant faces due to her mental health and therefore a decision regarding severity cannot be made.

Part F – Reasons for Panel Decision

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 and does not establish that 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 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.

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 argued that she experiences PMDD which leaves her unable to move or function for 3-5 days per month, every month.

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 its reconsideration decision, the ministry noted the appellant's physical functional skills as indicated by the general practitioner in the medical report. Namely, the appellant can walk 4+ blocks and climb 5 + steps unaided, lift and remain seated without limitation and does not require and aids or prostheses. The ministry noted that the appellant's mobility and physical ability as indicated by the general practitioner in the assessor's report. Namely, the appellant can walk indoors/outdoors, climb stairs, stand, lift and carry/hold independently. The ministry concluded that the assessments provided by the general practitioner do not establish that the appellant has a severe physical impairment.

After considering the evidence as noted above, the panel finds that the ministry did reasonably conclude that the information provided demonstrates that the appellant does not have a severe

physical impairment of her physical functioning. The panel finds that the physical functional skills, and mobility and physical ability as described by the general practitioner and listed above indicate good physical functioning. The panel also notes that at the time of appeal and the hearing, no additional or supporting information was provided by a prescribed professional. The panel considered the self-report and the appellant's assertion that she cannot function physically for 3-5 days per month due to PMDD. However, as the panel notes, the general practitioner did not diagnose the appellant with PMDD. Therefore, it cannot be determined that the appellant suffers from PMDD and, as a result, cannot function 3-5 days per month due to PMDD.

Given the overall assessments provided by the appellant and general practitioner, 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 her mental impairment prevents her from functioning cognitively and/or emotionally.

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 the general practitioner's narrative in the medical report and assessor's report, and that the general practitioner indicated that the appellant has significant deficits with cognitive and emotional functioning in the following areas: emotional disturbance, executive planning, motivation, impulse control, memory, attention or sustained concentration and psychotic symptoms. The ministry also noted that, in the assessor's report, the general practitioner indicated that with cognitive and emotional functioning there are major impacts in the areas of emotion, impulse control, attention/concentration, and executive, and moderate impacts in the areas of consciousness (intermittent), insight and judgement, memory, and motivation. There are minimal impacts in the areas of motor activity, language, and psychotic symptoms and no impacts in the remaining areas. The ministry noted that the general practitioner indicated that the appellant does not have any difficulties with communication; and notes the level of ability with speaking, reading, writing and hearing are good.

The ministry noted that the general practitioner indicated that with social functioning the appellant requires periodic assistance with developing and maintaining relationships, dealing appropriately with unexpected demands, and securing assistance from others. The appellant also has very disrupted functioning with both immediate and extended social networks.

The ministry noted that the general practitioner indicated that the appellant is independent with daily living activities that would typically be difficult for someone who experiences significant restrictions to their mental functioning, such as making decisions about personal activities, care, or finances, as well as relating to, communicating, or interacting with others effectively. The

ministry also noted that the general practitioner indicated that the appellant does not have difficulties with communication and is independently able to make appropriate social decisions and interact appropriately with others. The ministry finds this level of independence is not indicative of a severe mental impairment.

The ministry concluded that the appellant experiences difficulty keeping organized and maintaining relationships. However, the ministry determines that the information provided does not establish a severe mental impairment.

Minority Panel Decision

The minority panel notes that in the Medical Report (MR) the physician states:

“function is significantly more impaired when using alcohol and/or drugs” and “restrictions are significant and effect daily functioning most days”.

“[Appellant] does not drink or use drugs when appellant has care of their [child]”

“Intermittent use of cocaine affects [appellant’s] ability to function”

In the Assessor Report (AR) the physician states:

“Appellant is largely independent, but when her anxiety flares and [appellant] is using substances and alcohol her ability to function is impaired. This makes it difficult to maintain relationships and employment”

The reported abstinence from drugs and alcohol when appellant is in care of their child indicates a degree of choice, and control over the substance use that the physician indicates significantly impairs functioning.

The minority panel concurs with the ministry’s determination that the information provided in the appeal record does not establish that the appellant has a severe mental impairment.

Majority Panel Decision

The legislation requires that the ministry be satisfied that the appellant has a severe mental or physical impairment. The majority panel finds the ministry failed to consider the medical report and assessor’s report in their entirety and in a broad way; this includes the narrative provided in both reports. The ministry also failed to provide an analysis of the appellant’s self-report in its decision.

In addition to the previously mentioned significant deficits to cognitive and emotional functioning, the majority panel notes the general practitioner’s narrative in the medical report. The general practitioner stated that moderately severe depression and anxiety prevents the appellant from focusing and concentrating on daily tasks. Sleep deprivation causes fatigue and difficulty with coping. The appellant has difficulty keeping herself organized and maintaining relationships which affects her ability to function most days.

In terms of restrictions, the general practitioner indicated that personal care, management of medications and social functioning are periodically restricted. The narrative indicated that this restriction is significant and affects daily functioning most days; thus, describing the frequency of the restriction. Personal care, management of medications and social functioning are all typically related to mental functioning and the general practitioner has indicated that the appellant is periodically restricted with them.

The majority panel notes that in the assessor's report, the general practitioner indicated that the appellant has major or moderate impacts to 8 of the 14 areas listed under cognitive and emotional functioning. This is consistent with the medical report and the self-report.

The majority panel notes that in the self-report, the appellant stated that she misses appointments, forgets to pay bills or reply to important emails, and loses or misplaces important things. The appellant also indicated that she is in a constant state of anxiety and unable to focus on daily tasks. She has a constant stream of overwhelming thoughts and unexplainable and "unstabilizing" mood swings. She is isolated and overwhelmed with her mental health more than ever. The majority panel finds that the appellant's description of her mental health is consistent with both the medical and assessor's reports. The majority panel finds that there is no legitimate reason not to put significant weight on the appellant's testimony.

When this evidence is considered together, the majority panel finds that the information confirms that the appellant has a severe mental impairment.

Decision

Given the overall assessments of the appellant's mental, cognitive and emotional ability and functioning in the PWD application, the majority 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 and that the legislative criteria outlined in Section 2(2) of the Act have not been met.

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 her mental impairment prevents her from completing her daily living activities independently.

The ministry argued 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.

In its reconsideration decision, the ministry noted the general practitioner narratives and restrictions to daily living activities as noted in the medical report. Namely, periodic restrictions to personal care, management of medications and basic housework. The general practitioner also indicated that “restrictions are significant and affect daily functioning most days”. However, when asked, what assistance does your patient need with daily living activities, the general practitioner did not provide any information.

The ministry noted that in the assessor’s report, the general practitioner indicated that the appellant manages all aspects of daily living activities independently except for requiring periodic assistance with budgeting and paying rent and bills. The ministry acknowledged that the appellant has limitations resulting from anxiety flares and alcohol use and requires periodic assistance with some daily living activities as a result. However, the frequency and duration of these periods were not described to determine if they represent a significant restriction to the overall level of functioning. The general practitioner indicated that the appellant does not drink or use drugs when she has the care of her child. Therefore, a restriction that only arises once or twice a month is less likely to be significant than one which occurs several times a week. The ministry concluded that the general practitioner did not establish that a severe impairment significantly restricts daily living activities continuously or periodically for extended periods.

Minority Panel Decision

The appellant states in her self-report that she is unable to make decisions on a daily basis regarding appointments, organizing her life, self-care, making meals with adequate nutrition, taking medications, paying bills, housekeeping and shopping. She is incapacitated with depression, anxiety, worry, overwhelming thoughts and unexplainable behaviours on a constant basis, with the result that she cannot focus or concentrate, loses things and misses important meetings. For example, she took 4 months to complete her paperwork for the PWD application and reconsideration, and could not arrange an advocate, requiring two adjournments, and extensions, and did not submit the form for dismissal or attend the hearing. The medical practitioner has confirmed that she has periodic problems in self-care, laundry, housekeeping, taking medications, organization and management of her life, although she seems to function largely independently.

The minority panel would have found that the information provided in the appeal record establishes that the appellant has a severe mental impairment which directly and significantly restricts her ability to perform her daily living activities continuously or periodically for extended periods.

Majority Panel Decision

The majority panel finds the ministry's analysis of the evidence and its conclusion to be reasonable based upon the evidence before it. The majority panel finds that the evidence does not provide enough information to support a determination that daily living activities are continuously or periodically restricted for extended periods pursuant to the legislation. The majority panel notes that the general practitioner did not describe the type of assistance the appellant requires with any of the daily living activities or tasks that were indicated as requiring periodic assistance.

The majority panel also notes that there is a discrepancy between the information provided by the general practitioner in the medical report and assessor's report and that there is no explanation for this discrepancy. The majority panel notes that in the medical report, the general practitioner indicated that the appellant is periodically restricted with personal care, management of medications, basic housework and social functioning and this occurs most days. However, in the assessor's report, the general practitioner indicated that all tasks listed under personal care, basic housekeeping and medications are performed independently. Similarly, in the medical report the general practitioner indicated that management of finances is not restricted. However, in the assessor's report, the general practitioner indicated that periodic assistance is required with 2 of 3 tasks listed under pay rent/bills (i.e., budgeting and pay rent/bills). The majority panel finds that this discrepancy makes it difficult to determine if the appellant meets the legislative requirements.

Though the majority panel empathizes with the appellant's situation, the panel must determine the reasonableness of the ministry's decision. To do this the majority panel considers the evidence and the legislative requirements. In this case, the general practitioner did not provide enough evidence to confirm that the appellant's daily living activities are restricted due to a causal link to her impairment and no additional or supporting evidence was provided at the hearing from a prescribed professional. The information that is provided is contradictory and there is no explanation as to why the general practitioner provided two different assessments regarding daily living activities. The majority panel also considered the appellant's self-report in which she describes the challenges she faces due to her mental health. However, the legislation requires that the opinion of a medical practitioner confirm that daily living activities are directly and significantly restricted either continuously or periodically for extended periods. Therefore, the general practitioner's evidence carries more weight.

Decision

Given the evidence as a whole, the majority 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 .

In its reconsideration decision 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.

Minority Decision

The requirement for periodic and episodic help from family and community services, such as the Ministry of Child & Family Development, a treatment centre, and women's support is mentioned by the general practitioner but not quantified, specified, nor detailed, The fact that the appellant is not receiving the quantity and quality of help she may actually require does not negate the need for assistance, since her impairment according to the general practitioner, "makes it difficult to pursue treatment for her conditions."

In the absence of help, in her self-report states she was "left alone and untreated ... for 10 years", she appears to function independently, albeit significantly impaired with major impacts to emotion, impulse control, attention/concentration and executive, including psychotic symptoms, and moderate impacts to consciousness (intermittent), insight/judgement, memory and motivation. These deficits, collectively and cumulatively, do demonstrate that the appellant's overall function is severely impaired.

Also, she states in the Notice of Appeal that "I struggle with ADHD, depression, anxiety, BPD, and substance abuse. I am not able to seek the proper help and care as I cannot maintain a steady job or life schedule as well as being a part time single parent on a limited budget has added to my mental health issues". Therefore, though cognitively and emotionally impaired, the appellant is self-aware enough to understand that she needs help with her conditions but is not receiving it.

The self-report mentions side effects of her thyroid medication, fatigue, depression, sadness, brain fog, but no medications are referenced by her general practitioner for her conditions. The only counselling mentioned is for borderline personality disorder, with no suggestion of regular psychiatric or psychological care, or other treatments, solutions or supports.

The same general practitioner confirms that the appellant's functioning in daily tasks is impaired "restrictions are significant and affect daily functioning most days" and that is mentioned on both the medical report and assessor report, which demonstrates the frequency of her confusion and distress. The assessor report also notes that her mental impairment results in very disrupted functioning to both her immediate and extended social networks, with isolation and lack of support. "(R)ecovery is years away", yet no practical supports are proposed, initiated or facilitated in the meantime. In fact, the appellant may need assistance from another person, devices and/or an assistive animal.

The minority panel would have found that the appellant requires help in performing her restricted daily living activities.

Majority Decision

Given that confirmation of direct and significant restrictions with daily living activities is a precondition of the need for help criterion and because the majority 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 majority 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 majority 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*

2023-0023

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: 2023/04/04

Print Name

Linda Pierre – Dissenting member (daily living activities restricted, need for help)

Signature of Member

Date: 2023/04/18

Print Name

John Pickford – Dissenting member (mental impairment)

Signature of Member

Date: 2023/04/15