

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated March 3, 2023, in which the ministry found the appellant was not eligible for designation as a Person with Disabilities (“PWD”) under section 2 of the *Employment and Assistance for Persons with Disabilities Act* (“Act”). The ministry found that the appellant met the age requirement and the requirement for the impairment to continue for at least 2 years but was not satisfied that:

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

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

Part D – Relevant Legislation

The ministry based the reconsideration decision on the following legislation:

Employment and Assistance for Persons with Disabilities Act - sections 2, and 2.1

Employment and Assistance for Persons with Disabilities Regulation - section 2

Employment and Assistance Act - section 22(4)

The full text is available in the Schedule after the decision.

Part E – Summary of Facts

The information the ministry had at the time of the reconsideration decision included:

1. A record of the decision indicating that the PWD application was submitted on December 8, 2022, and denied on January 18, 2023, with *Decision denial summary* explaining the criteria that were not met. On February 16, 2023, the appellant submitted a *Request for Reconsideration*. On March 3, 2023, the ministry completed its review and found that the eligibility requirements for PWD designation were still not met.
2. The PWD application with 3 parts:
 - the *Applicant Information* (self-report) dated August 29, 2022;
 - a *Medical Report* dated November 16, 2022, signed by the appellant’s doctor, a General Practitioner (“Dr. A”) who has known the appellant since 2012, and has seen her 11 or more times in the past 12 months;
 - an *Assessor Report* dated November 16, 2022, also completed by Dr. A who based the assessment on an office interview with the appellant and file/chart information; comment, “office medical records.”

Summary of relevant evidence from the application

Diagnoses

In the Medical Report, the appellant is diagnosed with Generalized anxiety disorder and Social anxiety disorder, date of onset “childhood.” In *Section B - Health History*, the doctor describes the anxiety as “severe” with worry, restlessness, and panic attacks. In *Section C - Degree and Course of Impairment*, Dr. A says the appellant’s condition is long term and “exacerbates with life stressors.”

Additional information from the self-report

In addition to anxiety, the appellant reports chronic back and neck pain for which she is seeing a chiropractor. The appellant says that the pain has been getting worse over the years.

Functional skills

Self-report

The appellant says she is unable to function “normally” due to generalized anxiety and social anxiety. The appellant says she is also depressed despite treatment (therapy and

medication) for the past year. The appellant describes a “constant presence” of fear, stress, despair, and complete lack of motivation.”

The appellant describes problems with bodily functions including “butterflies in my stomach” that happen every morning and give her nausea and diarrhea. The appellant says that she has no desire to eat; is always picking at her skin (to the point of bleeding) because she feels anxious all the time; and has no energy or motivation to shower or maintain her personal hygiene.

The appellant describes social anxiety dating back to childhood. She reports struggling with depression and hopelessness for the past 10 years. The appellant wishes she was never born and has “crossed the street without looking in hopes I would get hit by a car.” The appellant says she has thought about suicide but couldn’t carry it out because of guilt over how it would affect her family. The appellant reports feeling “jealous” when a childhood friend attempted to take their own life.

The appellant describes cognitive difficulties including “brain fog” that leads to making mistakes or having little accidents such as dropping and breaking things. The appellant says she has a “constant fear of messing up.”

Medical Report

In Section B-*Health History*, Dr. A says that the appellant’s symptoms include panic attacks and “difficulty relaxing.” Dr. A reports “insomnia from worry” that disrupts the appellant’s sleep. The appellant also experiences low mood, with a lack of motivation to do things. The appellant gets “anxious during conversations and loses her train of thought.”

In Section D-*Functional skills*, Dr. A indicates the appellant can walk 4 or more blocks unaided on a flat surface; climb 5 or more steps unaided; and has no limitations with lifting and remaining seated. Dr. A checked that the appellant has no difficulties with communication.

When asked if there are any significant deficits with cognitive and emotional function, the doctor checked *yes*, and indicates deficits with *emotional disturbance* and *motivation*; comment, “see section B” [Assessor Report].

Section F - Additional Comments was left blank.

Assessor Report

Under Section B-2, *Ability to Communicate*, Dr. A checked *good* for all areas: *Speaking*, *Hearing*; *Reading*, and *Writing*.

Under section B-3, *Mobility and Physical Ability*, Dr. A indicates the appellant is independent with all 6 functions listed:

- *Walking indoors*
- *Walking outdoors*
- *Climbing stairs*
- *Standing*
- *Lifting*
- *Carrying and holding*

In section B-4, *Cognitive and Emotional Functioning*, the assessor is asked to indicate the impact of a *mental impairment* on various cognitive and emotional functions. For the 14 areas listed, Dr. A indicates the following impacts:

- moderate and major impact for *Bodily functions* (comment, “picks at her skin when anxious, sleep disrupted with panic attacks”);
- major impact for *Emotion*, and *Motivation*;
- moderate impact for *Impulse control*, and *Attention/concentration*.

No impact is indicated for:

- *Consciousness*
- *Insight and judgment*
- *Executive*
- *Memory*
- *Motor activity*
- *Language*
- *Psychotic symptoms*
- *Other neuropsychological problems*

No check mark is provided for:

- *Other emotional or mental problems*

Daily living activities

In the opinion of a prescribed professional, Dr. A provides the following information:

Medical Report - Restricted daily living activities

In Section B-1-*Health History*, the following restrictions are reported:

Social Functioning

- in addition to “severe generalized anxiety” and panic attacks, the appellant has “fear of negative judgment by others which affects her socially.” The appellant’s anxiety “has impacted her relationships.”

Meals, Personal Care, and Basic housekeeping

- the appellant’s low mood includes “a lack of motivation to prepare food, bathe, and do household chores.”

In Section B-3, Dr. A checked *no*, the appellant has not been prescribed medications or treatments that interfere with the ability to perform daily living activities.

Assessor Report - Independent daily living activities

In Section B-1, Dr. A indicates that the appellant’s anxiety disorders and low mood are the impairments that impact the ability to manage daily living activities.

In Section C-*Daily living activities*, Dr. A checked that the appellant is independent with all areas for 6 of the 8 daily living activities listed on the form:

- *Basic Housekeeping*: independent with *shopping*, and *basic housekeeping*,
- *Shopping*: independent with *going to and from stores*, *reading prices and labels*, *making appropriate choices*, *paying for purchases*, and *carrying purchases home*,
- *Pay Rent and Bills*: independent with *banking*, *budgeting*, and *pay rent and bills*,
- *Medications*: independent with *filling/refilling prescriptions*, *taking as directed*, and *safe handling and storage*.
- *Transportation*: independent with *getting in and out of a vehicle*, *using public transit*, and *using transit schedules and arranging transportation*,
- *Social Functioning*: independent with *appropriate social decisions*; *able to develop and maintain relationships*, *interacts appropriately with others*, *able to deal appropriately with unexpected demands*, and *able to secure assistance from others*.

Additional information for *Social Functioning* includes check marks regarding how a mental impairment impacts the appellant’s relationships with her social networks. Dr. A checked:

- *good functioning* with the immediate social network,
- *marginal functioning* with the extended social network.

The doctor left the spaces blank when asked to indicate what support is needed for the appellant to be maintained in the community, and whether there are any safety issues.

Assessor Report - Restricted daily living activities

The doctor provided checkmarks for two daily living activities, indicating the following restrictions:

- **Personal Care:** requires periodic assistance from another person with regulating diet. In comments, the doctor explains that a family member assists with gift certificates for meal delivery 2 times per week and that the appellant has lost 6 pounds.
- **Meals:** requires periodic assistance from another person with cooking. The doctor comments that the appellant requires support from a family member who helps with meals 2 times per week.

In the section for comments Dr. A indicates further restrictions:

- **Shopping:** the appellant requires support from a family member because she “does not shop for food.”
- **Basic housekeeping:** the family member also helps with home maintenance.

The doctor checked *independent* for the remaining areas of *Personal Care* and *Meals*:

- *dressing, grooming, bathing, toileting, feeding self, and transfers (bed and chair);*
- *meal planning, food preparation, safe storage of food.*

Appellant’s information on restrictions to daily living activities

In the self-report, the appellant says that her “complete lack of motivation,” along with constant anxiety, limits her ability to eat, bathe, and do basic chores. The appellant elaborates as follows:

Personal Care and Basic Housekeeping

- her family member has to provide gift certificates for food and check in on her to see if she needs to eat. She can’t make food at home because she has no desire to eat, and she has no motivation to clean up dirty dishes or clean out the fridge which is full of old vegetables and take-out food containers that she does not know what to do with.
- she can’t cope with home maintenance or yard work without help from a family member. The appellant reports a rat problem at her home due to not doing yard work.
- it is stressful to get dressed because she is so critical of her body and appearance. She reluctantly ends up “wearing the same smelly outfit” all week. She says she

dreads every evening when she has to brush her teeth, and she “always feels despair that life is just chores.”

- she finds showering “overwhelming and sensations unpleasant.”

Shopping

- she struggles to go to the grocery store and has not done so in awhile.

Social Functioning

- she has experienced a lot of sadness from not keeping friendships. She and her spouse have separated because the spouse was “unable to cope with the severity of my anxiety.”
- social anxiety gives her a need to be isolated, and she “becomes extremely agitated having conversations, then panics for hours afterward.”
- she has tried very hard to make friends “but my anxiety makes it impossible” because “no one wants to be around someone that is nervous.”

Need for help

Self-Report

The appellant says that she needs help with meals, shopping for food, and cleaning/home maintenance due to her anxiety and low motivation. The appellant says she has received therapy for her mental impairment since 2021, but her condition has not improved.

Medical Report

In section B-1, Dr. A says that the appellant is working with a mental health team to receive counselling. She has seen a psychiatrist as well, and will be referred back to the psychiatrist.

In Section B-4, Dr. A checked *no* when asked if the applicant requires any prostheses or aids for the impairment.

Assessor Report

In Section A-1, Dr. A checked that the appellant lives alone. In Section D-*Assistance provided by other people*, the doctor indicates that the appellant’s family assists her with daily living activities. The doctor wrote “n/a” in Section D-*Assistance provided through the use of assistive devices*. The doctor checked *no* the appellant does not have an assistance animal.

3. A Request for Reconsideration signed by the appellant on February 16, 2023, with a 46-page hand-written submission attached. In addition to argument for the reconsideration, the appellant adds the following details:

Mental and physical impairment

- she has physical symptoms that happen simultaneously with her anxiety and depressed mood. Her physical limitations include:
 - “often blinded by tears”;
 - mysophobia, in which certain sounds trigger an emotional or physiological response that may be perceived as unreasonable. The reaction “can cause panic and a need to flee;”
 - nausea every morning and often throughout the day, as well as diarrhea most evenings.
- muscle atrophy in her limbs “from being unable to move all day from depression and anxiety.” She often can’t sleep due to leg pain.
- headaches and migraines that often last for 3 days, as well as constant neck and back pain, and a lifelong hunch from not moving, and from “trying to be invisible or submissive” due to social anxiety.
- “major gastro-intestinal problems (including stomach pain) likely caused by anxiety;
- skin problems, malnutrition, weakened immune system, and anemia;
- dizziness, tiredness, heart palpitations, muscle aches, and “simultaneous restlessness and inability to move.”

Functional restrictions

- she is currently taking an art class [to help manage her mood disorder] but has difficulty participating because “I have to hold myself back from smashing what I’m working on.” She smashed a scraper on her car, frustrated at not being able to function normally. “I placed my bare hands on the icy windshield because the pain felt better than my mental anguish.”
- she has distressing nightmares every night and wakes up feeling terrified, overwhelmed, and full of dread, “like falling back off a chair.”

Daily living activities

Personal care

Bathing and grooming

- she is unable to bathe more than once every week and a half, which causes her to feel grimy, smelly, and emotionally/physically distressed. Her hair is “flaky and greasy; she covers it with a toque to hide the grease and dandruff.
- she gets anxious about washing her hands and is unable to do it thoroughly. She feels that even her hands smell.

- she has a diva cup for her period but doesn't clean it as directed. She is worried about the health risks from not boiling or replacing it.
- her glasses are constantly filthy because she can't handle cleaning them;
- she often has no motivation to get changed, and will wear the same socks, underwear, and pajamas each day/night.

Regulate diet

- she feels fatigue and coldness all the time from starving herself. At other times, she binge eats which makes her stomach feel awful. Even when she feels hungry, there is "nothing I can manage to eat."
- anxiety about getting a urinary tract infection, causes her to have a fear of not drinking enough water; but then she drinks too much water which further impacts her sleep.

Meals

Food preparation and cooking

- she has "major anxiety around eating/making food" and can only eat small meals from a "drive through"; microwavable meals, or food that requires hot water to be added. Sometimes she eats food right out of the package because she can't cope with preparing it.
- she had a food delivery service for awhile that brought microwavable meals, but it closed down (and she could not afford it anyway).

Basic housekeeping

- she doesn't clean anything and has never washed the floor;
- she is incapable of doing dishes. She usually eats packaged or microwavable food so that she doesn't have any dishes to wash, "but dealing with the empty containers stresses me out and I often can't even rinse them before throwing them in the garbage." The trash and recycling are full because "I can't deal with it."
- she is unable to cope with washing her bedding and pet hair covers everything. "I don't even bother picking it out of my food/water anymore;"
- there is black mold around the windows and under her mattress. She needs to clean the window ledges and wipe under the mattress and air dry it, but "I can't deal with it...I just let the black mold grow."
- there is a lot of ice build-up in her fridge and freezer causing it to malfunction, as well as a lot of expired food that she is unable to clean out;
- her toilet and sink are broken, and rats have chewed through the water line twice. She was without water until she finally calmed down enough to reconnect the line. There are still problems from the leak but "I can't deal with fixing it." A family

member will come and fix it for her, but she is unable to cope with setting rat traps to prevent it from happening again.

- her entire storage room is taken over by rats and all of her stored belongings are covered with rat urine and feces. Thousands of insects have also infiltrated her dishes, clothes, and kettle. She cannot cope with either problem.

Shopping

- she doesn't shop. The last thing she bought was clothing from a thrift store. If she had money, she would be able to shop [for clothing].
- she has major anxiety about leaving the house, especially to shop for groceries. She has been able to go to markets with very few people once a week, but never has enough food in the house. She is too anxious and overwhelmed to buy anything except microwavable meals or little snacks that she hopes she will be able to manage.

Pay Rent and Bills

- she has no banking to do because she is poor, but she uses a debit card.
- she is capable of getting money out of an ATM machine to pay rent, but she does not have bills because utilities are included with the rent, and her finances are very low anyway;
- she has not been able to upload receipts to do her taxes, and she is afraid to email her spouse to settle the divorce.

Medications

- she has medication for toenail fungus but could not cope with taking it 3 times per day as directed;
- she has run out of her anti-depressant and anti-anxiety medication because she has great difficulty asking for a prescription and is no longer able to. Even if she got disability assistance and the cost of the medication was covered, she still can't manage getting a prescription refill every couple of months as the doctor requires. She has been really struggling and suffering from withdrawal side effects such as "brain zaps." She would still like to take the medication if she could manage the prescription process.

Transportation

- her car needs regular maintenance, but she cannot deal with it (nor can she afford it); she can drive but it's a struggle when there are tears in her eyes. Most of the time she doesn't drive because she can't cope with going anywhere.

- she doesn't want to leave the safety of her home, despite it being like a prison. Sometimes a family member takes her to get breakfast.

Social Functioning

- she has difficulty asking for help because her "social anxiety is so bad, especially for doctors and vulnerable topics." She also can't afford appointments with specialists such as her chiropractor.
- she usually doesn't talk to anyone because her anxiety causes her to feel unsafe around people; her circle of friends has become smaller, and she has no support system.
- she has difficulty communicating with more than one-word sentences because she feels terrified when talking to people and has difficulty paying attention to what the other person is saying. She has difficulty pronouncing her own name and has always struggled to talk loud enough for people to hear. Even in a normal conversation, she gets confused, lost, and forgetful, and is terrified when she has to speak on the phone.
- even if she does talk to someone, she kicks herself afterward for saying "dumb things", being blind to social cues, and being "so nervous that it's a mix of half paying attention and forgetting things so that what you say makes no sense and I'm so embarrassed after."
- sometimes she is so terrified to speak that she has to write things down. She often has panic attacks during conversations, including "loss of breath, sweating, heartbeat going crazy, tears, forgetfulness, and panic."
- when the doctor asked her to name friends, she could only think of two people who do not live in her area. She does not talk to them except for sending memes. She feels completely alone except for her pets, and that no one likes her. Every friend and family member "has been a surface connection" due to childhood trauma, guilt, and living with extreme anxiety.

Need for help

- she has difficulty asking for help "for anything I'm vulnerable about," including meals; the rat infestation in her home; or even to get maintenance done on her car;
- she avoids making appointments with her doctor, mental health therapist, and chiropractor because she feels "burnt out, traumatized, nervous, depressed to do basic living;" and too tired and frustrated to keep jumping through hoops to get the support she needs.
- she also feels ashamed to ask for a mental health therapist or assistance from the government. When she did see the therapist, they refused to fill out the PWD forms and "got annoyed that I wasn't progressing."

- she uses ear plugs at night as an “assistive device;” otherwise, she can’t sleep. She also relies on the dishwasher as an “assistive device” because she doesn’t function “like a normal human” and feels so much trauma towards washing a dish that she “just can’t do it.”
- she relies on her pets as “therapy animals” because they calm her down when she is having a panic attack. “They are the only ones I feel safe around.”

Additional evidence - written hearing

With the consent of both parties the appeal format was a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*. The appellant filed a *Notice of Appeal* with an emailed statement to the Tribunal dated March 26, 2023, in which she explains that she asked for an oral hearing before realizing that it requires being in a group setting via phone or video. She stated that the “situation was too scary for her due to social anxiety.”

The appellant explains that her submission on appeal is an “audio/visual email submission” because meeting with people at the hearing would cause her to have a panic attack. In a 20-minute video submission dated March 31, 2023, the appellant provides her argument and adds further details about her function:

- she has never felt comfortable talking to anybody;
- she has physical symptoms such as “sweating and stomach turning” (even at the thought of people watching her video submission);
- she feels a sense of dread every morning about having to live for another day. She has to “run to the bathroom” because “I get nauseous at the thought of having to live.”
- she feels disgusted at the thought of eating and cannot enjoy foods that she used to like in the past. She has to go to a fast-food restaurant or get ready-made meals (that she can’t afford) because she can’t make food herself due to anxiety. She gets “a terrible feeling” when she thinks about doing anything, stating, “I just can’t do it.”
- she has not had a shower “in I don’t know how long, because my body just shuts down;”
- she does her own banking, but she only has a debit card and a savings account right now. Before losing her credit card, she was able to make purchases online, but would end up with additional charges because she had difficulty remembering to pay the balance;

- she has difficulty remembering appointments or even marking them on a calendar. She fought hard to get an appointment with a psychiatrist but got there late (forgetting the appointment time), and then could not remember what she wanted to say.
- she has been off her anxiety medication because it is too difficult to make the appointment, deal with waiting, then talk to the doctor.
- she goes to bed as early as possible and takes a sleeping pill, because it saves her a few hours of thinking about not wanting to exist.

Admissibility of video evidence

The ministry had no objections to the video submission being accepted as evidence. The video includes additional detail from the appellant which the panel finds is relevant to understanding the mental impairment and resulting limitations. The panel admits the video submission under section 22(4) of the *Employment and Assistance Act* as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The ministry did not submit any new evidence or argument. In an email to the Tribunal, the ministry states that the reconsideration summary is the ministry's submission on appeal. The panel will consider both parties' arguments in Part F-Reasons.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision that found the appellant ineligible for PWD designation was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. The panel's role is to determine whether the ministry was reasonable in finding that the following eligibility criteria in section 2 of the EAPWDA were not met:

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

Analysis*PWD designation - generally*

The legislation provides the Minister with the discretion to designate someone as a PWD if all the requirements are met. In the ministry's view, PWD designation is for persons who have significant difficulty in performing regular self-care activities including social interaction and making decisions about personal activities, where a mental impairment is shown.

Some requirements must have an opinion from a professional, so it is reasonable to place significant weight on those opinions. The ministry found that 2 of the 5 requirements were met because the appellant is at least 18 years of age, and a medical practitioner has given the opinion that the appellant's impairment is likely to continue for at least 2 years.

The application form includes a self-report so it is appropriate to place significant weight on evidence from the appellant unless there is a legitimate reason not to do so. The panel will review the reasonableness of the ministry's determinations and exercise of discretion.

Severe 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

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

Restrictions to Daily living activities

A prescribed professional must provide an opinion that the applicant's impairment restricts the ability to perform daily living activities. The BC Supreme Court decision in *Hudson v. Employment and Assistance Appeal Tribunal* [2009 BCSC 1461] determined that at least two daily living activities must be restricted in a way that meets the requirements of the Act, and that **not all activities need to be restricted**.

The restrictions to daily living 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 daily 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 requirements for restrictions to daily living activities are set out in subsection 2(2)(b)(i) of the Act. Specific activities are listed in section 2(1) of the Regulation. The Medical Report and Assessor Report also list activities, and though they do not match the daily living activities in the Regulation exactly, they generally cover the same activities.

The Medical Report and Assessor Report give the professional the opportunity to provide additional details on the applicant's restrictions. **The inability to work and financial need are not listed as daily living activities and are only relevant to the extent they impact the listed activities.**

Help Required

A prescribed professional must provide an opinion that the person needs help to perform the restricted daily living activities. This requirement is set out in subsection 2(2)(b)(ii) of the Act. Under subsection 3, "help" means needing an assistive device, the significant help or supervision of another person, or an assistance animal to perform daily living activities.

An assistance device, defined in section 2(1) of the Act, **is something designed to let the person perform the restricted daily living activities.**

Severe mental or physical impairment

Arguments - Appellant

The appellant's position is that her mental impairment is severe because she is unable to cope with everyday life due to anxiety and depression. She says that she feels overwhelmed and hopeless constantly; is not motivated to do things; and has no desire to keep living. The appellant says she would have killed herself long ago if she didn't feel a lot of guilt about the impact on her family. However, the feeling of guilt is diminishing as the stress of her situation continues.

The appellant expresses her frustration with the PWD application. She says that the process "is really cruel for someone who has a mental health problem because it is clearly meant for someone who has physical disabilities." The appellant argues that people are falling through the cracks, ending up homeless and addicted to drugs because the application focuses on a physical impairment rather than mental health conditions. The appellant argues that whether she can walk, or lift is "completely irrelevant" to her situation. She is certain that "sleeping or eating are more important daily functions than walking and climbing 50 stairs."

The appellant explains that she only got a 15-minute appointment with the doctor who basically asked her 10 "yes or no" questions and made assumptions about her mental health. The appellant argues that she is also impaired physically because of:

- chronic fatigue/insomnia;
- "major gastro-intestinal issues" including nausea and diarrhea every day, and anemia/malnutrition from not eating properly;
- chronic back/neck pain and muscle atrophy from "not moving all day from depression", and hunching over to try and be invisible, and
- headaches, hyper-sensitivity to sounds; weakened immune system; and skin problems from picking at scabs.

The appellant argues that anxiety restricts her cognitive functioning and communication because she often forgets appointments or what she wants to say; and is extremely nervous talking to people, especially doctors/other professionals about "vulnerable topics." The appellant says that the repeated denial of her disability application is extremely stressful as she has tried her best to explain her situation in detail and get the information from her doctor.

The appellant says that her impairment has gotten a lot worse due to the frustrating process which has really dragged her down. The appellant says that “being denied disability has left me so dead and angry that I can’t control my physical outbursts. like smashing things.” The appellant says she is “burnt out from fighting for myself and being told that because the doctor says I can do my own banking and walk, that I don’t need assistance.”

The appellant acknowledges that she is also applying for disability for financial reasons because she is unable to work; will run out of money soon; and is at risk of becoming homeless. She argues that the mental impairment has contributed a lot to her financial problems because she had to give up her business due to social anxiety and other symptoms (“lots of human interaction impacted daily tasks”) as well as financial reasons.

The appellant argues that her functioning “is not normal because I used to be just fine” with a long-term career and other successes. The appellant says that the ministry needs to change the process and use a “separate system for mental and physical impairments” because too many people with mental disorders are not getting the support they clearly need.

Arguments - Ministry

The ministry’s position is that the information provided by Dr. A does not establish a severe mental or physical impairment. The ministry argues that while “the determination of severity of impairment is at the discretion of the minister, considering all the evidence, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed professional respecting the nature of the impairment and its impact on daily functioning.”

The ministry acknowledges that the appellant experiences cognitive and emotional challenges due to anxiety, but argues that it is unclear why Dr. A would indicate a moderate impact with impulse control and attention/concentration in the Assessor Report when these areas were not check marked as “significant deficits’ in the Medical Report.

The ministry says it is unable to determine a major impact for emotion and motivation (as reported by Dr. A) because the doctor checked that the appellant is independent with social functioning as well as other activities “that would typically be difficult for a person who has a severe impairment of their mental functioning due to cognitive and emotional deficits.” The ministry argues that the appellant does not have difficulty with communication because the doctor checked “good” for all abilities including speaking.

Regarding a physical impairment, the ministry argues that the information from Dr. A does not establish a severe impairment because the doctor indicates no limitations for walking, lifting, or any of the physical functions listed in the Medical Report. Based on Dr. A's check marks in the Assessor report, the ministry argues that the appellant is "independent with all activities requiring mobility or physical ability."

Panel's decision - mental impairment

The panel finds that the ministry's decision is not reasonable because the evidence from all sources combined, establishes a severe mental impairment. The panel relies on the following information that shows significant restrictions in daily function:

In the Medical Report, the appellant is diagnosed with "severe" anxiety with multiple symptoms including worry, restlessness ("difficulty relaxing"), panic attacks, insomnia/disrupted sleep, difficulties with cognition and communication ("loses her train of thought"), and social/relationship difficulties. The doctor also describes "low mood" that results in a lack of motivation for meals and other activities. The appellant's emotional disturbance and lack of motivation are "significant."

In the Assessor Report, the doctor indicates moderate and major impacts for bodily functions, commenting that the appellant picks at her skin, and has disrupted sleep due to anxiety and panic attacks. As well, the appellant's mental impairment has a major impact on emotion and motivation, and a moderate impact on impulse control and attention/concentration.

The ministry gave less weight to the information on impulse control and attention/concentration because these items were not check marked in the Medical Report as having significant deficits. The ministry also gave less weight to the information on emotional disturbance and motivation, arguing that the appellant is independent with social functioning and activities requiring motivation.

However, when the information from the doctor is looked at cumulatively, across both reports, the significant deficits and moderate/major impacts across a number of functions demonstrate a severe mental impairment. The narrative comments in the reports confirm the appellant's difficulties with relationships and lack of motivation to do things.

In addition, the appellant's evidence provides many detailed examples which support the functional restrictions indicated in the two reports. The appellant worries about her bodily functions, living conditions, relationship problems, and finances to such a great extent

that she experiences frequent nausea, diarrhea, sleep disturbance/fatigue, and panic attacks. The appellant details picking at her scabs and having disturbing nightmares every night. The appellant reports impulse control problems (“smashing things”) and a lot of difficulty making and keeping appointments.

The appellant reports hopelessness, despair, and suicidal ideation from her low mood and lack of motivation. The appellant describes deteriorating living conditions due to her inability to control rats, insects, and mold. Dr. A notes that the appellant’s condition is long term and exacerbated by “life stressors.” The appellant reports a serious decline in her mood symptoms and daily functioning over the past year and a half due to stressors that include closing her business and separating from her spouse, as well as home maintenance issues.

In the Assessor Report, the doctor check marked no difficulties with communication, or impacts for language but the panel gives greater weight to the doctor’s narrative comments in the Medical Report which indicate that social anxiety causes difficulties with “train of thought” during conversations. The appellant’s evidence corroborates the impact of social anxiety on communication. She describes in detail how she forgets what she wants to say or worries afterward about saying “dumb things” that don’t make any sense.

The panel prefers the narrative comments over the check marks on the forms because the comments are consistent with the appellant’s descriptions of severe emotional and physical distress due to her anxiety and low mood. The panel finds that the totality of the evidence including the additional information in the video submission, meets the requirement for a severe impairment under the Act.

Panel’s decision - physical impairment

The panel has considered the evidence in its entirety and finds that the ministry’s decision is reasonable. The appellant is not diagnosed with a physical condition in the Medical Report of Assessor Report. The physical symptoms reported by the doctor and the appellant (problems with sleeping eating, restlessness, and picking at her skin) are the result of a mental impairment (anxiety) rather than a physical impairment.

The appellant reports back/neck pain, muscle atrophy, and problems with her posture but attributes these to anxiety and depression as well. There is no indication in the PWD application that these issues have been investigated by the doctor. The appellant reports malnutrition and anemia from her eating problems, and while Dr. A confirms weight loss of 6 pounds, the appellant’s weight is in the normal range in the Medical Report.

In both reports, the appellant's ability to walk, lift, carry objects, etc., are assessed at the highest level of ability on the rating scales, and the appellant is independent with all physical functions. The appellant acknowledges that she can perform her physical functions but says that is not relevant to understanding mental health conditions.

The panel finds that the ministry reasonably determined that the requirement for a severe impairment under the Act is not met based on physical impairment because the appellant is not restricted with walking, climbing stairs, lifting/carrying, sitting, or standing. However, as noted earlier, the requirement under the Act is met because a severe mental impairment is shown based on anxiety and low mood.

Restrictions to daily living activities

Arguments - Appellant

The appellant's position is that her daily activities are directly and significantly restricted by her anxiety disorders and complete lack of motivation. The appellant argues that she has "major anxiety around eating" and often completely avoids cooking, grocery shopping, and doing dishes because it is a "major struggle" to do any of those things.

The appellant says she gets a "terrible feeling in her stomach" when she thinks about preparing food; "I just can't do it." Although a family member helps her with meals twice a week, she argues that she needs support most days because, on her own, she can only eat fast food, or packaged/microwavable meals, and she struggles to even add hot water, wash a dish, or dispose of the packaging afterward. She is also too anxious and afraid to ask for help more often.

The appellant says that while she can go to the bathroom by herself and pay her rent, the bathroom is steps away, and she has a debit card and no longer uses a credit card. The appellant argues that she is unable to renew her prescriptions because she is too anxious and overwhelmed at doctor's appointments. The appellant says that although she can drive, she rarely leaves the house and cannot even make an appointment for car maintenance.

The appellant says that showering causes so much distress that she is "smelly" from wearing the same clothing for days. The appellant says that she lives with black mold, rats and "thousands of insects" because she is unable to clean or maintain her residence in a sanitary condition.

The appellant argues that the greatest inaccuracy in the doctor's information is that she is independent with social functioning, when the reality is that she isolates herself due to

social anxiety. The appellant says that she lacks a support system; feels “unlikeable and undeserving of friends” and avoids asking for help by being too anxious to make or keep appointments.

Arguments - Ministry

The ministry’s position is that the doctor has not confirmed that the appellant’s impairment significantly restricts daily living activities continuously or periodically for extended periods as required by the legislation. The ministry acknowledges that the appellant receives periodic assistance from a family member with regulating diet and cooking, but argues that the doctor does not indicate if the help received is because the appellant cannot afford groceries (as she states) or is unable to manage these activities independently due to the impairment.

The ministry argues that daily living activities are not restricted under the Act because the doctor check marked “independent” for the majority of activities. The ministry argues that the doctor that does indicate the appellant “requires assistance with making decisions about personal activities, care or finances; or relating to, communicating or interacting with others effectively.”

The ministry further argues that financial barriers prevent the appellant from completing some activities. The ministry argues that the level of restriction the appellant describes is not supported by her doctor or another prescribed professional.

Panel’s decision - restrictions to daily living activities

The panel finds that the ministry’s decision is not reasonable. The panel concluded above that a severe mental impairment is established based on the evidence. The panel determines that there is enough evidence from Dr. A, with additional details from the appellant, to confirm that daily living activities are directly and significantly restricted for extended periods by the appellant’s mental health issues.

The ministry argues that the appellant is independent with most daily living activities, based on the doctor’s check marks in the Assessor Report. However, the reconsideration decision does not reference the narrative comments in the Medical Report (other than summarizing them).

The narrative comments from the doctor combined with check marks in the Assessor Report and clarification from the appellant, show significant restrictions with the following activities:

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

The evidence from Dr. A in the Medical Report is that the appellant's low mood combined with the impacts of anxiety, result in a "lack of motivation" to prepare food, bathe, and do household chores. The doctor notes in the Assessor Report that the appellant receives gift certificates for meals twice a week because she is restricted with regulating diet and cooking.

The ministry argues that the appellant relies on gift certificates because she cannot afford food, but the evidence from the doctor is that the appellant has no motivation to prepare meals because her impairment is "severe." According to Dr. A, the appellant's condition has a major impact on emotion, motivation, and bodily functions and is also exacerbated by stress.

The appellant explains throughout her submissions that she is not independent with meal preparation and cooking because when she doesn't have gift certificates, she can only manage fast food from a drive through, or microwavable meals due to her anxiety around food preparation and eating. The appellant notes that she has difficulty with simple food tasks such as boiling the water for packaged foods.

The appellant details not showering for more than a week at a time; not taking out the garbage or disposing of rotting food in her fridge; never washing the floor; and having issues with mold and rats because she is unable to clean things. While the doctor left the spaces for identifying safety issues blank, the appointment was only 15 minutes, with a lack of detailed questioning. The lack of motivation that the doctor indicates, does cause safety issues for the appellant as she is unable to maintain her residence "in acceptable sanitary condition."

The appellant reports not shopping for food (other than buying such a small amount that she never has enough food). The appellant details eating too little due to stomach symptoms from her anxiety, or binge eating which also makes her feel awful. The ministry

argues that the level of restriction reported by the appellant is not confirmed by the doctor, but with comments and check marks regarding severe anxiety, low mood, and a lack of motivation, the panel finds that the information from Dr. A supports the appellant's detailed descriptions. The doctor explicitly states in the Assessor Report that the appellant "does not shop for food."

The evidence from doctor A ("the condition is long term"), with additional details from the appellant, indicates that restrictions to daily living activities are for extended periods. The information from Dr. A, with the appellant's descriptions of a "typical day," indicates impacts for decision-making about personal activities and care, that are significant and continuous as required by the Act.

Dr. A provides compelling evidence for restrictions to social functioning in the Medical Report, despite the check marks in the Assessor Report which indicate the appellant is independent with all areas. In particular, the doctor writes that the appellant has panic attacks and "gets anxious during conversations." The appellant's "fear of negative judgment by others" affects her socially. The appellant's anxiety "has impacted her relationships."

The panel gives significant weight to the narrative because the appellant's descriptions of her social isolation expand on and explain Dr. A's comments. The appellant's examples include being unable to *relate to, communicate, or interact with others effectively* because she is so anxious and worried, that she forgets what she wants to say; avoids appointments and going out; and has lost contact with friends (other than sending memes). The appellant thinks that no one likes or wants to be around her because she is too nervous.

The appellant describes separating from her spouse who was unable to cope with the "severity of my anxiety" and told the appellant that her anxiety "makes those around you anxious, and they don't need to be around that." The appellant is too scared to email her spouse about a divorce. The appellant has lost a significant relationship due to her anxiety.

The appellant's social functioning is continuously restricted due to severe social anxiety that makes her worry about talking to people, not only about "vulnerable topics" but even to strangers at the store on the rare occasion that she goes out. The appellant indicates that she couldn't remember what she wanted to say when talking to the psychiatrist, and her therapist got annoyed due to the lack of progress. The appellant avoids interacting with people by only going to a small market that is not very busy.

Regarding the remaining daily living activities set out in the Regulation, the ministry was reasonable to find that restrictions for *manage personal finances, use public or personal transportation, move about indoors and outdoors, and manage personal medication* are not confirmed by Dr. A. The appellant acknowledges that despite her limited funds, she is able to use a debit card and pay her rent. The appellant confirms she is able to drive even though she rarely goes out.

The appellant says she has abruptly stopped her medication and is experiencing “brain zaps” and other withdrawal symptoms as a result of not being able to “handle prescription renewals.” However, Dr. A has not confirmed that the appellant is unable to manage medications. The doctor has not provided any comments for *Medications* which is checked as independent in the Assessor Report. In the Medical Report, the doctor checked *no*, the appellant is not taking any treatment that interferes with daily activities.

Summary

The panel finds that it was not reasonable for the ministry to focus on check marks that show no restrictions for most activities, when only two daily living activities need to be restricted. It is necessary to consider the evidence in its entirety, analyze the doctor’s narrative, and weigh it against the check marks. It was not reasonable for the ministry to overlook the doctor’s comments in the Medical Report (other than summarizing them), or to find that the information does not support the doctor’s view. The panel finds that the appellant’s information adds clarity and depth to the doctor’s comments about her restrictions.

In doing a complete analysis, Dr. A confirms that the appellant lacks motivation for meal preparation, bathing, and household chores. The doctor says that the appellant doesn’t shop for food, and her relationships have been negatively impacted by social anxiety. The appellant gives many examples and details to elaborate on these restrictions.

The evidence from a prescribed professional, with additional details from the appellant, indicates that the mental impairment significantly restricts at least two daily living activities continuously or for extended periods. The requirement under the Act is therefore met.

Help with daily living activities*Arguments - Appellant*

The appellant's position is that she needs a lot of help and support but is isolated due to social anxiety and has a lot of difficulty asking for help because she can't cope with doctor's appointments anymore. The appellant acknowledges that a family member helps her with meals and home maintenance occasionally but argues that she needs more support than twice-weekly help with meals (and is afraid to ask).

The appellant says she relies on ear plugs and the dishwasher as "assistive devices" to help her cope with the anxiety from noise and her lack of motivation to do dishes. The appellant argues that her pets are "assistance animals" because they help calm her panic attacks and are the only thing that keeps her alive.

Arguments - Ministry

The ministry's position is that the criteria for help are not met because daily living activities are not significantly restricted. The ministry acknowledges that the appellant receives help from her family but argues that it could not determine that significant help from other persons, or help from an assistive device, is required when daily living activities are not significantly restricted.

The ministry acknowledges that the appellant considers ear plugs and the dishwasher to be "assistive devices," but argues that these items are "designed for people regardless of their impairment." They are therefore not considered "assistive devices" under the legislation.

Panel's decision - help with daily living activities

The ministry is not reasonable to find that the requirement for help is not met. Dr. A indicates in the PWD medical reports that the appellant does not require an assistive device, but the appellant needs assistance from family with daily living activities because she lacks the motivation to do things.

While the doctor does not indicate the appellant's pets are "therapy animals," the PWD medical reports confirm that the appellant requires counselling and a follow-up visit with a psychiatrist to manage her anxiety including the impact of social anxiety on her relationships. Given the diagnosis of "severe" generalized and social anxiety and the cumulative impacts on emotional function, with sleep disturbance, and difficulties relating

to people reported by the doctor, it follows that the appellant requires significant help from her family and mental health professionals due to the mental impairment.

The Act requires confirmation of direct and significant restrictions to daily living activities, directly related to a diagnosed mental or physical impairment, as a precondition for needing help to perform daily living activities. The panel found that the ministry's determination that significant restrictions to daily living activities are not established on the evidence is unreasonable for the reasons stated earlier.

The evidence is that the appellant needs help from family and mental health professionals to manage her anxiety in order to perform daily living activities. Accordingly, the panel finds that the ministry's conclusion that the help requirement is not met, is not a reasonable application of the legislation in the appellant's circumstances.

Conclusion

The panel finds that the reconsideration decision is not reasonably supported by the evidence. The panel overturns the decision because the appellant meets all the requirements for PWD designation.

The totality of evidence, including the appellant's very detailed and fulsome account of her situation, shows that the appellant suffers from a mood disorder that is especially characterized by a lack of motivation to do daily activities and severe social anxiety. The appellant's low mood is very concerning because she expresses suicidal ideation throughout her submissions that has escalated to the point where she feels capable of following through on her desire to "not exist."

The panel acknowledges that the check marks on the PWD medical reports are often inconsistent with the doctor's narrative comments. The panel has given greater weight to the narrative comments which are supported by the appellant's accounts of her distress.

The appellant gave a reasonable explanation for the inconsistencies: the appointment with the doctor was only 15 minutes; she has a lot of difficulty expressing herself; is very anxious about appointments; and lacks the motivation to follow up with her doctors. At the same time, the appellant acknowledges that she needs professional help, and the

information in the medical reports confirms that the appellant needs help from her family with meals and other activities, as well as support from mental health professionals.

For these reasons, the panel rescinds the reconsideration decision, and sends the matter back to the Minister for a decision on the amount of disability assistance. The appellant is successful with her appeal.

Schedule – Relevant Legislation

EAPWDA

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).

EAPWDR

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,

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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

Margaret Koren

Date (Year/Month/Day)

2023/04/28

Print Name

Robert McDowell

Signature of Member

Date (Year/Month/Day)

2023/04/28

Print Name

Mary Chell

Signature of Member

Date (Year/Month/Day)

2023/04/28