

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated March 14, 2023 denying persons with disabilities (PWD) designation. The ministry found that the appellant met the requirements for age (18 years or older), severity of impairment (physical), daily living activities restrictions, and need for help.

However, the ministry was not satisfied that a medical or nurse practitioner confirmed that the appellant’s impairment is likely to last for at least 2 years.

The ministry also found that the appellant was not one of the prescribed classes of persons eligible for PWD designation on the alternative grounds. As there is no information or argument on this point, the panel considers it not to be at issue in this appeal.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (the Act), sections 2 and 2.1

Employment and Assistance for Persons with Disabilities Regulation (the Regulation), section 2

The full text of these sections of legislation is set out at the end of this decision.

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

- 1) The appellant's PWD application. The Medical Report was completed by the appellant's general practitioner (the doctor) of 3 ½ years, who had seen the appellant 11 or more times in the past 12 months. The Assessor Report was completed by a Registered Psychiatric Nurse who had known the appellant for more than 6 months and seen the appellant 11 or more times in the past 12 months. The appellant chose not to complete the Applicant Information (self-report) section.
- 2) The appellant's Request for Reconsideration, which included additional information from the appellant and a letter dated February 17, 2023 (February letter) from the doctor. The panel notes that the appellant and the doctor do not address expected duration of the appellant's impairment. The panel considers that the lack of information about duration is likely explained by the fact that the decision being reconsidered indicated that the duration requirement was met.

New Evidence Provided on Appeal and Admissibility

The appellant submitted:

- A Notice of Appeal in which the appellant explains why she believes the ministry's decision is unfair, but does not provide new evidence.
- A letter from the doctor dated March 21, 2023 (March letter).

The ministry did not object to the admission of the doctor's March letter. The panel found that the information provided in the March letter directly related to the expected duration of the appellant's impairment. Therefore, the panel found that the information was reasonably required for a full and fair disclosure of all matters at issue and was admissible under section 22(4) of the *Employment and Assistance Act*.

Summary of Relevant Evidence

Medical Report

Diagnoses:

- Post-Covid brain fog, memory dysfunction, arrhythmias and postural syncope, and tinnitus, since February 2022

Duration:

- Where asked if the impairment is likely to continue for two years or more from today, the doctor responds “unknown” and “Impairment duration is unknown.”

March 21, 2023 doctor’s letter

- Since March 25, 2022, when the appellant was assessed by the doctor for early symptoms of long Covid, the appellant has had persistent, prolonged and severe disabling physical and mental symptoms.
- Over the past year, the symptoms have not demonstrated any improvement in frequency or intensity despite following all medical advice and participating in Post-Covid Interdisciplinary Clinical Care Network sessions.
- This trajectory predicts a poor prognosis for long term recovery.
- “I am confident predicting that [the appellant’s] impairment is likely to continue for two or more years from today. My opinion is based on over 30 years of experience as a family physician.”

Information at the Hearing:

At the hearing, the ministry confirmed that it had received the doctor’s March letter and did not object to its admission into evidence. The ministry also stated that based on the information in the March letter, it was satisfied that the duration requirement was met.

At the hearing, the appellant and her advocate stated that the doctor’s March letter shows that the duration requirement has now been met.

Part F – Reasons for Panel Decision**Issue on Appeal**

The issue on appeal is whether the ministry's decision that the appellant was ineligible for PWD designation was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. That is, was the ministry reasonable when deciding that the requirements of section 2 of the Act were not met because a medical or nurse practitioner had not confirmed that the appellant's impairment is likely to last two years.

Panel Decision**Duration of Impairment**

Section 2(2)(a) of the Act requires the Minister to be satisfied that the appellant's severe impairment is, in the opinion of a medical or nurse practitioner, likely to continue for at least two years.

The appellant's position is that the doctor's March letter provided the required opinion that the appellant's impairment is likely to last for two years.

The ministry's position is that at reconsideration the doctor did not indicate that the appellant's impairment is likely to continue for two years but instead indicated that expected duration was unknown. The ministry's position at the hearing was that the doctor has now indicated that the expected duration is for two years, and that the criterion is now met.

The panel finds that at reconsideration, the ministry was reasonable to find that the doctor, a medical practitioner, had not provided an opinion that the appellant's impairment was likely to last for two years. As the ministry noted, in the Medical Report, the doctor responded "unknown" when asked about the expected duration. The panel finds that no additional information about duration was provided by the doctor elsewhere in the PWD application or in the doctor's February letter.

However, in the March letter, the doctor specifically addresses the expected duration of the appellant's impairment. The doctor clarifies that although the duration of impairment is unknown for people suffering long Covid, the appellant's severe disabling symptoms

have continued for the last year with no improvement despite treatment. As a result, the doctor predicts a poor prognosis for the appellant's long-term recovery and that, at this time, the appellant's impairment is likely to continue for two or more years.

The panel finds that the new information from the doctor explains the information initially provided by the doctor and the basis for the doctor's current opinion that the likely duration of impairment is at least two years. Accordingly, the panel places significant weight on the new information and finds that the ministry's decision about duration is no longer reasonably supported by the evidence.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, is not reasonably supported by the evidence. The panel rescinds the decision. The appellant is successful on appeal.

Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

2(1) In this section:

“assistive device” means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

“daily living activity” has the prescribed meaning;

“prescribed professional” has the prescribed meaning:

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person is in a prescribed class of persons or that the person has a severe mental or physical impairment that

- (a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and
- (b) in the opinion of a prescribed professional
 - (i) directly and significantly restricts the person’s ability to perform daily living activities either
 - (A) continuously, or
 - (B) periodically for extended periods, and
 - (ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

- (a) a person who has a severe mental impairment includes a person with a mental disorder, and
- (b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires
 - (i) an assistive device,
 - (ii) the significant help or supervision of another person, or
 - (iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

Employment and Assistance for Persons with Disabilities Regulation

Definitions for Act

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 authorized under an enactment to practise the profession of

- (a) medical practitioner,
- (b) registered psychologist,
- (c) registered nurse or registered psychiatric nurse,
- (d) occupational therapist,
- (e) physical therapist,
- (f) social worker,
- (g) chiropractor, or
- (h) nurse practitioner.

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

Jane Nielsen

Signature of Chair

Date (Year/Month/Day)

2023/05/10

Print Name

Diane O'Connor

Signature of Member

Date (Year/Month/Day)

2023/05/10

Print Name

Bill Haire

Signature of Member

Date (Year/Month/Day)

2023/05/10