

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry). The ministry decided that the appellant did not meet all of the requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* (the Act) for person with disabilities designation (PWD). The ministry found that the appellant met the age requirement, but did not meet the following:

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

The ministry also found that the appellant is not qualified for PWD designation on alternative grounds, which includes: a person who is in palliative care; a person who got At Home Program payments through the Ministry of Children and Family Development; a person who gets or ever got 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

The complete legislation is found at the end of this decision in Appendix A.

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

- The appellant's PWD application that includes:
- A Medical Report [dated December 22, 2022] completed by the appellant's doctor who knows the appellant since November 28, 2022, and had seen the appellant 2-10 times in the past 12 months of the PWD application.
- An Assessor Report [dated November 28, 2022], which was completed by the appellant's nurse practitioner who knew the appellant for 1 month before completing the PWD application. The assessor's report was also co-signed, reviewed and had additional comments added by the appellant's doctor. The approaches and sources used to complete the AR were an office interview with the appellant by the nurse practitioner, with file/chart information. The approaches and sources used to complete the assessor's report were an office interview with the appellant, file/chart information (which file/chart information that was used was not specified).
- The PWD application also included the appellant's Self-Report (SR) dated November 28, 2022.
- Mental health and substance use progress notes from the nurse practitioner who completed the assessor's report. These notes are dated November 4, 2022 and November 10, 2022. and provide details of the initial assessment about the appellant. The notes provide the history of the appellant's substance use, diagnosis of his medical conditions, describes his past and current living situation, and treatment plan which includes the use of medication.
- Request for Reconsideration dated April 13, 2023. In the request for reconsideration the appellant wrote that his recent injury restricts his ability to attend appointments, he is dependent on others for his schedule and that the PWD application was filled out wrong. He said that he lost the use of his hands because of frostbite.

The information in the PWD application said the following:

Diagnoses

In the medical report, the doctor diagnosed the appellant with mood disorders and substance disorders (onset not indicated).

Health History

The doctor said that the appellant has generalized anxiety disorder, and social anxiety disorder. The appellant is currently on medication and has difficulty rejoining society. The doctor also said that the appellant has opioid use disorder and difficulty with alcohol. The appellant is not taking medication or treatments that interfere with the ability to complete his daily living activities. The doctor also said that the appellant does not need any prosthesis or aids for his impairment.

Duration

The doctor said that the appellant's impairment will not last 2 or more years from the date of the PWD application. The doctor said that the impairment "should improve [with] medications and social assistance".

Physical Impairment

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

- Under functional skills, the doctor said “N/A” (not applicable).

In the assessor’s report, the nurse practitioner said the following about the appellant:

- Under mobility and physical ability, the nurse practitioner said that the appellant needs periodic help with walking indoors, walking outdoors, standing, climbing stairs, lifting and carrying/holding. The nurse practitioner said that periodic help is needed because the appellant is weak.

Mental Impairment

In the medical report the doctor said the following about the appellant:

- The section under communication was left blank by the doctor.
- He has significant deficits in the areas of emotional disturbance, impulse control, and attention/sustained concentration.
- He is restricted in his social functioning. The doctor said that the appellant is anxious in social settings.
- The appellant’s restriction is moderate to severe in the area of social functioning.

In the assessor’s report, the nurse practitioner said the following about the appellant:

- The appellant is “working very hard on sobriety, but still struggling to get back on his feet. Family helping him with some [daily living activities].
- Speaking and reading is good. Writing is poor (poor writing and spelling). Hearing is satisfactory. The nurse practitioner also said that the appellant has poor vision.
- There are moderate impacts to emotion, attention/concentration, executive function, and motivation.
- All other areas of cognitive and emotional functioning have either a minimal or no impact.
- Life skills support will be necessary if he moves out of his mother’s home.
- The doctor added that counselling and social assistance is also needed.

In the self-report the appellant said the following about his disability:

- General anxiety, social anxiety/phobia, alcohol use disorder, opioid use disorder, and polysubstance use disorder.

Daily Living Activities

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

- There are continuous restrictions to social functioning. The doctor said that the appellant has difficulty rejoining society, is anxious in social situations and the restriction is moderate to severe.
- All other listed areas of DLA were left blank.
- When the doctor was asked ‘what assistance does the appellant need with daily living activities’ the doctor said “N/A” (not applicable) or “No”.

In the assessor’s report, the nurse practitioner said the following about the appellant:

- Under personal care, the nurse practitioner said that the appellant completes all the listed tasks on his own except regulating his diet. He needs continuous assistance with regulating his diet and his mother cooks for him.
- He needs continuous help with laundry and basic housekeeping and his mother helps with this.
- Under shopping, all tasks need continuous help except carrying purchases home. His mother helps with going to and from stores, reading prices and labels, making appropriate choices and paying for purchases.
- His mother periodically helps with all listed tasks under meals.
- His mother continuously helps with all listed tasks under pay bills/rent.
- Under medications his mother helps periodically with filling/refilling prescriptions, and taking medications as directed. He does not need help with safe handling and storage of medications.
- Under social functioning, he needs periodic help to develop and maintain relationships and with interacting with others. All the other listed tasks under social functioning the appellant can do on his own.
- The nurse practitioner said that he needs help with developing and maintaining relationships because he lost all his friends when he moved.
- The nurse practitioner said that he needs help with interacting with others because he is subjected to stigma.
- The appellant has marginal functioning with immediate and extended social networks.
- The nurse practitioner also said that the appellant needs life skills support.

In the self-report, the appellant said that:

- Its hard to get motivated.
- He has struggled with anxiety throughout his life, and its hard to meet new people.

Help

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

- The appellant does not need prostheses or aids for the impairment.

In the assessor's report, the nurse practitioner said the following about the appellant:

- He lives with family/friends/caregivers.
- Family and the health authority provide assistance with daily living activities.
- The section 'assistance provided through the use of assistive devices' was left blank.
- Assistance provided by assistance animals was indicated as 'no'.

The nurse practitioner also said that she did a very thorough assessment and the appellant needs some help getting back on his feet.

In the self-report, the appellant said that he needs a lot of help from his mother.

Evidence on Appeal

The appellant submitted a notice of appeal dated April 20, 2023. In the notice the appellant said that "A lot of the information was wrong in the original decision. I didn't get to submit all of my information".

The panel found that the information in the notice of appeal is the appellant's argument.

Additional Information

Before the hearing, the appellant gave the panel the following information:

1. A letter from the appellant's social worker which is dated May 4, 2023. The social worker said that she did a thorough assessment of the appellant's social determinants of health in several in-person consultations. The social worker said that the appellant has long standing mental health and substance use issues. These issues have lasted for many years and the social worker thinks they will continue to need ongoing support and medication. The social worker has referred the appellant to a local psychiatrist for ongoing assessment and diagnosis. The appellant's hands are badly injured and he needs help from another person on a daily basis to complete his daily living activities. This recovery may take several more months and he may have permanent damage to his hands. This will affect his functioning for life.
2. The appellant gave a second self-report dated May 9, 2023. In it the appellant gave a brief history of his mental health and substance use. The appellant stated he began to experience mental health symptoms when he was 14 years old, to include social anxiety, agitation, and problems with attention and concentration and depression. He said that he had a bad head injury from a car accident in 2016. This caused his depression and anxiety to become worse and he had side effects from the medications he had to take. In 2023 he got severe frostbite on four fingers on each hand. Now he cannot use his hands to do any of his daily living activities. It is likely that he will have permanent nerve pain and his fingers will be impacted for a long time. The appellant provided details about how his daily living activities are impacted by this mental health and frostbite. Personal care, preparing/eating meals, taking medications, housekeeping, shopping, moving indoors/outdoors, using public transportation and managing his finances are all impacted. He also said that he:
 - Has difficulty making decisions, planning ahead, finishing tasks, doing important things, making rational choices, remembering information and appointments, socializing without getting anxious and scared, interacting with family/friends/partner/strangers in public, establishing/maintaining relationships, and asking for help.
 - He experiences anxiety, agitation, stress, depression, confusion, motion sensitivity, auditory hallucinations/delusions and difficulty dealing with unexpected demands.
 - With communication he has difficulty with understanding what has been read, and feeling anxious and scared when speaking or listening to others.
3. Emergency room note and discharge summary dated March 12, 2023. The hospital visit was related to the appellant's frostbite.
4. Emergency room note and discharge summary dated February 23, 2023. The hospital visit was related to the appellant's frostbite.
5. Clinical progress notes by various authors dated from November 4, 2022 – March 24, 2023. These notes provide an update about the appellant's mental condition and the management of his mental condition and substance use. The notes also provide information about the appellant's frostbite.

6. 2-page summary of the appellant's hospital visits from February 2, 2017 to October 16, 2022.
7. 2-page consultation report from an emergency room doctor dated May 1, 2016.
8. 2-page consultation report from an emergency room doctor dated May 9, 2016.
9. 2-page consultation report from an emergency room doctor dated June 27, 2022.
10. 2-page intervention report from a social worker dated June 27, 2022.
11. A picture of the appellant's hand showing frostbite on four of his fingertips.

Evidence at the Hearing

At the hearing the appellant said the following:

- He cannot use his hands because of frostbite.
- His mental health became worse after his car accident in 2016.
- He dropped out of school because of his mental health and for the same reason he cannot hold down a job.
- His mental health problem is life-long and is getting worse.
- People are referring him as the crazy guy.
- The nerve damage in his hands is for life.
- The PWD application had a lot of false information. The doctor did not know him well. For example, he was not living with his mother as said in the PWD application.
- His hands will never be the same and he cannot do any labour work again.
- He needs help all the time and with everything including budgeting.
- He cannot go into crowds because of severe anxiety.
- He cannot function normally.

When asked a question the appellant said the following:

- He needs help with his daily living activities but his mother moved away and cannot take any more time off from work to help him.
- He cannot do his daily living activities which impacts his mental health even more.
- He puts things off until someone comes to help.
- Doctors have not been accessible to have the PWD application review.
- He is not sure if he was referred to a psychiatrist.
- He is taking medication for mental health issues including SSRIs for depression and anxiety.
- When the PWD application was done he was not heard. He has many other physical and mental health issues that the doctor did not put in the PWD application.
- He had help from a social worker to complete the 2nd self-report.
- Even before the frostbite he had problems with doing his daily living activities because he did not have motivation.
- He has not been told if he has an appointment with a plastic surgeon.
- He was in counselling before his car accident in 2016. He cannot go now because he does not have transportation to get to the appointments.
- He is living in a cabin currently.
- He is on income assistance, but he is supposed to be on disability.
- Doing his daily living activities is impossible because of his frostbite and mental health.

At the hearing the ministry relied on its reconsideration decision. When asked, the ministry said that the additional information does not change the decision because the new information is not in the form of a PWD application from a doctor.

Admissibility of Additional Information

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

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

In this case, the panel determined that the additional information submitted before the hearing is information that allows for a full and fair disclosure of all matters related to the decision under appeal and has admitted this information as evidence in accordance with s. 22(4) of the *Employment and Assistance Act*. The panel notes that other than the appellant's second self-report, the information submitted before the hearing did not talk in detail about how long the appellant's mental health conditions and frostbite will last, how severe either condition is, how these conditions impact the ability to perform daily living activities and/or if the appellant needs help.

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 legislation.

Panel Decision**Duration**

The appellant said that his mental health issues are life-long and are getting worse. The nerve damage to his fingers is life-long as well.

The ministry said that how long the appellant's medical conditions will last, has not been verified by a doctor or a nurse practitioner.

In the reconsideration decision, the ministry noted that the doctor said that the appellant's impairment is not likely to last 2 years and should improve with medications and social assistance. Therefore, the application does not meet this requirement

The panel notes that the doctor did not confirm duration. The panel also looked at the assessor's report and the nurse practitioner did not give any information to verify that the mental health issues will last 2 years or more.

The social worker has stated that the mental health issues will require ongoing support and medication to manage long term and that new mental health symptoms have been self reported by the appellant which have resulted in a referral to a psychiatrist for ongoing assessment and diagnosis. However, the legislation requires that how long an impairment lasts, that is duration, must be confirmed by a medical practitioner. The social worker is a prescribed professional but not a medical practitioner.

When the panel looks at the additional information that the appellant gave before the hearing, there is no evidence from a doctor or a nurse practitioner that verifies that the appellant's frostbite or nerve damage or mental health issues will likely last 2 or more years.

Given all this information, the panel finds that the ministry was reasonable when it found that a medical practitioner or nurse practitioner did not verify that the appellant's mental impairment is likely to last 2 or more years as is required by Section 2(2)(a) of the Act.

Severe Impairment

In the reconsideration decision, the ministry was not satisfied that the information provided showed that the appellant has a severe physical or mental impairment. To show that an impairment is severe, the evidence has to be weighed against the nature of the impairment and how it impacts functioning either physically or mentally. Having a diagnosis of an impairment does not show that the condition is severe or that the person is qualified for PWD. The information has to show that the impairment is a medical condition that restricts a person's ability to function on their own or effectively. The ministry has to look at the impairment and see

if it impacts daily functioning. The ministry relies on the information in the PWD application and any other information that is given.

Physical Impairment

The appellant said that frostbite has damaged four of his fingers on each hand and now he cannot function. He said that it has caused permanent nerve damage.

The ministry said that based on the information provided in the PWD application, the appellant does not meet the legislative requirements of severe physical impairment.

In the reconsideration decision, the ministry pointed out that in the medical report the doctor did not diagnose the appellant with a medical condition that would cause a physical impairment. The doctor also left the functional skills part of the PWD application blank and said "N/A". The ministry pointed out that in the assessor's report the nurse practitioner said that the appellant needs periodic help with walking indoors/outdoors, climbing stairs, standing, lifting, and carrying/holding because the appellant is weak. However, the nurse practitioner did not explain why the appellant needs help in these areas, how often, what kind of help is needed and for how long. The ministry cannot verify a severe physical impairment because there is not enough information from the doctor or nurse practitioner.

The panel finds that the information from the doctor and nurse in the PWD application does not point to a severe physical impairment. Though the nurse practitioner said that help is needed periodically with walking, standing, climbing stairs, lifting/carrying, she did not explain why assistance is needed nor did she link the need for help to a medical condition.

The panel also looked at the additional information given before the hearing. The emergency room visit reports and discharge summaries show that the appellant has frostbite on both hands and the appellant's 2nd self-report explains how the frostbite impacts the ability to function. The ministry said that the additional information does not change the decision because it is not in the format of the PWD application from a doctor. But the panel points out that the legislation does not say that information given to the ministry has to be in a specific form or format and notes the second SR was written in the same general format as the ministry form.

The package of emergency room and follow up clinic reports indicate the appellant will require plastic surgery to both hands. The appellant goes into detail on how the damage to his hands impacts his mobility and physical ability in many items including getting in and out of a vehicle and lifting, carrying and holding. The appellant testified in oral hearing of the inability to hold or grasp anything due to the pain in his fingers and hands.

Given the additional information the panel finds that the appellant does have a severe physical impairment. As a result, the panel finds that the ministry was not reasonable when it found that the appellant does not have a severe physical impairment as is required by Section 2(2)(a) of the Act.

Mental Impairment

The appellant said that he has severe anxiety which prevents him from functioning in his daily life. The appellant also said that his mental health issues have been a problem for a very long time.

The ministry said that based on the information provided in the PWD application, the appellant does not meet the legislative requirements of severe mental impairment.

In the reconsideration decision, the ministry pointed out that in the medical report the doctor said that the appellant has significant deficits to cognitive and emotional function in the areas of emotional disturbance, impulse control, and attention/sustained concentration. The doctor did not give any information about the appellant's communication ability. The ministry said that the doctor also said that the appellant is not restricted in areas that are typically restricted by a mental illness other than social functioning. The doctor said that the appellant is not restricted with personal care, management of medications or management of finances.

The ministry also pointed out that in the assessor's report the nurse practitioner said that there are moderate impacts to emotion (anxiety), attention/concentration (poor short-term memory), executive (planning, organizing, problem-solving), and motivation. The nurse practitioner said that all other areas under cognitive and emotional function have either minimal or no impacts. The nurse practitioner said that appellant has good ability in speaking and reading, poor writing and spelling due to "very poor vision" and satisfactory hearing. The nurse practitioner said that the appellant needs help in many of the areas that are typically restricted with a mental illness, but it is not clear that this is the direct result of the appellant's medical condition, or that the help that is needed is significant. The ministry decided that based on the information provided in the PWD application and Request for Reconsideration, the appellant does not have a severe mental impairment.

Minority Panel

The minority panel agrees that the information from the PWD application does not show that the appellant has a severe mental impairment. The severity of the impairment must be linked to the ability to function. The minority panel points out that though the doctor said that there are significant deficits to some areas of cognitive and emotional function, the nurse practitioner said that there are moderate impacts to those same areas. The doctor said that the only area of daily living that is restricted is social functioning and all other areas are not restricted. This includes daily living activities that are usually impacted by a mental impairment. The doctor also said that help with daily living activities is not needed or is not applicable. The doctor said that the degree of the appellant's restriction is moderate to severe. The minority panel weighed this statement against the nurse practitioner's information. The nurse practitioner stated that a thorough assessment was done over several visits. In this thorough assessment, the nurse practitioner found that the appellant's mental impairment had only a moderate impact.

The minority panel also considered the additional information given before the hearing. The emergency room visit reports and discharge summaries do not speak in any detail about the appellant's mental impairment. The clinical progress notes speak positively about the appellant's function and determination to get well. The letter from the social worker dated May 4, 2023 also did not provide any details about the severity of the mental impairment or how it

impacts the appellant's functioning. The appellant's self-report provided a lot of detailed information but that information is not consistent with the first self-report, the medical report or the assessor's report. Given the evidence as a whole, the minority panel finds that the ministry was reasonable when it found that the appellant does not have a severe mental impairment as is required by Section 2(2)(a) of the Act.

Majority Panel

The majority panel does accept that the degree of functioning is established as a separate criterion as outlined above, and that a person may have an impairment that does not unduly affect function or the ability to complete daily living activities.

In considering this case the appellant's physical and mental impairments cannot be neatly divided into compartments. A traumatic injury was suffered by the appellant during the period between the original PWD application and the reconsideration decision. At hearing the appellant states to having been evicted from the trailer he was living in by the owner turning off the heat. People were referring to him as the "crazy guy" and, not knowing his rights, he left, standing outside for hours waiting on a tow truck for his belongings and thereby suffered bilateral hand grade 3 frostbite. The appellant spent a week in hospital.

The majority panel notes that the medical practitioner who completed the original PWD application provided a diagnosis of mental impairment of mood disorder, generalized anxiety disorder and social anxiety disorder. The appellant has significant deficits to some areas of cognitive and emotional functioning, including emotional disturbance, impulse control and attention or sustained concentration. The panel notes that both in the medical report and the assessor report the doctor draws attention to a mental health assessment attached. The panel does not see this report attached to the reconsideration decision.

In the medical report the doctor also answered yes to the restriction to the appellant's performance in social functioning, and this restriction to be both continuous and moderate to severe. The nurse practitioner in the assessor reports the appellant to have poor writing skills and in the section of identified mental impairment or brain injury to have moderate impacts to daily functioning in the areas of emotion; attention and concentration; and in the executive and motivation functions.

In the section on describing how the impairment affects the appellant's relationship with social functioning the nurse practitioner states the appellant has marginal functioning with immediate and extended social networks. For the immediate network the ministry provides an interpretation as "little significant participation/communication: relationships often minimal and fluctuate with quality". For the appellant's extended social network, the ministry has provided the interpretation of marginal functioning as "little more than minimal acts to fulfill basic needs".

The majority panel also considered the new information and notes the social worker reported being referred by the appellant's new doctor to write a supporting letter for PWD status. Although the letter states the doctor is in support of the application no information is available to the panel from this doctor. The social worker writes that several in-person consultations allowed for a thorough assessment of the appellant's social determinants.

The majority panel finds the social worker did provide details about the severity of the mental impairment and how it impacts the appellant's functioning through the support provided to the appellant in the completion of the second SR. The appellant's new self-report provided a lot of detailed information that relates directly to his physical and mental limitations that builds on the information in the first self-report, where he reported to find it hard to get motivated, has struggled with anxiety throughout life, and being hard to meet new people, and needs a lot of support from his mother.

The appellant addresses his condition and the effect on his life in the format laid out in the PWD application form section 1 itself. The appellant explains in detail how his mental impairment affects his life using examples that were reinforced during his oral testimony, including financial, communication and anxiety challenges daily.

The early clinical progress notes speak positively about the appellant's function and determination to get well, however the majority panel notes that at the time the appellant was receiving direct daily support from his mother, as evidenced in the first assessor report, and at hearing from the appellant. The appellant stated that his mother has now moved away, and he now has very limited support. The emergency room visit reports and discharge summaries do not speak in any detail about the appellant's mental impairment.

Given the evidence as a whole, the majority panel finds that the appellant has a severe mental impairment within the meaning of Section 2(2)(a) of the Act. The ministry was therefore not reasonable when it found that the appellant does not have a severe mental impairment.

Restrictions in the ability to perform Daily Living Activities

Section 2(2)(b)(i) of the Act requires that the minister must 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 decision is based on the evidence from prescribed professionals. The term "directly" means that there must be a connecting link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a part 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 examination of periodicity must also include of how frequently the activity is restricted. If a restriction only happens once a year it is less likely to be considered periodic for extended periods than one that happens several times a week. So, in the cases where the evidence shows that a restriction happens periodically, it is okay and right for the ministry to ask for evidence about the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

The appellant said that his mental health prevents him from doing his daily living activities. Now with the frostbite, it is impossible to do anything.

The ministry said that it is not satisfied that the information in the PWD application shows that the impairment directly and significantly restricts daily living activities continuously or periodically for extended periods.

In its reconsideration decision, the ministry points out that the doctor said that the appellant has not been prescribed any medications or treatments that interfere with the ability to do daily living activities. The doctor said that the impairment does not directly restrict the ability to perform daily living activities aside from social functioning as it is “difficult to reclaim society, anxious in social setting”. The degree of restriction in social functioning is “moderate to severe”. There are no restrictions in personal self-care, meal preparation, medication management, basic housework, daily shopping, mobility inside/outside the home transportation, or finances. Help is not needed with daily living activities.

The ministry pointed out that in the assessor’s report the nurse practitioner said that the appellant needs continuous help in some areas such as regulating diet, basic housekeeping and banking. Periodic help is needed in some areas too, such as meals and medications. The nurse practitioner also said that social functioning needs help in two of the five areas that are listed in the PWD application. The nurse practitioner said that help is needed because the appellant lost his friends when he moved communities and that he is subjected to stigma.

The ministry decided that that appellant receives some assistance with daily living activities from his mother but the information did not show that the help needed is the direct result of a medical condition. It is not clear if this help is related to living in a rural location, having moved, to his financial situation, or living with his mother which results in some interdependence. Further, the doctor does not say that the appellant is restricted in these areas. Therefore, the ministry cannot find that the indicated level of help shows a significant restriction in the appellant’s daily living activities.

The panel finds that the information in the PWD application does not show that the appellant’s daily living activities are directly and significantly restricted due to a severe impairment. The doctor said that only one area of daily living is restricted and that help is not needed or applicable. The nurse practitioner pointed out that several tasks of daily living are restricted either continuously or periodically for extended periods, but she did not provide enough information about the type of help needed, how often or for how long. Simply checking off a box does not provide enough information. For example, the nurse practitioner did not explain why the appellant’s mother must continuously complete his laundry, basic housekeeping, and shopping. The nurse practitioner did not explain how the appellant’s mood disorders and substance use disorder, which she indicated have a moderate impact on functioning, are linked to the inability to complete these daily living activities. The nurse practitioner also did not explain why the assessor’s report varies in opinion from the medical report. The doctor indicated that the only restriction to daily living was in social functioning and that there are no restrictions to all other listed areas of daily living. Unfortunately, the information in the PWD application is insufficient. When considering the information in the PWD application, the panel finds that the ministry was reasonable in its determination that the appellant’s daily living activities are not directly and significantly restricted by a severe physical or mental impairment as is required by the legislation.

However, when the panel looks at the additional information, majority and minority findings resulted.

Minority Panel

When looking at the additional information, the appellant's 2nd self-report provides good information about how the appellant's mental impairment restricts his ability to do his daily living activities. The 2nd self-report also gives detail on how the frostbite impacts his ability to do his daily living activities. But the legislation says that a prescribed professional must report how an impairment directly and significantly restricts the ability to do daily living activities.

As far as the frostbite is concerned the doctor and nurse practitioner who completed the PWD application gave no information about how frostbite impacts daily living activities because the frostbite happened after the application was completed. In the additional information, none of the emergency room doctors or the nurse practitioners who did the progress notes mentioned anything about how the frostbite impacts daily living activities and if help is needed.

As far as the mental impairment is concerned, the emergency room doctors and the nurse practitioners who did the progress notes did not give enough information about how the appellant's mental impairment impacts the ability to do daily living activities and if help is needed.

Since a prescribed professional did not explain how a severe impairment directly and significantly restricts the appellant from completing his daily living activities, the minority panel finds that the ministry was reasonable when it found that severe impairment does not directly and significantly restrict his ability to complete his daily living activities either continuously or periodically for extended periods as is required by Section 2(2)(b) of the Act.

Majority Panel

Daily Living Activities (DLA) are defined in Section 2(1) of the regulation and are also listed, in an expanded form and using different language, in the MR and in the AR. For example, the DLA of "*prepare own meals*" in the Regulation section 2(1) appears in the AR as "*meal planning*", "*food preparation*", "*cooking*" and "*safe storage of food*".

Section 2(2)(b) of the Act requires that the Ministry be satisfied that a prescribed professional has provided an opinion that an applicant's severe impairment directly and significantly restricts their DLA, continuously or periodically for extended periods. The term DLA appears in the Act, Section 2(2)(b) in the plural ("daily living activities"), which means that at least two of the activities listed in Section 2(1) must be significantly restricted for this legislative criterion to be met. 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. There is also a component related to time or duration - the direct and significant restriction must be either continuous or periodic. If periodic, it must be for extended periods.

Section 2(2)(a) of the Regulation defines "*prescribed professional*" to include a "*medical practitioner*", a "*nurse practitioner*" and a "*social worker*".

In the MR and the AR, prescribed professionals are instructed to check marked boxes and to provide additional explanations; for example, a description of the type and amount of assistance required and the frequency and duration of periodic restrictions. The panel notes the ministry argument that there was insufficient detail of any daily living restriction however notes the level of explanatory detail provided in the new self report and the testimony of the appellant.

The panel notes the medical practitioner stated that the mental impairment directly restricts the daily living ability to perform social functioning on a continuous basis. In the assessor's report the nurse practitioner said that the appellant needs continuously help in some areas such as regulating diet, basic housekeeping, and banking. Periodic help is needed in some areas too, such as meals and medications. The nurse practitioner also said that social functioning needs help in two of the five areas that are listed in the PWD application.

The majority panel notes the first assessor report states that the appellant needs life-skills support and will need that support if he moves out of his mother's house. The appellant has stated that he was not living with his mother, but in a trailer. This is supported by a clinician program note of 9 February 2023, notably before the date of the frostbite on 23 February 2023. The appellant stated that his mother had to take time off from work and come to his trailer to assist. The appellant at questioning stated that many of these tasks are now not being done as she has moved away, and thereby addressed a number of the ministry concerns regarding whether "the help is related to a rural location, having moved, his financial situation, or living with his mother which results in some interdependence".

It is reasonable to put significant weight on the opinions of the professionals. It is also reasonable to put significant weight on the self-report and the evidence of the appellant, unless there is reasonable reason not to do so. In this case the appellant had argued at appeal that he was not able to tell his full story at application or reconsideration and submitted a new self-report as well as correcting inaccuracies of the first PWD application.

The social worker is a prescribed professional within the definitions of the legislation. The panel recognises the ministry argued that the social worker has not filled in the boxes of a PWD application form. The panel notes the letter and the statement that it was through several in-person consultations where she assessed the appellant's social determinants of health. In the new self-report the social worker stated above her signature that the appellant's hands are so badly injured that he requires the help of another person on a daily basis to complete many of his daily living activities.

The social worker then provided the following difficulties on daily living activities on behalf of the appellant in a written self-report;

- personal care – standing in the shower, unable to wash his body, shaving and brushing of teeth,
- preparing and eating meals – moving food on shelves, chopping, mixing and peeling, opening cans and jars and sealing bags,
- keeping his home clean – doing dishes, cleaning counters, cleaning floors, vacuuming, dusting, carrying doing and folding laundry,
- moving indoors – opening and closing doors, bending to pick things up.

With regards to his mental health the appellant also provided that he:

- has difficulty making decisions, planning ahead, finishing tasks, doing important things, making rational choices, remembering information and appointments, socializing without getting anxious and scared, interacting with family/friends/partner/strangers in public, establishing/maintaining relationships, and asking for help,
- experiences anxiety, agitation, stress, depression, confusion, motion sensitivity, auditory hallucinations/delusions and difficulty dealing with unexpected demands, and
- he has difficulty in communications with understanding what has been read, and feeling anxious and scared when speaking or listening to others.

At hearing the appellant provided oral testimony in support of these restrictions detailed in the SR and provided a number of heartfelt examples, including not being able to put on his shoes, tie his shoe-laces, or open and close doors.

Considering the whole evidence, the majority panel finds that the appellant's severe mental and physical impairments directly and significantly restrict his ability to perform daily living activities within the meaning of Section 2(2)(b)(i) of the Act. The ministry was therefore not reasonable when it found that the appellant's impairment(s) do not directly and significantly restrict daily living activities.

Help to perform Daily Living Activities

Section 2(2)(b)(ii) of the Act requires that, *because of direct and significant restrictions in the ability to perform daily living activities*, a person needs help to perform those activities. Help is defined as the need for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform daily living activities.

The appellant said that he needs help with daily living activities or they do not get done.

The ministry said that because it decided that daily living activities are not significantly restricted, it cannot find that significant help is needed from other persons or a device.

Minority Panel

Given that a direct and significant restriction with daily living activities is a prerequisite of the need for help and because the minority panel found that the ministry was reasonable in its decision that direct and significant restrictions in the appellant's ability to perform daily living activities have not been established, the minority 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.

Majority Panel

The majority panel has found that the appellant has direct and significant restrictions to his ability to complete a number of daily living activities. The panel has reviewed the medical and

assessor reports and the social worker letter which demonstrate that, while the impairments may last anywhere from several months to a longer period, the need for help has been clearly stated by prescribed professionals and corroborated by the appellant.

Although the appellant has suffered serious injuries to his hands the panel sees no evidence to suggest the use of an assistance device nor the services of an assistance animal. The majority panel does note however, that the assessor report, social worker report, self report and the testimony of the appellant, all report the need for periodic and continuous assistance from others in a number of areas from counselling to the completion of daily living activities. Some of the clinician reports discuss supervision of drug treatment and other reports discuss providing transportation to shopping by the appellant's mother. The panel has noted that the ministry argues it cannot establish this assistance indicates a significant restriction in daily living activities, and it therefore cannot be determined that significant help is required from other persons. The panel has previously noted that the appellant suffered a traumatic event after the submission of the PWD application and the completion of the reconsideration decision. This precluded the ministry from any review of the appellant's current medical condition. The majority panel therefore must look to the type and level of assistance as to whether it is significant. The social worker, a prescribed professional, states that the appellant's hands are so badly injured that he requires the help of another person on a daily basis to complete many of his daily living activities. The testimony of the appellant at hearing clearly articulates his challenges with completing simple tasks such as putting on his shoes and tying the laces and opening doors. He reports to not doing tasks such as cleaning and laundry until someone comes to assist.

On review of all of the evidence the majority panel finds that significant help and supervision is currently required on a daily basis by the appellant. The ministry was therefore not reasonable when it 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.

Summary

The panel has found that although the appellant has a severe physical impairment, it has not been shown to likely continue for at least 2 years.

A majority panel has found that the appellant has both a mental and physical impairment, that directly and significantly restricts the appellant's ability to perform daily living activities, and because of those restrictions, the appellant requires help to perform those activities.

A minority panel found that the appellant does not have a severe mental impairment, that the appellant's physical impairment does not directly and significantly restrict his ability to perform daily activities, and as a result it cannot be determined that the appellant requires help to perform daily living activities.

Conclusion

The panel finds that the ministry's reconsideration decision, which found that the appellant was not eligible for PWD designation, was reasonably supported by the evidence and is a reasonable application of the legislation, 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 EAPWDA 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*

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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

Neena Keram

Signature of Chair

Date: 2023/05/11

Print Name

Bill Farr

Signature of Member

Date: 2023/05/19

Print Name

Don Stedeford

Signature of Member

Date: 2023/05/24