

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) decision dated February 14, 2023, denying persons with disability (PWD) designation.

The Ministry found the Appellant met the age (over 18) and duration (likely to last more than two years) requirements. However, the Ministry found the Appellant did not meet the requirements for:

- severe mental or physical impairment
- significant restriction on the ability to perform daily living activities
- needing significant help to perform daily living activities.

The Ministry found the Appellant was not one of the prescribed classes of persons eligible for PWD on alternative grounds. As there was no information or argument on this point, the Panel considers it not to be an issue in this appeal.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (Act), s. 2
Employment and Assistance for Persons with Disabilities Regulation (Regulation), s. 2
Employment and Assistance Act (EAA), s. 22(4)

Full text of the Legislation is in the Schedule of Legislation at the end of the Reasons.

Part E – Summary of Facts

The hearing took place by teleconference on May 30, 2023. The Appellant provided additional written evidence, received at the Tribunal on the business day before the hearing. The Ministry representative said that they had received the additional evidence two hours before the hearing. In response to a question from the Panel Chair, they confirmed that they did not need an adjournment to review the evidence.

Evidence Before the Ministry at Reconsideration:

The information the Ministry had at the time of the decision included:

- Medical and Assessor Reports completed by the Appellant's Doctor;
- Appellant's Self Report.

Medical Report:

The Doctor stated that the Appellant has been their patient for over three years, and they have seen the Appellant between two and ten times in the past twelve months.

Diagnosis:

The Doctor states diagnoses of anxiety/depression (onset thirty years ago), Osgood Schlatter (onset thirty-one years ago), lower back pain (onset five years ago) and right shoulder pain (onset three years ago).

Health History:

The Doctor states that the Appellant requires knee braces and a hiking stick for his impairment.

Functional Skills:

The Doctor indicates that the Appellant can:

- Walk less than 1 block unaided on a flat surface
- Climb 5+ steps
- Lift 2 to 7 kilograms
- Remain seated less than 1 hour.

The Doctor indicates that the Appellant has significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance, motivation and attention or sustained concentration.

Daily Living Activities:

The Doctor indicates that the Appellant's impairment directly and continuously restricts his ability to perform the following daily living activities:

- Basic housework
- Daily shopping
- Mobility inside the home
- Mobility outside the home.

The Doctor also indicates that the Appellant's ability to manage his finances is restricted by his impairment but does not indicate if the restriction is continuous or periodic. The Doctor does not provide any additional comments or explanation of the restrictions.

Assessor Report:

Mental or Physical Impairment:

Asked to provide a brief summary of the Appellant's mental or physical impairments that impact his ability to manage daily living activities, the Doctor states: *"During social interactions his anxiety state will prevent him from enjoying his social events."*

Mobility and Physical Ability:

The Doctor indicates that the Appellant requires periodic assistance from another person for all listed areas of mobility and physical ability:

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

Cognitive and Emotional Functioning:

The Doctor indicates that the Appellant's mental impairment has major impact on emotion and motivation. They indicate moderate impact on memory and "other neuropsychological problems (e.g., visual/spatial problems; psychomotor problems; learning disabilities; etc)." and minor impact on attention/concentration and "other emotional or mental problems (e.g., hostility)". Although the report form asks the Assessor to explain the "other problems", the Doctor does not provide further explanation or description.

Daily Living Activities:

The Doctor indicates that the Appellant is independent in all aspects of daily living activities listed on the form:

- Personal care
- Basic housekeeping
- Shopping
- Meals
- Pay rent and bills
- Medications
- Transportation
- Social functioning.

They indicate that the Appellant has good functioning with his immediate social network and marginal functioning with his extended social network.

Assistance Provided for Applicant:

The Doctor indicates that the Appellant's family and friends provide help required for daily living activities. They also state that the Appellant routinely uses a cane and braces as assistive devices to help compensate for his impairment.

Self Report:

The Appellant states that he suffers from chronic knee pain, lower back pain and shoulder pain. He says he is unable to sit or stand for more than a few minutes, and standing and walking are "near impossible" because of his knees. He says that stress and crippling anxiety are overwhelming and make it difficult to function normally in public. His sleep and eating habits are also affected. He says he was diagnosed with "ADHD, LDD, ODD" as a child, which he continues to try to manage. Medication to manage his conditions makes him "doopy and irritable."

Additional Evidence:

Appellant:

The Appellant provided the following additional written evidence before the hearing:

- Letter dated April 26, 2023 from a Social Worker with a three-page written statement from the Appellant attached, signed by the Appellant and the Social Worker
- Medical Imaging Reports:
 - Knees, May 4, 2022
 - Facial bones and cervical spine, May 9, 2019
 - Right Clavicle, December 21, 2015, January 18 and February 23, 2016
- Psychological Assessment Report, October 12, 2018

While not all details of the additional evidence are repeated here, the Panel has reviewed all of the documents and provides a summary of the evidence.

Letter from Social Worker:

The Social Worker states:

- They completed an assessment of the Appellant's Social Determinants of Health, gathered information about his medical conditions and helped the Appellant complete a thorough list of daily living activities affected by his disabilities.
- The Appellant has "demonstrated that his daily living activities are impacted by his chronic mental health and chronic pain issues that have been persistent across his lifespan."

Appellant/Social Worker Statement:

The Appellant states:

- His daily living activities and ability to care for himself are affected by:
 - Chronic pain in his knees

- Pain in his right neck and shoulder due to fractured right clavicle in 2015
- Generalized Anxiety Disorder and Major Depression.
- He was diagnosed with Osgood Schlatter's Disease as a child and had surgery to correct resulting pressure and damage to his knees, though he was told to expect long term complications from the condition.
- He is waiting for a consultation with an orthopedic surgeon to be assessed for knee replacements.
- In 2015 he broke his right clavicle, which has not healed well. He struggles with lifting and carrying heavy things and has pain in his right neck and shoulder.
- He takes medication and has tried other therapies to manage mental health issues.

He states that his disabilities make it difficult to do the following activities:

- Personal care and hygiene, including remembering or being motivated to get out of bed and do basic daily hygiene;
- Prepare and eat meals, including remembering to eat regular meals and throw out spoiled food;
- Taking medications as prescribed;
- Basic housework, including remembering and being motivated to keep his home clean
 - Mess and clutter trigger mental health symptoms but chronic pain prevents him from cleaning his house;
- Shopping for personal needs
 - Limited in walking, standing, and carrying
 - Becomes anxious, angry, and frustrated in stores because of crowds, sounds, motions, and long lineups;
- Moving about indoors and outdoors, limited in:
 - Going up and down stairs
 - Standing from sitting or lying down
 - Kneeling, and getting up from kneeling
 - Walking on flat or uneven ground takes longer, needs frequent breaks
 - Going out without being anxious;
- Managing personal finances, finds it difficult to stop himself from buying things he does not need.

The Appellant also states that, he has "a lot of anxiety, agitation, stress and depression" and, due to his mental health disability, he has difficulty:

- Making decisions and planning ahead
- Remembering information and appointments
- Socializing without anxiety
- Interacting with strangers in public
- Establishing and maintaining relationships
- Asking for help when needed
- Making himself understood by others, either speaking or writing
- Understanding what he reads
- Hearing what others say to him in person or on the phone.

Psychological Assessment Report:

The Psychologist carried out a psychological assessment of the Appellant's cognitive abilities, mental health, and vocational capacity, at the request of a vocational counsellor. They state the following diagnoses:

- Persistent depressive disorder, with intermittent major depressive episodes, with current major depressive episode
- Generalized Anxiety Disorder
- Attention Deficit/Hyperactivity Disorder (ADHD)
- Specific Learning Disorder in Written Expression
- Medical: Chronic pain due to wrist, shoulder, knees, and back injuries.

They state:

- Elevated anxiety symptoms have a negative effect on attention.
- The Appellant is *“prone to being overwhelmed by situational stressors, and at those times he experiences deterioration in executive functions (judgment, organization and planning, and impulse control), and physical functions (disordered sleep, not eating, GI problems) which may contribute to episodes of poorly controlled anger (explosive outbursts), and impairment in his capacity to perform vocational, social, parenting, and ADL functions without external support providers.”*

They make a series of recommendations, including that the Appellant *“would benefit from residing in a supportive environment in which his accommodation and nutrition are stable, and where he has access to medical and mental health and physiotherapy supports.”*

Evidence at the Hearing:

At the hearing, the Appellant said:

- His Doctor was very rushed in completing the Medical and Assessor Reports.
- Most everyday tasks are impossible for him to do alone.
- He has no cartilage left in his knees, and he cannot walk, climb stairs, or stand for more than a few minutes.

In answer to questions from the Ministry, the Appellant stated:

- His anxiety and depression are worse now than when the psychological assessment was done.
- He cannot work, and he is terrified of crowds.
- He was trembling and sweating during the hearing, due to anxiety.
- He has been waiting for two years for surgery for his knees; his left knee is worse than his right, but both are severely damaged, extremely painful and swollen.
- He has full time help from his girlfriend and his family.
- His girlfriend does his shopping and cleans his house.
- He cannot stand long enough to do dishes, after a few minutes he has to sit down because his knees swell up.
- He has to use a cane to walk around the house, otherwise he would fall.

In answer to questions from the Panel, the Appellant stated:

- He can shower on his own and make his own snacks, but his girlfriend cooks and brings him meals.
- He needs a lot of help to be reminded to take his medication.
- He relies on family and friends for transportation because there are no buses where he lives, and he does not have a driver's licence.
- Medication does not help with his pain.
- Medication gives a little relief from anxiety, but he cannot sleep and has crippling panic attacks where it feels as if he has a truck on his chest, and his extremities go numb.
- It is hard for him to sit still due to ADHD, but he also has low back and knee pain that "puts [him] in tears and feels like it's all on fire" and his knees swell up.
- He wears knee braces all day and uses the cane to walk inside and outside.
- He can do his own banking because most of his transactions are online and are repetitive processes that stay the same—the only change is the amount.

Admissibility of Additional Evidence:

The Ministry did not object to the admissibility of the Appellant's additional written or oral evidence.

The Panel finds that the additional evidence is reasonably required for the full and fair disclosure of all matters in the appeal. Therefore, the Panel finds that the additional evidence is admissible under EAA s. 22(4).

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's decision denying the Appellant PWD designation is reasonably supported by the evidence or is a reasonable application of the legislation. The Ministry found the Appellant met the age (over 18) and duration (likely to last more than two years) requirements. However, the Ministry found the Appellant did not meet the requirements for:

- severe mental or physical impairment
- significant restriction on the ability to perform daily living activities
- needing significant help to perform daily living activities.

Appellant's Position:

The Appellant says that he has both severe mental and severe physical impairments. He says that he has chronic pain in his knees, back, shoulder and neck, that prevent him from standing for more than a few minutes or lifting anything heavy. He is unable to climb stairs or sit comfortably and has great difficulty getting up from a seated position. He says that he has crippling anxiety, depression, and ADHD that affect his motivation to do even basic self-care. He maintains that his impairments restrict his ability to perform many daily living activities, including preparing meals, grocery shopping, housework, moving about indoors and outdoors, and remembering to take medication as prescribed. He says that he has help from family, and his girlfriend, and he uses a cane and knee braces continuously. Therefore, the Appellant says that he meets all the criteria for PWD designation.

Ministry Position:***Physical Impairment:***

The Ministry maintains that, based on the information in the Medical and Assessor Reports, the Appellant's physical impairment is moderate, rather than severe. They acknowledge the Appellant's limitations in walking, climbing stairs, lifting, and remaining seated, but say that the Doctor has not indicated how much longer the Appellant takes, or how often the Appellant needs help from others, to do those activities. They also note the Doctor's indication that the Appellant is independent in all daily living activities, and the lack of information about how often the Appellant uses a cane or knee braces.

Mental Impairment:

The Ministry maintains that a mental impairment that only has major impacts on emotion and motivation and moderate impact on memory is more indicative of "mild-to-moderate impact in function overall". They note again that the Doctor reports that the Appellant is independent in all daily living activities and social functioning.

In the reconsideration decision, the Ministry stated that the Appellant's self-report of ADHD and anxiety was not reported by the Doctor; at the hearing, the Ministry agreed that the Doctor did provide a diagnosis of anxiety in the Medical Report.

The Ministry maintains that the information provided at reconsideration demonstrated a moderate overall impairment of the Appellant's ability to function independently or effectively, due to a combination of the mental and physical limitations reported.

Daily Living Activities:

The Ministry acknowledges that the appellant has continuous restrictions with housework, shopping, and mobility inside and outside the home. However, the Ministry says that, because the Doctor indicated that the Appellant is also independent in all daily living activities and did not provide details of help the Appellant might need with those activities, the information provided did not demonstrate direct and significant restrictions in the ability to perform daily living activities.

Help with Daily Living Activities:

The Ministry says that, as it has not been established that daily living activities are significantly restricted, it cannot determine that the Appellant needs significant help with those activities.

Additional Evidence:

With respect to the additional evidence the Appellant provided, the Ministry said that there was not enough current information to determine that the Appellant meets the criteria for PWD designation. In answer to a question from the Panel, the Ministry confirmed that it accepts the letter and attached statement signed by the Social Worker, as the Social Worker's opinion.

Majority Panel Decision:

PWD Designation – Generally

The legislation provides the Ministry with the discretion to designate someone as a PWD if the requirements are met. In the Panel's view, PWD designation is for persons who have significant difficulty in performing regular self-care activities. If the inability to work is the major reason for applying for PWD designation, the Panel encourages the applicant to speak to the Ministry about other potential programs such as Persons with Persistent Multiple Barriers to Employment (PPMB) or explore federal government programs such as Canada Pension Plan disability benefits.

Some requirements for PWD designation must have an opinion from a professional, and it is reasonable to place significant weight on these opinions. The application form includes a Self Report. It is also appropriate to place significant weight on the Self Report and evidence from the Appellant, unless there is a legitimate reason not to do so.

The Panel will review the reasonableness of the Minister's determinations and exercise of discretion.

Severe Mental or Physical 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 Majority Panel finds that an assessment of severity based on

physical and mental functioning including any restrictions is a reasonable application of the legislation.

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

1. Physical Impairment:

In the Medical Report, the Doctor states that the Appellant has Osgood Schlatter and pain in his low back and right shoulder, and reports that the Appellant needs knee braces and a cane or hiking stick. The Doctor also indicates that the Appellant can walk less than a block unaided and remain seated less than one hour. They indicate that the Appellant's impairment directly and continuously restricts his mobility inside and outside the home.

The Doctor also states that the Appellant also needs periodic assistance for walking indoors and outdoors, climbing stairs, standing, lifting, carrying, and holding. The Appellant provides further details, stating that he wears the knee braces all day, and uses the cane whenever he is walking indoors or outdoors. He also describes severe pain when walking, standing, and sitting, which limits his ability to sit or stand for more than a few minutes. He explains that, even with a cane and the knee braces, he walks very slowly and needs frequent breaks.

At the same time, in the Daily Living Activities section of the Assessor Report, the Doctor indicates that the Appellant is independent in all daily living activities. That section is not consistent with the Doctor's statements in the Medical Report and elsewhere in the Assessor Report that the Appellant needs assistance for all listed areas of mobility and physical ability, as well as basic housework and daily shopping.

The Majority Panel places greater weight on the Medical Report and the sections of the Assessor Report that are consistent with the Medical Report, because that evidence is consistent with the Appellant's Self Report, his evidence at the hearing, and the Social Worker's opinion of the Appellant's functional ability, as set out in their letter and attached statement. The Majority Panel finds that the degree of restriction in the Appellant's ability to walk, stand and sit, the severity of the chronic pain the Appellant describes, and the need for continuous use of knee braces and a cane for even limited mobility, indicate a severe physical impairment.

The Majority Panel finds that the Ministry was not reasonable in its determination that, based on the information in the Doctor's reports, the Appellant's physical impairment is moderate rather than severe.

2. Mental Impairment:

The Psychologist provides diagnoses of Generalized Anxiety Disorder, persistent depressive disorder with major depressive episodes, and ADHD. The Doctor provides current diagnoses of anxiety and depression, with significant deficits in the areas of memory, emotional disturbance, motivation, and attention. The Social Worker provides additional information of the Appellant's current condition, as does the Appellant in his Self Report and his evidence at the hearing. They confirm that, as a result of anxiety, depression, and ADHD the Appellant struggles to find the motivation to get out of bed or perform basic hygiene. The Majority Panel finds that the current

evidence from the Doctor and the Social Worker confirms that the Appellant continues to experience the conditions described in detail in the Psychologist's report.

The Majority Panel notes that, in the reconsideration decision, the Ministry states that, while the Appellant self-reports anxiety and ADHD, those conditions were not reported by the Doctor and therefore could not be considered in determining mental impairment. The Majority Panel notes that, in fact, the Doctor did report diagnoses of anxiety and depression, with significant deficits in cognitive and emotional functioning. The additional evidence of the Psychologist confirms those diagnoses and provides a further diagnosis of ADHD. Although the Psychological Assessment Report was prepared in 2018, there is no suggestion that the Appellant has recovered from that condition, or that his symptoms have improved since then. The evidence of the Doctor, the Appellant and the Social Worker confirm that the Appellant continues to struggle with symptoms related to all diagnosed psychological conditions.

The Doctor has indicated that the Appellant's mental impairment has a major impact on emotion and motivation. They indicate moderate impact on memory and other neuropsychological, emotional, or mental problems that, unfortunately, the Doctor does not specify or explain. The Appellant describes crippling anxiety, with extreme symptoms of panic. The Social Worker confirms that the Appellant has difficulty remembering or having the motivation to do basic hygiene, eat regular meals, take prescribed medications, or even get out of bed. While he appears to be able to maintain relationships with immediate family and a girlfriend, the Appellant has only marginal functioning beyond his immediate social circle. The Psychologist indicated in 2018 their recommendation that the Appellant "would benefit from residing in a therapeutic independent residential care setting." It appears from the Social Worker's assessment that the Appellant continues to be unable to manage basic aspects of self care independently.

The Majority Panel places significant weight on the Psychologist's recommendation of therapeutic residential care, supported by the Social Worker's assessment, as indicating a severe mental impairment. The Majority Panel also notes that the Ministry failed to consider the Doctor's diagnosis of anxiety/depression in determining whether the Appellant has a severe mental impairment. It is unfortunate that the Doctor did not provide any details of the "other problems" that they identified when listing impacts on cognitive and emotional functioning. However, the Doctor did indicate "major impact" with emotion (eg. excessive or inappropriate anxiety; depression, etc.) and motivation (eg. lack of initiative, loss of interest). As well, the additional evidence of the Psychologist and the Social Worker provide that information, and further clarification of the effects of the Appellant's mental impairment on his functioning. The Majority Panel finds that the Appellant has a severe mental impairment due to symptoms of anxiety, depression and ADHD that require him to have constant support and assistance from others for basic functions and leave him with only marginal ability to interact with others outside his immediate circle of friends and family.

Considering the additional evidence of the Social Worker and the Psychologist, and the Ministry's statement in the reconsideration decision that it did not consider evidence of anxiety, ADHD and other mental impairments, the Majority Panel finds that the Ministry was not reasonable in its determination that the information provided does not indicate a severe mental impairment.

3. *Restrictions to Daily Living Activities (Activities):*

A prescribed professional must provide an opinion that the applicant's impairment restricts the ability to perform the daily living activities ("Activities") listed in the legislation. The Activities that are considered are listed in the Regulation. Those Activities are:

- Prepare own meals
- Manage personal finances
- Shop for personal needs
- Use public or personal transportation facilities
- Perform housework to maintain the person's place of residence in acceptable sanitary condition
- Move about indoors and outdoors
- Perform personal hygiene and self care
- Manage personal medication.

For a person who has a severe mental impairment, Activities also include:

- Make decisions about personal activities, care, or finances
- Relate to, communicate, or interact with others effectively.

At least two Activities must be restricted in a way that meets the requirements. Not all Activities, or even the majority, need to be restricted. The inability to work and financial need are not listed as Activities and are only relevant to the extent that they impact listed Activities.

The restrictions to 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 the 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 Medical Report and Assessor Report also have activities that are listed, and though they do not match the list in the Regulation exactly, they generally cover the same activities. The Medical Report and Assessor Report provide the professional with an opportunity to provide additional details on the applicant's restrictions.

As noted above, the Doctor's Reports are inconsistent in the description of the Appellant's ability to perform Activities. The Doctor states that the Appellant's impairment directly and continuously restricts his ability to do basic housework and daily shopping, as well as his mobility inside and outside the home. They also state that family and friends provide the help the Appellant needs for daily living activities, and that he routinely uses knee braces and a cane to help compensate for his impairment. At the same time, in the Assessor Report the Doctor states that the Appellant is independent in all Activities.

The Social Worker has provided a detailed assessment of the Appellant's ability to perform Activities. Their assessment is consistent with the information the Doctor provides in the Daily Living Activities section of the Medical Report, the Mobility and Physical Ability section of the Assessor Report, as well as the Doctor's statements in the Assessor Report about the Appellant's need for assistive devices. The Majority Panel places little weight on the Doctor's indications in the Daily Living Activities section of the Assessor Report. That section is inconsistent with the information the Doctor provides in the rest of the Medical and Assessor Reports, and it is also contradicted by the additional evidence of the Social Worker and the Appellant.

The Majority Panel finds that the rest of the information provided by the Doctor and the Social Worker confirms that, in the opinion of prescribed professionals, the Appellant's ability to perform the following Activities is directly and significantly restricted by severe physical and mental impairments:

- Prepare own meals: cannot walk or stand at a counter long enough to prepare more than a small snack or move food from cupboards to counters
- Perform housework to maintain his place of residence in acceptable sanitary condition: due to chronic pain, cannot walk or stand long enough to wash dishes, clean floors or surfaces, vacuum, dust, or clean windows; due to mental impairment, lacks motivation to maintain basic cleanliness
- Move about indoors and outdoors: walks slowly with frequent breaks; unable to walk one block unaided; needs knee braces and a cane to walk inside and outside; cannot stand or sit more than a few minutes
- Perform personal hygiene and self care: forgets or lacks motivation to do basic hygiene
- Relate to, communicate, or interact with others effectively: due to anxiety has marginal functioning outside his immediate social network.

The Majority Panel finds that the Ministry's determination that the limitations described in the Medical and Assessor Reports did not indicate a significant restriction in the Appellant's ability to perform two or more Activities is not reasonably supported by the evidence.

Help Required:

A prescribed professional must provide an opinion that the person needs help to perform the restricted Activities. Help means using an assistive device, the significant help or supervision of another person, or using an assistance animal to perform the restricted Activities. An assistive device is something designed to let the person perform restricted Activities.

As the Ministry was not satisfied that the Appellant's ability to perform Activities was significantly restricted, it found that it could not determine that significant help was required, although the Ministry acknowledged that the Doctor reported that the Appellant uses assistive devices. The Majority Panel has found that the Appellant is significantly restricted in performing two or more Activities, and the Majority Panel also finds that the Appellant requires help to perform those Activities. Again, the Majority Panel places significant weight on the opinion of the Psychologist that the Appellant would benefit from therapeutic residential care, which is an indication both of

significant restrictions and of the need for significant help. The Majority Panel notes the Appellant's evidence that his family and friends provide "full-time" help. The Appellant also uses knee braces and a cane, which are assistive devices.

Therefore, the Majority Panel finds that the Ministry's determination that it could not be determined that the Appellant requires significant help to perform Activities is not reasonably supported by the evidence.

Conclusion:

The Majority Panel finds that the Ministry's decision to deny the Appellant PWD designation is not reasonably supported by the evidence. The Majority Panel rescinds the reconsideration decision. The Appellant is successful in the appeal.

Dissenting Panel Member Reasons:

The Dissenting Panel Member interprets the evidence provided as showing the appellant's impairment and daily living activity restrictions are moderate and not severe and would have found the Ministry was reasonable in their determination.

The psychological assessment states that "on an inventory assessing daily functioning and disability [the Appellant] reported a *moderate* degree of general disability." The medical and assessment reports show continuous restriction with *periodic* assistance being required. The Social Worker's letter reported that it is *difficult* for the Appellant to move about and in the hearing the Appellant reported that it "*takes longer* because I go slow and need frequent breaks."

When looking at the evidence, the Dissenting Panel Member noted small inconsistencies.

- In the hearing when asked by the ministry if his anxiety and depression are worse now, the Appellant responded "yes". However, in the Social Worker's letter he states that his mental health symptoms have "stayed pretty steady across his lifespan".
- **Prepare own meals** - no restrictions are noted in the Medical Report, during the hearing the Appellant stated that he "can make snacks and stuff" but his girlfriend makes his meals generally, and the Social Worker's letter states that he has difficulty with many activities involved in planning and preparing meals.
- **Managing personal finances** - the Medical Report noted it is restricted and in the Social Worker's letter the difficulty is stated as "stopping himself from buying things he doesn't need" however in the psychological report, the Appellant demonstrated he could manage personal finances by reporting that "due to tight finances" he has not been using marijuana because he could not afford it. At the hearing, the Appellant stated that he could manage his finances as it is all done online.
- **Shop of personal needs** - the Medical Report noted it is restricted, and in the hearing the Appellant confirmed that part of the restriction was due to the fact that he lost his driver's license and lives in an area without public transportation.
- **Perform personal hygiene and self care** - the Social Worker's letter noted that it is difficult for the Appellant to stand in the shower, reach up to wash, shave, brush teeth,

remember or have motivation to do basic hygiene daily, however there were no restrictions listed in the Medical Report, and during the hearing the Appellant reported that he can “shower and all that”.

- **Manage personal medications** - no restrictions are listed in the Medical Report but the Social Worker's letter noted that it was difficult for him to remember to take the right medications at the right doses at the right times. In the hearing the Appellant stated that he has been working with his doctor on trying a number of different medications “in an attempt to find something that worked for him.”
- **Communication difficulty** - the Social Worker's letter states that it is difficult for the Appellant to make himself understood, understand what he reads, and hear what others say. No difficulties are noted in the Medical Report, and in the Assessor Report, the Doctor notes that speaking/reading/writing/hearing is assessed as good. During the hearing testimony he was composed and communicated his thoughts well, although he communicated that he was anxious about the hearing.
- **Medical information** - the Social Worker's letter states it will provide a progression of his illness, however there isn't information showing this. There is imaging on the appellants knee, face, and clavicle. The radiologist states that it is not likely he has Osgood Schlatters disease (which is one of the main issues reported by the Appellant), the imaging on his clavicle shows while not complete there has been progression in healing between the imaging dates, and the psychological report is a history and assessment done at a point in time five years ago.
- **Ability to work** - the psychological report states that the Appellant used to do a variety of jobs including physical labour and retail (gas station attendant), and now is unable to do physical labour. The Appellant stated in his testimony that he cannot work “at all”.

None of the points above are egregious on their own, however when taken as a whole it raises questions as to the evidence provided. The Dissenting Panel Member is also curious as to the length of time the impairment and restrictions will continue given that the Appellant reports that he is working with his doctor to find a medical solution to improve his anxiety and depression and he is waiting to see a surgeon to assess and suggest a remedy for his chronic knee pain. Unfortunately, the Appellant has been waiting a long time for the appointment, presumably due to delays resulting from covid and the medical system.

It may be that the impairment and restrictions experienced by the appellant are significant and severe, however the Dissenting Panel Member feels more evidence is needed to make this determination.

Schedule – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

Persons with disabilities

s. 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

s.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.

(3) The definition of "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

Employment and Assistance Act

s. 22 (4) 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.

APPEAL NUMBER 2023-0058

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

Susan Ferguson

Signature of Chair

Date (Year/Month/Day)
2023/06/05

Print Name - Dissenting

Shelly McLaughlin

Signature of Member

Date (Year/Month/Day)
2023/06/05

Print Name

Carmen Pickering

Signature of Member

Date (Year/Month/Day)
2023/06/05