

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated April 18, 2023, in which the ministry found the appellant was not eligible for designation as a Person with Disabilities (“PWD”) under section 2 of the *Employment and Assistance for Persons with Disabilities Act* (“Act”). The ministry found that the appellant met the age requirement and the requirement for the impairment to continue for at least 2 years but was not satisfied that:

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

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

Part D – Relevant Legislation

The ministry based the reconsideration decision on the following legislation:

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

Employment and Assistance for Persons with Disabilities Regulation - section 2

Employment and Assistance Act - section 22(4)

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

Part E – Summary of Facts

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

1. A record of the decision indicating that the PWD application was submitted on January 10, 2023, and denied on March 10, 2023, with *Decision denial summary* explaining the criteria that were not met. On April 3, 2023, the appellant submitted a *Request for Reconsideration*. On April 18, 2023, the ministry completed its review and found that the eligibility requirements for PWD designation were still not met.
2. The PWD application with 3 parts:
 - the *Applicant Information* (self-report) - undated;
 - a *Medical Report* dated January 3, 2023, signed by the appellant's doctor, a General Practitioner ("Dr. A") who has known the appellant since 2015, and has seen her 2-10 times in the past 12 months;
 - an *Assessor Report* dated January 3, 2023, also completed by Dr. A who based the assessment on an office interview with the appellant and review of the medical chart.

Summary of relevant evidence from the application

Diagnoses

In the Medical Report, the appellant is diagnosed with Chronic pain syndrome following a motor vehicle accident in 2015. In Section B - *Health History*, Dr. A describes "severe left-sided myofascial pain" in the appellant's hip, back, shoulder, and neck.

Functional skillsSelf-report

The appellant says she has permanent injuries (neck, shoulder, back, and hip) as well as a "tendon tear" that limits her physical functions. The appellant says that her injuries prevent standing and sitting for long periods of time due to fatigue and stress. She needs to lie down often to alleviate these symptoms.

Medical Report

In Section C-*Health History*, Dr. A says the appellant is unable to work at her usual profession because she cannot sit for more than 30 minutes. Dr. A. says that standing and walking for prolonged periods are also difficult. The appellant has increased financial stress due to her inability to work.

In Section E - *Functional Skills*, the appellant is able to walk 4+ blocks unaided on a flat surface but “takes longer and needs to rest.” The appellant is able to climb 5+ steps unaided; lift 5-15 pounds; and remain seated for less than 1 hour.

The doctor check marked “no” when asked if the appellant has difficulties with communication.

When asked if there are any significant deficits with cognitive and emotional function, the doctor checked “yes”, for 1 of the 11 areas listed, indicating difficulty with Emotional disturbance (comment, “related to financial stress”).

No check marks were provided for the following areas to indicate any deficits:

Consciousness

Executive

Language

Memory

*Perceptual psycho-
motor*

Psychotic symptoms

Motivation

Impulse control

Motor activity

Attention or sustained concentration

Other

Section E - *Additional Comments* was left blank.

In Section G - *Additional Comments* (generally), Dr. A states that the accident in 2015 “has had a major detrimental impact” on the appellant’s life due to financial stress from the inability to work. The appellant has had to sell assets to cover her expenses for the last 6-7 years. The accident has left her “almost bankrupt” and “struggling to pay for her meds.”

Assessor Report

In section C-3, Dr. A assessed all areas of *Mobility and Physical Ability* as taking significantly longer than typical:

- *Walking indoors* (comment, “not longer than 30 minutes”)
- *Walking outdoors*
- *Climbing stairs*

- *Standing* (comment, “not longer than 30 minutes”)
- *Lifting* (comment, “not more than 10 pounds”).
- *Carrying and holding* (“ ”).

In section C-2, the doctor wrote “N/A” for *Ability to Communicate*.

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

- moderate impact for *Emotion* (comments, “due to financial stressors” and “inability to work has caused increases financial stress”).
- Minimal and moderate impact for *Motivation*.

The doctor checked “no impact” for the remaining functions:

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

No check mark is provided for:

- *Other emotional or mental problems*

Daily living activities

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

Medical Report

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

Assessor Report

In Section D - *Daily Living Activities*, the doctor provides the following assessments:

Personal Care

The appellant is assessed as independent with all areas listed on the form, but *dressing* and *grooming* take significantly longer than typical as “left shoulder pain slows this down.”

Basic Housekeeping

The appellant takes significantly longer with all activities (*laundry*, and *basic housekeeping*). The space for an explanation was left blank.

Shopping

The appellant is independent with 4 of the 5 listed activities:

- *going to and from stores*
- *reading prices and labels*
- *making appropriate choices*
- *paying for purchases*

The appellant takes significantly longer than typical in *carrying purchases home* (comment, “needs a buggy”).

Meals

The appellant is independent with all activities:

- *meal planning*
- *food preparation*
- *cooking*
- *safe storage of food*

Pay Rent and Bills

The appellant is independent with banking and budgeting. No check mark was provided for *pay rent and bills* (comment, “limited finances”).

Medications

No assessment (check marks) was provided for *filling/refilling prescriptions* and *taking as directed* (comment, “limited finances”).

Dr. A checked "independent" for *safe handling and storage*.

Transportation

The appellant is independent with *getting in and out of a vehicle and using transit schedules/arranging transportation*.

The doctor wrote "N/A" for *using public transit*.

The space for *Additional comments* for these DLA was left blank.

Social Functioning

No check marks or comments were provided for any areas of social functioning. The doctor wrote "N/A" for this daily living activity.

Need for help

Medical Report

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

Assessor Report

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

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

- fatigue prevents her from doing "any long-term daily chores." She needs to "take naps throughout the day due to stress and fatigue."
- a home care company cleaned her house from 2016-2020 when the services stopped due to the Covid-19 pandemic. The appellant says she is still not able to do her housekeeping.

The appellant submitted the following documents with her *Request for Reconsideration*:

4. Invoices from a home care company dated July 13, 2022. The appellant was billed a total of \$10,796.63 for home cleaning between February 2016 and January 2020.
5. An *Independent Medical Examination* report, dated May 12, 2022 (21 pages). An evaluation of the appellant's injuries was conducted by an Orthopedic Surgeon/Hand specialist ("the specialist"). The appellant was referred to the specialist by the lawyers representing the other party in the motor vehicle accident of April 2015.

The specialist provides the following information regarding diagnoses, symptoms, function, and daily living activities:

- the appellant's main complaint is ongoing pain and chronic muscle symptoms in her left leg, shoulder, arm, neck, and back. The appellant gets back spasms if she sits for too long.
- The appellant's pain is at least 7/10 on a pain scale and can also reach 10/10. The most pain she experienced in the past 30 days was 9/10, and the least was 7/10. The appellant reports constant arm or shoulder pain and rates the pain as 9/10 on average which she states is "almost unbearable."
- The appellant's leg and hip pain are intermittent depending on how long she is sitting or walking. If she is moving to relieve the pain, it decreases to 6/10. If she sits or walks for too long, the pain is 9/10.
- After the accident, the appellant was referred for physical therapy and massage which she did for a number of years. She also had acupuncture and cupping treatments and saw a sports medicine specialist for a "frozen shoulder" which is just beginning to unfreeze after 3 years. The appellant "is attending physical therapy to try to get it better but states that nothing helps alleviate the pain."
- The appellant "cannot work and is limited in most activities because of the pain in her left hip, buttocks, and leg." She cannot sit or stand for more than half an hour. An MRI of the appellant's left leg/hip showed a torn tendon beneath her butt in 2016.
- The appellant reports that she "does not do any specific hobbies or activities other than going to the mall and walking around. She can do approximately one lap around the large mall. She then has to sit down, and when she does, she feels as if she has had a great workout and feels fatigued."
- The appellant does not use a cane or any other assistive device. She lies down up to 4 times a day at home. She has been doing home exercises and is not taking any pain medications because "it did not feel right."
- The appellant is able to bathe herself, "but she has some difficulty donning a sweater that zips up in the back because she cannot reach back. She has difficulty

lifting her arms to do hairstyling and has simplified the way she wears her hair.”

- The appellant is uncomfortable driving “but was able to drive two hours for this evaluation today.” The appellant was so tired from driving that she needed to take a nap in the parking lot before the appointment.
- The appellant goes to the grocery store and “can lift groceries out of the cart into her vehicle.” She puts the groceries in a cart at home to bring them inside. The appellant “can do her laundry. She can cook for herself and does not have any specific limitations, except that she keeps all her utensils, pots, and tableware in lower cupboards so that she can reach them.” The appellant’s family “does a lot of the cooking, cleaning, and laundry. The appellant states that “she does not do anything.”
- The appellant has other medical conditions including Grave’s disease (“she is hypothyroid”), Type 2 diabetes, and osteopenia. She takes medications for her thyroid, diabetes, and high cholesterol.
- The appellant has problems sleeping due to her shoulder pain. Once she gets up the first time she cannot sleep again.
- The report describes appointments with any doctors and rehabilitation therapists between 2015 and 2018 for her ongoing pain symptoms. The current physical examination indicates that the appellant walks “with a mildly antalgic gait” due to pain in her left hip. She does not use a cane or any assistive device. She can heel walk, toe walk, and tandem walk without difficulty.
- The examination revealed some motor strength measurements of 5/5, while the range of motion in the appellant’s shoulders is reduced. The appellant has “physical limitation in her ability to reach forward or to the side (flexion and abduction) with both shoulders.”
- The appellant’s “physical limitations in not being able to sit or stand for more than 30 minutes” is consistent with hamstring syndrome. The appellant has experienced a “prolonged 7-year period of decompensation” secondary to pain. The appellant “is limited in activities of daily living, such as prolonged standing or sitting, secondary to her hamstring syndrome.”
- The appellant requires aggressive treatment by an orthopedic surgeon to help alleviate her chronic pain. Without further treatment, “the disability will continue to be permanent.” Without more aggressive intervention, the appellant’s prognosis is poor for regaining a full range of motion in her shoulders. With a referral to an orthopedic surgeon for more aggressive treatment, “the prognosis is good for alleviation of her chronic left hip pain.”

Additional evidence

At the hearing, the appellant provided the following information in response to questions:

- She used to do housekeeping regularly, and laundry once a week. Since the accident, she is only able to clean once a month and do her laundry every 2 months. When she had the home care company assisting her, they cleaned her house several times a month until the Covid-19 pandemic.
- She needs to take naps throughout the day, sometimes for 1-2 hours, other times for 15 minutes. She took a 15-minute nap before her appointment with the specialist and felt refreshed.
- She needs to rest for 1-2 hours every day. Her day consists of an “up sleep, up sleep” routine and she is in bed by 6:00 PM to watch TV. How often she takes naps varies, but sometimes she needs to nap 4 times a day.
- She was prescribed pain medications after the accident but had to stop taking them because none of them agreed with her. The doctor said to take over-the-counter medications or a lower dose of the prescription if the appellant can’t bear the pain.
- She uses a cane for walking and has a handicapped parking permit.
- She uses a buggy/cart for shopping and carries things in small quantities. She has a cart at home to transport small loads from the car. The last time she went shopping, she was so fatigued that she fell asleep in the parking lot.
- She walks short distances and can climb a few steps before fatigue sets in. Then she has to lie down and falls asleep because she is so fatigued.

Admissibility of oral testimony

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

The ministry did not submit any new evidence and both parties provided argument. The panel will consider the arguments in Part F-Reasons.

Part F – Reasons for Panel Decision

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

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

Analysis*PWD designation - generally*

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

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

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

Severe impairment

"Severe" and "impairment" are not defined in the legislation. The ministry considers the extent of any impact on daily functioning as shown by limitations with or restrictions on physical abilities and/or mental functions. The panel finds that an assessment of severity based on physical and mental functioning including any restrictions, is a reasonable

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

Restrictions to Daily living activities

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

The restrictions to daily living activities must be significant and caused by the impairment. This means that the restriction must be to a great extent, and that not being able to do daily activities without a lot of help or support will have a large impact on the person's life.

The restrictions also must be continuous or periodic. Continuous means the activity is generally restricted all the time. A periodic restriction must be for extended periods, meaning frequent or for longer periods of time. For example, the activity is restricted most days of the week, or for the whole day on the days that the person cannot do the activity without help or support. To figure out if a periodic restriction is for extended periods, it is reasonable to look for information on the duration or frequency of the restriction.

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

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

Help Required

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

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

Arguments

Appellant - all criteria

The appellant's position is that her physical impairment is severe because the specialist said that her injuries are permanent and she is unemployable as a result of the accident. The appellant says she experiences a great deal of stress and fatigue due to "throbbing pain" in her neck, shoulder, back, and hip. Even with surgery, the "torn tendon under my butt is not going to get better."

The appellant explained that her doctor did not have the specialist report when they filled out the PWD forms and she only sees Dr. A for prescriptions, brief appointments, and to approve the handicapped parking permit. The appellant argues that the specialist's report gives a detailed account of the severity of her injury and resulting restrictions. She cannot understand how the ministry can deny PWD once they had the 21-page specialist's report that confirms the impairment is permanent, as well as home care receipts to prove that she needs help with household chores.

Ministry - Severe mental or physical impairment

The ministry's position is that the information provided by Dr. A does not establish a severe mental or physical impairment. The ministry acknowledges that the appellant physical functioning is limited due to pain but argues that the assessments for walking and standing (up to 30 minutes) and lifting (up to 10 pounds) indicate a moderate rather than severe impairment of physical functioning. The ministry argues that these limitations still allow a wide range of physical activities.

The ministry said it is difficult to determine the appellant's overall level of functioning when neither she nor her doctors indicate how much longer than typical it takes to do activities that require mobility or physical ability. The ministry indicates it would need more information on the duration of the appellant's rest breaks (naps) to help determine her overall level of functioning because "if you lie down for 15 minutes, this would be much less significant than needing to lie down for 2 hours 4 times per day."

Regarding a mental impairment, the ministry notes that the appellant has not been diagnosed with a mental health condition or brain injury. The ministry argues that the information provided for emotional and cognitive deficits/impacts (no difficulty with communication, and financial stress) do not reflect a severe mental impairment.

Panel's decision - mental impairment

The panel finds that the ministry's decision is reasonable. The evidence does not indicate a severe impairment of mental functioning because the appellant has not been diagnosed with a mental condition; she has no difficulties with communication (as reported in both the Medical and Assessor Reports); and the impacts on cognitive or emotional functioning are due to financial stress from not being able to work.

Dr. A comments that the significant deficit for *emotional disturbance*; the moderate impact for *emotion*; and the minimal/moderate impact for *motivation* are due to "financial stressors as unable to work." These deficits/impacts are not the result of a mental impairment and despite the appellant's descriptions of extreme fatigue and the specialist's report of sleep disturbance, Dr. A indicates *no impact* for bodily functions. The ministry's decision (no severe mental impairment) is reasonably supported by the evidence.

Panel's decision - physical impairment

The panel has considered the evidence in its entirety and finds that the ministry's decision is reasonable. The appellant is diagnosed with Chronic pain syndrome and reports fatigue and stress as her main symptoms. However, the assessments from Dr. A in the Medical Report indicate that the appellant can walk 4+ blocks on a flat surface unaided and climb 5+ steps unaided despite taking longer and needing to rest. This level of physical ability is at the least restricted end of the rating scale in the Medical Report and do not demonstrate a severe impairment.

In the Assessor Report, Dr. A indicates the appellant can walk for a maximum of 30 minutes and that walking and climbing stairs take significantly longer than typical. There was no explanation for how much longer it takes the appellant to walk anywhere. The appellant says that she does not have to walk long distances because she qualifies for handicapped parking, but the doctor does not mention the parking pass.

The specialist notes that the appellant feels fatigued and needs to rest after activity, but “she can do approximately one lap around the large mall.” The specialist describes a minor issue with gait (the appellant walks with “a mildly antalgic gait...she does not use a can or any assistive device”). The specialist reports that the appellant can heel walk, toe walk, and tandem walk without difficulty.

The panel finds that the ministry was reasonable to find that the level of ability described by the doctors indicates a moderate rather than severe physical impairment. A moderate impairment does not meet the requirement under the Act.

Dr. A and the specialist indicate that the appellant cannot sit or stand for more than 30 minutes or lift more than 10 pounds, but the panel finds that the ministry was reasonable to conclude that this degree of restriction still allows the appellant to do a wide range of physical tasks despite the reduced range of motion in her shoulders.

The panel acknowledges that the appellant suffers from pain that causes her a lot of fatigue. Although the specialist confirms that the appellant needs to rest up to 4 times per day, the appellant explained that the duration of her naps varies widely, from 15 minutes to 2 hours. The appellant sometimes feels “refreshed” after a 15-minute nap. It is unclear from the evidence whether the appellant requires longer naps most days, or is able to function with shorter naps more often than not.

The specialist indicates that the appellant’s left-side pain rarely goes below 7/10 on the pain scale, and the appellant reports “constant arm or shoulder pain” that is “9/10 on average and almost unbearable.” Despite this level of pain, the appellant is able to perform all of her physical functions unaided (slowly and with rest breaks), and without prescription pain medication which she stopped taking due to side effects.

The degree of suffering the appellant reports is inconsistent with her doctors’ assessments of physical functioning. The appellant says that her impairment is severe because the specialist indicates “permanent and unemployable,” but these words do not negate the information provided for specific functions such as walking and lifting which were assessed as moderately impaired. The panel finds that the ministry reasonably determined that the requirement for a severe impairment under the Act is not met because the appellant is only moderately restricted with walking, climbing stairs, lifting/carrying, sitting, and standing.

Restrictions to daily living activities*Arguments - Ministry*

The ministry's position is that the doctors have not confirmed that the appellant's impairment significantly restricts daily living activities continuously or periodically for extended periods as required by the legislation. The ministry argues that there was not enough information to satisfy these criteria.

Panel's decision - restrictions to daily living activities

The panel finds that the ministry's decision is reasonable because there is not enough evidence from Dr. A, and the specialist to confirm that daily living activities are directly and significantly restricted continuously or for extended periods by the appellant's Chronic pain syndrome or other physical conditions.

The panel acknowledges that Dr. A has confirmed some restrictions. The appellant takes significantly longer than typical with personal care (dressing and grooming) due to shoulder pain. The appellant needs more time for housekeeping (laundry, and basic housekeeping) and shopping. However, Dr. A did not provide further detail about these restrictions to establish if they are significant as required by the Act. The doctor does not say how much more time the appellant needs for these activities. The panel finds that the ministry reasonably required that information to determine if these chores are significantly restricted by the appellant's physical impairment.

The specialist confirms that the appellant is able to bathe, groom, and dress herself with only minor adjustments such as not wearing a sweater that zips in the back "because she cannot reach back"; and having a simpler hairstyle due to difficulty lifting her arms. The specialist confirms that even though the appellant is uncomfortable with driving and needs a nap afterward, "she was able to drive two hours for this evaluation today."

The specialist said that the appellant goes to the grocery store and "can lift groceries out of the cart into her vehicle" and bring groceries inside with a cart. The appellant "can do her laundry. She can cook for herself and does not have any specific limitations, except that she keeps all her utensils, pots, and tableware in lower cupboards so that she can reach them."

The panel finds that the ministry was reasonable to conclude that the restrictions reported by the specialist are not significant as the appellant is able to perform daily activities as

long as she takes rest breaks throughout the day. The appellant says that she is only able to clean and do laundry infrequently, but the assessments by Dr. A and the specialist do not indicate any restriction on how often she can do these chores. Dr. A notes restrictions to *Medications* and *Pay Rent and Bills* that are due to financial stress rather than a severe impairment. Given the evidence from both doctors, the ministry was reasonable to find that the requirement under the Act for significant restrictions to daily living activities was not met.

Help with daily living activities

Arguments - Ministry

The ministry's position is that the criteria for help are not met because daily living activities are not significantly restricted. The ministry argues that Dr. A has not indicated that the appellant requires help from another person, assistive device, or assistance animal.

Panel's decision - help with daily living activities

The ministry was reasonable to find that the requirement for help is not met. The appellant said at the hearing that she uses a cane for walking, but she gave no detail about how often she needs to use it. Dr. A indicates in the PWD medical reports that the appellant does not require an assistive device, The specialist indicates (twice) in their report that the appellant does not use a cane or any assistive device.

The appellant stated to the specialist that "she does not do anything" because her family does most of the cooking, cleaning, and laundry. However, the degree of physical ability reported by the doctors indicates the ability to independently manage household chores at a slower pace despite pain and fatigue.

The Act requires confirmation of direct and significant restrictions to daily living activities, directly related to a diagnosed mental or physical impairment, as a precondition for needing help to perform daily living activities. The panel found that the ministry's determination that significant restrictions to daily living activities are not established on the evidence was reasonable for the reasons stated earlier. Accordingly, the ministry's conclusion that the help requirement is not met, was a reasonable application of the legislation in the appellant's circumstances.

Conclusion

The panel finds that the reconsideration decision is reasonably supported by the evidence and a reasonable application of the legislation. The panel confirms the decision because the appellant does not meet all the requirements for PWD designation.

The totality of evidence, including the appellant's written and oral submissions, shows that the appellant suffers from severe pain and fatigue but is still able to walk at least 5 blocks, lift up to 10 pounds, and sit and stand for up to 30 minutes. The ministry was reasonable to conclude that this level of ability is sufficient for most physical tasks. The evidence is that the appellant can independently manage daily living activities at a slower pace, and with rest breaks, despite relying on her family to do most household chores. For these reasons, the panel confirms the reconsideration decision. The appellant is not successful with her appeal.

Schedule – Relevant Legislation

EAPWDA

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

(a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

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

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

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

EAPWDR

Definitions for Act

2 (1) For the purposes of the Act and this regulation, "daily living activities",

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self-care;

(viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

(i) make decisions about personal activities, care or finances;

(ii) relate to, communicate or interact with others effectively.

(2) For the purposes of the Act, "prescribed professional" means a person who is

(a) authorized under an enactment to practise the profession of

(i) medical practitioner,

(ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner,

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Part G – Order

The panel decision is: (Check one) Unanimous By Majority

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

Legislative Authority for the Decision:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name

Margaret Koren

Signature of Chair

Date (Year/Month/Day)

2023/06/15

Print Name

Susanne Dahlin

Signature of Member

Date (Year/Month/Day)

2023/06/15

Print Name

Perihan (Iris) Sucu

Signature of Member

Date (Year/Month/Day)

2023/06/15