

**Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated March 15, 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 16, 2023, and denied on February 1, 2023, with *Decision denial summary* explaining the criteria that were not met. On March 2, 2023, the appellant submitted a *Request for Reconsideration*. On March 15, 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) signed on August 23, 2021. The appellant chose not to complete the self-report.
  - a *Medical Report* dated December 14, 2022, signed by the appellant's doctor, a General Practitioner ("Dr. A") who has known the appellant since birth, and has seen him 2-10 times in the past 12 months;
  - an *Assessor Report* dated December 14, 2022, also completed by Dr. A who based the assessment on an office interview with the appellant. The doctor indicates that the services they provide to the appellant include "general physical and mental health, prescribe medications, and psychological advice."

*Summary of relevant evidence from the application*

***Diagnoses***

In the Medical Report, the appellant is diagnosed with "anxiety disorder to a paralyzing degree" and "severe attention deficit disorder," date of onset "early childhood." In Section B - *Health History*, the doctor indicates "severe forms" of these conditions. In *Section C - Degree and Course of Impairment*, Dr. A says that "the impairment is lifelong. Remedial treatments have minimal chance of resolving the impairment."

***Functional skills***Medical Report

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

When asked if there are any significant deficits with cognitive and emotional function, the doctor checked "yes" and indicates deficits with *executive, emotional disturbance, motivation, and attention/sustained concentration*. Under *Health History*, the doctor explains

that the appellant “is unable to finish any given task because he is so anxious to do things right. Thus, he cannot maintain any degree of responsibility. Further, the anxiety blocks his attempts to establish any sort of schedule as he is too consumed with worrying about the next task to be able to complete the current one.”

*Section F - Additional Comments* was left blank.

#### Assessor Report

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

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

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

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

- minimal impact for *Executive and Motivation;*
- major impact for *Emotion, Impulse control, and Attention/concentration.*

No impact is indicated for:

- *Bodily functions*
- *Consciousness*
- *Insight and judgment*
- *Memory*
- *Motor activity*
- *Language*
- *Psychotic symptoms*
- *Other neuropsychological problems*
- *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 B-3, Dr. A did not provide a check mark for whether the appellant has been prescribed medications or treatments that interfere with the ability to perform daily living activities.

Assessor Report

In Section B-1, Dr. A indicates that the appellant's "severe attention deficit disorder and extremely severe anxiety disorder" are the impairments that impact the ability to manage daily living activities.

In Section C-*Daily living activities*, Dr. A checked that the appellant is independent with all areas for 4 of the 8 daily living activities listed on the form:

- **Personal Care:** independent with *dressings, grooming, bathing, toileting, feeding self, regulating diet, transfers (in/out of bed), and transfers (on/off chair),*
- **Pay Rent and Bills:** independent with *banking, budgeting, and pay rent and bills,*
- **Transportation:** independent with *getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation,*
- **Social Functioning:** independent with *appropriate social decisions; able to develop and maintain relationships, interacts appropriately with others, able to deal appropriately with unexpected demands, and able to secure assistance from others.*

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

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

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

**Restricted daily living activities**

Dr. A indicates restrictions for 4 daily living activities as follows:

- **Basic Housekeeping:** requires periodic assistance from another person with all areas: *Laundry*, and *Basic housekeeping*. The space for an explanation was left blank.
- **Shopping:** needs continuous assistance with *going to and from stores*.

The remaining areas under *Shopping* were checked as independent: *reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home*.

- **Meals:** requires periodic assistance from another person with *food preparation and cooking*.

The remaining areas under *Meals* were checked as independent: *meal planning, and safe storage of food*.

- **Medications:** requires continuous assistance with *filling/refilling prescriptions*.

The remaining areas for *Medications* were checked as independent: *taking as directed, and safe handling and storage*. The sections for *Additional comments* for these daily living activities was left blank. Section E - *Additional information* was also left blank.

**Need for help**Medical Report

In Section B-4, Dr. A did not provide a check mark 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 D-*Assistance provided by other people*, the doctor indicates that the appellant's family assists him with daily living activities. The doctor did not provide any check marks 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 March 1, 2023, with a typed 3-page submission attached. In addition to argument for the reconsideration, the appellant provides the following information:

## ***Cognitive and emotional functioning***

### *Attention/concentration*

- The appellant says he has “little to no ability to control the target of and/or intensity of my attention” and perform tasks in a predictable or timely manner. He “struggles greatly” to focus on even simple tasks and is easily distracted. Even if he forces himself to stay on task, he can’t concentrate to complete the task at hand. As a result, he becomes very anxious.

### *Impulse control*

- Not only is he often unable to concentrate on a task, he also “struggles greatly to stop focusing on tasks or activities or topics that my brain has latched onto.” This makes it “doubly hard” to complete tasks.

### *Emotion*

- He primarily suffers from anxiety, but with an element of depression from dealing with “overwhelming anxiety.”
- He experiences a moderate amount of general anxiety that gets much worse when combined with his Attention deficit disorder and obsessiveness. He becomes increasingly anxious and then feels stressed and guilty for not completing the task. Medication has helped dull the anxiety to some extent, but he still needs to take things at his own pace to accomplish anything.

### *Executive*

- On a cognitive level, he understands what he needs to do, when and in what order, but he focuses on planning to the detriment of doing the task. He “struggles greatly” to follow through with plans due to his unpredictable ability to focus.

### *Motivation*

- He has “no problem being motivated in so far as wanting to do things” especially in the long-term. However, he “frequently struggles” to find the initiative to do things “right now.” His struggles with motivation also extend to things he enjoys and wants to do.

### *Daily living activities*

The appellant says he is able to complete daily living activities occasionally despite his anxiety, but when he has to handle multiple activities and responsibilities, his anxiety increases to the point of being “completely unmanageable.”

### Personal care

- He is able to get out of bed, shower, and get dressed each day but it often takes him the entire day, leaving little time for any other tasks.

### Housekeeping

- He relies on his family for household chores and chips in sporadically and infrequently as his mental state allows. He finds it especially difficult to manage regular, ongoing responsibilities so mostly helps “on a whim” when he becomes fixated on a particular cleaning project. Tasks that need to be done regularly involve “weeks or more of indecision about when to do it, and anxiety about having to do it and/or having not done it yet.”

### Meals

- He relies on his family to prepare all the regular meals. He is capable of making meals on a temporary basis but is not able to keep it up for very long.

### Shopping and Transportation

- He relies on his family to do “virtually all my shopping” because he only leaves the house once a month on average, and that is only when his family takes him somewhere. He finds is very difficult to figure out logistics including how and when to get somewhere plus the process of being there, then getting back home. He is “theoretically capable of taking transit independently” but rarely has the focus, calm mood, motivation, and decisiveness to get anywhere on transit or follow a reliable schedule.

### **Additional evidence**

Subsequent to the reconsideration decision, the Tribunal received the Notice of Appeal with the appellant’s handwritten statement which the panel accepts as argument. The appellant filed a 5-page submission comprised of the following documents:

1. A 3-page type-written self-report in which the appellant provides argument for his appeal and additional information about his impairment and ability to function:

- The appellant says that his mental impairment has been characterized as both “ADHD” and “OCD anxiety.” These conditions are interconnected and rooted in the “total inability” to control his attention. The symptoms include both an “attention deficit or inability to concentrate as well as a tendency to uncontrollably obsess over things.”

- He “struggles greatly” with focus and concentration; or conversely, he “latches on” to an activity or topic and finds it very difficult to stop focusing on it regardless of the interference with more pressing matters. In order to complete tasks, he needs a “very specific intersection of able to focus on [A] and not being pulled away by an obsession with [B].”
- Knowing what he is supposed to be doing (but not getting it done) increases his anxiety and leads to “a lot of mental spiralling and second guessing.” He spends a lot of time “trapped in my own head, just going in circles and obsessing over the things I want or need to attend to.”

2. Two pages from the Assessor Report (Section D - *Daily Living Activities*) with new check marks as well as comments indicating restrictions to DLA. The appellant confirmed at the hearing that the new information in the Assessor Report is a self-report because he was unable to get an appointment with his doctor to obtain an updated form.

The appellant indicates the following restrictions in this additional self-report:

#### Personal Care

- He takes significantly longer than typical with *dressing, grooming, bathing, transfers (in/out of bed), and transfers (on/off chair)*

#### Basic Housekeeping

- He requires periodic assistance with *laundry and basic housekeeping*. These activities take significantly longer and are mostly handled by his family.

#### Shopping

- He needs continuous assistance with *going to and from stores* (comment, “always relies on help with transportation”).
- He takes significantly longer with *making appropriate choices* (comment, “highly indecisive”).
- He needs continuous assistance with *carrying purchases home* (comment, “always relies on help with transportation”).

Under *Additional Comments* for these DLA, the appellant states that symptoms vary in severity task-to-task but even simple tasks take longer because he is easily distracted or anxious. Personal care activities can take up the entire day and contributions to housekeeping and meals are only possible occasionally.



Meals

- He needs periodic assistance with *meal planning, food preparation, and cooking*. These activities take significantly longer than typical and are mostly handled by his family.

Pay Rent and Bills

- *Banking, budgeting, and pay rent and bills* take significantly longer than typical for the same reasons as *Personal Care*.

Medications

- He needs continuous assistance with *filling/refilling prescriptions* (comment, “relies on [family] for all pick ups”).

Transportation

- He requires periodic assistance and takes significantly longer in *using public transit* (comment, “cannot reliably get places via transit”).

**3.** The appellant provided further evidence at the hearing in response to questions. He explained that the impairment has persisted since childhood but was not recognized as a problem though he always had difficulty “switching tasks.” The appellant explained that his “obsessive anxiety” got worse after high school and became a problem as an adult. The appellant said that he talked to his doctor about a referral to a psychologist or psychiatrist, but “nothing seemed workable” because some services are billed to the patient and free ones are difficult to access. The appellant said he has had the same doctor all his life, and they have been supportive.

*Admissibility of new evidence*

The ministry had no objections to the additional submissions. The self-reports include additional detail about daily functioning, as well as the appellant’s perspective on restrictions to daily living activities. The oral testimony provides background information on treatment. The panel finds that these submissions are relevant to a fuller understanding of the appellant’s condition. The panel admits the additional information 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. The panel will consider both parties’ arguments in Part F-Reasons.

**Part F – Reasons for Panel Decision**

The issue on appeal is whether the ministry's decision 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 gives the Minister 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 impairment is likely to continue for at least 2 years.

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

*Severe impairment*

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

“severe” is not determinative on its own. The ministry must make this determination considering the relevant evidence and legal principles.

### *Restrictions to Daily living activities*

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

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

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

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

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

### *Help Required*

A prescribed professional must provide an opinion that the person needs help to perform the restricted daily living activities. This requirement is set out in subsection 2(2)(b)(ii) of the Act. Under subsection 3, “help” means needing an assistive device, the significant help or supervision of another person, or an assistance animal to perform daily living activities. An assistance device, defined in section 2(1) of the Act, **is something designed to let the person perform the restricted daily living activities.**

**Severe mental or physical impairment***Arguments - Ministry*

The ministry's position is that the information provided by Dr. A does not establish a severe mental or physical impairment. The ministry argues that a severe physical impairment was not established on the evidence because the appellant is able to independently manage walking, climbing stairs, standing, lifting, and other physical functions. The ministry acknowledges that the appellant indicates a mental rather than physical impairment in his self-report but argues that the doctor did not confirm deficits in most areas of cognitive and emotional functioning.

The ministry acknowledges that the doctor indicates significant deficits to *Executive* and *Motivation* in the Medical Report but argues that these functions are minimally impacted based on the check marks in the Assessor Report. The ministry notes "three major and two minimal impacts, and no impacts to nine areas" arguing that "the cumulative impact to your mental functioning is not considered indicative of a severe impairment of mental functioning."

The ministry acknowledges the appellant's descriptions of "obsessiveness" but argues that it is "unable to confirm the significance of any issue with obsession" because it is not mentioned in the Medical and/or Assessor Report. The ministry argues that the appellant is independent with almost all tasks related to making decisions around personal activities and social interaction based on the information in the Assessor Report. The ministry said that a severe mental impairment was not established "based on the assessed cumulative impact to your mental functioning and assessed ability to perform most of the daily living activities."

*Arguments - Appellant*

The appellant's position is that his mental impairment is severe because he has a "total inability to control the target and/or intensity of [his] attention" which makes it very difficult to complete tasks, further increasing his anxiety. The appellant acknowledges that he does not have a physical disability but argues that the PWD application is not well-suited to conveying his particular mental illness or its impact. The appellant hopes that his self-reports "will help clarify the larger picture of my situation."

The appellant submits that the ministry's statements about obsession not being mentioned by his doctor are not accurate due to comments that include "so anxious to do

things right” and “too consumed with worrying about the next task.” The appellant argues that “OCD is an anxiety disorder” and the type of anxiety he has includes many obsessive thoughts and behaviours.

### ***Panel's decision - mental impairment***

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

In the narrative comments (Medical Report), the doctor describes “severe forms” of both Attention deficit disorder and anxiety. The doctor reports anxiety “to a paralysing degree” with multiple symptoms including the inability to finish tasks, maintain “any degree” of responsibility, and establish “any sort of schedule.” While the doctor does not use the word “obsession” or “OCD,” they describe obsessive worrying about future tasks and the need to “do things right.”

In several self-reports, the appellant details “OCD anxiety” in which he “uncontrollably obsesses over things” to the point of not being able to pull himself away from an activity to attend to a simple or pressing matter. The appellant reports becoming more anxious and miserable when he cannot stop thinking about a topic or transition to a more important task. The appellant describes being “trapped in my own head...going in circles and obsessing over things” as well as second guessing himself. Based on the information from Dr. A and the appellant, the panel finds that the appellant's anxiety is characterized by obsessiveness.

The appellant's detailed information and Dr. A's narrative comments support the significant restrictions that are indicated through the check marks in the Medical Report. For example, the appellant reports that *Executive*, and *Attention/sustained concentration* are significantly restricted for routine tasks such as organizing one's day. The appellant explains his challenges with acting in an orderly and predictable manner, focusing, and becoming easily distracted. The appellant's self-reported limitations with executive function are reflected in Dr. A's narrative, “anxiety blocks his attempts to establish any sort of schedule.”

*Emotion* is significantly restricted because the appellant has anxiety “to a paralyzing degree” (Medical Report). Dr. A offers a further explanation about the severity of the condition, noting that “medical treatments have minimal chance of resolving the impairment.” The appellant describes in detail the “overwhelming anxiety” he feels “when faced with tasks that I should or must complete.” The appellant's self-reports support the

doctor's description of paralyzing anxiety because "not a day goes by" where the appellant does not spend "a significant chunk of time" worrying and obsessing over what he needs or wants to do, and when/how to do it.

The appellant details a significant restriction to *Motivation*, explaining that even though he wants to do things in a "long-term or eventual sense", he frequently struggles "to find the initiative or interest in doing things right now." The ministry focused on the check marks in the Assessor Report which indicate a minimal impact for *Executive* and *Motivation*. However, the panel gives more weight to the doctor's comments, and the check marks for significant deficits in the Medical Report.

The panel finds that the information in the Medical Report supports the diagnosis of "severe forms of both Attention Deficit Disorder and anxiety" because the appellant has provided detailed and candid examples about his "overwhelming challenges" that are reflected in what the doctor said. The panel finds that the information in its entirety meets the requirement for a severe impairment under the Act.

***Panel's decision - physical impairment***

The panel has considered the evidence in its entirety and finds that the ministry's decision is reasonable; the appellant does not have a severe physical impairment. The appellant is not diagnosed with a physical condition in the Medical Report or Assessor Report. In both reports, the appellant's ability to walk, lift, carry objects, etc., was assessed at the highest level of ability on the rating scales. The appellant is independent with all physical functions. Both the appellant and the doctor focus on the mental impairment as the source of the appellant's functional restrictions. The appellant's restrictions are cognitive and emotional, and not physical in nature.

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

**Restrictions to daily living activities***Arguments - Ministry*

The ministry's position is that the doctor has not confirmed that the appellant's impairment significantly restricts daily living activities continuously or periodically for extended periods as required by the legislation. The ministry acknowledges that the appellant receives continuous assistance from family for one aspect of *Shopping (going to and from stores)* and one aspect of *Medications (filling/refilling prescriptions)*. The ministry argues that these daily living activities do not have an "overall restriction" because the appellant is independent with all other areas of *Shopping* and *Medications*.

The ministry further argues that it is unclear why continuous assistance is required when the appellant is able to walk, climb stairs, and use transportation independently, and has no limitations with lifting. The ministry notes that the appellant's social functioning is also "in good standing."

The ministry argues that requiring periodic assistance with two areas of *Meals (food preparation and cooking)* does not result in an overall restriction. The ministry said it was unable to confirm that the periodic restriction for *Meals* and *Housekeeping* is for extended periods because "there is no mention of frequency and duration" to establish that the restriction is significant and longer lasting.

The ministry acknowledges the *Request for Reconsideration*, in which the appellant reports taking longer than typical for daily living activities. The ministry argues that a prescribed professional (Dr. A) has not given the opinion that more time is required for personal care. The ministry argues that the appellant can manage meals if family is not available to help.

The ministry acknowledges that the appellant has difficulty with regular, ongoing responsibilities and anxiety around tasks but argues that the appellant can "help on a particular cleaning project at home." The ministry said that it considered the self-report in conjunction with Dr. A's assessments but concluded there is "insufficient information to confirm if you require periodic or continuous help with daily living activities for extended periods."

The ministry was asked to comment on the additional information submitted on appeal. The ministry said it would need verification from a health professional to support what the appellant had written.

*Arguments - Appellant*

The appellant's position is that his impairment has a "massive impact" on his ability to function and complete daily living activities. Given that his impairment is mental rather than physical, the appellant submits that the issue is not as straightforward as "being definitively able or unable to perform specific tasks such as those listed in section 3C of my assessment."

The appellant argues that he is sometimes capable of doing individual tasks but is unable to "handle a full load of all these activities and responsibilities" to be independent. The appellant submits that his anxiety becomes "completely unmanageable" and prevents him from completing daily tasks in a timely manner or predictable schedule.

The appellant argues that his restrictions are for extended periods because it can take him the whole day to do his personal care. The appellant argues that he cannot complete tasks because he "constantly procrastinates" or gets distracted or paralyzed by anxiety.

The appellant said that his contributions to household chores such as cooking, cleaning, and shopping are infrequent and he helps "mostly on a whim" when he gets fixated on a particular cleaning project. The appellant argues that even when he does handle a task, he faces "weeks or more of indecision about when to do it, and anxiety about having to do it and/or having not done it yet."

The appellant submits that if his family was not around to prepare meals, he could do it on temporary basis, but would quickly fall in the habit of eating very little (only one full meal a day) and relying too much on pre-packaged foods. The appellant argues that shopping and transportation are significantly restricted for extended periods because he rarely leaves the house (once a month on average) as it is very difficult for him to plan and undertake an outing.

The appellant said that he and his doctor made a significant mistake in completing the Assessor Report because they failed to notice the column for "takes longer than typical" or the space for offering an explanation. The appellant explained that he contacted the office several times, but the doctor was on medical leave, not offering appointments for the foreseeable future. The appellant said he considered going to a walk-in clinic but felt that a doctor who did not know him would be unable to provide an updated assessment on his restrictions.

The appellant argues that his self-reports support the doctor's assessments. The appellant hopes that his own information will provide the "big picture" on his restrictions.



***Panel's decision - restrictions to daily living activities***

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

The panel accepts that there is not enough information from Dr. A. to confirm the appellant's reports of restrictions with *Personal Care*, and *Transportation*. All areas of these activities were assessed as independent in the Assessor Report. There was no additional information from medical personnel to verify the appellant's information.

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

- *prepare own meals*
- *shop for personal needs*
- *perform housework to maintain the person's place of residence in acceptable sanitary condition,*
- *move about indoors and outdoors,*
- *manage personal medications, and*
- *make decisions about personal activities.*

The evidence from Dr. A in the Medical Report is that the appellant is unable to finish any task because he is "so anxious to do things right" and "too consumed with worrying about the next task." In the Assessor Report, Dr, A states that the appellant's "extremely severe anxiety order" as well as Attention deficit disorder directly restrict his ability to manage daily living activities. The inability to finish any task due to problems with attention and anxiety, demonstrates the doctor's opinion that "make decisions about personal activities" is significantly and continuously restricted by a severe mental impairment.

The doctor's comments support the check marks in the Assessor Report for continuous assistance with *going to and from stores* and *filling/refilling prescriptions*. The appellant reports not being able to independently manage these activities because he is too anxious, unfocused, and disorganized to leave the house and go through the process of planning to go somewhere, getting there, being there, and then returning home.

The ministry argued against an “overall restriction” because the other areas for these daily activities were assessed as independent. The panel finds that the restriction is nonetheless significant when the appellant is unable to follow through on going to the store or pharmacy in the first place. The doctor indicates significant restrictions or major/moderate impacts for *Executive, Emotion, Motivation, and Attention/sustained concentration*. The cumulative effect of these deficits and impacts supports the continuous need for assistance as assessed by Dr. A.

Regarding the periodic assistance required for *Basic Housekeeping and Meals*, the appellant explains that the assistance he requires demonstrates “extended periods” because he relies on his family for “95% of the housekeeping” and “all regular meals.” The appellant explains that he is able to handle these chores sporadically, but even the odd task involves “weeks or more” of indecision and anxiety around needing to do it and not having completed it yet.

The panel accepts the appellant’s information to explain the frequency, duration, and nature of the support required. The panel finds that the appellant’s information supports the doctor’s comments about not being able to complete tasks, maintain any degree of responsibility, or follow a schedule due to anxiety “blocking his attempts.”

### *Summary*

The panel finds that it was not reasonable for the ministry to focus on check marks that show no restrictions for many specific activities, when only two daily living activities, as set out in the Act, need to be restricted. It is necessary to consider the evidence in its entirety, analyze the doctor’s narrative, weigh it against the check marks, and consider additional details from the appellant that support the doctor’s assessments.

The ministry’s considered the appellant’s information but focused on his ability to complete tasks occasionally. The appellant explained that although he has the ability per se to perform household tasks, he cannot reliably complete daily living activities because the cumulative responsibility is too difficult to manage. The panel finds that the appellant’s information adds clarity and depth to the doctor’s comments about restrictions.

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

**Help with daily living activities***Arguments - Ministry*

The ministry's position is that the criteria for help are not met because daily living activities are not significantly restricted. The ministry acknowledges that the appellant receives help from his family and psychological advice from his doctor but argues that it could not determine that significant help from other persons is required when daily living activities are not significantly restricted.

*Arguments - Appellant*

The appellant's position is that he needs a lot of help from his family and support from his doctor who has followed him long term.

***Panel's decision - help with daily living activities***

The ministry was not reasonable to find that the requirement for help is not met. Dr. A indicates in the Assessor Report that the appellant relies on continuous and periodic assistance from family because of his inability to complete tasks due to his "extremely severe" anxiety, and difficulties with attention, executive function, impulse control, and motivation. The doctor also notes that they provide the appellant with "psychological advice" but that medical treatment is unlikely to resolve the impairment.

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

The evidence is that the appellant needs help from his family to do most of the shopping, housekeeping, and cooking. The appellant has not been referred to a psychiatrist or psychologist but relies on his doctor for mental health support. Accordingly, the panel finds that the ministry's conclusion that the help requirement is not met, is not a reasonable application of the legislation in the appellant's circumstances.

## Conclusion

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

The totality of evidence, including the appellant's very detailed and fulsome account of his situation, shows that the appellant suffers from attention and mood disorders that are characterized by crippling anxiety, a lack of focus (or too much focus), problems with motivation and impulse control, and the inability to complete tasks. The appellant's doctor, with detailed explanations from the appellant, has confirmed that daily living activities such as *prepare own meals*, *shop for personal needs*, and *perform housework* are directly and significantly restricted continuously or periodically for extended periods. The appellant therefore relies on his family to do most of the household chores.

For these reasons, the panel rescinds the reconsideration decision, and sends the matter back to the Minister for a decision on the amount of disability assistance. The appellant is successful with his 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)  
2023/06/27

Print Name  
Effie Simpson

Signature of Member

Date (Year/Month/Day)  
2023/06/27

Print Name  
Glenn Prior

Signature of Member

Date (Year/Month/Day)  
2023/06/27