

**Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated June 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 March 7, 2023, and denied on April 18, 2023, with the *Decision denial summary* explaining the criteria that were not met. On June 1, 2023, the appellant submitted a *Request for Reconsideration*. On June 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) dated February 1, 2023;
  - a *Medical Report* dated February 28, 2023, signed by a Nurse Practitioner (“NP”) who has known the appellant since August 2021, and has seen her 2-10 times in the past 12 months, and
  - an *Assessor Report* dated February 28, 2023, also completed by the NP who based the assessment on an office interview with the appellant and file/chart information.

*Summary of relevant evidence from the application*

**Diagnoses**

In the Medical Report, the appellant is diagnosed with Schizophrenia/psychosis (onset, January 2018); Anxiety disorder (onset 2001), and Digestive disorders – Other – Cholelithiasis/fatty liver (onset 2021).

In Section B - *Health History*, the NP describes a long-standing history of mental illness including anxiety and auditory hallucinations. The appellant has been hearing voices on and off since 2018 and currently hears voices daily with some breaks.

The NP describes anxiety as “active and gets worse due to situations along with panic attacks.” The NP reports that the symptoms of psychosis and anxiety are “very frequent and moderate-severe.” The appellant has tried some medications in the past that were not tolerable due to side effects. The **appellant** is not receiving treatment for her symptoms. In Section F – *Additional Comments*, the NP describes “daily voices in [the appellant’s] head for hours at a time.”

*Additional information from the appellant*

In the self-report, the appellant describes suffering from anxiety and panic attacks “for around 20 years” with more frequent attacks in the past 2 years. She has also been

diagnosed with non-alcoholic fatty liver disease. The appellant reports some success with vitamins and self-care for anxiety but says that her most prominent issue is hearing voices on a daily basis. The appellant reports a family history of late-onset Schizophrenia.

The appellant says she has documented hearing up to 30 voices since at least 2018. The voices repeat simple things which sometimes escalates to complex dialogue. The appellant contacted a mental health intake team in 2021, but they said she had not been experiencing symptoms long enough for a diagnosis.

The appellant was referred to psychology, but cancelled the appointment because she was overwhelmed with medical tests/appointments for her newly diagnosed fatty liver disease. The appellant said she tried to get a new psychology appointment but was told there was a backlog and they could not fit her in unless she agreed to take medication or had an emergency.

The appellant says she has not felt depressed or suicidal in recent years, but this year when she was involved in a family conflict she heard voices say she should "kill myself." The appellant reports that odd sights, stressful situations, and social isolation increase her anxiety and make the voices more frequent and more negative. The appellant describes some of the voices as "high level, intelligent, with ideas or reflection superior to my own feelings" while other voices are "nagging, disruptive, critical, administratively themed."

### ***Functional skills***

#### Self-report

The appellant reports that the voices are very disruptive. While the voices can be convincing, she does not mistake or confuse them with reality. The appellant reports "periods when the voices go quiet." They are not as disruptive at night now that she has help from a companion animal. The appellant reports that the voices cause sleep disturbance. They affect her concentration when she is working on something or doing everyday tasks.

#### Medical Report

In Section B-*Health History*, the NP says the appellant is unable to work due to hearing voices "as it's difficult to distinguish from reality, causes insomnia and other impairments."

In Section D - *Functional Skills*, the appellant is able to walk 4+ blocks unaided on a flat surface; and climb 5+ steps unaided. The appellant has no limitations with lifting or sitting. The NP 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 NP checked “yes” with additional check marks for 2 of the 11 areas listed: *psychotic symptoms*, and *emotional disturbance* (comment, “currently hearing voices”).

There was no check mark for the following areas to indicate any deficits:

*Consciousness*

*Executive*

*Language*

*Memory*

*Perceptual psycho-  
motor*

*Motivation*

*Impulse control*

*Motor activity*

*Attention or sustained concentration*

*Other*

#### Assessor Report

In Section B-1, the NP reports “loss of full cognitive/psychological function as voices in head are distracting, troubling, and impair social connections.”

In Section B-2, the NP indicates “good” for all areas of communication: *speaking, reading, writing, hearing*.

In Section B-3, the NP assessed all areas of *Mobility and Physical Ability* as independent:

*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, the NP indicates the following impacts:

- minimal impact for *emotion*
- moderate impact for *psychotic symptoms*.

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

- *Bodily functions (including sleep disturbance)*
- *Consciousness*
- *Impulse control*
- *Insight and judgment*
- *Attention/concentration*
- *Executive*
- *Memory*
- *Motor activity*
- *Language*
- *Other neuropsychological problems*
- *Other emotional or mental problems*

***Daily living activities***

In the opinion of a prescribed professional, the NP provides the following information:

Medical Report

In Section C-3, the NP checked “no”, the appellant has not been prescribed medications or treatments that interfere with the ability to perform daily living activities. In Section E – *Daily Living Activities*, the NP checked “no” when asked if the impairment directly restricts the person’s ability to perform activities.

When asked if specific activities are restricted, the NP checked “no” for all of the tasks listed:

*Personal self care*

*Meal preparation*

*Management of medications*

*Basic housework*

*Daily shopping*

*Mobility inside the home*

*Mobility outside the home*

*Use of transportation*

*Management of finances*

*Social functioning*

## Assessor Report

### *Restricted daily living activities*

#### **Social Functioning**

In Section C, the NP indicates restrictions with most areas of *Social Functioning*. The appellant requires periodic support/supervision from another person with *able to develop and maintain relationships; interacts appropriately with others, and able to deal appropriately with unexpected demands*.

The NP assessed the remaining areas as independent: *appropriate social decisions, and able to secure assistance from others*. The NP checked that the appellant has “marginal functioning” with her immediate and extended social networks (comment, “no supervision needed but trouble with independently connecting with others”). Section E – *Additional Information* was left blank.

The NP checked “independent” for all areas of the other daily living activities listed in the Assessor Report:

#### **Personal Care**

The appellant was assessed as independent with *dressings, grooming, bathing, toileting, feeding self, regulating diet, and transfers* (bed and chair).

#### **Basic Housekeeping**

The NP checked “independent” for *laundry, and basic housekeeping*.

#### **Shopping**

The NP checked “independent” for all the activities listed:

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

## **Meals**

The NP checked “independent” for all activities:

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

## **Pay Rent and Bills**

The NP checked “independent” for *banking, budgeting, and pay rent and bills.*

## **Medications**

The NP checked “independent” for *filling/refilling prescriptions, taking as directed, and safe handling and storage.*

## **Transportation**

The NP checked “independent” for *getting in and out of a vehicle, using public transit, and using transit schedules/arranging transportation.*

## ***Need for help***

### Medical Report

In Section B-4, the NP checked “no” when asked if the applicant requires any prostheses or aids for the impairment.

### Assessor Report

In Section A-1, the NP checked that the appellant lives alone. In Section D-*Assistance provided by other people*, the NP wrote “none.” The NP left the next part of Section D blank (*Assistance provided through the use of assistive devices.*). The NP checked “no” the appellant does not have an assistance animal.

**3.** A *Request for Reconsideration* signed by the appellant on June 1, 2023, with a 9-page typed-submission dated May 31, 2023. In addition to argument for the reconsideration, the appellant adds the following details:

*Symptoms and functional skills*

- auditory hallucinations are accompanied by disorganized thinking, sleep disturbance, difficulty with planning and focusing, and confusion about passing time. The appellant reports difficulty with meeting deadlines and determining the time of day or day of the week.
- she has difficulties with communication caused by a cognitive impairment. Specifically, “trouble with the intake of information, with focus and holding my attention to a certain task or conversation so I normally have to write things down.” The appellant says that her ability to read “has lessened greatly in recent years as I lack focus and concentration in processing information.”
- in addition to *psychotic symptoms* and *emotional disturbance* (as indicated in the Medical Report) the appellant reports significant deficits with *executive, memory, motivation, and attention or sustained concentration*. Specifically, “trouble processing and applying information, find it difficult to go from one task to another and find some environments unsustainable to be in for an extended period.” Organization is especially difficult due to auditory hallucinations. The appellant says her emotions have flattened since the psychosis started; she sometimes lacks motivation for tasks. While her memory is clear for facts, she loses track of when she last did something.
- her mental impairment has a major impact on bodily functions (“sleep disturbance”), as well as emotion (“excessive or inappropriate anxiety”). Auditory hallucinations can wake her up at night and keep her awake until she manages to ignore them. The voices can be “negative, insulting, relentless, and there is a feeling of lack of control” which can cause her to over-react.
- the appellant reports a major impact for attention/concentration (distractible, hard to focus due to hallucinations); executive function (“time sequencing” planning), and motivation (has difficulty getting important things done).
- the appellant reports a moderate impact for motor activity. The appellant reports other emotional or mental problems that also impact her function to a moderate degree (“behaviour patterns that are autistic in nature”).

*Daily living activities*

The appellant reports continuous restrictions with most of the activities listed in the Medical Report and Assessor Report:

- she can move about outdoors and cook but these activities “are always plagued by disorganization, negative voices in my head telling me I shouldn’t do something, distractions, and lack of motivation caused by all of the above.”
- *Personal self-care* is continuously restricted. Unless she uses an app. on her phone, she has difficulty recalling the last time she brushed her teeth or bathed. The



appellant reports difficulty in setting up routines (“they get abandoned”). She says that daily auditory hallucinations are “repetitive and nagging” and may not be related to the task at hand.

- *Meal preparation* is continuously restricted because she cannot make recipes in her current state of psychosis or cope with anything that is not simple. For the most part, her cooking is limited to boiling food in a rice cooker or making a sandwich. The appellant says she used to cook and bake but can no longer do so. She relies on community meals programs as having to clean the kitchen “would cause more stress and more voices.”
- *Basic housework* is continuously restricted as she neglects deep cleaning unless she uses apps. to remind her of the last time something was cleaned. She tries to keep her home uncluttered to make things simpler. She cannot afford to hire a cleaner. She uses a timer to keep track of each load of laundry.
- *Daily shopping* is continuously restricted because she needs extra time to plan what to buy and track how much she is spending. She can’t always afford to pay for the app. that assists her with ordering groceries and having them delivered. The appellant says that without the app, she buys small quantities at a time (“but that can be exasperating”) and relies on community meal programs. When in a store, she hears voices “repeating the same things I hear when I am at home.” Decision-making at the store “takes me longer than normal.”
- she used to commute on transit but now finds it overwhelmingly difficult to organize travel. The appellant says she walks or uses a ride-sharing service if she needs to go somewhere.

#### *Need for help*

- the appellant describes her frequent use of ipad/phone apps. and checklists to remind her to have a bath or go shopping. She relies on her companion animal to alert her to do certain tasks. The appellant states that her pet is not trained as an assistance animal.
- The appellant says she doesn’t have a social worker, psychologist, or home care worker but receives support from her building managers who usually check on her daily. She also relies on community programs to assist with food preparation/meals.

**Additional submissions - written hearing**

With the consent of both parties the appeal format was a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*. Neither party submitted additional evidence requiring an admissibility decision by the panel. The appellant filed a *Notice of Appeal* with a hand-written statement which the panel accepts as argument. In an email to the Tribunal, the ministry said that the *Record of Ministry Decision* is its submission on appeal. 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 nurse 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.**

## **Arguments**

### *Appellant – severe mental impairment*

The appellant's position is that her mental impairment is severe because she is distracted by daily auditory hallucinations ("that can last for hours") and she also suffers from anxiety and panic attacks which have worsened in the last 2 years. The appellant argues that these conditions impact her cognitive and social functioning and she suffers from sleep disturbance as well. The appellant argues that her ability to plan and keep track of time are decreased and she lacks the motivation to do some important things.

The appellant argues that she has difficulties with communication because it is hard to hold her focus and process information. In her appeal submission the appellant says she can't understand why the ministry fails to see that daily auditory hallucinations constitute a disability.

In her Request for Reconsideration, the appellant explains that the NP interviewed her over the phone when the appellant may have been distracted by her companion animal. The appellant feels that she may have been "too liberal in assuming the difficulties I have been experiencing would be clear, and also did not give enough careful thought to the questions about how my daily living is affected." The appellant argues that some questions have been recorded "as having no impact on my life when I would answer differently."

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

The ministry's position is that the information provided by the NP and the appellant does not establish a severe impairment. The ministry acknowledges the NP's report of "full loss of cognitive/psychological function" due to auditory hallucinations but notes that the NP also indicates no impacts to the majority of cognitive and emotional functions. The ministry argues that the moderate and minimal impacts that the NP indicates for psychotic symptoms and emotion (combined with no significant restrictions to daily living activities) does not establish a severe impairment of mental functioning.

The ministry said it considered the appellant's self-reports in conjunction with the information from the NP but argues that the appellant's descriptions of the impacts and restrictions caused by her mental impairment "do not align with the assessments of the

Nurse practitioner. “The ministry argues that the appellant does not have a severe physical impairment because she is not diagnosed with a medical condition “expected to impact your physical functioning” and the NPs assessments indicate the appellant is independent with all areas of mobility and physical ability.

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

The panel finds that the ministry’s decision is not reasonable regarding a mental impairment. The panel finds that the appellant’s detailed and candid descriptions of impacts to her cognitive, emotional, and social functioning align with the NP’s information. The panel finds that the evidence as a whole establishes a severe mental impairment.

Specifically, the NP ‘s narrative indicates longstanding mental illness with auditory hallucinations that cause insomnia “and other impairments” and make it difficult to distinguish reality. The appellant’s submissions fill in the details to further explain the impairments and impacts she experiences.

The appellant says that she has not lost touch with reality but the voices she hears can be very convincing to the point that she recently heard a voice say that she should kill herself. The appellant reports being under stress at the time which is consistent with the NP’s comments that psychotic symptoms and panic attacks get worse “due to situations.” The appellant details stressful situations including her newly diagnosed liver problem, a dispute with a family member, and safety/security issues in her community.

Both the NP and appellant report that the voices are heard daily, sometimes for hours and other times with breaks for a few hours. Currently, the appellant is hearing voices “for hours at a time.” The NP describes psychotic symptoms as “very frequent” and “moderate-severe.” In the Assessor Report, the NP further states that the appellant experiences a “loss of full cognitive/psychological function” because the voices are “distracting, troubling, and impair social connections.”

The ministry notes that there were no check marks in the PWD medical reports to indicate sleep disturbance or impacts to most cognitive functions. The ministry acknowledges that check marks in the Medical Report indicate significant deficits in the areas of psychotic symptoms and emotional disturbance but gave the information lower weight because the impact on function was checked as only moderate and minimal in the Assessor Report.

The panel gives more weight to the NP’s comments that indicate sleep disturbance (“insomnia”); impaired attention (the voices are “distracting”); and a reduced ability to function cognitively and psychologically. The appellant’s submissions add breadth and

depth to the NP's comments by including detailed descriptions of the difficulties she experiences with sleep, attention/focus, planning, time orientation, organizing tasks, and processing information.

The evidence indicates a severe impairment of mental functioning because the appellant's daily life is marked by frequent auditory hallucinations and worsening anxiety symptoms that significantly reduce her ability to function cognitively and emotionally, especially with the current stressors in her life. The ministry's decision (no severe mental impairment) is not reasonably supported by the evidence. The requirement for a severe impairment under the Act is met.

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

The panel has considered the evidence in its entirety and finds that the ministry's decision regarding a physical impairment is reasonable. The appellant is diagnosed with some physical conditions (digestive/liver disorders) but there is no indication of any impact to her physical functioning.

In her *Request for reconsideration*, the appellant reports a moderate impact for motor activity but does not give any detail. In the Medical and Assessor Reports the NP indicates the lowest degree of restriction ("independent") for all physical functions. The appellant is able to walk 4+ blocks and climb 5+ steps unaided, and has no limitations with lifting, carrying, sitting, or standing. The appellant reports walking with her companion animal to gain some relief from hearing voices.

These assessments and descriptions of mobility and physical ability do not demonstrate a severe impairment of physical functioning. The panel finds that the ministry reasonably determined that the requirement for a severe impairment under the Act is 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, a severe impairment is established by the appellant's schizophrenia/psychosis and anxiety disorders.

### **Restrictions to daily living activities**

#### *Arguments – Appellant*

The appellant's position is that that NP's information is not accurate because "I have a mental disability...my daily activities are affected by cognitive difficulties and my positive symptoms of schizophrenia." The appellant argues that she is continuously restricted with:

- personal care (grooming and bathing - relies on apps. to remind her)
- housekeeping including laundry (requires app./timer)
- all areas of shopping except paying for purchases
- meals (relies on community programs to reduce the stress of cooking and cleaning up afterward)
- transportation (using public transit and schedules)
- social functioning (due to cognitive difficulties and social isolation)

The appellant acknowledges that she is independent with finances (bills are paid automatically) and medications (does not take medication for her psychosis).

#### *Arguments - Ministry*

The ministry's position is that the NP 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 argues that there was not enough evidence 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 the NP to confirm that daily living activities are directly and significantly restricted continuously or for extended periods by the appellant's severe mental impairment.

Almost all of the information about restrictions to activities comes from the appellant, but the Act requires a medical person (prescribed professional) to confirm restrictions. The appellant says that she did not pay enough attention or give enough thought to the questions during the interview with the NP. However, there is no indication that she went back to the NP to ask for endorsement of the restrictions described in the Request for Reconsideration. There was no additional medical information submitted with the *Notice of Appeal* or prior to the written hearing.

Without any endorsement or additional information from the NP or other professional, the ministry (and the panel) must rely on the evidence provided in the Medical and Assessor Reports. The panel acknowledges the appellant's detailed and fulsome account of her restrictions but unfortunately, there is no discretion under the Act to rely solely on the appellant's information to establish that the criteria for daily living activities are met.



The ministry reasonably determined that the NP did not confirm significant restrictions to daily living activities because:

- The NP checked “no” the impairment does not directly restrict the person’s ability to perform daily living activities (Medical Report).
- The NP checked “no” – none of the activities listed in the Medical Report (Section E) are restricted.
- The NP checked “independent” for 7 out of 8 daily living activities listed in the Assessor Report (despite indicating significant deficits with psychotic symptoms and emotion; hearing voices for hours at a time; and “loss of full cognitive/psychological function”).
- There was no additional detail about the periodic support required for social functioning including the frequency/duration of support to confirm that the restriction is for extended periods. The NP said the appellant does not require supervision for social interactions despite having “trouble independently connecting with others.”

Based on the information from the NP the panel finds that the ministry was reasonable to conclude that there is insufficient medical evidence to establish significant restrictions to daily living activities either continuously or periodically for extended periods. 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 – Appellant*

The appellant’s position is that she requires an assistive device (ipad/phone apps.) to help her organize or remember daily tasks that she needs to do. While she is not under the care of a social worker or psychiatrist and does not have home help, she depends on her companion animal, building managers, and community meal programs for support.

#### *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 the NP 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 was not met. The appellant provides detailed descriptions about her reliance on apps. but the NP checked in both the Medical and Assessor Reports that the appellant does not require any aids or assistive device for the impairment. It is unclear from the record why the NP has not confirmed the use of apps.

The appellant describes the support she receives from her pet but acknowledges that it is not trained as an assistance animal. The appellant says that she gets support from her building managers and community programs, but the NP wrote "none" when asked if the appellant gets help from other people or community services.

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 panel finds that 3 of the requirements under the Act are met because the appellant is over 18; the impairment is expected to continue for at least 2 more years, and a severe mental impairment was established on the evidence.

However, the requirement for significant restrictions to daily living activities is not met because the NP or other prescribed professional indicates that the appellant is independent and not restricted with the activities set out in the Act:

- 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, and  
in relation to a person who has a severe mental impairment:
- make decisions about personal activities, care or finances;
- relate to, communicate or interact with others effectively.

In addition, a prescribed professional has not confirmed that the appellant requires help to perform daily living activities as a result of significant restrictions. 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,

APPEAL NUMBER 2023-0181

**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

Date (Year/Month/Day)

2023/07/26

Print Name

Anil Aggarwal

Signature of Member

Date (Year/Month/Day)

2023/07/26

Print Name

Robert McDowell

Signature of Member

Date (Year/Month/Day)

2023/07/26