

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision (the “Reconsideration Decision”) of the Ministry of Social Development and Poverty Reduction’s (the “Ministry”), dated June 23, 2023. In the Reconsideration Decision, the Ministry determined that 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*.

The Ministry was not satisfied that:

- the Appellant had a severe mental or physical impairment;
- in the opinion of a prescribed professional, the Appellant’s impairment directly and significantly restricted his ability to perform daily living activities either continuously or periodically, for extended periods; and
- as a result of such restrictions, the Appellant requires help to perform those activities.

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

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (the “Act”) - section 2
Employment and Assistance for Persons with Disabilities Regulation (the “Regulation”) – sections 2(1), 2.1

A full text of the above-described legislation appears at the end of Part F of this decision.

Part E – Summary of Facts

The information before the Ministry at the time of the Reconsideration Decision included the following:

- the Ministry’s letter to the Appellant, dated June 1, 2023 (the “Application”), denying his application for the PWD designation;
- the Ministry’s Person with Disabilities Designation Denial Decision Summary, dated June 1, 2023, which had initially determined that the Appellant met only the age and duration requirements for a PWD designation;
- the Appellant Application for the PWD designation, which included:
 - the Appellant’s Applicant Information (the “Self Report”), dated April 3, 2023;
 - the Medical Report (the “Medical Report”), completed by a doctor (the “Doctor”), dated April 3, 2023; and
 - the Assessor Report (the “Assessor Report”), completed by a social worker (the “Social Worker”), dated March 29, 2023;
- the Appellant’s Request for Reconsideration, dated June 9, 2023, in which the Appellant wrote that:
 - he felt that his mental impairment was permanent;
 - he had experienced several mental breakdowns;
 - he consumed alcohol excessively to cope with things;
 - he had difficulty with tasks like cooking, cleaning, lifting and driving but that the doctor had neglected to mention these issues in the Medical Report;
 - if not for his grandparents, he would either be living on the street or dead.

The Appellant’s Notice of Appeal was filed on June 28, 2023. In the Notice of Appeal, the Appellant wrote that he believes that the Ministry’s decision was a mistake and that he was suffering from lifelong mental illness and addictions that affect his life in many negative ways.

The Application

The Self Report

In Part B of the Self Report, the Appellant stated that:

"I am suffering from Depression as well as OCD and a very serious arm injury involving my tendons being lacerated."

The Medical Report

The Doctor diagnosed the Appellant with the following:

- mood disorder/chronic depression, with an onset in 2014;
- generalized anxiety disorder and OCD, both with an onset in 2014; and
- alcohol use disorder, with an onset in 2020.

The Medical Report made no mention of the Appellant's arm injury.

The Doctor described the Appellant's health history as follows:

- longstanding anxiety – severe;
- obsessive thoughts, intrusive thoughts;
- feels nervous, anxious, and on edge;
- unable to stop or control worrying; and
- symptoms interfere with his activities of daily living .

The Appellant was described as being 72.5 inches tall and weighing 180 pounds. The Doctor confirmed that the Appellant has not been prescribed any medications or treatments that interfere with daily living activities and does not require any prostheses or other aids.

The Doctor confirmed that the Appellant's impairment was likely to continue for at least two or more years.

In terms of functional skills, the Doctor confirmed that the Appellant:

- can walk unaided 4+ blocks;
- can climb 5+ stairs unaided;
- has no limitations on lifting;
- has no limitations on remaining seated; and
- has no difficulties with communication.

The Doctor did note that the Appellant had significant deficits with respect to emotional disturbance, motivation, and motor activity. These deficits, however, were not elaborated upon by the Doctor.

With respect to the Appellant's daily living activities, the Doctor indicated that none of the listed activities (i.e., personal care, meal preparation, management of medications, basic housework, daily shopping, mobilities inside and outside the home, use of transportation, or management of finances) were restricted. The Doctor did not indicate whether the Appellant's social functioning was or was not restricted.

The Doctor completed the Medical Report with an indication that the Appellant had been a patient for about nine months and had been seen between 2 and 10 times.

The Assessor Report

The Social Worker noted that the Appellant lived with his grandparents. The Social Worker described the Appellant's impairment as follows:

- depression;
- alcohol use disorder;
- anxiety;
- injury to forearm- lacerated tendons; and
- restricted mobility.

The Appellant's ability to communicate was described as good with respect to speaking (the Appellant was described by the Social Worker as "Articulate"), reading, and hearing. The Social Worker described the Appellant as having "poor" writing, noting issues with spelling, grammar, and letter formation.

With respect to mobility and physical ability, the Social Worker described the Appellant as "Independent" with respect to walking indoors and outdoors, climbing stairs, and standing. The Appellant was described as needing periodic assistance from another person when it came to lifting and carrying and holding.

With respect to cognitive and emotional functioning, the Social Worker indicated that the Appellant's mental impairment had no impact on body functions, consciousness, motor activity, or psychotic symptoms and a minimal impact on executive functioning, memory, and language. However, the Appellant's mental impairment was described as having a moderate impact on insight and judgment, attention and concentration, and

other neuropsychological problems. The Appellant's mental impairment was described by the Social Worker as having a major impact on emotion, impulse control, motivation, and "other", although no explanation was given as to what "other" meant.

In terms of daily living activities, the Appellant was described as being independent in all areas other than the following, for which the Social Worker indicated the Appellant required periodic assistance from another person:

- meal planning ("does not often plan meals in advance");
- food preparation ("Guidance");
- cooking ("Guidance");
- budgeting ("Reminders/Guidance"); and
- paying rent and bills ("Reminders/Filling out Docs").

The Appellant's social functioning, however, was described as needing periodic support or supervision in all of the following areas:

- able to develop and maintain relationships ("Support from grandmother and church to initiate contact with others");
- interacts appropriately with others ("Sometimes confused by others intentions in social interactions, sometimes impulsively communicates thoughts");
- able to deal appropriately with unexpected demands ("challenges in work environments and communicating with authority figures"); and
- able to secure assistance from others.

It was only in the area of making appropriate social decisions where the Social Worker deemed the Appellant's abilities as independent

The Social Worker also described the Appellant as marginally functioning with respect to the impact of his mental impairment on his immediate social network and his extended social networks.

The Social Worker indicated that the Appellant required positive peer support to help maintain him in the community.

With respect to assistance, the Social Worker advised that the Appellant required help from family to carry out daily living activities.

The Social Worker provided additional information, writing that the Appellant experiences depression that impairs his ability to “engage in society without resistance and is significantly impacting his progress in life.”

The Social Worker notes that the Appellant has reduced motivation, a distorted view of the world, and a sense of helplessness that affects his ability to care for some of his basic needs without the support of his grandmother. The Social Worker reiterated that the Appellant excessively ruminates and has distorted beliefs arising from childhood trauma. These were described by the Social Worker as preventing the Appellant from being able to sustain focus and live in the present.

The Social Worker describes the Appellant as medicating with alcohol and remaining complacent and unable to address his mental health issues in a different way. The Social Worker stated that the Appellant will require “time and much support from the health care system” in order to work his way through his ingrained patterns and live independently.

The Social Worker concluded the Assessor Report by noting that the Appellant had been seen between two and ten times since February 27, 2023 and had undergone counselling to determine the source of his anxiety and depression, to build coping skills to manage his symptoms, and to provide support with the aim of reducing his alcohol use as a way of coping with his mental health symptoms.

Evidence at the Hearing

The Appellant

The hearing of this appeal was by teleconference. The Appellant described having many things going on with respect to mental health issues. The Appellant described his depression, drinking, and anxiety and needing his grandparents to look after him. The Appellant indicated that he did not know where he would be without his grandparents.

The Appellant described the injury to his forearm which occurred in 2022 when he tripped while carrying glass, causing shards to cut the tendons in his arm. He stated that he had undergone surgery to repair the tendons and had subsequently done some physiotherapy. The Appellant still has not regained full range of motion and cannot carry out activities for very long. The Appellant described having difficulty carrying heavy loads.

The Appellant stated that he did not have a family doctor and that the Doctor was someone he saw briefly at a walk-in clinic. He described the Doctor as having not accurately recorded everything that he had communicated. The Appellant noted that the Doctor had not asked specific questions about his daily living activities.

The Appellant stated that he had lived independently at various times but had lived on and off with his grandparents as an adult. His grandparents were primarily responsible for ensuring that the Appellant ate breakfast and dinner each day due to both the Appellant's mental health issues and the symptoms he was having in his arm.

The Ministry

The Ministry representative stated that there was too much contradiction in the information before it for it to find that the Appellant had met the requirements of having a severe physical or mental impairment, noting that many of the impacts it would expect of someone suffering from a severe mental impairment were not present in the Appellant's case. In particular, the Ministry representative noted that there was only a minimal impact on the Appellant's executive functioning.

The Ministry representative also noted that the answers in the Application were often brief and not very informative. The Ministry representative stated that the Ministry would require considerably more information from the health care providers but that, while it occasionally asks for clarification when information is missing from a PWD application, it usually only does so in cases where the information it has is otherwise compelling.

The Ministry representative stated that what it looks for in PWD applications is consistency in the information that it receives from applicants and the authors of the medical reports and the assessor reports, which is not present in the Appellant's case.

The panel admits the oral evidence and submissions made at the hearing of this appeal as being reasonably required for a full and fair disclosure of all the matters related to this decision, pursuant to section 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision***Issue on Appeal***

The issue in this appeal is whether the Ministry was reasonable in its determination that the Appellant was not eligible for a PWD designation because the Ministry was not satisfied that:

- the Appellant has a severe mental or physical impairment;
- in the opinion of a prescribed professional, the Appellant’s impairment directly and significantly restricted his ability to perform daily living activities either continuously or periodically for extended periods; and
- as a result of such restrictions, the Appellant requires help to perform those activities.

Panel Decision***Legal Principles***

The Act sets out the various criteria that must be met in order for a PWD designation to be made. These criteria are set out in section 2(2) of the Act:

- a person must be 18 years of age;
- the Ministry must be satisfied that the person has a severe physical or mental impairment;
- the opinion of a nurse or medical practitioner must be that the impairment is likely to continue for at least 2 years;
- the opinion of a prescribed practitioner must be that the person’s DLAs are directly and significantly restricted continuously or periodically for extended periods; and
- as a result of the person’s restrictions, the person requires help to perform daily living activities.

Severe Mental or Physical Impairment

“Severe” and “impairment” are not defined in the legislation. The Ministry considers the extent of any impact on daily functioning as shown by limitations with or restrictions on physical abilities and/or mental functions. The panel finds that an assessment of severity based on physical and/or mental functioning, including any restrictions, is a reasonable application of the relevant section of the Act. However, by itself, a medical practitioner’s

description of an applicant's condition or impairment as "severe" is not determinative. The Ministry must make its determination of severity on a consideration of all the relevant evidence and legal principles.

Restriction to DLAs

The Act requires that a prescribed professional provide an opinion that an applicant's impairment restricts one's ability to perform DLAs. In the B.C. Supreme Court decision of *Hudson v. Employment and Assistance Appeal Tribunal*, 2009 B.C.S.C. 1461, the court held that at least two daily living activities had to be restricted for the requirements of the Act to be satisfied but that not all of the enumerated activities needed to be restricted.

Section 2(1) of the Regulation specifically references the following daily living activities in respect of persons with a severe physical or mental impairment:

- preparing one's own meals;
- managing personal finances;
- shopping for personal needs;
- using public or personal transportation facilities;
- performing housework to maintain one's place of residence in acceptable sanitary condition;
- moving about indoors and outdoors;
- performing personal hygiene and self care; and
- managing personal medication.

For persons with a severe mental impairment only, section 2(1) of the Regulation specifically references the following daily living activities:

- making decisions about personal activities, care or finances; and
- relating to, communicating or interacting with others effectively.

The above daily living activities are also referenced in both the Medical Report and the Assessor Report, providing professionals who complete those reports with the opportunity to describe the extent of any restrictions to an applicant's daily living activities and to provide more detail about the restrictions. While the daily living activities in the Medical Report and Assessor Report do not match the daily living activities referenced in the Regulation exactly, they generally cover the same activities.

An applicant's inability to work and financial need are not among the daily living activities referenced in either the Regulation or the Medical Report and Assessor Report and are only relevant to the extent that they have an impact on an applicant's ability to carry out the listed daily living activities.

The restrictions to daily living activities must be significant and caused by the impairment.

The restrictions to daily living activities must also be continuous or periodic for extended periods, as per section 2(2)(b)(i) of the Act. Continuous means the activity is generally restricted all the time. A periodic restriction must be for an extended period. This means, generally, that the restriction is either frequent or, if not as frequent, occurs for longer periods of time. This can mean a daily living activity is restricted most days of the week or for an entire day on days where a person cannot perform the daily living activity without help or support. To determine whether a restriction is periodic for extended periods, it is reasonable to look for information on the duration or frequency of the restriction.

Help

Help is defined in section 2(3)(b) of the Act as one or more of:

- the use of an assistive device;
- the significant help or supervision from another person; or
- the services of an assistance animal.

Severity

With respect to the Appellant's physical impairment, the panel finds that the Ministry was reasonable in its determination that the Appellant did not have a severe physical impairment. While the Appellant clearly appears to have suffered a fairly serious arm injury, it was not mentioned by the Doctor in the Medical Report. While this omission may have been the result of the Doctor having been less than thorough in completing the Medical Report, the Ministry is nevertheless required to assess the evidence that is before it. While the Assessor Report, completed by the Social Worker, references the arm injury, it does so sparingly. The Social Worker described the injury in Part B of the Assessor Report in the section for Mental or Physical Impairment, but the arm injury is not specifically referenced elsewhere, including in the Social Worker's relatively thorough write up under Part E of the Assessor Report in the section for Additional Information. Further, the Appellant himself stated in his evidence that his difficulties with cooking were only partly due to his arm injury and also due to his mental health. As an aside, because the Doctor

did not address the Appellant's arm injury in the Medical Report, there was also no opinion provided as to whether it is likely to continue for at least 2 years.

With respect to the Appellant's mental impairment, the panel finds that the Ministry was not reasonable in concluding that the Appellant did not have a severe mental impairment.

Although not conclusive, the Doctor described the Appellant's anxiety as both longstanding and "severe," noting that the symptoms interfered with DLAs. The Doctor also described the Appellant as having significant deficits with respect to emotional disturbance, motivation, and motor activity.

The Social Worker noted that the Appellant's mental impairment had a moderate impact on his insight and judgment and attention/concentration and a major impact on his emotion, impulse control, and motivation. This was echoed by the Appellant who stated that he was unable to perform many basic tasks such as cooking and planning meals, at least partly due to his mental health symptoms. The Appellant was described by the Social Worker as marginally functioning in respect of his relationships with both his immediate and extended social networks.

The Ministry submitted that certain aspects of mental functioning (in particular, executive functioning) that might be expected to have been impacted by a severe mental impairment were not impacted in the Appellant's case. However, if it were the case that specific aspects of mental functioning were determinative in an assessment of whether a mental impairment was severe, the legislation would reflect that. On a consideration of the whole of the evidence in the Medical Report, the Assessor Report, and the Appellant's evidence in the Self Report and at the hearing of the appeal, the panel finds that the Ministry was not reasonable in its determination that the Appellant did not have a severe mental impairment.

Restrictions to Daily Living Activities

With respect to daily living activities, the Doctor did not check off any of the daily living activities specified in the Medical Report as being restricted but left "Social Functioning" blank.

The Social Worker, on the other hand, indicated that the Appellant was independent with respect to most of the daily living activities specified in the Assessor Report, with the exception of meal planning, paying rent and bills, and social functioning.

While there is considerable evidence that the Appellant is significantly restricted in respect of relating to, communicating or interacting with others effectively, there is little reference made in the Medical Report, the Assessor Report, or the Self Report as to the extent of the Appellant's restrictions in respect of meal planning or paying rent and bills. Although the Appellant stated that his grandparents make his breakfast and dinner for him, the Social Worker commented only sparingly in Part C of the Assessor Report on the type and amount of assistance that the Appellant required. As far as meals go, the Social Worker commented only "Does not often plan meals in advance" and that he needed guidance with respect to cooking and food preparation. The Appellant's evidence was that he was also partly restricted in these areas because of his arm injury. With respect to paying rent and bills, the Social Worker commented that the Appellant needed reminders and guidance with respect to budgeting and reminders and assistance with filling out documents when it came to paying bills.

Given the above and, in particular, in view of the limited detail provided by the Social Worker in the Assessor Report about the extent and cause of the Appellant's restrictions regarding meals and money management, the panel finds that it was reasonable for the Ministry to have determined that these aspects of the Appellant's daily living activities were not directly and significantly restricted by his mental impairment.

In the result, the panel finds that the Ministry was reasonable in its determination that the Appellant had not demonstrated that, in the opinion of a prescribed professional, the Appellant's mental impairment directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods.

Help

In the case of the Appellant, there is no indication from the Doctor, the Social Worker, or the Appellant himself that he requires an assistive device or the services of an assistance animal. As such, the only legislatively referenced help that could be relevant in the Appellant's circumstances is significant help or supervision from another person.

The Medical Report makes no reference to the Appellant requiring the help of another person. The Social Worker does indicate that the Appellant requires help performing daily living activities from his family in Part D of the Assessor Report but did not comment on what that help entailed or the frequency with which such help is required. In Part C of the Assessor Report, the Social Worker noted that the help required with daily living activities was "positive peer support." The frequency with which the Appellant needs support in the areas of social functioning where support is required was periodic, according to the Social

Worker. However, in the space provided on the Assessor Report for comments on the degree and duration of support required, the Social Worker instead commented on the nature of the Appellant's social functioning and the type of help required rather than describing the degree and duration of the help required, which could have assisted the Ministry in its determination of whether the Appellant met the legislative requirement of "significant help or supervision of another person."

The Self Report did not address the issue of help and while the Appellant advised that his grandparents take care of breakfast and dinner for him, it was not clear that the Appellant was incapable of taking care of meals himself or whether he required help because of his mental health issues or his arm injury.

In view of the foregoing, the panel finds that the Ministry was reasonable in its conclusion that the Appellant had not demonstrated that he required help, as contemplated by the Act, in carrying out daily living activities. In addition to the foregoing, the panel has found that the Ministry was reasonable in its finding that the Appellant's daily living activities were not directly or significantly restricted. In order to satisfy the criterion of a need for help in carrying out daily living activities, an applicant must first satisfy the criterion that the daily living activities are, in fact, directly and significantly restricted by a physical or mental impairment.

Conclusion

Although the panel finds that the Ministry was not reasonable in its determination that the Appellant's mental impairment is not severe, the panel does find that, on the evidence before it, the Ministry was reasonable in its determination that:

- a prescribed professional has not provided an opinion that the Appellant's daily living activities are directly and significantly restricted continuously or periodically for extended periods of time; and
- as a result of restrictions to the Appellant's daily living activities, the Appellant requires help, as help is defined in section 2(3)(b) of the Act.

The Appellant is not successful in the appeal.

Relevant Legislation*Employment and Assistance for Persons with Disabilities Act*

Section 2

Persons with disabilities

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

Employment and Assistance for persons with Disabilities Regulation

Section 2

Definitions for Act

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

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

- (i) prepare own meals;
- (ii) manage personal finances;
- (iii) shop for personal needs;
- (iv) use public or personal transportation facilities;
- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self care;
- (viii) manage personal medication, and

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

- (i) make decisions about personal activities, care or finances;
- (ii) relate to, communicate or interact with others effectively.

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

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

- (i) medical practitioner,
- (ii) registered psychologist,
- (iii) registered nurse or registered psychiatric nurse,
- (iv) occupational therapist,
- (v) physical therapist,
- (vi) social worker,
- (vii) chiropractor, or
- (viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

- (i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or
- (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*,

if qualifications in psychology are a condition of such employment.

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

Section 2.1

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2

(2) [*persons with disabilities*] of the Act:

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act*;
- (d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act* to assist that family in caring for the person;
- (e) a person who is considered to be disabled under section 42 (2) of the *Canada Pension Plan* (Canada).

2023-0192

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

Adam Shee

Signature of Chair

Date (Year/Month/Day)

2023/July/24

Print Name

Carmen Pickering

Signature of Member

Date (Year/Month/Day)

2023/07/24

Print Name

Susan Ferguson

Signature of Member

Date (Year/Month/Day)

2023/07/24