Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated February 10, 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. The ministry found that the appellant has a severe (mental) impairment as required by the Act but was not satisfied that:

- the appellant has a severe physical impairment,
- the severe (menta) 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 mental 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 - section 2

Employment and Assistance for Persons with Disabilities Regulation - sections 2 and 2.1

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 included:

1. A *Record of decision* indicating that the PWD application was submitted on November 24, 2022, and denied on November 28, 2022, with the *Decision denial summary* explaining the criteria that were not met. In the original decision, the ministry found that only the age and duration requirements were met.

On January 13, 2023, the appellant submitted a *Request for Reconsideration* with a request for an extension of time to submit additional information. No new information was received. On February 10, 2023, the ministry completed its review and found that the appellant has a severe mental impairment but the criteria for daily living activities and help were still not met.

2. The PWD application with 3 parts:

The *Applicant Information* ("self-report"- not signed or dated) with a typed submission from the appellant.

A *Medical Report* (undated), signed by a General practitioner ("Dr. A") who has known the appellant for 3 months, and has seen him once in the past 12 months, and

An *Assessor Report* dated November 16, 2022, also completed by Dr. A who based the assessment on office and telephone interviews with the appellant and information from a family member who is also the appellant's advocate.

Summary of relevant evidence from the application

Diagnoses

In Section A of the Medical Report, the appellant is diagnosed with spastic hemiplegia (onset, October 2004); Right hip dysplasia ("pain" - onset 2010), and anxiety disorder and mood disorder (onset 2010).

In Section B - *Health History*, Dr. A described Spastic hemiplegia as "moderate in severity." Hip dysplasia "has resulted in moderate, sometimes severe pain." In Section F - *Additional Comments*, Dr. A noted "significant pain" due to hip dysplasia. The appellant's anxiety and depression are "moderate to severe."

Additional information from the appellant - diagnoses

In the self-report, the appellant described "mild cerebral palsy on my right side" since birth, resulting in "lengthening surgery" on his right leg. The appellant said he was later diagnosed with hip dysplasia resulting in chronic pain.

The appellant reported that his hip pain is getting worse. He will eventually require hip replacement surgery as recommended by a university hospital. The appellant said that he is also suffering from "various mental illnesses." The most prominent of these are anxiety and obsessive compulsive disorder ("OCD").

Functional skills

Self-report
The appellant reported missing months of school at a time due to his mental illnesses and physical disabilities. The appellant said that his hip dysplasia is so severe that most days, he cannot get out of bed, do simple tasks, or attend school. The appellant said that he used to enjoy physical recreation but has lost the motivation "to do the things I love most in life…now I'm lucky if I can go for a quick walk."

Medical Report
In Section B - *Health History*, Dr. A said that anxiety and depression prevent the appellant from doing physical activities as well as "dealing with the demands of concentration, interactions with others and errands."

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 doctor checked "no" when asked if the appellant has difficulties with communication.

When asked if there are any significant deficits with cognitive and emotional function, the doctor checked "yes" with additional check marks for 3 of the 12 areas listed:
Emotional disturbance
M*otivation*
Attention or sustained concentration.

In Section F - *Additional Comments*, Dr. A wrote, "social and cognitive functions are limited."

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

Consciousness
Executive
Language
Memory
Perceptual psycho-motor
Psychotic symptoms
Impulse control
Motor activity
Other

Assessor Report

In Section B-2, Dr. A indicated "good' for 3 areas of communication: *speaking*, *reading*, and *hearing*. The appellant's ability to write is "poor" (comment, "poor dexterity").

In Section B-3, the doctor 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 functions. For the 14 areas listed, Dr. A indicated the following impacts:
minimal impact for *language*
moderate impact for *impulse control*, *insight and judgment*, *attention/concentration*, *memory*, and *other neuro-psychological problems*
major impact for *emotion*, *executive*, and *motivation*.

The doctor checked "no impact" for the remaining functions:
Bodily functions (including sleep disturbance)
Consciousness
Motor activity
Psychotic symptoms

No check mark was provided to indicate the degree of impact for *other emotional or mental problems*.

Daily living activities

Dr. A provided the following information:

Medical Report
In Section C-3, the doctor 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 doctor checked "no" when asked if the impairment directly restricts the person's ability to perform activities.

Assessor Report
In Section B-1, Dr. A wrote that pain (due to hip dysplasia) "affects his activities." Anxiety prevents the appellant from "shopping and functioning."

Restricted daily living activities

In Section C, Dr. A indicated the following restrictions for 6 of the 8 daily living activities listed in the form:

Basic housekeeping

The appellant requires continuous assistance with all activities (*laundry*, and *basic housekeeping*).

Shopping

The appellant requires periodic assistance from another person with 3 of the 5 listed areas: *going to and from stores*, *making appropriate choices*, and *carrying purchases home* (comment, "social anxiety prevents him from shopping").

Under *Additional Comments* for these daily living activities including the type and amount of assistance required, the doctor stated that family members "help him with shopping. [The appellant] spends most of his time at home."

Dr. A checked "independent" for *reading prices and labels*, and *paying for purchases*.

Meals

The appellant needs continuous assistance with all areas: *meal planning*, *food preparation*, *cooking*, and *safe storage of food* (comment, "lives with [family members] who do these things for him").

Pay Rent and Bills

The appellant needs periodic assistance with all areas: *banking*, *budgeting*, and *pay rent and bills* (comment, "lives with [family members] who do these for him").

Transportation

The appellant requires assistance with 2 of 3 areas listed: *using public transit* (periodic assistance from another person), *using transit schedules and arranging transportation* (continuous assistance). Dr. A wrote "see above" in reference to help provided by family. *Additional comments* for these daily living activities was left blank.

Dr. A checked "independent" for *getting in and out of a vehicle*.

Social Functioning

In Section C, the doctor indicated restrictions with one area of *Social Functioning.* The appellant requires periodic support/supervision from another person with *able to develop and maintain relationships* (comment, "few friends").

Dr. A assessed the remaining areas as "independent:"
Appropriate social decisions
Interacts appropriately with others,
Able to deal appropriately with unexpected demands
Able to secure assistance from others.

The doctor checked that the appellant has "marginal functioning" with his immediate and extended social networks. When asked what support/supervision is required to help maintain the appellant in the community, the doctor indicated family support.

Section E - *Additional Information* was left blank.

Dr. A 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 *dressing*, *grooming*, bathing, *toileting*, *feeding self*, *regulating diet*, and *transfers* (bed and chair).

Medications

The doctor checked "independent" for *filling/refilling* prescriptions, *taking as directed*, and *safe handling and storage*.

Additional information from the appellant – daily living activities

In the self-report, the appellant stated that "daily activities including movement are very hard for me to do." The appellant said he has difficulty doing "simple day to day tasks…most days."

Need for help

Medical Report
In Section B-4, Dr. A checked "no" when asked if the applicant requires any protheses or aids for the impairment.

Assessor Report
In Section A-1, Dr. A did not check whether the appellant lives alone or with family or other people. In Section D - *Assistance provided by other people* the doctor checked "family." The doctor left the next part of Section D blank - *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 January 13, 2023, with a typed submission dated May 31, 2023. In addition to argument for the reconsideration, the appellant added the following details:

Symptoms and functional skills

He suffers from severe chronic pain due to "multiple permanently disabling conditions."

Walking any distance results in "extreme pain." Sitting is also very uncomfortable.

In addition to "instability and excruciating pain" from hip dysplasia, he also has "left side

brain trauma as well as mental illness, OCD, ADHD, and severe social anxiety."

He has had numerous injections to reduce pain "with little to no benefit."

Daily living activities

The appellant reported that getting out of bed in the morning "is very difficult."

Additional submissions

The advocate submitted a large volume of documentary evidence requiring an admissibility determination by the panel. The advocate also provided additional information at the hearing. The ministry raised no objections to any of the submissions and the panel admits all the new evidence which provides additional background information on the appellant's diagnoses, symptoms, and treatments/interventions, as well as historical and updated information regarding function. The panel finds that the additional submissions are admissible as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The appellant filed a *Notice of Appeal* with a hand-written statement which the panel accepts as argument. Both parties provided argument at the hearing. The panel will consider the arguments in Part F-*Reasons.*

Documentary evidence

The appellant submitted 9 submissions containing 295 pages of documents. The relevant evidence from the submissions is summarized as follows:

1. Appellant Submission I (2010-2012), 76 pages, received at the Tribunal on May 17, 2023

Background information - physical impairment

A *Medical Imaging Consultation* (exam date March 11, 2010) indicated no cervical spine abnormalities. A review of images obtained in another country, showed a white matter abnormality "suspicious for metabolic disease."

A letter from an orthopedic surgeon dated March 17, 2010 (with additional hospital records) describe a neck injury from which the appellant recovered. The surgeon noted the appellant's "mild right-side Cerebral palsy."

A *Gait Analysis Report* dated July 8, 2010, states that the appellant was referred to the Gait lab with an underlying diagnosis of right hemiplegia. The appellant was involved with bike riding, swimming, and other activities. The report noted that the appellant wore bilateral AFO orthotics ("leg braces") and tripped frequently but was able to walk easily and independently and had mild difficulty with running, balance, and coordination.

A letter from a neurologist dated June 1, 2011 ("2011 neurologist letter") described the appellant's developmental history including a non-progressive congenital myopathy diagnosed in infancy with notable hip girdle instability. The appellant started walking at age 2 and was followed by a physiotherapist. The appellant's strengths were noted as cognitive, including a sharp memory and excellent language skills.

Mild right-side hemiplegia was identified with symptoms of mild leg weakness; an unsteady gait, and excessive internal foot progression and asymmetry. The Gait lab recommended Botox treatment if the leg brace could not be tolerated.

A *Diagnostic Radiology Consultation Report* dated August 24, 2011, indicated no bone, soft tissue or joint abnormalities in the pelvis.

A letter from an orthopedic specialist dated August 24, 2011, stated that the appellant had a community physiotherapist. The letter noted tibial abnormalities on the appellant's right side, exaggerated by the rotation of his hips. Surgery and Achilles lengthening may be indicated as the appellant's foot "is completely mobile and correctable" and his left side has "excellent range of movement."

A letter from a neurologist dated August 24, 2011, stated that the appellant's right-side hemiplegia has not progressed. An MRI of the appellant's spine was essentially normal. The appellant continued to have mild spasticity on the right side with his leg more affected than his arm.

A letter from a pediatric ophthalmologist dated December 15, 2011, indicated a normal eye examination with no optic nerve or vision problems.

Laboratory test results dated December 15, 2011, indicated an "unremarkable plasma amino acid profile" (pathologist's comment). A telephone record from the hospital stated that bloodwork was necessary to look for the underlying cause of symptoms.

2. Appellant Submission II (2015-2017), 26 pages, received at the Tribunal on May 17, 2023

Background information - physical and mental impairment

A letter from a neurologist dated August 14, 2015 ("2015 neurologist letter") indicated right-side hemiplegia since age one. The appellant was generally doing well "but he has certain social problems and has been seen by a psychologist." The appellant did not require neurological intervention "other than addressing his behavioural/psycho-social issues."

A report from an outpatient physiotherapist dated July 5, 2017 ("2017 physiotherapy report") noted "spastic diplegic cerebral palsy" with level II functional mobility. A new Gait analysis was performed in July 2016, and some surgical recommendations were previously discussed.

The appellant had some discomfort in his lower extremities, primarily after walking a long distance. The appellant reported some hip pain, but his main concern was to discuss surgery to help his foot achieve a plantigrade position. The appellant was noted to walk on his toes at times, with some flexion in his right knee which challenged his mobility. The appellant had multiple bruises due to frequent falls but was in good health otherwise.

The report indicated that the appellant can ride a bike, skateboard, and play tennis which he is quite good at. The appellant had not worn his leg brace consistently due to some discomfort but was "independent in functional mobility and does not use any mobility devices or ambulation aides." The appellant navigated stairs without using the handrail. He sometimes required hand-held assistance to navigate uneven surfaces.

An apparent leg length discrepancy was observed, with the right leg shorter than the left. A mild deformity of the left knee and "a mild planovalgus evident in standing" were also observed. A pelvic x-ray revealed a mild right hip abnormality; however, the appellant was not registered with the *Hip Surveillance Program*. Mild spasticity was evident in the lower right extremities, primarily the hamstrings and gastrocs.

Surgical treatment including a right gastrocs recession and right hamstring lengthening ("leg-lengthening surgery") was recommended by an orthopedic surgeon. The appellant would need to use his leg brace throughout the adolescent growth spurt to maximize the outcome of the surgery. The surgery would likely take place in the next 12-18 months.

A letter from an orthopedic surgeon ("Dr. B") dated July 5, 2017 as well as earlier letters from Dr. B and the family doctor (2015 and 2016), addressed the appellant's mechanical issues and the potential benefits of surgery. Upon re-assessment by the physiotherapist

and Gait lab, Dr. B believed that leg-lengthening surgery would improve the appellant's gait and help prevent knee flexion contracture on the right side. The risks and benefits of surgery were discussed, and consent was obtained.

3. Appellant Submission III (2018), 103 pages, received at the Tribunal on May 17, 2023

Background information - 2018 leg-lengthening surgery

A letter from Dr. B dated August 8, 2018, discussed the appellant's pre-operative function. The appellant had been non-compliant with his leg brace in the past and was currently not wearing any braces or attending physiotherapy. The appellant was actively involved in physical recreation, and occasional foot and hip pain did not limit his activities. The leg-lengthening surgery will proceed as planned.

Hospital records from August 2018 confirmed that the appellant underwent right hamstring and calf lengthening surgery for Cerebral palsy on August 9, 2018. This elective surgery was uncomplicated, and pain was well tolerated with Tylenol and Advil in addition to a medication for mild anxiety.

A letter from an orthopedic Fellow dated October 3, 2018, stated that the appellant presented with right-sided foot pain 8 weeks post-surgery. The doctor reassured the appellant that he is doing really well, and the pain is likely due to "getting used to things."

A letter from an orthopedic Resident dated October 31, 2018, stated that the appellant was having difficulty with his leg brace but had been wearing it at night; attending physiotherapy regularly; and doing stretching exercises. The appellant had some "vague leg pain" which he stated was minor. The doctor recommended adjustments to the brace. The appellant will be seen in 6 months if there are no concerns.

4. Appellant Submission IV (2019-2022), 36 pages, received at the Tribunal on May 17, 2023

Follow-up - post-2018 leg-lengthening surgery

Outpatient clinic notes from an orthopedic resident and Dr. B (June 12, 2019), stated that the appellant was doing well since the surgery in August 2018, despite some discomfort due to his leg brace. A personal trainer has helped the appellant in a lot of ways. It is important for the appellant to stay as fit and active as possible and to use the leg brace as prescribed.

A *Gait Analysis Report* from Dr. B dated August 29, 2019, noted that the appellant has an endurance of one hour for activities such as skateboarding and swimming. Dr. B stated that the appellant "is able to walk independently on all surfaces and at all distances with minimal difficulty with balance." The appellant is "able to walk easily indoors and outdoors and has mild difficulty when running, or with balance and coordination."

Dr. B stated that at one-year post-surgery, the appellant has an improved hamstring length, and "a very functional range of motion in his right knee and ankle" despite some mild, persistent contracture. The appellant is doing very well overall and will have a follow-up Gait analysis in 2 years.

An outpatient clinic note from Dr. B dated November 6, 2019, indicated "no new significant contractures or areas for further orthopedic intervention." Dr. B recommended the leg brace for the next year or two, removing it for activities. The appellant will have a follow-up appointment in one year.

Recent information - hip dysplasia

A letter from Dr. B dated October 28, 2020, referred the appellant for potential surgical management of his right hip dysplasia. Dr. B stated that the appellant had developed some right hip symptoms over the last few years, predominantly, "right activity-related groin pain." X-rays showed a "dysplastic acetabulum with mild lateral femoral head wear that has progressed over the last 3 years."

An outpatient clinic note from an orthopedic Resident ("Dr. C") dated October 28, 2020, indicated that right-sided hip pain had been ongoing for approximately 6 years. The appellant reported that the pain became worse after a low-speed fall from his skateboard almost a year ago. The pain was worse with certain movements as well as prolonged weight-bearing on the right side.

Dr. C said that the appellant "is still able to skateboard and complete his activities of daily living without significant limitation, but he is having daily pain." There was no history of dislocation, pain at night, or numbness in his lower extremities. The appellant had some residual right-sided leg weakness as a result of the previous leg-lengthening surgery. The appellant had a long-standing limp, unchanged despite his hip pain.

An X-ray in September 2020 showed signs of dysplasia that are more advanced than on the previous X-ray in 2017. Dr. C suggested that the progression of right-sided hip dysplasia over the last 3 years was likely due to the appellant's residual right-sided

hemiplegia, as well as his participation in skateboarding and other physical activity which is beneficial overall.

Dr. C recommended conservative management with physiotherapy to strengthen the area. The appellant can take Advil or Tylenol as needed for pain. A potential surgical option could be pursued if the pain became significant and limits the appellant's activities.

An outpatient clinic note from an orthopedic Fellow ("Dr. D") dated February 1, 2021, indicated an 18-month history of right hip pain which is felt in the groin and worse on flexion of the hip. The appellant rated the pain at 7/10, "but it does not stop him doing the things he likes, such as skateboarding."

Clinically, the appellant walked with a slight limp as there was a limb length inequality of approximately 1.5 cm. The appellant had a satisfactory range of motion in both hips. Recent X-rays indicated "degeneration of the lateral border of the femoral head such that it is losing its sphericity."

Dr. D stated that the only surgical option at that point would be a periacetabular osteotomy ("PAO surgery") to improve coverage on the right hip. Dr. D described the surgery as "a bit of an undertaking and would require a bit of logistical planning," as it is not routinely offered at the appellant's local hospital. Dr. D reported that the appellant is against any form of surgery, and PAO surgery was not indicated at this time as the appellant's symptoms "do not seem that bad."

Dr. D stated that the surgery could be considered in "the next year or 2, depending on how he does…as it is a procedure that will help maintain his native hip and theoretically reduce the chance of him having an early total hip replacement." The appellant will be reassessed in a year. Physiotherapy was recommended in the meantime "for strengthening his glutes and core," along with "simple analgesia for exacerbation of the pain."

An outpatient clinic note from an orthopedic Resident ("Dr. E") dated March 3, 2022, indicated "ongoing right hip pain" in addition to Right spastic hemiplegia. The doctor noted significant flattening on the lateral aspect of his femoral head and associated degenerative changes." PAO surgery was discussed, and the appellant had already sought an opinion at a university hospital.

An outpatient clinic note from Dr. E dated March 17, 2022, suggested physiotherapy, specifically for the appellant's right hip. PAO surgery was discussed and the appellant was advised to "try and maintain his native hip for as long as possible." Dr, E stated that

"maintaining his native hip and getting a total hip replacement in the future would be his best option given the radiographic findings at this time."

Dr. E noted that the appellant continued to ride his skateboard and had not had physiotherapy for his hip. Other forms of treatment including kinesiology, chiropractic, and injections were discussed. On examination, the appellant continued to walk with an antalgic gait. Recent X-rays indicated that joint space narrowing and lateral flattening of the femoral head had progressed. The doctor reiterated that "physiotherapy is paramount for maintaining his motion and stability and decreasing his pain in his right hip."

5. Appellant Submission V, 1 page, received at the Tribunal on June 7, 2023

Recent information - mental impairment

A letter from a Registered psychologist dated June 7, 2023, stated that the appellant had been engaging in psychotherapy intermittently with the writer since 2018. The appellant has a history of mental health conditions including:
OCD: currently in remission but obsessive tendencies persist.
Generalized anxiety disorder: longstanding and ongoing
Neurodivergence including a diagnosis of ADHD
Learning disorder (impacts current functioning).

Functional restrictions

The letter from the psychologist stated that the learning disability causes differences in brain function that affect the appellant's daily mental functions, including "*severely* affected executive functioning impacting his behavioural inhibition, decision-making, engaging in goal-oriented behaviour, and understanding action-consequence relationships. This contributes to recklessness and affects his safety."

6. Appellant Submission VI, 24 pages, received at the Tribunal on June 12, 2023

Mental functioning - 2015 psycho-educational assessment

A *Psycho-educational Assessment Report* from a Registered psychologist, dated June 2015 ("2015 psych-ed. report"), stated that:

The appellant was referred for the assessment "due to behaviour concerns at home and school." The appellant's home environment is supportive but stressful due to ongoing

behaviour challenges which have persisted despite supports such as community and school counsellors.

The appellant exceeded in school until the past year when he became unhappy; reluctant to complete work independently; and needed frequent reassurance that he was doing things correctly. The appellant struggles with fine and gross motor difficulties; the physical aspect of writing is difficult for him.

The appellant was described by family as “discontent for most of his life.” It is difficult for the appellant to shift his mood away from negative ideas or experiences. He holds onto past hurts and disappointments “for years.” The appellant has some OCD tendencies, mostly around health and safety, “including frequent hand washing causing his hands to chafe.”

Socially, the appellant has good social skills for relating to people but has difficulty making friends with his peers; struggles with “social banter”; and would not have any peer interactions if a family member did not plan and facilitate social engagements.

In 2014, the appellant was assessed by a psychiatrist who diagnosed an anxiety disorder.

Eight psychometric tests/rating scales were administered with results valid for 2-3 years. The tests identified deficits with perceptual reasoning (“well below average”) that can contribute to problems with social interactions and anxiety because of difficulty understanding non-verbal communication.

The appellant scored “well below average” on visual memory tasks and “extremely low” on visual motor coordination. The appellant was “well below average” on a measure of applied problem-solving in mathematics.

Difficulties with peer relationships, cognitive shifting, emotional control, and task planning/organization were in the “clinically significant” or “at-risk” range on some measures. The test results showed difficulty with many executive functions overall.

Symptoms of depression, low mood, anxiety, and social withdrawal were “clinically significant.” The appellant displays many performance-related fears which may be related to self-concept concerning his physical disability.

The psychologist recommended a wide range of techniques and supports including applied behaviour intervention, cognitive-restructuring, and occupational therapy. The

appellant has an Individual Education Plan ("IEP") with current goals of improved school attendance and attitude, and positive peer relationships.

7. Appellant Submission VII, 2 pages, received at the Tribunal on July 14, 2023

Recent information - hip dysplasia

A letter from the appellant's family doctor (Dr. A) dated May 15, 2023, stated that the appellant's hip is "regularly becoming painful and non-weight bearing." The appellant will not be able to attend school in person at this time but will be able to continue with his courses on-line.

8. Appellant Submission VIII, 5 pages, received at the Tribunal on July 14, 2023

Recent information - cognitive and social functioning

An *Individual Education Plan* ("IEP") *Review* dated June 22, 2022, included a self-report on interests, and cognitive and social functioning. The appellant said he enjoys tennis as well as skateboarding and cycling. The appellant described challenges with math and some difficulty with science. The appellant reported having good verbal reasoning.

The appellant reported that his social strengths include being able to ask for help as required, and having a network of friends (comment, "I am social and have lots of friends"). The appellant said that he likes to fit in but finds it hard to reach out to "new people" and make friends.

The appellant was described by his teachers as "proficient" with physical education, asking for assistance, and understanding English literature. The appellant "does well in group activities when he surrounds himself with students committed to engagement and learning."

The appellant's ability to contribute meaningfully to class discussions, conduct research, and plan/carry out a science experiment were assessed as "developing." The appellant's performance in math was assessed as both "emerging" and "developing."

9. Appellant Submission IX, 22 pages, received at the Tribunal on July 21, 2023

Mental functioning - 2019 psycho-educational assessment

A *Psycho-educational assessment report* from a Registered psychologist, dated April 26,

2019 (“2019 psych-ed. report”), stated that:

The purpose of the assessment was to provide updated information regarding the appellant’s strengths and learning needs upon transition to high school. The appellant has a history of behavioural and mental health challenges including the diagnosis of an anxiety disorder in 2014. The appellant has been taking medication for anxiety since age 10.

Despite strong social and communication skills, the appellant has had peer difficulties related to his tendency to associate with peers who are not always kind to him.

The appellant is designated as a student with a physical disability/chronic health impairment. He has received a variety of support services including speech-language therapy, occupational therapy, physical therapy, art therapy, learning supports, and therapeutic riding. The appellant has seen counsellors and has an IEP with goals for increased independence and strategies to maximize learning.

The appellant has not wanted to attend school since his primary years and has “significant difficulties with follow-through in completing assignments and has problems with self-regulation. He is easily distracted and has difficulties with focus.”

The appellant has difficulties with organization, motivation, and adapting to change. He continues to have with anxiety and obsessive-compulsive behaviours.

The appellant’s strengths include being well-liked, patient, and kind. He enjoys tennis and skateboarding but is frustrated about having to wear his leg brace for 3 years.

Thirteen psychometric tests/rating scales were administered with results valid for 2-3 years. The test results were consistent with previous testing indicating “documented weaknesses in perceptual reasoning, and particular difficulty with visual-constructional ability.” The appellant has relative strengths in language-related abilities, and weaknesses with visual-motor processing speed and interpreting visual-spatial information.

The appellant has “relative strengths in verbal memory and significant weaknesses for visual-spatial information” (also consistent with the testing in 2015).

The appellant’s difficulties with “writing mechanics” have also persisted and are suggestive of a “mild learning disability/disorder in writing.” The appellant meets the criteria for a learning disability/disorder in math.

The appellant displays “elevated levels of problems with executive functions, disruptive/aggressive behaviours, and peer relations,” especially in the school setting where there are greater demands for focus and attention. The appellant was rated as having “very significant problems with initiation (getting started on things) and organization of materials.”

The appellant “does not meet the criteria for ADHD at this time…although he does have genuine difficulties in this area and his capacity for attention should be monitored.”

The test results suggested significant difficulties with anxiety, with particular elevations in obsessive/compulsive symptoms. Adaptability, social skills, and functional communication were in the normal range.

The appellant’s self-care skills were rated as “low-average” (home) and “high-average” (school) and his home living skills were rated as “extremely low.”

The appellant’s cognitive and learning difficulties “are consistent with the pattern of Non-verbal learning disorder” which can present with a lack of motivation or disinterest, as well as difficulties with executive function and organization. Peer difficulties due to “difficulty reading visual cues in social interactions” are also features of the disorder.

Recommendations included extensive support for social functioning with peers such as encouraging participation in orderly, structured activities; pairing with a “buddy,” and one-to-one support and guidance in groups. The appellant would continue to benefit from psychotherapy or counselling to learn coping strategies, anxiety-reduction techniques, and strategies for increasing self-esteem and enhancing mood. Daily participation in physical activity was encouraged.

Oral testimony

The appellant attended the hearing with his advocate but did not appear on camera at the video-conference. The advocate provided the following information, describing the appellant’s current health, level of function, and restrictions to daily living activities:

The appellant had a 6-person team supporting him at school. He has now graduated from high school; is unable to work and continues to live at home.

The proposed hip surgery is still on hold. The most recent advice from doctors is to wait 5 years and deal with the pain in the meantime. The advocate explained that the leg-lengthening surgery was terrifying for the appellant: “he catastrophizes, he worried that

he would lose his leg if he had surgery. He was terrified by Terry Fox's situation." The appellant will need a hip replacement in the long-term.

The appellant is able to dress himself and move without a walker "but hip pain inhibits his participation in almost everything."

The appellant often does not get dressed "because he lies in bed." The appellant relies on family help and support 80% of the time. The appellant has to be "micro-managed" because his mental functioning is characterized by "constant chaos and confusion." The appellant also displays "a lack of judgment around what is/is not safe and who is/is not a friend."

The appellant is able to do laundry/prepare meals from a physical standpoint, "but it won't get done. He would throw laundry on the floor; he is not able to sequence the task." The appellant "can make macaroni and cheese, but he will put the water on the stove, then walk away." The appellant "is in a disorganized state. He leaves the doors open or the stove turned on." When the appellant "tries to do something, there is chaos. If he takes a shower there will be puddles of water on the floor."

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 Act were not met:

The appellant has a severe physical impairment (a severe mental impairment was established);

The (mental) 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 (mental) 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 severe physical or 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 3 of the 5 requirements were met because the appellant is at least 18 years of age, a doctor has given the opinion that the impairment is likely to continue for at least 2 years; and a severe (mental) impairment was established on the evidence.

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

Severe physical impairment

Appellant's position

The appellant's position is that his physical impairment is severe because he experiences "severe chronic pain every day" due to hip dysplasia. The appellant argues that he is in so much pain that he cannot get out of bed most days. Even though he is physically capable of walking 4+ blocks, he will be in "extreme pain" upon walking any distance. The appellant said that sitting is also very uncomfortable.

The appellant said that his mental health conditions exacerbate the chronic pain which has been getting worse, causing him to miss months of school at a time. The appellant said that he has been suffering for the past 4 years and can no longer enjoy skateboarding which was one of his favourite things to do. His Cerebral palsy has caused wear and tear on his hip, so he needs a total hip replacement as recommended by his doctors. The appellant argues that numerous injections to reduce that pain were of little or no benefit.

The appellant argues that Dr. A (his new family doctor) did not have accurate information about his conditions. The advocate explained that the doctor who had followed the appellant for 10 years has retired. The advocate said that Dr. A is not familiar with the appellant's lengthy medical history; did not have a lot of time to fill out the forms, and therefore omitted many points. The advocate acknowledged that the appellant's "neuro-divergence," anxiety, and OCD are "pushing him toward physical pain."

Ministry's position - reconsideration decision

In the reconsideration decision, the ministry's position was that the information from Dr. A did not establish a severe physical impairment because all physical functions were assessed as independent. The ministry acknowledged that the appellant experiences some pain, but argued that the functional assessments from Dr. A do not describe a *severe* degree of impairment.

Ministry's position - additional submissions

At the hearing, the ministry considered the additional submissions but maintained that a severe physical impairment was not established on the evidence. In particular, the ministry said that there was still not enough information about the physical impairment impacting daily living activities.

Panel's decision - physical impairment

The panel finds that the ministry's decision (no severe physical impairment) was reasonably supported by the evidence. The additional submissions support the appellant's evidence regarding a lot of pain due to hip dysplasia, but they do not confirm the degree of limitation the appellant attributes to his physical impairment.

The recent evidence about the appellant's mental health indicates that his experiences with pain and physical limitations are more closely related to his mental impairment. In the Medical Report as well, Dr. A said that the appellant's anxiety and depression (rather than his hemiplegia and hip dysplasia) prevent him from doing physical activities.

In the PWD Medical Report, Dr. A stated that "significant pain" due to hip dysplasia is longstanding (onset 2010). However, in the Medical and Assessor Reports the doctor indicated the lowest degree of restriction ("independent") for all physical functions. The appellant was able to walk 4+ blocks and climb 5+ steps unaided; and had no limitations with lifting, carrying, sitting, or standing despite his hip pain.

In the additional submissions, the appellant's hemiplegia (and most of the associated symptoms) were consistently described as "mild" by various orthopedic/neurology specialists across the large number of medical reports that were submitted. In addition, no spine or pelvic abnormalities were found.

While the appellant walked with a limp both before and after the leg-lengthening surgery, the braces that he wore throughout his life, were to treat the hemiplegia and maximize

the benefits of surgery, rather than a mobility aid for walking or performing physical functions. The appellant has always been independent with his mobility.

Hip pain was first described in the 2017 physiotherapy report which noted "a mild right hip abnormality," but no monitoring through the *Hip Surveillance Program* and no activity limitations on account of pain. Following the leg-lengthening surgery in August 2018, the appellant had resumed skateboarding and swimming and was "able to walk easily indoors and outdoors" (report from Dr. B, August 2019).

The information from orthopedic specialists (Dr. B and Dr. C, 2020) indicated "daily hip pain" and more advanced signs of hip dysplasia and degeneration of the femoral head. However, the appellant was "still able to skateboard and complete his activities of daily living without significant limitation."

A conservative approach was recommended, and the appellant was prescribed over-the-counter medications for pain (Advil and Tylenol). Physiotherapy to strengthen the area was strongly recommended and surgery would only be pursued if the pain became significant and limited the appellant's activities.

In 2021, (clinical note from Dr. D), the appellant rated his hip pain as "7/10" but was still participating in skateboarding and other physical recreation. Dr. D said that PAO surgery was not indicated at that time because the appellant's symptoms "do not seem that bad." Physiotherapy to strengthen the glutes and core as well "simple" pain medications were recommended.

In 2022, the appellant was advised to "maintain his native hip" and avoid surgery for as long as possible. Another orthopedic Resident (Dr. E, March 2022), noted that the appellant continued to skateboard and had not had physiotherapy for his hip. Dr. E reiterated that "physiotherapy is paramount" for maintaining motion and decreasing hip pain. The appellant stated that injections have not helped his pain, but he provided no recent evidence about physiotherapy to strengthen his hip area or what the outcome has been to date.

The most recent medical information (letter from Dr. A, May 2023) confirmed that the hip is "regularly becoming painful and non-weight bearing" to the point that the appellant was not able to attend school in person. However, there was no updated assessment of his ability to walk, climb stairs, lift, carry, sit, or stand, and no indication that he requires stronger medications or an assistive device. The advocate confirmed at the hearing that the appellant continues to "move on his own without a walker" despite mobility being very painful for him.

The panel finds that the evidence, as a whole, does not establish a severe physical impairment because there was no updated medical information on the appellant's ability to walk, sit, etc. and no update on the recommended physiotherapy for hip function and pain reduction. However, the requirement for a severe impairment under the Act was met based on the appellant's mental disorders including anxiety and mood disorders, OCD. ADHD, neuro-divergence, and learning disorders.

Restrictions to daily living activities

Appellant's position

The appellant's position is that his hip pain and mental health conditions prevent him from getting out of bed and doing simple tasks "most days." The advocate argued that the appellant is also continuously restricted with doing laundry, preparing meals, and showering because he is "unable to sequence tasks."

While he is physically able to do these things the advocate said the appellant is "constantly in a state of disorganization, chaos, and confusion," with the result being that "things don't get done." The advocate argued that the appellant displays a lack of judgment about safety and has impaired social functioning due to not recognizing "who is/is not a friend."

Ministry's position - reconsideration decision

In the reconsideration decision the ministry said there was not enough evidence from Dr. A to confirm that a severe impairment significantly restricts daily living activities continuously or periodically for extended periods as required by the Act. The ministry acknowledged "continuous assistance" from family with laundry, basic housekeeping, meals, and using transportation, as well as "periodic assistance" for paying rent and bills, and shopping.

However, the ministry argued that it was unclear why the appellant needs help with these activities when he does not have limitations to his physical function. The ministry argued that it was unclear whether the appellant requires help from family because of a medical condition or because of "a delegation of household responsibilities" with family members doing most of the household tasks.

Where periodic assistance was indicated for daily living activities (including social functioning), the ministry argued that no additional information was provided to explain the type, frequency, or degree of support that is needed. The ministry noted that the

appellant did not require support with most areas of social functioning in the Assessor Report.

Ministry's position - additional submissions

At the hearing, the ministry took a different position and said that the additional evidence submitted on appeal, supports that daily living activities are directly and significantly restricted by the severe impairment. The ministry accepted that the 2019 psych-ed. report showed elevated problems with executive function, memory, motivation, and cognitive and emotional functions which make it difficult for the appellant to complete daily tasks and develop positive relationships with his peers.

The ministry was satisfied that the recent letter from the psychologist (June 7, 2023) established that daily living activities are significantly restricted by the appellant's anxiety, OCD, and other mental impairments, especially in the areas of decision-making and social functioning, with safety also affected. The ministry said that the additional information "confirms that supports are required for the applicant."

Panel's decision - daily living activities

The panel finds that the reconsideration decision was not reasonable because the totality of evidence including the Medical and Assessor Reports and additional information on psychological functioning, show that daily living activities are directly and significantly restricted. The record as a whole supports continuous restrictions to daily living activities due to anxiety/mood disorder, OCD, ADHD, and learning disorders. The advocate offered specific examples of the appellant's challenges with daily tasks that support the information from Dr. A and the psychologists.

The evidence that establishes restrictions to daily living activities includes:

Medical and Assessor Reports

In the PWD application, Dr. A said that anxiety and depression prevent the appellant from doing errands and impair his social interactions.

Dr. A identified significant deficits or moderate/major impacts for *motivation*, *executive*, and *attention/sustained concentration*, with 'limited' social and cognitive functions.

The doctor said that anxiety (particularly social anxiety) prevents the appellant from "shopping and functioning."

The appellant "spends most of his time at home" and relies on his family for continuous assistance with laundry, housekeeping, and meals.

Despite the check mark in the Medical Report to indicate no restrictions and the check marks indicating that social functioning is mostly independent, the panel gives more weight to Dr. A's information on deficits and impacts, as well as the narrative comments and assessments for specific activities. These demonstrate that the combined effect of cognitive/emotional deficits and impacts significantly restrict daily living activities such as *shopping*, *basic housekeeping*, *meals*, and *social functioning*.

The ministry argued that the periodic assistance indicated for shopping, budgeting/paying bills, and using transportation was not explained. However, the evidence regarding significant and ongoing cognitive difficulties, and reliance on family support to perform daily tasks, establishes that the restrictions reported are for extended periods as required by the Act.

Additional submissions

In the earliest submissions (2011 neurologist letter), the appellant was noted to have cognitive strengths including a sharp memory and excellent language skills. The appellant's "behavioural and psycho-social problems" were first described in the 2015 neurologist letter. The appellant did not require neurological intervention but was referred to a psychologist.

The psycho-educational assessments conducted in 2015 and 2019 were largely consistent in finding that:

The appellant has difficulty making friends and initiating social engagements despite his strong social and communication skills. The appellant has significant deficits with perceptual reasoning which contribute to his problems with social interaction.

The appellant has difficulties with task planning/organization and struggles to complete tasks independently He has a lot of difficulty getting started on things and following through in completing tasks. The appellant is easily distracted and has difficulties with focus, motivation, and adapting to change.

The appellant has learning disorders and "clinically significant" scores for executive function. Testing corroborated difficulty with interpreting visual-spatial information despite relative strengths with verbal memory.

While the appellant's self-care skills are "low-average" at home, his "home living skills are extremely low" due to a lack of motivation as well as difficulties with executive function, especially organization.

The appellant continues to require a wide range of supports and therapeutic techniques to manage his daily life.

The panel finds that the limitations with cognitive and social functioning described in the psych-ed. reports support Dr. A's assessments of significant restrictions with daily living activities. All the reports indicate challenges with planning and organization as well as low motivation and high levels of anxiety that make it difficult for the appellant to function effectively.

While the appellant's self-report (June 2022 IEP) indicates "lots of friends," in the *Request for Reconsideration* (January 2023) "severe social anxiety" was reported as well as a lot of difficulty getting out of bed each day. The recent psychologist letter (June 7, 2023) indicates that the appellant's anxiety, obsessive tendencies, ADHD, and learning disorder continue to impact his current functioning. The appellant has difficulty with decision-making, engaging in goal-oriented behaviour, and understanding the consequences of his actions which affects his safety.

At the hearing the advocate further detailed the appellant's restrictions with daily living activities. The appellant has challenges in identifying who is/is not a friend. "Chaos and confusion" ensue when the appellant attempts to shower, cook, clean, or do an errand without a family member "micro-managing" these activities.

Summary - daily living activities

The panel finds that the information from Dr. A along with the additional evidence from several neurologists and psychologists (with details from the appellant and advocate as well) provide sufficient evidence that daily living activities are significantly restricted by a severe mental impairment. The evidence, viewed in its entirety, indicates that restrictions with organizing daily tasks and relating to peers are long term (onset, childhood) and continuously impact the appellant's current life by making it very difficult for him to independently manage the activities described in the Regulation including:
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; 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.

The panel finds that the reconsideration decision is unreasonable because the requirements for restrictions to daily living activities under the Act have been established on the evidence from prescribed professionals, with additional details from the appellant and his family member. The requirement under the Act for significant restrictions to daily activities is therefore met.

Help with daily living activities

Appellant's position

The appellant's position is that he needs a great deal of help and support from his family and professionals to manage his daily life. The advocate argued that the appellant relies on family to manage shopping, meals, housework, and other tasks "80% of the time" because of his problems with anxiety, motivation, and organization. The advocate argued that the numerous professionals and "6-person team" that has supported the appellant over the years were necessary to help manage the appellant's social problems, as well as his difficulties with task completion.

Ministry's position - reconsideration decision

The ministry took the position that it could not be determined that significant help was required as it had not been established that daily living activities were significantly restricted.

Ministry's position - additional submissions

The ministry maintained that the reconsideration decision was reasonably supported by the evidence it had at the time. However, based on the information submitted on appeal, the ministry said there is now enough evidence to confirm that the appellant needs significant help and support because the new evidence establishes that daily living activities are significantly restricted.

The ministry argued that it was not clear from the original submissions why the appellant needed help with daily living activities, but the additional evidence demonstrated that

"help of a significant nature is required" especially with social functioning. The ministry said that if the supplementary information had been received with the original PWD reports, the ministry would have had enough evidence to approve the PWD application.

Panel's decision - help with daily living activities

The panel finds that the reconsideration decision was not reasonable because the totality of evidence including the Medical and Assessor Reports and additional information on psychological functioning, indicate significant help from family is required for household tasks. In addition, the appellant requires long term support from school/community-based professionals to address his social difficulties with peers.

In the Assessor Report, Dr. A. indicated that the appellant received help from family who do the shopping, laundry, cooking, and other household tasks. The ministry said it was unclear whether family assistance was needed because of the appellant's impairment, or due to the "delegation of household responsibilities." However, there was enough evidence from Dr. A regarding difficulties with attention, motivation, etc. to establish that the appellant was dependent on family support because of his mental impairment.

The additional submissions on appeal, including the testimony from the advocate, substantiate the appellant's need for help with task planning, organization, and completion, as well as support from various professionals to help him manage his anxiety, improve his relationship with peers, and mitigate safety issues. For example, the 2019 psych-ed. Report indicated that the appellant required extensive support for social functioning with peers due to "difficulty reading visual clues in social interactions."

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 those activities. In the panel's view, the totality of evidence established that daily living activities are significantly restricted continuously, and the appellant cannot manage his daily life independently. The requirement for help under the Act is therefore met.

Conclusion

The panel finds that the reconsideration decision is not reasonably supported by the evidence or a reasonable application of the legislation. In the circumstances of the appellant. The appellant meets all 5 requirements for PWD designation under the Act because the PWD medical reports and additional submissions on appeal establish that:

The appellant is at least 18 years old
The impairment is expected to continue for at least 2 more years
The appellant has a severe mental impairment.
The severe impairment significantly restricts daily living activities as confirmed by prescribed professionals, and
The appellant requires extensive help and support from other people to manage his daily living activities.

The panel rescinds the ministry's decision and refers the decision back to the Minister for determination on the amount of disability assistance. The appellant is successful with his appeal.

Schedule – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

2 (1) In this section:
"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;
"daily living activity" has the prescribed meaning;
"prescribed professional" has the prescribed meaning.
(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person is in a prescribed class of persons or that the person has a severe mental or physical impairment that
(a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and
(b) in the opinion of a prescribed professional
(i) directly and significantly restricts the person's ability to perform daily living activities either
(A) continuously, or
(B) periodically for extended periods, and
(ii) as a result of those restrictions, the person requires help to perform those activities.
(3) For the purposes of subsection (2),
(a) a person who has a severe mental impairment includes a person with a mental disorder, and
(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires
(i) an assistive device,
(ii) the significant help or supervision of another person, or
(iii) the services of an assistance animal.
(4) The minister may rescind a designation under subsection (2).

Employment and Assistance for Persons with Disabilities Regulation

Definitions for Act
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 2023-0125

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) 2023/08/13

Print Name Connie Simonsen	
Signature of Member	Date (Year/Month/Day) 2023/08/13
Print Name Inge Morrissey	
Signature of Member	Date (Year/Month/Day) 2023/08/13