

Part C – Decision Under Appeal

The Appellant is appealing a decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated July 6, 2023 (the “*Reconsideration Decision*”) on a reassessment requested by the Appellant.

The *Reconsideration Decision* denied the Appellant’s application for a Persons with Disabilities (*PWD*) designation based on the ministry determining that the Appellant did not have a severe mental or physical impairment that directly and significantly restricted the Appellant’s ability to perform daily living activities and did not require help with those activities.

The ministry also found 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 that it is not 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*”):

Section 2

Employment and Assistance Act

Section 24

(See attached Appendix for text of the above)

Part E – Summary of Facts

Over 40 years ago, the Appellant was in an accident that left him with a partial synthetic skull and epilepsy. In 2022, the Appellant had coronary bi-pass surgery and has since suffered from ongoing chest pains, limited exercise/physical abilities, and severe anxiety that he submits have disabled him.

The Appellant applied for designation as a *PWD*, which the ministry denied. The Appellant sought a reconsideration.

On July 6, 2023 the ministry issued the *Reconsideration Decision*. In it the ministry explained that in order to receive the *PWD* designation, an applicant must meet the 5 criteria (age, duration, severity of impairment, severity of effect on daily living activities, and that help was required for daily living activities) drawn from the requirements set out in the Act at section 2, and the Regulation at sections 2 and 2.1.

The Reconsideration Decision accepted that 2 of the 5 criteria were met, specifically met were the age of the Appellant and the duration of the impairment. The remaining 3 criteria (severity of impairment, severity of effect on daily living activities, and help required for daily living activities) were not considered as met. For that assessment, at reconsideration, the ministry had before it:

- The Appellant's Persons with Disability Designation Application form with the following sections:
 - Section 1 – Applicant Information completed March 21, 2023, by the Appellant.
 - Section 2 – Medical Report of April 14, 2023, (the "*MR*") completed by the Appellant's physician (the "*GP*").
 - Section 3 – Assessor Report of April 19, 2023, (the "*AR*") completed by the *GP*.
- A letter from the *GP* dated June 18, 2023 (the "*GP's Letter*") to update deterioration of the Appellant's anxiety and social functioning noting it as aggravated by the after-effects of heart surgery. It described the Appellant's disability as "a marked impairment in social functioning and control" and that he would "now rate impact on Emotion, Attention/ Concentration, Executive and Motivation as Major in severity."
- A submission dated June 19, 2023, made for the request for reconsideration. It described the Appellant as having failed at a return to work due to an inability to lift over 35 lbs, and having chest pains and headaches. The Appellant was described as in financial need, being on income assistance, having an application for employment insurance, and that without funding under the *PWD* designation would be forced to attempt a return to work at the risk to his health.

- Various finance related records
- The Appellant’s statement of October 19, 2022, describing the disability and impact, as an addendum to the Persons with Disabilities Application.

On July 17, 2023, the Appeal of the Reconsideration Decision was filed with this tribunal.

On July 28, 2023, the Appellant filed a new Assessor Report completed by the GP for consideration at the appeal hearing (the "New AR"). It showed a significant change from the April 19, 2023, AR completed by the same GP. The following table compares the following sections of the AR and New AR forms:

C - Mental or Physical Impairment		
1. What are the Applicants mental or physical impairments that impact their ability to manage Daily Living Activities?		
Descriptor (abridged)	April 19th	New AR
(provide brief summary)	Anxiety Heart Disease Epilepsy	Myocardial Infarction Epilepsy Anxiety – This is progressively worse and his main issue currently Foot Pain – Post Operative (New)
2. Ability to Communicate		
Descriptor (abridged)	April 19th	New AR
Speaking Reading Writing Hearing	Good	Unchanged
3. Mobility and Physical Ability		
Descriptor (abridged)	April 19th	New AR
Walking indoors	Independent	<i>Continuous Assistance/Unable</i>
Walking outdoors	Continuous assistance from another person or unable (<i>"Continuous Assistance/Unable"</i>)	Uses Assistive Device Takes significantly longer than typical (describe how much longer) (<i>"Significantly Longer"</i>)

	Limited walking 'from IMD' [?]	Foot pain from bypass -uses cane now
Climbing stairs	Independent	<i>Continuous Assistance/Unable</i> Uses Assistive Device <i>Significantly Longer</i>
Standing	Independent	<i>Continuous Assistance/Unable</i> Limited with Pain
Lifting	<i>Continuous Assistance/Unable</i> Limited Weight	<i>Continuous Assistance/Unable</i> <i>Significantly Longer</i> Due to MI- Can't lift >10 lb
Carrying and holding		

C - Mental or Physical Impairment (continued)

4. Cognitive and Emotional Functioning

Descriptor (abridged)	Impact - April 19th	Impact - New AR
Body functions	No	Moderate Sleep disturbance
Consciousness	No	Minimal Confusion - Missing pills
Impulse control	No	Unchanged
Insight and judgement	No	Unchanged
Emotion	Moderate	Major Progressive anxiety
Attention	Moderate	Major concentration, short term memory, poor memory, poor focus
Executive	Moderate	Unchanged
Memory	Minimal	Moderate

Motivation	Moderate	Major
Motor activity	No	Moderate Extreme tension
Language	No	Unchanged
Psychotic symptoms	No	Unchanged
Other neuropsychological problems	No	Unchanged
Other emotional or mental problems	Minimal	Major
Comments	anxiety causing issues as above also some anger issues [associated] social function impaired	Worsening anxiety impacting executive and social functioning Isolation and now mainly house bound

D - Daily Living Activities

Descriptor (abridged)	Impact - April 19 th	Impact - July 18 th
Personal Care		
Dressing	Independent	[blank]
Grooming	Independent	<i>Significantly Longer</i>
Bathing	Independent	Due to foot pain / Post M I
Toileting	Independent	Unchanged
Feeding self	Independent	Unchanged
Regulating diet	Independent	Unchanged
Transfers (in/ out of bed)	Independent	Unchanged
Transfers (in/ out of chair)	Independent	Unchanged
Basic housekeeping		
Laundry	Independent	<i>Significantly Longer</i>
Basic housekeeping	Independent	Due to foot pain / Post M I

Shopping		
Going to and from stores reading prices and labels	Independent	Uses assistive device – uses cane <i>Significantly Longer</i>
Making appropriate choices	Independent	Unchanged
Paying for purchases	Independent	Unchanged
Carrying purchases home	Independent	Uses assistive device – uses cane <i>Significantly Longer</i>
Additional comments	[blank]	no help available for shopping due to mobility / Post MI social functioning is a problem for any activity outside home

D – Daily Living Activities (continued)		
Descriptor (abridged)	Impact – April 19th	Impact – New AR
Meals		
Meal planning	independent	unchanged
Food preparation	Independent	<i>Significantly Longer</i>
Cooking	Independent	<i>Significantly Longer</i>
Safe storage of food	Independent	unchanged
Pay Rent and Bills		
Banking	Independent	Unchanged
Budgeting	Independent	Unchanged
Pay rent and bills	Independent	Unchanged
Medications		
Filling/refilling prescriptions	Independent	Unchanged
Taking us directed	Independent	Unchanged

Safe handling and storage	Independent	Unchanged
Transportation		
Getting in and out of a vehicle	Independent	Uses assistive device – walking is an issue – uses cane
Using public transit	Independent	<i>Significantly Longer</i>
Using transit schedules and arranging transportation	independent	[blank]
Additional comments	[blank]	no assistance available

D – Daily Living Activities (continued)

Social Functioning

Descriptor (abridged)	Impact – April 19th	Impact – New AR
Appropriate social decisions	continuous support/supervision (“Continuous S/S”) anxiety	<i>Continuous S/S</i> poor social functioning anxiety + social hostility
Able to develop and maintain relationships	<i>Continuous S/S</i> relationship issue [Per] social impairment	<i>Continuous S/S</i> dysfunctional social
Interacts appropriately	<i>Continuous S/S</i>	<i>Continuous S/S</i> interactions
Able to deal appropriately with unexpected demands	<i>Continuous S/S</i>	<i>Continuous S/S</i> is overwhelmed
Able to secure assistance from others	independent	<i>Continuous S/S</i> no help available
Other		
Describe how the mental impairment impacts the applicant’s relationship...		
• Immediate social network	Marginal functioning	Very disrupted functioning

• Extended social network	Marginal functioning	Very disrupted functioning
Help required	[blank]	Help with shopping + social interaction

In “E – Assistance Provided for Applicant” the original was blank but the update provided that help was required for shopping, mobility and socialising, and that a cane was now used.

Appellant Submissions

The Appellant’s “Reasons for Appeal” say the Appellant has not healed from recent coronary artery bypass grafting, and has headaches in the winter from effects on a partial artificial skull implant following an accident over 40 years ago. Prior to the hearing, the Appellant submitted a newspaper article describing the accident and a January 30, 1984, prescription that the Appellant only engage in light work. The Appellant stated that this was provided to support that he was in an accident and suffered injuries that affect the Appellant’s life, as on occasion he felt disbelieved.

At the hearing, the Appellant described suffering leg and arm pains following cardiovascular grafting that has gotten worse without known cause. The Appellant described being hopeful of recovery and that the doctors are still assessing for cause. The Appellant stated that a risk of being put on pain medication that would prevent him from driving to the food bank, currently his only outing. The Appellant described physical limitations and the impact on daily living activities, which was to walk and lift less, use a cane and take a longer time to do things. The Appellant stated that he doesn’t shop, having no funds to do so, but receives occasional assistance from his sister.

The Appellant provided and relied upon the *New AR*. In response to questioning, the Appellant described having no recent epileptic seizures but that he suffered from learning disabilities affecting his daily life, but which he did not disclose to the *GP*. He acknowledged that the *New AR* marked that as “No impact”, which he attributed to trying to hide his disability and not talking to the physician about it.

Ministry Submissions

The ministry representative did not have a copy of the *New AR* but received a copy before making verbal submissions and consented to continue after a brief review. The ministry did not object to its admission into evidence or to the other evidence – the newspaper article and prescription.

The ministry reiterated the reasons set out in the *Reconsideration Decision* for the denial of Persons with Disability designation.

The ministry accepted that the first 2 of the 5 criteria (age and duration) were met and reiterated this after review of the *New AR*.

On the criteria of “Severity of Impairment”, the *Reconsideration Decision* determined that the GP identified only a “mild physical impairment” given the GP’s prior description of independent physical mobility (walking, climbing stairs etc.) without need of assistance. The representative considered that the *New AR* only added that assistance of a cane was now required but was “unclear” why this was changed.

In terms of the mental impairment, the ministry accepted that the Appellant had significant deficits (as it had before) but considered that the *GP* had previously reported the Appellant to be independent with all daily living activities except for social functioning. The representative acknowledged that the Appellant was no longer described as independent with the *New AR* now describing the impact on those activities as more significant and that it provided more detail than in the prior *GP Letter*.

For the criteria of “Daily Living Activities”, the ministry reiterated that the original *MR* and *AR*, and the *GP Letter* did not provide enough evidence to confirm the GP’s opinion of a severe impairment and the impact on the Appellant’s ability to perform daily living activities. The representative cited that the *GP* previously reported no, or minor, restrictions.

Under the 5th criteria: “Help Required with Daily Living Activities”, the ministry reiterated that need for help had not been demonstrated other than the use of a cane, as identified in the *New AR*.

The ministry cited that previously the Appellant was able to maintain marginal function in immediate and extended social networks demonstrating an ability to meet basic needs and that information did not identify that support or supervision was required or how it would aid in daily living activities. The representative acknowledged that the *New AR* updated the impact to “very disrupted functioning” requiring continuous support or supervision.

Admissibility of New Evidence

As permitted by Section 22(4) of the *Employment and Assistance Act*, the panel may admit new evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. For this hearing the panel admits the following as evidence that is reasonably required to be considered for a full and fair disclosure of all matters related to the decision under appeal:

- Testimony (statements expressed as fact in the hearing).
- The *New AR*.

Part F – Reasons for Panel Decision

The purpose of the panel in appeals, such as this, is not to substitute its opinion for that of the GP or make a decision as if it was the ministry. Rather, it is to decide whether the decision made by the ministry was a reasonable application of the laws and reasonably supported by the evidence available, including consideration of any evidence newly submitted as part of the appeal. That is, was the ministry reasonable to deny the *PWD* designation considering both the evidence it had at the time as well as any new evidence admitted at the hearing.

The ministry's submissions included a statement that *PWD* designation is not about employment factors. The panel considered this to be a prudent clarification given that the ministry's own application form for reconsiderations says "Section 1 and 2 to be completed by **worker**" (emphasis added), and uses that same term elsewhere.

In the *Reconsideration Decision*, under the headings "Severity of impairment" and "Daily living activities", the ministry compared the more recently received *GP's Letter* with the *GP's MR* and *AR*. It noted that the letter addressed psychological difficulties without changing the physical impairment stated in the *MR* and *AR* where the Appellant was described as independent in all daily living activities except for social functioning. It found that the *GP Letter* had insufficient detail, despite changing the description of the Appellant's anxiety from earlier reports.

In respect of "severity of impairment", the ministry stated that the lack of detail in the *GP Letter*:

...makes it difficult to conclude that you have a severe mental impairment in your ability to function independently or effectively for reasonable durations, given that you are reported to be almost fully independent with your DLA's [daily living activities] with the exception of social functioning. This does not represent a severe mental impairment in function and describes more of a mild-to-moderate mental impairment given the assessments provided.

In respect of "Daily living activities", the ministry stated that it did not find enough evidence that the *GP* was of the opinion that the Appellant suffered from direct and significant restrictions for extended periods.

Under the heading "Help required with daily living activities", the ministry noted that the *GP* did not report the use of assistive devices (or animals) or significant help from other people that might establish that there was significant restriction of daily living activities.

Over the course of the completion of documents for this matter, the *GP* has progressively updated the information. The *MR* was issued April 14th of this year, and the *AR* 5 days

later. The information was updated by the *GP's Letter* 2 months later and then a further month later (after the *Reconsideration Decision*) when the *New AR* was issued.

The panel finds that the information that the ministry had in hand at the *Reconsideration Decision* lacked detail that might dispel concern about apparent contradictions in the documents. However, that information has been supplemented or changed by the admission of the *New AR* and that has an effect on this decision. That is because, as stated above, this panel is to consider the matter in light of the new evidence.

The ministry accepted that the Appellant met the age and duration criteria, so the test that applies here, under the *Act* and *Regulation*, is satisfaction of the minister that the Appellant has a severe mental or physical impairment that:

- (a) in the opinion of a medical practitioner (such as *GP*) is likely to continue for at least 2 years, and
- (b) in the opinion of a prescribed professional (such as the *GP*)
 - (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 ["help" includes use of an assistive device per Reg 2(3)].

In that context "severe mental impairment" also included "mental disorder" and "help in relation to a daily living activity" included help from:

- (i) an assistive device (that includes a cane),
- (ii) the significant help or supervision of another person, or
- (iii) the services of an assistance animal

The ministry relies, in accordance with the *Act* and *Regulation*, upon the opinion of medical practitioners and prescribing professionals, which in this case is the *GP*.

In the *Reconsideration Decision* the ministry determined that the Appellant had a mild physical impairment and that it was not clear that the *GP* was of the opinion that the physical impairment significantly restricted the Appellant's ability to perform daily living activities. Indeed, the ministry stated that it was "unable to conclude that it is currently impacting your physical functioning."

However, since then the *New AR* changed most of the physical daily living functions from "independent" to requiring assistance and taking significantly longer than typical and requiring the use of an assistive device due to leg pain. The panel finds that the *GP* has

expressed an opinion that the leg pain is a physical impairment that is now directly and significantly impacting the Appellants daily living activities and for which he requires the help of an assistive device. The *New AR* also effectively updated the MR by stating that the Appellant now requires a cane (assistive device) and takes significantly longer than typical. The MR:

- “C - Health History” 4. “Does the Applicant require any prostheses or aids for their impairment?” changes from a “No” to “Yes”.
- “E – Functional Skills”
 - 1. “How far can this person **walk unaided** on a flat surface?” becomes “Not at all” without an assistive device i.e. the cane
 - 2. “How many **stairs** can this person **climb unaided?** “ also becomes “None”.
 - 3. “What are the person’s limitations in **lifting?**” changes from “15 to 35 lbs” to “Can’t lift > 10 lb” per New AR where this is stated re: “Carrying and holding”.
- “F – Daily Living Activities” instructs “Note: If you are completing the Assessor Report - Section 3, in addition to this Medical Report, do not complete this page, (Part F).” That direction, in the panel’s opinion, means that this section in the MR cannot be considered for conflict in the GP’s opinion given that the GP completed the AR and NEW AR, with more recent information and the latter expressly addressing deteriorative change.

However, more significant, and determinative here, is that the panel finds that the GP’s updated opinion is that the Appellant’s mental impairment, aggravated by his physical state, directly and significant impact the Appellants daily living activities as discussed below.

In the *Reconsideration Decision*, the ministry found it difficult to conclude that the Appellant had a severe mental impairment given the report that he is “almost fully independent with your [his] DLA’s with the exception of social functioning” or that they cause direct and significant restrictions to daily living activities for extended periods. The ministry concluded that the evidence did “not represent a severe mental impairment in function and describes more of a mild-to-moderate mental impairment given the assessments provided.”

The *New AR* updates and changes that information to disclose the GP’s opinion is that the Appellant has a severe mental impairment and that the daily living activities are affected so that he requires continuous support or supervision shopping and with social interactions, although none was available. The fact that the Appellant has been unable to obtain that help is not relevant; what is relevant is the need for the help.

The GP described the Appellant as having “poor social functioning” due to anxiety and “social hostility”. Relationships and social interactions are described as “dysfunctional” with

unexpected demands overwhelming the Appellant. In describing the impact with immediate social network (partner, family, friends), the Appellant has “very disrupted functioning” that could be from aggression, abuse, major withdrawal, or rejection by others. The same applies to extended social networks (neighborhood contacts, acquaintances, shopkeepers, public officials, etc.), which is also listed as “very disrupted functioning – overtly disruptive behaviour; major social isolation”.

This is the highest impact on the list to choose. Formerly, in the original *AR* a lesser impact was identified, respectively, as “marginal functioning - little significant participation/communication: relationships often minimal and fluctuate in quality” and “marginal functioning – little more than minimal acts to fulfill basic needs”.

The *New AR* is internally consistent and sufficiently detailed to disclose the severity of the Appellant’s mental impairment and the GP’s opinions that it directly and significantly restricts the Appellant’s ability to perform daily living activities continuously and for which the Appellant requires help. Any inconsistency with prior reports is accounted for as deterioration of mental state and increased leg pain in the intervening time. In light of the *New AR* and the *GP*’s opinion expressed in it, the panel finds that the *Reconsideration Decision* was not reasonably supported by the evidence, as now available.

Conclusion

The panel finds that the ministry’s *Reconsideration Decision* was not reasonably supported by the evidence in the circumstances of the Appellant.

Accordingly, the Panel rescinds the *Reconsideration Decision*.

Appendix – Relevant Legislation

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT
[SBC 2002] CHAPTER 41

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

[Last amended March 8, 2023 by B.C. Reg. 66/2023]

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*.

Employment and Assistance Act, SBC 2002, c 40

Decision of panel

24 (1) After holding the hearing required under section 22 (3) [[panels of the tribunal to conduct appeals](#)], the panel must determine whether the decision being appealed is, as applicable,

- (a) reasonably supported by the evidence, or
- (b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

(2) For a decision referred to in subsection (1), the panel must

- (a) confirm the decision if the panel finds that the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision, and
- (b) otherwise, rescind the decision, and if the decision of the tribunal cannot be implemented without a further decision as to amount, refer the further decision back to the minister.

APPEAL NUMBER 2023-0203

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

Kent Ashby

Signature of Chair

Date (Year/Month/Day)

2023/08/10

Print Name

Edward Wong

Signature of Member

Date (Year/Month/Day)

2023/08/10

Print Name

Gordon Thompson

Signature of Member

Date (Year

2023/08/10