

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision dated July 10, 2023 (the “Decision”) denying the Appellant persons with disabilities (PWD) designation.

The Ministry found that the Appellant met the age (over 18) and duration (impairment to last 2 years) requirements.

However, the Ministry found:

- The Appellant did not have a severe physical or mental impairment;
- The Appellant's daily living activities aren't directly and significantly restricted; and,
- The Appellant doesn't need significant help to do daily living activities because of significant restrictions.

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

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (the Act), section 2
Employment and Assistance for Persons with Disabilities Regulation (Regulation), s. 2
Employment and Assistance Act, Section 22(4)

The legislation is in the Appendix at the end of this decision.

Part E – Summary of Facts

The information the Ministry had at the time of the Decision included:

- The Medical Report, dated Feb. 24, 2023 completed by the Appellant’s Doctor (the Doctor);
- The Assessor Report, dated Feb. 24, 2023 also completed by the Doctor;
- The Self Report, dated Feb. 23, 2023 and completed by the Appellant;
- The Appellant’s request for reconsideration (the Reconsideration Request), dated June 21, 2023, which explains why he wanted the Ministry to reconsider its original decision. Information in the Reconsideration Request is summarized below.

MEDICAL REPORT

Diagnoses

In the Medical Report, the Doctor says the Appellant has the following medical conditions:

- August 2022: Choroidal Melanoma/Left Eye
- 2022: Encephalomalacia Right Frontal Lobe/ traumatic
- Childhood: Pituitary insufficiency
- 40 yrs old?: Osteoporosis

Health History

The Doctor provides a brief summary regarding the severity of the Appellant’s impairment and indicates: “Osteoporosis – fragile bones, multiple fractures, fragility, chronic pain, functional impairment; Traumatic frontal lobe injury – seizures/headaches; Choroidal Melanoma – blindness left eye, presently being investigated (for) treatment options; and Pituitary insufficiency—short stature: Height-54 inches, Weight-65.4 lbs”.

The Doctor identifies that the Appellant is on lifelong treatment for his conditions, with chronic pain medication that “may interfere with cognition” and “Recent blindness Lt eye/Now patched affecting his visual fields”. The Doctor confirms that the Appellant requires a knee brace and cane as required, for his impairments.

Functional Skills

In the Medical Report, the Doctor says the Appellant has “chronic mssk (musculoskeletal) pains limiting physical function (and) Lt eye blindness limiting visual awareness”.

The Doctor says the Appellant can:

- Walk 2 to 4 blocks on a flat surface without help;

- Climb 5+ steps without assistance;
- Lift 2 to 7 kgs; and,
- Remain seated for 1 to 2 hours.

The Doctor indicates that the Appellant has significant deficits with cognitive and emotional function in the area of "Perceptual psychomotor", and "visual" is circled.

Daily Living Activities

The Doctor states that the Appellant requires "help from others" and "mssk (musculoskeletal) structural supports/ braces" to assist with daily living activities. The Doctor further confirms that the Appellant's impairment directly restricts his ability to perform a majority of daily living activities on a continuous basis. He is not restricted in only three areas: 1. Management of medications; 2. Mobility inside the home; and 3. Management of finances.

ASSESSOR REPORT

Mental or Physical Impairment

The Doctor says the Appellant's mental or physical impairments are "visual impairments/chronic musculoskeletal pains resulting in limited functioning like standing or walking for any distance".

Ability to Communicate

The Appellant is noted to have "good" speaking and hearing abilities and "satisfactory" abilities in reading and writing.

Mobility and Physical Ability

The Doctor says the Appellant is independent in all areas but two, of which no box is ticked as to the assistance required. Specifically, the Doctor says the Appellant takes significantly longer than typical with walking outdoors and standing. Under walking outdoors, the Doctor notes "for short distances only" and under standing, the Doctor says "for short periods only".

Cognitive and Emotional Functioning

The Appellant's impairment is noted by the Doctor to have moderate impact in the areas of emotion, motivation, and other neuropsychological problems. No additional information is given about the other neuropsychological problems. The Doctor further indicates that the Appellant has no impact in the areas of consciousness, insight and judgement, language, and psychotic symptoms; the Appellant has minimal impact in the areas of impulse control, attention/concentration, executive, memory, motor activity, and

other emotional problems. No additional comments are provided about other emotional problems. No major impacts are identified by the Doctor.

Daily Living Activities

The Doctor indicates that the Appellant manages many of his daily living activities independently, including:

- Personal Care
- Shopping
- Meals
- Pay Rent and Bills
- Medications

However, the Doctor comments that “due to mssk (musculoskeletal) limitations and visual impairment all activities take longer than typical” for the following:

- Basic Housekeeping—Laundry and Basic Housekeeping: Takes significantly longer than typical and “takes twice as long”
- Shopping—Going to and from stores and Carrying purchases home: Takes significantly longer than typical and “2-3x as long”
- Meals—Cooking: Takes significantly longer than typical
- Pay Rent and Bills—Banking: Takes significantly longer than typical
- Medications—Filling/refilling prescriptions: Takes significantly longer than typical
- Transportation—Getting in and out of a vehicle, Using public transit, Using transit schedules and arranging transportation: Takes significantly longer than typical.

The Appellant is noted to have good functioning with his immediate and extended social networks; he is independent in social functioning.

The Doctor says the Appellant receives help with daily living activities from Friends, Health Authority Professionals, and Community Service Agencies.

APPELLANT’S SELF REPORT and RECONSIDERATION REQUEST

In his self-report, the Appellant describes that after many fractures, approximately 10 years ago he was diagnosed with osteoporosis. He wears a knee brace continuously and takes pain medication daily. Pain keeps him from sleeping and he needs to take pain medication in the night. The Appellant indicates that he relies on friends to get groceries and to get to medical appointments.

In November 2022, he had multiple seizures and was told he had scarring on the brain and as a result, couldn’t work. The Appellant also discovered that the trouble he was experiencing with the vision in his left eye was due to a tumour. He needs to be careful with walking, stairs, and some other activities due to struggles with depth perception. Since his cancer diagnosis, the Appellant says he has lost motivation other than dealing

with his cancer and treatment. The Appellant also highlights that he struggles to find suitable employment because of the medical conditions.

In his Reconsideration Request, the Appellant further reported that he sometimes uses a cane but because of shoulder pain he “doesn’t like using (it)”. He is also having difficulty with daily living activities such as cooking due to his vision problems, and with his laundry he gets help from a friend because of back (pain) and not being able to reach into the washing machine.

ADDITIONAL INFORMATION SUBMITTED AFTER RECONSIDERATION

Section 22(4) of the *Employment and Assistance Act* says that a panel can consider evidence that is not part of the record when the Ministry made the Decision. But first the panel must decide if the new information is relevant. Once a panel has determined if any new evidence can be admitted, it must decide if the Decision was reasonable considering the new evidence.

Notice of Appeal

In the notice of appeal, the Appellant says he “can’t walk to the welfare office, can’t afford the bus, can’t get a ride because the people who help with rides are working, and ... can’t get to the food bank”.

At Hearing

The Appellant was represented at the hearing by an advocate (the Advocate).

At the hearing, the Appellant said:

- All of his conditions are chronic and continuous, his activity is continuously restricted, and he does not understand why he has not been given PWD designation
- Due to his impairments, he requires help including structural supports
- He has severely limited independent function
- He takes two-to-three times longer for an activity such as doing laundry: due to his stature and the pain he experiences, it takes him about 10 minutes to put the washing in and about 15 minutes to take the washing out
- He just had eye surgery; he only has about 10% peripheral vision in his left eye
- He relies on help to get groceries as he can’t carry the groceries due to pain in his back and shoulders
- He is only able to sit for about 30 minutes and then needs to stand because his back is sore
- The Doctor who filled out the Medical and Assessor Reports missed ticking some boxes, and was not his regular doctor and did not know him

- The Ministry did not properly look at the information from the Doctor that confirmed his continuous, significant, and severe physical and mental limitations and restrictions
- The Ministry should be guided by the BC Supreme Court decision, *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2009 BCSC 1461; under that decision, the Ministry is obligated to:
 - Not limit its assessment to the tick boxes on the Medical Report and the Assessor Report
 - Recognize that not all daily living activities must be restricted; a direct and significant restriction with at least two daily living activities is sufficient
 - Consider the Medical and Assessor Reports in their entirety and in a broad way
 - Find eligibility confirmation elsewhere including in the narrative provided
 - Review and assess (eligibility) liberally and with a benevolent purpose

In further support of the Appellant, the Advocate stated:

- The Appellant has had seizures for years, his “brain looks like Swiss cheese”, and his mental impairment is as severe as his physical one
- The unseen is what is important; there is more emphasis on the physical impairment than the cognitive, and the Appellant’s conditions limiting daily living activities must be considered as a whole: stature (4’ 8”) + pain + left eye
- The severity of the Appellant’s impairment was not adequately recognized and considered in relation to his limitations in performing daily living activities—for example, due to his physical stature the Appellant needs to stand on a chair to reach the washing machine and do his laundry

In response to questions from the Panel, the Appellant stated that his seizures are controlled by medication, but he does have occasional dizzy spells. He also wears the knee brace constantly and uses the cane when walking and climbing stairs but does not always use the cane because sometimes his shoulder is too sore. He confirmed he takes longer for many daily living activities and is limited to bigger grocery purchases or going to the food bank approximately once/month as he can’t pack or carry them far and he relies on friends for rides, and they are not always available.

In response to a question from the Panel, the Ministry said that the Assessor Report didn’t have to be completed by a medical practitioner or a nurse practitioner, as there were other prescribed professionals, such as an occupational therapist who could complete that report.

Admissibility of New Evidence

The Ministry did not object to the admissibility of the Appellant’s or his Advocate’s additional oral evidence.

The statement of the Appellant and his Advocate provide further clarification about the Appellant's experiences and capabilities, and the additional supportive measures he requires. The Panel finds that the additional evidence is reasonably required for the full and fair disclosure of all matters in the appeal. Therefore, the Panel finds that the additional evidence is admissible under the EAA s. 22(4).

Part F – Reasons for Panel Decision

The issue in the appeal is whether the Decision was reasonable based on all the evidence or whether the legislation was reasonably applied in this case. In other words, was it reasonable for the Ministry to determine that:

- The Appellant doesn't have a severe mental or physical impairment;
- The Appellant's daily living activities aren't directly and significantly restricted either continuously or periodically for extended periods due to the severe impairment; and,
- It couldn't be determined that the Appellant needs help to do daily living activities.

ANALYSIS*PWD Designation – Generally*

The legislation provides the Ministry with the discretion to designate someone as a PWD if the requirements are met. The PWD designation is for persons who have *significant difficulty* in performing regular self-care activities—the daily living activities. An applicant's inability to work and financial need are not among the daily living activities referenced in either the Regulation or the Medical Report and Assessor Report and are only relevant to the extent that they have an impact on an applicant's ability to carry out the listed daily living activities. If the inability to work is the major reason for applying for PWD designation, the Panel encourages the applicant to speak to the Ministry about other potential programs such as Persons with Persistent Multiple Barriers to Employment (PPMB).

The requirements for PWD designation include having an opinion from professionals, and the legislation requires that the Ministry place significant weight on these opinions. A medical practitioner's description of a condition as "severe" is not determinative. The Minister must make this determination considering the available evidence and the legislation. The application form also includes a Self Report. It is appropriate to place significant weight on the Self Report and evidence from the Appellant, unless there is a legitimate reason not to do so. In determining PWD eligibility, the Ministry must consider all relevant evidence, which includes the Appellant's evidence. That said, the legislation says that the Ministry must make its decision based largely on the prescribed professionals' opinion.

The Panel must review the reasonableness of the Ministry's decision. The Ministry has determined that both the duration of the impairment criterion and the Appellant's age criterion have been met, so they are not at issue in this appeal.

Severe Mental or Physical Impairment

“Severe” and “impairment” are not defined in the legislation. The Ministry considers the extent of any impact on daily functioning as shown by limitations with, or restrictions on, physical abilities and/or mental functions.

1. Physical Impairment:

The legislation says the Ministry must be satisfied that the impairment is *severe*, and that it must *directly* and *significantly* restrict someone’s ability to do their daily living activities either continuously or periodically for extended periods. This assessment must be made by a “*prescribed professional*”, which includes a doctor.

The Ministry has designed two reports to measure physical impairment based on someone’s ability to function physically. The two reports are the Medical Report and the Assessor Report. In this case, both reports were completed by the Doctor. The Medical Report and Assessor Report ask the prescribed professional to indicate if the person applying for PWD has any restrictions with physical functions, and to explain the restrictions or provide comments giving more detail, such as how any restrictions impact the applicant’s physical abilities.

The Appellant’s position is that both he and the Doctor have adequately demonstrated that his physical impairment is severe and as a result, his daily living activities are directly and significantly restricted on a continuous basis. The Appellant argues that his condition is chronic, continuous, and he requires help; he regularly takes pain medication and requires the use of a knee brace and sometimes uses a cane for walking and climbing. The Appellant says that the boxes ticked by the Doctor with regard to his functional skills in walking, climbing stairs, lifting, and remaining seated do not adequately capture the physical realities of his situation and the limitations related to his vision and chronic pain. He may be able to walk 2 to 4 blocks and climb 5+ stairs but he is in pain and requires the knee brace and/or cane. Similarly, he may be able to lift 2 to 7kg but shoulder and back pain mean he can’t carry heavy things and he requires help. Due to back pain, he is limited to staying seated for about 30 minutes—not the 1 to 2 hours stated by the Doctor—and then he must stand to relieve the soreness. Finally, the Appellant says the requirements for a severe physical impairment are met; due to his limited capabilities and direction from his Specialist, he is unable to work.

The Ministry’s position is that because the Appellant is noted as independent in the vast majority of daily living activities and basic physical functioning, a severe physical impairment cannot be established. Although the Appellant is reported to take longer than average with his activities due to vision impairment and chronic pain, the report of taking 2 or 2-3 times longer with basic functioning, the limits identified with functional skills, and the fact that he requires minimal assistance with his functioning and daily living activities,

is indicative of a moderate physical impairment as opposed to a severe physical impairment. The Ministry's position is that it must take someone at least three times as long to do a daily living activity before an impairment would be considered severe, or that the person would need to be continuously restricted in that activity or periodically restricted for extended periods. The Ministry also says that it relies on both the Appellant's Self Report, the Medical Report and the Assessor Report to determine severe physical impairment, and in this case, those reports point to a moderate physical impairment. Although the Appellant's opinion is that the Medical Report and the Assessor Report may not have been an accurate reflection of his situation, in the absence of additional assessment(s) from a prescribed professional, the Doctor's Medical and Assessor Reports are what the Ministry must rely on.

With respect to the Appellant's physical impairment, the panel finds that the Ministry was reasonable in its determination that the Appellant did not have a *severe* physical impairment.

In the Medical Report, the Appellant was noted to be independent in all Mobility and Physical Ability activities with limited clarification in only two areas: walking outdoors—"short distances only"; and standing—"short periods only". The Panel notes that the Appellant said at the hearing that the Doctor who completed the Medical Report and the Assessor Report was not his regular doctor and hardly knew him. While the lack of clarity may have been the result of the Doctor having been unfamiliar with the Appellant and being less than descriptive in completing the Report, the Ministry is nevertheless required to assess and rely on the evidence that it has before it. Further, the Appellant confirmed he is able to complete these activities given time and breaks. Similarly, the Assessor Report indicates that the Appellant is independent in all aspects of daily living activities except that he "takes twice (or) 2-3x as long" with Basic Housekeeping and Shopping—Going To and From Stores and Carrying Purchases Home.

2. *Mental Impairment*

The Appellant's position is that both he and his Doctor have sufficiently demonstrated that he has a mental impairment that is severe and significantly restricts his daily living activities. The Appellant indicates that along with his Self Report stating, "loss of motivation", he reported to his Doctor "depression" which should have been captured in the Medical Report under Diagnostic Code 5.3: Mood Disorders. At the hearing, the Appellant said he had had multiple seizures in November 2022, and was told he had scarring on the brain. As a result, he couldn't work. At the hearing, the Appellant said his seizures are controlled with medication but he continues to have occasional dizzy spells. The Appellant also discovered that the trouble he was experiencing with the vision in his left eye was due to a tumour. He needs to be careful with walking, stairs, and some other activities due to struggles with depth perception. At the hearing, the Advocate said the

Appellant's unseen (cognitive) impairment is equally important, and equally limiting, as his obvious physical impairment.

The Ministry's position is that there is insufficient evidence to confirm a mental impairment. There is no Mood Disorder diagnosis indicated by a prescribed professional and the limited information provided in the Medical Report creates difficulty in making a determination of mental impairment. The Ministry also notes that the Appellant's daily functioning is not impacted in the areas of consciousness, insight and judgement, language, and psychotic symptoms; and the Appellant has minimal impact in the areas of impulse control, attention/concentration, executive, memory, motor activity, and other emotional problems. The Ministry says that although the Doctor reports seizures and headaches from the frontal lobe injury, chronic pain medications may interfere with cognition, and left eye blindness limits visual awareness; the Appellant has no difficulties with managing medications, finances or with social functioning. In respect to the daily living activities related to cognitive functioning, the Ministry also found that both the Medical Report and the Assessor Report indicate the Appellant is independent with things such as meal planning, food prep, safe storage of foods, budgeting, paying bills, taking meds as directed, and is fully independent with good social functioning in all his relationships with both his immediate and extended social networks.

Panel Decision

The legislation says the Ministry must be satisfied that any mental impairment is *severe*, and that it must *directly* and *significantly* restrict someone's ability to do their daily living activities either continuously or periodically for extended periods. This assessment also must be made by a "*prescribed professional*".

The legislation doesn't define what mild, moderate or severe cognitive deficits are. In the Medical Report and the Assessor Report, prescribed professionals are asked to say how mental skills are affected by a mental impairment to help the Ministry assess the applicant's severity. The Doctor, as a prescribed professional, is best qualified to assess the severity of a person's impairments.

With respect to the Appellant's mental impairment, the Panel finds that the Ministry was reasonable in determining that the Appellant did not have a severe mental impairment. In the Assessor Report, the Doctor identifies no impact or minimal impact in most cognitive and emotional functioning areas related to his mental impairment. The Appellant is also noted to be fully independent with good functioning in all areas of social functioning including with both his immediate and extended social networks. Further, in the Medical Report the Doctor indicates "No" in response to whether social functioning is restricted and comments "Physical stature/chronic pain/visual impairment affects his interaction with others". The Panel concludes from this comment that, while the Appellant's physical

impairments are considered by the Doctor to “affect his interaction with others”, any such effect is not due to mental impairment and the appellant is reported to have good social functioning; his impairments do not significantly challenge his social relationships. The findings of the Doctor are consistent with the evidence of the Appellant, who indicated he readily asks for and receives help and support from friends.

3. *Restrictions to Daily Living Activities:*

A prescribed professional must provide an opinion that the applicant’s impairment restricts the ability to perform the daily living activities listed in the legislation. Daily living activities are described as:

- Prepare own meals
- Manage personal finances
- Shop for personal needs
- Use public or personal transportation facilities
- Perform housework to maintain the person’s place of residence in acceptable sanitary condition
- Move about indoors and outdoors
- Perform personal hygiene and self care
- Manage personal medication.

For a person who has a severe mental impairment, daily living activities also include:

- Make decisions about personal activities, care, or finances
- Relate to, communicate, or interact with others effectively.

At least two Activities must be restricted in a way that meets the legislated requirements. Not all daily living activities, or even the majority of them, need to be restricted. The inability to work and financial need are not listed as Activities and are only relevant to the extent that they impact the daily activities prescribed in the Act.

The restrictions to daily living activities must be significant, and must result directly from an impairment. “Significant” is not defined in the legislation. The Oxford dictionary defines significant to mean “sufficiently great or important to be worthy of attention”. Based on this definition and the requirement in the legislation that help be required, the Panel finds that it is reasonable to assume that a significant restriction is one where the restriction has a very big impact on a person’s ability to do daily living activities, and that the person must have a lot of help or support to do those activities.

The restrictions also must be continuous or periodic for extended periods. Continuous means the activity is generally restricted all the time. And a periodic restriction must be frequent or for longer periods of time. For example, the activity must be 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, the

Panel finds that the Ministry would reasonably need information on the duration and frequency of the restriction.

The Medical Report and Assessor Report also have activities that are listed, and though they do not match the list in the Regulation exactly, they generally cover the same activities. The Medical Report and Assessor Report provide the prescribed professional with an opportunity to provide additional details on the applicant's restrictions.

The Appellant's position is that he and his Doctor have clearly noted that his impairments continuously restrict most of his daily living activities. The Appellant argues that he and his Doctor have both confirmed that he requires assistance with and/or takes significantly longer with daily living activities. For example, the Appellant requires help with doing laundry either from a friend, or he takes much more time to do it on his own because he needs to stand on a chair in order to reach and takes 10 minutes to put the laundry in the washer and 15 minutes to take it out.

The Ministry's position is that the information provided does not confirm that the impairment directly and significantly restricts daily living activities continuously or periodically for extended periods. The Ministry says that because the information about daily living activities is inconsistent between the Medical Report and Assessor Reports, it is difficult to determine whether they are restricted or not. The Medical Report identifies that all daily living activities are restricted continuously, while the Assessor Report indicates most daily living activities are completed independently. The Ministry recognizes that due to the Appellant's impairments he is reported to take longer with several daily living activities, but the stated 2-3 times longer is not considered to be a significant restriction. In addition, given that no additional details were provided from the Doctor about how much longer the Appellant takes with many of his daily living activities, and how much help is required and/or is being provided with his restricted activities, it cannot be established that his ability to perform daily living activities is directly and significantly restricted.

Panel Decision

Based on the information provided, the panel concludes that there is insufficient information to confirm that, in the opinion of a prescribed professional, the applicant's ability to perform daily living activities is directly and significantly restricted.

Although it is demonstrated that the Appellant may take more time with the daily living activities of laundry, basic housekeeping, and shopping, the term "takes significantly longer than typical" is not found in the legislation, nor is it used as an indication of a significant restriction.

In addition, the Panel notes that the Doctor's information about the Appellant's daily living activities provided in the Medical Report and the Assessor Report is inconsistent with each other, and is not entirely consistent with the evidence of the Appellant. In the Medical Report, the Doctor indicated that the Appellant is continuously restricted in all activities listed on the form except "Management of Medications", "Mobility in the Home", "Management of Finances", and "Social Functioning". However, in the Assessor Report, the Doctor reported that all activities were independent, except commenting that Basic Housekeeping and Shopping—Going To and From Stores and Carrying Purchases Home, take twice or 2-3x longer. Although the Appellant stated he had significant restrictions in at least two daily living activities, he also confirmed that he did complete all daily living activities to some extent either independently (even though it took longer), or with the occasional help of friends with activities such as laundry and rides to the grocery store and food bank.

Given the inconsistencies between the Medical Report and the Assessor Report, and without a clear explanation from the prescribed professional about the duration and extent of any restrictions, the Panel finds that the Ministry was reasonable in determining that the available information was not sufficient to conclude that the Appellant was directly and significantly restricted in his ability to perform two or more daily living activities.

Help with Daily Living Activities

A prescribed professional must provide an opinion that the person needs help to perform any significantly restricted activities. Help means using an assistive device, the significant help or supervision of another person, or using an assistance animal to perform the restricted activities. An assistive device is something designed to let the person perform restricted activities.

In the case of the Appellant, the Doctor indicates that the Appellant requires a knee brace and sometimes a cane for his impairment. The Appellant further clarified that he has worn the knee brace for 10 years and wears it continuously. The Appellant says he doesn't always use the cane because of shoulder pain; he has difficulty with depth perception and so now uses the cane more often to maintain his balance.

The Ministry's position is that as the information has not established that daily living activities are significantly restricted, it also cannot be established that significant help is required from other persons or from assistive devices.

Panel Decision

The legislation says that a person must need help to do daily living activities *as a result of direct and significant restrictions in their ability to perform daily living activities*. So direct and significant daily living activities restrictions must be the cause of the need for help.

As the Panel has found that the Ministry was reasonable in determining that direct and significant restrictions in the ability to perform two or more daily living activities had not been established, it follows that the Ministry was reasonable in determining that it was not established that the Appellant needed significant help to perform those daily living activities.

CONCLUSION

The Panel finds that the Ministry's reconsideration decision, which determined that the Appellant was not eligible for PWD designation, was reasonably supported by the evidence, and was a reasonable application of the legislation. Therefore, the Panel confirms the Ministry's reconsideration decision. The Appellant is not successful in his appeal.

The Panel sympathizes with the Appellant and his concerns that his Doctor is not knowledgeable about him. The Panel encourages the Appellant to consider seeking the support of other prescribed professionals available in his community who may provide direct assistance with, and assessment for, future PWD applications.

Appendix – Relevant Legislation

The criteria for being designated as a PWD are set out in Section 2 of the Act as follows:

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).

The Employment and Assistance for Persons with Disabilities Regulation provides as follows:

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 ...

The *Employment and Assistance Act* provides as follows:

Panels of the tribunal to conduct appeals

22(4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

APPEAL NUMBER 2023-0201

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
Carmen Pickering

Signature of Chair

Date (Year/Month/Day)
2023/08/14

Print Name
Simon Clews

Signature of Member

Date (Year/Month/Day)
2023/08/14

Print Name
Erin Rennison

Signature of Member

Date (Year/Month/Day)
2023/08/14