

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) reconsideration decision dated June 29, 2023. The ministry denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant met the age (18 years or older) requirement. However, the ministry was not satisfied that the evidence establishes that

- the appellant has an impairment that is likely to continue for at least two years;
- the appellant has a severe physical or mental impairment;
- the appellant's impairment significantly restricts the ability to perform daily living activities; and
- the appellant requires the significant help or supervision to perform daily living activities.

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

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (the Act), section 2

Employment and Assistance for Persons with Disabilities Regulation (the Regulation), section 2

The full text of these sections of legislation is set out at the end of the decision.

Part E – Summary of Facts

Evidence Before the Ministry at Reconsideration

1) The appellant's PWD application:

- The Medical Report and Assessor Report sections (January 23, 2023) completed by the appellant's general practitioner (the doctor) who has been the appellant's family doctor for 2 months and who has seen the appellant twice in the past 12 months.
- To complete this form, the doctor used an office interview and reviewed consultations with a GI specialist, a rheumatologist and an endocrine surgeon.
- The Applicant Information (Self Report) section was not completed.

2) The appellant's Request for Reconsideration that included her letter and a questionnaire completed by her.

3) Reports from various medical professionals:

- Electrocardiogram (May 31, 2023);
- Chest X-Ray (May 31, 2023);
- Ferritin (May 11, 2023);
- Sodium Level (May 11, 2023);
- Arthrogram MRI (February 2, 2023);
- Abdomen MRI (November 8, 2022);
- Neck/Chest/Abdomen/Pelvis CT (June 14, 2022);
- Neck MRI (October 10, 2021).

4) A note from the appellant's doctor that says that the appellant should "stay off work for medical reasons for 6 months."

New Evidence Provided on Appeal and Admissibility

The appellant submitted a Notice of Appeal.

A few hours before the start of the hearing the appellant submitted 2 medical documents:

- A Soft Tissue Ultrasound Report (July 26, 2023)
- A letter from a thoracic specialist (June 20, 2023)

At the hearing, the appellant provided additional information about her medical conditions and their impact on her functioning. The ministry did not provide additional evidence but provided further explanation of how it made its decision.

The ministry did not object to the admission of the additional documents and the appellant's information. The panel finds that the information provided by the appellant on appeal and at the hearing is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, as it contributes to the panel's understanding of the circumstances surrounding her PWD application. The panel therefore admits this information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

Summary of Relevant Evidence

Medical Report

Diagnoses:

- Chronic RUQ pain (onset July 2021)
- Chronic R Hip pain (onset July 2019)
- Chronic Fatigue Syndrome (onset July 2020)
- Hyperparathyroidism (onset July 2020)
- Osteoarthritis/Osteoporosis (onset July 2020)

Health History:

- Chronic right upper quadrant / rib pain
 - Cause yet undetermined -> query slipped. Rib syndrome vs. Myofascial Pain Syndrome. Awaiting Thoracic Surgery assessment
 - Negative GI workup
 - Significant activity restriction (increased time/difficulty completing ADLs/IADLs due to same)
- Chronic R hip pain
 - Likely MSK Etiology -> Anterior Superior Labral tear on MR Arthrogram
 - Did have Osteoporosis secondary to Hyperparathyroidism
 - Hyperpara treated with surgical resection
 - Ca levels normalized and PT on Ca/Vit D supplementation
 - Ongoing PT/Massage
- Chronic Fatigue Syndrome
 - Affecting energy/motivation, short-term memory
 - Referral in progress for Complex Chronic Diseases Program at BC Women's Hospital
 - Sx [symptoms] Significantly increasing time and difficulty of routine task completion.

- Has not been prescribed medications and/or treatment that interfere with her ability to perform daily living activities

Degree and Course of Impairment:

- When prompted to answer the question “Is the impairment likely to continue for two years or more from today?” the doctor leaves both “yes” and “no” box blank.
- “Prognosis unclear. Awaiting assessment by Complex Chronic Diseases Program and by Thoracic Surgery.”

Functional Skills:

- Can walk 2 to 4 blocks unaided on a flat surface.
- Climb more than 5 steps unaided.
- Can lift 2 to 7 kg.
- Can remaining seated for less than 1 hour.
- Has no difficulty with communication.
- Has significant deficits with cognitive and emotional function (memory, emotional disturbance, and attention). “Chronic pain affects mood on recurrent basis, fatigue affects short-term memory, concentration.”

Assessor Report

Impairments that impact ability to manage Daily Living Activities:

- Chronic musculoskeletal pain (RUQ, R hip, coccyx).
- Chronic fatigue syndrome (fatigue, short-term memory).

Ability to Communicate:

- Speaking, reading, writing, and hearing abilities are good.

Mobility and Physical Ability:

- Walking indoors, walking outdoors, climbing stairs, and standing take significantly longer than typical (“Takes 2-3x longer than normal”).
- Lifting and carrying require periodic assistance from another person (“Assistance required for heavy objects, prolonged carrying”)
- “Largely independent but substantially increased difficulty and duration to complete ADLs due to physical impairment.”

Cognitive and Emotional Functioning (impact on daily functioning)

- Major impacts for attention/concentration and memory.

- Moderate impacts for bodily functions and executive.
- Minimal impact for emotion.
- No impact for consciousness, impulse control, insight and judgement, motivation, motor activity, language, psychotic symptoms, other neuropsychological or emotional or mental problems.

Daily Living Activities:

- Personal Care: dressing requires periodic assistance from another person “for certain clothing items (bra)”; all other activities (grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed, transfers on/off chair) take significantly longer than typical. “Takes 2-3x longer than normal on average.”
- Basic Housekeeping: both tasks (laundry and basic housekeeping) take significantly longer than typical. “Takes 2-3x longer than normal on average”.
- Shopping: Carrying purchases home requires periodic assistance from another person (“assist with carrying groceries”); all other activities (going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases) take significantly longer than typical – “takes 2-3x longer than normal on average”.

“Again, patient is largely independent but basic ADLs are ++ difficult and time consuming due to physical impairments.”

- Meals: all activities (meal planning, food preparation, cooking, safe storage of food) take significantly longer than typical – “2-3x longer than normal”.
- Pay Rent and Bills: Paying rent and bills requires periodic assistance from another person – “income support (limited \$)”; banking and budgeting take significantly longer than typical – “2-3x longer than normal”.
- Medications: Taking as directed requires periodic assistance from another person – “forgets Rx on occasion”; the other 2 tasks (filling/refilling prescriptions, and safe handling and storage) take significantly longer than typical (2x longer).
- Transportation: Getting in and out of a vehicle takes significantly longer than typical – “2x longer than usual”; the other 2 tasks concerning public transit do not apply – “n/a - does not use”.

“Patient can manage independently but tasks in above domains take 2-3x longer than typical on average due to physical, neurocognitive impairments.”

- Social Functioning: independent for appropriate social decisions and securing assistance from others; periodic support/supervision for develop and maintain relationships, interacting appropriately with others, and dealing appropriately with unexpected demands. “Requires periodic assistance as recurrent fatigue, short term memory issues limit ability to effectively maintain relationships, adapt to new

problems, meet unexpected demands." Marginal functioning with immediate and extended social networks.

Assistance Provided:

- Help required for daily living activities is provided by family and friends.
- Cane ("Rx for cane start Feb 2023"), stair railings. [At the hearing the appellant stated that she does not use a cane and the cane trial never happened.]
- The appellant does not have an assistance animal.

Reports from various medical professionals

- Electrocardiogram
 - "ECG Severity: - Abnormal ECG - "
- Chest X-Ray
 - "Impression: No significant abnormality"
- Ferritin
 - Numerical test results
- Sodium Level
 - Numerical test results
- Arthrogram MRI
 - "Impression: Anterior superior labral tear."
- Abdomen magnetic resonance imaging (MRI)
 - "Nonspecific but stable 8 mm lesion in the left hepatic lobe"
- Neck/Chest/Abdomen/Pelvis CT
 - "No size significant cervical lymphadenopathy"
 - "No acute intra-abdominal or intrathoracic abnormality"
 - "13 mm enhancing lesion at the border between segment II/III of the liver"
- Neck MRI
 - "Probable reactive lymph nodes in the neck..."

None of these reports speak to duration of the impairment, physical functioning, mental functioning, or daily living activities.

Request for Reconsideration

In her letter the appellant wrote:

- She struggles every day with daily tasks at home; some don't get done.
- She had stopped working in September 2019 due to pain in tailbone/hip aggravated from sitting at work.
- She previously applied for PWD designation in 2019.
- She had surgery in 2020 but her original pain remained unresolved.

- She has had increasing difficulty with memory. That is why she reached out to an advocate who helped her complete a PWD questionnaire.
- Additional medical issues are affecting her health. She feels her previous medical team has either not taken them seriously, or they have not been confident in exploring/treating them. This is why she has been referred to an endocrinologist and to a Complex Disease Clinic.
- The following is a list of “additional medical info”: ferritin deficiency, low sodium, extreme vertigo, skeletal issues, abnormal ECG, hyperinflated lungs, possible prior left vertebral artery infarction, liver nodule, TD1, mental/cognitive health issues, extreme fatigue, chronic scalp infection, cervical lymphadenopathy.
- Some days it is a challenge to walk her dog. She usually only goes as far as necessary for the dog to relieve itself. She often stops due to fatigue or to steady herself.
- She used to be an extremely active, intelligent, outgoing, and a hard-working medical professional who now struggles with very basic daily living/functioning.
- She hopes her medical team will help her.
- She hopes that with ministry help she will be able to get through her struggle financially.
- She has an amazing child who deserves their mom back and food on the table.
- She would not apply again for PWD designation unless it was absolutely necessary.

In her questionnaire the appellant checked boxes and added comments:

- She has “severe lower rib pain that caused nerve blocks and irritation, torn hip labrum; frozen right shoulder, difficulty with breathing, and chronic fatigue.
- She has been referred to an endocrinologist, the Complex Disease Program, and to orthopedic and thoracic surgeons.
- She needs assistance pulling herself up and out of the tub, gets dizzy and faint, and has bouts of light-headedness causing her to risk a fall.
- She is unable to stand in the shower for long periods of time and needs “shower aids for balance” as she feels she could fall or lose balance.
- She has difficulty reaching up and down to wash her feet or hair as her shoulder can lock.
- Brushing her hair is challenging; she sits on the edge of the tub to shave as she becomes dizzy and loses balance and can be at risk of falling.
- She has low motivation to perform daily hygiene due to chronic pain and depression.
- She spends a lot of time in bed due to severe pain, vertigo and dizziness and occasional nausea.

- She has difficulty getting out of bed due to severe pain in rib, hip and shoulder, and has to move slowly due to dizziness.
- She sometimes needs assistance with getting dressed as it is difficult to pull clothing on or up or to clasp undergarments due to loss of motion in right shoulder and severe pain in hip and rib when bending over. She can't fasten her bra or pull up her socks.
- She is unable to stand at the sink, counter and stove for long periods of time and needs breaks in between.
- She needs assistance with a step stool to sit on or reach high shelves. She is unable to lift, bend or reach up.
- She has to re-read labels as she is unable to retain information.
- Due to chronic fatigue and physical pain, she lacks motivation to eat regular meals and healthy food.
- She forgets to take supplements, can sometimes over- and under-medicate, and needs reminders.
- She needs to set reminders on the phone or make notes to herself and have the pharmacy send her reminders so that she does not run out of prescriptions.
- She has a history of vertigo from suspected side-effects of medication, and she notifies her physician when this happens.
- She is unable to bend when trying to keep her home clean – that is why she uses an electric vacuum.
- She has assistance with cleaning her bathroom and with repetitive movements due to chronic and severe pain in right side of body, hip, rib and shoulder.
- Vacuuming, dusting, and cleaning windows causes excruciating pain in shoulder, rib and hips.
- She is unable to clean floors or windows on a regular basis without assistance.
- She is unable to carry heavy loads of laundry and has no energy to put laundry away. Folding and putting clothes away causes severe pain in shoulder and ribs.
- Her motivation to keep her home clean is low. She does not have the physical ability to clean due to her chronic pain and fatigue.
- During shopping in stores, she has difficulties breathing and needs to take breaks.
- She relies on online shopping.
- Line-ups at a cash register frustrate her and cause her to become short-tempered.
- She needs help with carrying groceries as this takes a lot of energy.
- She feels chronic fatigue and pain while lifting or carrying heavy items.
- When she hears loud voices or noises, arguing, or banging she gets triggered emotionally and becomes seriously anxious and nervous. This is due to pain and PTSD.

- Stairs are challenging due to her chronic hip and rib pain. She needs assistance with ramps and railings.
- She has difficulty getting up and can get light-headed or experience severe stiffness if she sits too long.
- She relies on her left side to open and close heavy doors and drawers because the right side of her body is weak and unable to open or move anything heavy.
- She has to move slowly when she walks from room to room. Repetitive movement causes severe pain.
- She is unable to bend and pick up anything from the floor – for this she needs assistance.
- Chronic pain in her hip prevents her from kneeling or getting up from kneeling.
- She moves slowly due to dizziness and chronic pain and can't walk for long periods of time.
- She is trying to avoid walking on uneven ground due to limited mobility, inability to balance and episodes of dizziness.
- She needs to set reminders and write lists to pay rent and bills on time.
- She has no money left for budgeting and relies on credit which is almost used up.
- She experiences a lot of anxiety, agitation, stress, confusion and sensitivity to sound.
- She has difficulties with making decisions and planning ahead, doing the most important things first and finishing tasks, remembering information and appointments, interacting with friends, family and/or partner, establishing and maintaining relationships with people, and asking for help.
- She writes that she sometimes feels anxiety and frustration and disbelief when she is dealing with her ex-partner which can trigger her emotionally and causes her to disengage. She has to manage how she is going to communicate but it has taken a long time to respond assertively so she is not feeling overwhelmed when interacting.
- It is difficult for her to meet new people as she does not get out much due to her chronic fatigue and pain.
- She is usually in extreme need before she asks for help.
- She has difficulties making herself understood when she speaks or writes, and difficulties understanding what she reads. Inability to retain information causes her to re-read information. She feels anxious when she speaks or listens to other people such as police, "MCFD" or Court officials.
- She receives some assistance from community agencies, counsellors, family members, health professionals, physio and massage therapists.
- She requires bathing aids, a cane, orthotics, "CGM Type 1 diabetes", communication devices (a cell phone for reminders, lists, schedules).

- She needs and has an assistance animal. “My animals help with my mental and emotional wellness.”

Notice of Appeal

- The appellant writes there are “several reasons” for her appeal.
- “Need time to gather/respond.”

Soft Tissue Ultrasound Report

- “Recurrent posterior cervical lymphadenopathy of unclear etiology.”
- “Multiple visualized lymph nodes in the region are normal by size and morphologic criteria. In the posterior neck hypoechoic focus measuring 5 mm does not demonstrate definite central flow or fatty hilum but is decreased from previous (8 mm).”
- “Unchanged prominent lymph nodes. The posterior focus favored to represent a small lymph node seen previously has slightly decreased in size.”

The report does not speak to duration of the impairment, physical functioning, mental functioning, or daily living activities.

Thoracic specialist letter – Summary

- “a lot of issues going on including fatigue and vertigo, shortness of breath, frozen right shoulder, left [the appellant corrected this to “right”] hip pain as well as right sided subcostal pain.
- I agree she does have slipped rib on examination but it doesn’t seem to be the site of her pain.
- We did discuss the role of surgery which we do where we anchor the cartilage but I am not sure that she would truly benefit from this given this doesn’t seem to be the site of her pain.
- I think at this time I would hold off and see if some of her other issues can be worked out. If this comes back to being a main factor of pain it could be repaired in the future.”

The letter does not speak to duration of the impairment, physical functioning, mental functioning, or daily living activities.

Information at the Hearing

The appellant reported:

- When she applied for PWD designation in 2019, her application was denied. Her medical issues have not changed since then. Her hip MRI had not been included with her 2019 application.

- She has a torn hip and feels the pain all the time.
- She has pain in her shoulder, rib and abdomen.
- She cannot play with her child, cannot run, and the quality of her whole life has suffered.
- She cannot sit still uninterruptedly but must adjust her position constantly.
- She can walk but it is not easy – she struggles.
- She has been suffering from vertigo on and off for 4 months. It makes her unsteady and gives her queasiness, especially when she is bending down. She feels nauseous, must rest, sit down, and hold on to something.
- For over 2 years her iron has been low. She thinks that many of her symptoms could be related to iron deficiency, but her doctor does not think so. She started to take iron supplements without the doctor’s recommendation and eats iron-rich food. When she first started taking iron her vertigo improved but she felt unwell again during the last 2 weeks and her nausea has come back. Several years ago, she had iron infusions but still she did not feel well.
- Her issue is not a mental one but a physical one, caused by her painful hip.
- Her 7 ½ -year-old child helps her a lot with carrying and shopping. The child puts away groceries into the lower cupboard, puts away dishes into the higher cupboard using a step stool, feeds her pets, fetches the frying pan when she needs to cook dinner, and carries the laundry. Her child helps her with getting out of the shower and fastening her bra.
- Her child had to learn to adapt.
- The appellant is unhappy that she must ask her child for help.
- The appellant also gets some help from other family members. Her stepsibling installed her air-conditioner, her stepparent helps care for her child.
- She does not have a lot of family and friends. Without them her daily living activities would not get done. She does not get them done on her own.
- She had to cancel many plans with her family and friends. If she attends a large event such as a birthday party or a function, she needs to stay in bed the next day.
- Community members and friends have offered to help.
- She does not want to ask for help and “puts on a tough exterior”.
- Her home has stairs with railings on which she depends. Her bedrooms are upstairs. She tries to avoid going upstairs but she can manage. There is a bathroom on each level of her house.
- She has been struggling with memory loss. She had been working in the medical field but can’t go back to work there due to her memory issues.
- Instead of 12 minutes it took 2 hours to write a handwritten submission.
- She thinks her impairment is a cognitive one, not an emotional one.

- Paying bills is a constant struggle. Recently she had 2 NSF checks because of her forgetfulness.
- She borrows money to pay her bills.
- She drives a car. To avoid hip pain, she adapts how she sits in the car. Public transport is not readily available in her community.
- She can walk 2-4 blocks without a cane, but she doesn't like to. She is comfortable walking 2 blocks. Her doctor recommended a cane for longer walks. The cane trial never took place because her vertigo started.
- She has no appointments with the Complex Disease Program because there is a 2-year waiting list. She has been doing her own research.
- She is considering a biopsy which is planned for mid-month.
- Fatigue has a huge impact on her life.
- Getting groceries takes every bit of her energy.
- She shops primarily online.
- When she shops at the grocery store, they put the groceries in the car for her. Depending on how she feels on that day, they both, or her child alone, bring in the groceries upon arrival - in small increments.
- She does the laundry when necessary. Typically, she has a basket full of clean unfolded laundry and takes garments out of the basket when needed. Quite often she cannot put the laundry away. She is teaching her child how to fold laundry.
- House cleaning is hard for her. Her house is not as clean as she would like it to be. Her electric vacuum helps a lot. Her child also helps with dusting.
- The appellant can manage to clean the bathrooms when needed but her child cleans the tub.
- Her child prepares their own breakfast. The appellant prepares the other meals but has to rest during the process. She manages it because it is important to her.
- Taking her medications is not complicated. Her medications are important because she is diabetic. She monitors her blood sugar levels and is "fairly on top of it." Her advocate gave her the idea of having reminders on her cell phone. She has a glucose meter now which helps her a lot. She struggles more with oral medications.
- She has applied for several benefits, for instance for CPP, and is waiting for the outcome.
- She did not talk to her doctor in detail about her daily living activities but provided the information in her questionnaire.

The advocate stated:

- The appellant has been a client of a local centre where the advocate works. It opened in October 2022 and the appellant was there from the very beginning.
- The appellant is in pain and very unstable.
- Every step for her is labored.

- Her range of motion is limited due to neck problems and a frozen shoulder.
- She has to sit sidewise and keep adjusting her position.
- It takes her 45 minutes to cross the room when it takes another person 12 seconds.
- The advocate gives the appellant reminders.
- The appellant met with the doctor 12 times within the last 6 months and has access to nurses through this centre.
- Physical issues are visible, but cognitive issues are barely visible.
- “Indigenous peoples do not share information with a doctor right away because to them a doctor is a figure of authority.”
- To a question from the panel whether the advocate is a medical professional, the advocate answered that they are a “wellness navigator”.

The ministry largely restated the reconsideration decision. To a question from the panel, they responded that they cannot consider the duration criterion retroactively because of the wording of the legislation. They cannot consider information from previous PWD applications. To another question from the panel the ministry responded it is their unwritten internal policy to find taking 2-3 times longer than typical to be indicative of a moderate impairment. The majority of the time, significantly extended periods of time, or taking 4-5 times longer than typical would be indicative of a severe impairment. The ministry elaborated that not every activity needs to be done daily, and taking 2 times longer than normal should be sufficient for managing all daily living activities.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision that the appellant was ineligible for PWD designation was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. That is, was the ministry reasonable when it determined that

- the appellant does not have an impairment that is likely to continue for at least two years;
- the appellant does not have a severe physical or mental impairment;
- the appellant's impairment does not significantly restrict her ability to perform daily living activities; and
- the appellant does not require the significant help or supervision to perform daily living activities.

PANEL DECISION**Duration**

Section 2(2)(a) of the Act requires the Minister to be satisfied that the appellant's impairment is likely to continue for at least 2 years.

The appellant's position is that her medical conditions have continued unchanged after her 2019 application, which means they have been continuing for over 2 years.

The ministry's position is that the doctor did not indicate whether the appellant's impairment is likely to continue for two years or more. They wrote: "Prognosis unclear. Awaiting assessment by Complex Chronic Disease Program and by Thoracic Surgery." Supplementary medical documents do not speak to the expected duration of her impairment.

The panel finds that the information from the appellant's doctor does not confirm that the appellant's impairment is likely to continue for at least 2 years. The doctor left the "yes"- and the "no"-boxes blank and writes "Prognosis unclear. Awaiting assessment by Complex Chronic Diseases Program and by Thoracic Surgery." No other information about the continuation of the impairment was provided. Based on this evidence the panel finds the ministry was reasonable when it determined that the appellant did not meet the duration requirement. The panel finds that the words of the legislation have the ordinary meaning and there is no ambiguity or reference to retroactivity in the legislation.

Severity of Impairment – Physical or Mental

Section 2 of the Act requires the Minister to be satisfied that the appellant has a severe impairment. “Severe” and “impairment” are not defined. 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 daily physical and mental functioning including any restrictions is a reasonable interpretation of the legislation. However, the panel notes that frequency and/or duration of impairment is not required in the assessment of severity by the legislation at this stage of the legislative test. The panel also notes that the legislation does not identify employability or financial limitations as considerations when determining PWD eligibility.

Physical Impairment

The appellant’s position is that she is severely impaired by fatigue and pain caused by her medical conditions. Her vertigo puts her at risk of falling.

The ministry’s position is that the ability to walk 2 to 4 blocks unaided, climb 5+ steps unaided, and lift 5 to 15 lbs. is not indicative of a severe physical impairment. Also, the appellant’s doctor did not describe how much less than 1 hour the appellant can remain seated. The ministry considers the ability to lift 5 to 15 lbs as sufficient to lift a variety of household and shopping objects. The supplementary medical documents do not speak to impacts on the appellant’s physical functioning. Taking two to three times longer than typical in performing acts of mobility and physical ability is not indicative of a severe physical impairment. The doctor does not describe the frequency of periodic assistance needed with lifting and carrying/holding.

The panel finds that the ministry reasonably determined that the appellant does not have a severe physical impairment. While the appellant’s doctor confirms that most aspects of the appellant’s physical functioning have limitations, the panel finds that these limitations do not add up to a severe impairment of the appellant’s physical functioning. While the appellant takes 2-3 times longer with walking and climbing stairs, the panel finds that this is not sufficient to show severe impairment when considered together with the appellant’s ability to walk 2 to 4 blocks unaided, climb 5+ steps unaided, and lift 5 to 15 lbs. While the appellant’s doctor did not describe how much less than 1 hour the appellant can remain seated, the appellant explained that when she is seated, she has to shift her position due to pain in her hip, and she manages to drive her car sitting sideways. While the doctor reported the appellant would start a cane trial, the appellant stated she is not using a cane and did not do the trial. While the appellant says her pain is severe, the doctor does not

speak to the severity of her pain. The supplementary medical documents neither speak to restrictions of physical functioning nor to the intensity of her pain. Based on the above information the panel finds there is insufficient evidence that the appellant has a severe physical impairment.

Mental Impairment

The appellant's position is that she experiences a lot of anxiety, agitation, stress, and confusion. She lacks motivation due to chronic pain, chronic fatigue, and depression. Her memory is impaired. She has difficulties with planning and decision-making, interacting and communicating, establishing and maintaining relationships, and asking for help.

The ministry's position is that the appellant does not have a severe mental impairment. The doctor does not indicate significant deficits for the majority of listed areas of cognitive and emotional functioning. The cumulative impact on cognitive and emotional functioning, as indicated by the doctor, is indicative of a moderate as opposed to a severe impairment of mental functioning. The ministry noted that the doctor did not describe the frequency of periodic support/supervision required with the areas of social functioning. The ministry also noted that although the doctor indicates marginal functioning with the immediate social network, they also state the appellant receives help from friends and family. The ministry noted further that the doctor did not indicate any safety issues with regards to social functioning, and that the various supplementary medical documents do not speak to impacts on mental functioning.

The panel finds that the ministry reasonably determined that the appellant does not have a severe mental impairment. The doctor reports no difficulties with communication; the appellant's abilities are good in all 4 listed areas (speaking, writing, reading, and hearing). They report no deficits in the majority of the aspects of cognitive and emotional functioning (9 out of 12), with significant deficits in 3 out of 12 aspects (memory, emotional disturbance and attention/sustained concentration). Considering there are no difficulties with communication and the appellant has no deficits with most of her cognitive and emotional functioning, the panel finds that the ministry was reasonable to decide that the cumulative impact on her cognitive and emotional functioning is not indicative of a severe mental impairment.

Respecting social functioning, the doctor indicates the appellant is independent in making appropriate social decisions and securing assistance from others; she requires periodic support/supervision in developing and maintaining relationships, interacting appropriately with others, and dealing appropriately with unexpected demands. Continuous support or supervision is not required. She receives help from family and

friends and has marginal functioning with her immediate and extended social networks. No safety issues are reported.

Based on the above information the panel acknowledges that there are impacts on the appellant's mental and emotional functioning. However, the panel finds that the information does not establish that, in its totality, these impacts constitute a severe mental impairment.

Restrictions in the ability to perform daily living activities

The appellant's position is that she is significantly restricted in her ability to perform daily living activities due to chronic pain, fatigue, vertigo, depression, anxiety, stress, and loss of memory.

The ministry's position is as follows: Based on the assessment of the doctor, the supplementary medical documents, and the appellant's information and questionnaire at reconsideration, there is not enough evidence to establish significant restrictions to daily living activities. Taking two to three times longer in performing daily living activities is not considered indicative of significant restrictions to daily living activities. The doctor does not describe the frequency of periodic assistance required with dressing, carrying purchases home, paying rent/bills, or taking medications as directed. They do not describe the frequency of periodic support/supervision required with the social functioning and do not indicate safety issues with regards to social functioning. Restrictions with paying rent and bills are due to financial limitations and not a direct result of the impairment. The doctor states the appellant is largely independent. Supplementary medical documents do not speak to restrictions of daily living activities.

Section 2(2)(b) of the Act requires that the ministry be satisfied that in the opinion of a prescribed professional, a severe physical or mental impairment directly and significantly restricts the appellant's ability to perform daily living activities either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether it is satisfied, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and restriction. The direct restriction must also be significant.

The panel notes that the only information from a prescribed professional about the appellant's ability to perform daily living activities is from the doctor. The doctor stated that the appellant is largely independent in managing her daily living activities. Where the doctor reported restrictions, they indicated that for the majority of the tasks the appellant takes 2-3 times longer than typical. The panel finds that in the appellant's circumstances

the ministry was reasonable when it determined that taking 2-3 times longer than typical for daily tasks was not enough to establish that her daily living activities were significantly restricted, especially as the appellant is mostly independent according to the doctor and manages with the help of her young child. While the appellant states she needs a lot of help, this degree of help is not confirmed by the doctor. There is no evidence from the doctor that the appellant needs continuous support in any of her daily living activities. The doctor identifies a small number of tasks as requiring periodic assistance (putting on bra, carrying groceries home, taking medications as directed, developing and maintaining relationships, interacting with others, and dealing with unexpected demands), but does not provide any information that shows that this periodic assistance is needed for extended periods of time.

Based on the foregoing analysis, the panel finds that the ministry reasonably determined that there is not enough evidence to establish significant restrictions to the appellant's daily living activities.

Help to perform daily living activities

The appellant's position is that she needs a lot of help that is mainly provided by her child.

The ministry's position as it has not been established that daily living activities are significantly restricted it cannot be determined that significant help is required.

The panel notes that direct and significant restrictions with daily living activities must first be shown to decide that help is needed because of significant restrictions. As the panel already found that significant restrictions with daily living activities were not shown, the panel also finds that the ministry was reasonable to decide that the help requirement is not met.

Conclusion

The panel finds that based on the available information, the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was reasonably supported by the evidence. The panel confirms the decision. The appellant is not successful on appeal.

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

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 ...

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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) and Section 24(1)(b)
Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name

Inge Morrissey

Signature of Chair

Date (Year/Month/Day)

2023/08/04

Print Name

Gordon Thompson

Signature of Member

Date (Year/Month/Day)

2023/08/17

Print Name

Jan Broocke

Signature of Member

Date (Year/Month/Day)

2023/08/18