

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) decision dated June 29, 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 the 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 (the Regulation), section 2

Employment and Assistance Act, sections 22(4) and 24(1) and (2)

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 March 21, 2023, completed by the Appellant's Doctor (the Doctor);
- The Assessor Report, dated March 21, 2023, also completed by the Doctor;
- The Self Report, dated February 17, 2023 and completed by the Appellant; and,
- The Appellant's request for reconsideration (the Reconsideration Request), dated June 25, 2023, in which the Appellant writes *"After a recent appointment we had to re-evaluate my medical condition and amend application form"*.

Diagnoses

In the Medical Report, the Doctor says the Appellant has musculoskeletal (MSK) system back pain, and level 2 (L2) degenerative disc disease (DDD), both with a date of onset of November 2017.

Physical Impairment

The Doctor has not completed the section of the Medical Report that asks the prescribed professional to indicate the severity of the applicant's medical condition relevant to their impairment and how the medical condition impairs the applicant.

The Doctor says the Appellant:

- Can walk four or more blocks on a flat surface without help;
- Can climb five or more steps unaided;
- Has no limitations with lifting; and,
- Can remain seated for one to two hours.

In the Assessor Report, the Doctor says the Appellant is independent in all listed aspects of mobility and physical ability (walking indoors and outdoors, standing, climbing stairs, lifting, and carrying and holding).

In the Self Report, the Appellant says he doesn't walk for any distances, adding *"If I do a day of rest is needed and pain killer use goes up."* He says that his left thigh goes completely numb and his balance is compromised if he has to stand for any length of time, and that he has shifted his weight to his left side, which leaves his left hip and knee very sore. He also writes *"sleeping on either side is difficult and results in pain."*

The Appellant says, also in the Self Report, *"everything is in slow motion"*, and he has to make sure he's not aggressive in anything he does, adding *"It's changed my life."*

Mental Impairment

In the Medical Report, the Doctor says the Appellant has short term memory issues as a result of his opiate use.

In the Assessor Report, the Doctor says the Appellant's writing, speaking, reading, and hearing abilities are good. The Doctor also says the Appellant's mental impairment has a major impact on his attention/concentration, and a moderate impact on his bodily functions, concentration, and memory. The Doctor says there are no impacts in any other areas.

Restrictions in the Ability to Perform Daily Living Activities

In the Medical Report, the Doctor says the Appellant has been prescribed Percocet, and that this drug interferes with his ability to do daily living activities. The Doctor identifies previous medication taken by the Appellant, and lists some side effects of the previous medication (fatigue, nausea and cognitive issues).

The Doctor also says in the Medical Report that the Appellant requires periodic assistance with the daily living activity of "*Mobility outside the home*".

In the Assessor Report, the Doctor says, with the exception of not being able to remain seated for more than two hours, the Appellant is independent in all daily living activities. As defined in the legislation, these activities are:

- Performing personal hygiene and self care;
- Performing housework to maintain the person's place of residence in acceptable sanitary condition:
- Shopping for personal needs;
- Preparing own meals;
- Using public or personal transportation facilities;
- Moving about indoors and outdoors;
- Making decisions about personal activities, care, or finances; and,
- Relating to, communicating or interacting with others effectively.

The Doctor also says the Appellant is able to perform all his daily living activities, "*but (at a) slowed pace at times*".

Need for Help

In the Medical Report the Doctor says the Appellant lives alone and does not require any prostheses or aides for his impairment.

In the Assessor Report, the Doctor says the Appellant does not need any assistive devices.

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 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.

Evidence Provided after the Decision

In the notice of appeal, the Appellant says he is taking five to eight Oxycodone pills a day *"to do any task ... due to your neurosurgeon botching my surgery"*.

The Appellant submitted additional information on July 14, 2023 (the Submission). New information contained in the Submission comprised the following documents:

- A new Medical Report, dated June 15, 2023, completed by the Doctor (the June 15 Medical Report); and,
- A new Assessor Report, also dated June 15, 2023, completed by the Doctor (the June 15 Assessor Report).

The two new reports (collectively, the June 15 Reports) contained some of the same information that was in the original reports, but some of the information was new or amended. Additional or amended information from the Doctor in the two new reports is summarized below.

The Ministry didn't submit anything in the form of a response to the Submission.

Diagnoses

In the June 15 Medical Report, the Doctor provides an additional diagnosis of paresthesia chronic thigh, with a date of onset of January 2018.

Physical Impairment

In the section of the June 15 Medical Report where the prescribed professional is asked to indicate the severity of the applicant's medical condition relevant to their impairment and how the medical condition impairs the applicant, the Doctor has written *"(Appellant) states limited abilities due to increased pain. Requires daily analgesics to function."*

The Doctor has re-evaluated the Appellant's functional skills as follows:

- He is unable to walk on a flat surface without help;
- He is unable to climb any steps unaided;

- He is only able to lift up to two kgs.; and,
- He can remain seated for less than one hour.

In the June 15 Assessor Report, the Doctor says the Appellant needs continuous assistance or is unable to walk indoors or outdoors, climb stairs, or stand. For walking and climbing activities, the Doctor has indicated that the Appellant uses an assistive device. The Doctor has also indicated that the Appellant takes significantly longer than typical to lift, carry and hold. No explanations are given in the space provided for a description of how much longer activities take, or what assistive devices are required for any of these activities.

Mental Impairment

In the June 15 Medical Report, the Doctor says the Appellant has short term memory issues as a result of his opiate use.

In the June 15 Assessor Report, in addition to the impacts identified in the original Assessor Report, the Doctor says the Appellant's mental impairment has a major impact on bodily functions.

Restrictions in the Ability to Perform Daily Living Activities

In the June 15 Medical Report, the Doctor lists an additional side effect of the previous medication by writing "*memory affected*".

In the June 15 Medical Report, the Doctor says that the Appellant requires continuous assistance with personal self care, meal preparation, basic housework, and mobility both inside and outside the home. The Doctor also says that the Appellant needs periodic assistance with daily shopping.

In the June 15 Assessor Report, the Doctor provides a revised assessment of the Appellant's abilities with respect to the following daily living activities (*with comments in italics*):

- **Perform personal hygiene and self care** – Takes significantly longer than typical with transfers in and out of bed and chairs;
- **Perform housework to maintain the person's place of residence in acceptable sanitary condition** – Takes significantly longer than typical with basic housework and laundry;
- **Shop for personal needs** – Needs continuous assistance or is unable to go to or from stores or carry purchases home;
- **Prepare own meals** - Takes significantly longer than typical with food preparation and cooking (*mother helps prepare his meals*);

- **Use public or personal transportation facilities** – Takes significantly longer than typical with getting in and out of a vehicle; and
- **Move about indoors and outdoors** – See Doctor’s comments in the “Physical Impairment” section above.

Need for Help

In the June 15 Medical Report, the Doctor says the Appellant currently uses a cane to ambulate.

In the June 15 Assessor Report, the Doctor says the Appellant gets the help he needs with his daily living activities from his family, and that he uses a cane as an assistive device to mobilize.

Evidence Presented at the Hearing

At the hearing the Appellant said he did not provide any information to the Doctor when the Doctor completed the Medical Report and the Assessor Report because, having been the Doctor’s patient for 25 years, the Appellant was aware that the Doctor had hundreds of patients and “*didn’t have the time*”. The Appellant also said he was present and did participate when the Doctor completed the June 15 Reports.

The Appellant said that he no longer has feeling in his right thigh at all and his left knee “*is gone too*”. Because of the pain he takes two different pain killers every day and uses a cane at all times when ambulating. He said he can do things if he takes 10 pills, but his Doctor said “*that isn’t how it works*”. The Appellant explained that he is aware of the risk of opioid dependence and is constantly “*weaning off*” his daily intake. He said that he is presently taking 4 pills a day.

The Panel asked the Appellant for more information about the “*botched surgery*” that he mentioned in the notice of appeal. The Appellant said that he had had spinal fusion surgery, performed by a neurologist, in November 2017. A couple of months later, in January 2018, he had a follow-up consultation with the neurologist because “*something was wrong*”. He had been released from the hospital within 24 hours of the operation and was not offered post-operational physiotherapy. He had been told by the neurosurgeon that he would gradually feel better following the fusion procedure, but after two months he was still in extreme pain. In the January 2018 follow-up consultation, the Appellant asked the neurologist for a second opinion but the neurologist would not refer him to anyone. Eventually the Appellant was able to arrange an examination with a different neurosurgeon at a different hospital, where he was told that the problem was that the Appellant had “*severe nerve damage at L2*”. The Appellant’s subsequent attempts to have the botched surgery redone were unsuccessful.

When asked by the Panel if he had any written documentation regarding his spinal fusion surgery problems, the Appellant said that nothing was available and the Doctor couldn't provide him with anything until he had had a magnetic resonance imaging test (MRI) which he has not been able to have scheduled.

The Ministry representative at the hearing (the Ministry Rep) asked the Appellant about his use of a cane as an assistive device and whether he was able to walk unaided. The Appellant said he used a cane "*off and on*" since he first started experiencing pain in his back, but was using a cane all the times when he had the fusion surgery in 2017. He said he tries not to walk anywhere anymore, and has to "*plan everything*". For example, if he has to go somewhere he takes medication before going out, parks in a handicap zone, and "*gets in and out ASAP*".

When asked by the Ministry Rep if his Doctor had recommended any other mobility devices, the Appellant said he was not getting any medical care and was struggling on his own. Regarding help, he said that his mother prepares his food, but he lives alone and there is no one else to help him. He said daily living activities, like getting in or out of bed or a chair, take about 10 times as long as they did when he was healthy. In addition, he can only remain seated for less than an hour. He also said that he doesn't take pain killers after 6:00 pm, and as a result he only gets about four hours sleep a night.

The Ministry Rep summarized the reasons for the Decision based on the original Medical Report and Assessor Report. The Ministry Rep then addressed the information contained in the June 15 Reports, identifying a number of cases where the Ministry Rep said there were missing details or inconsistencies between the June 15 Reports. The Ministry Rep said the Ministry sometimes contacts prescribed professionals to get answers to questions about inconsistencies or missing information that it needs to make a decision. In this case, the Ministry Rep said, "*there (were questions) that the Ministry would have liked to have asked the Doctor*". In addition to what the Ministry Rep described as inconsistencies and missing details, the Ministry Rep said "*only requiring assistance with two daily living activities is not indicative of a severe impairment*".

The Ministry Rep said that the Appellant could apply for the PWD designation again if the Panel confirmed the Ministry's Decision, and that the Assessor Report could be completed by someone other than the Doctor, a physiotherapist for example. The Ministry Rep also said that the Appellant might consider applying for a different benefit, specifically the person's with persistent multiple barriers to employment (PPMB) designation. Alternatively, if his disability was recognized by qualifying federal government disability programs, such as the Canada Pension Plan disability benefit, for example, he would automatically qualify for the PWD designation.

Admissibility of New Evidence

The Panel admits the new information in the notice of appeal regarding the amount of opioid medication the Appellant takes every day for his pain because the information is relevant to his appeal.

The Panel notes that the June 15 Medical Report and the June 15 Assessor Report were provided by the Doctor. The Panel also notes that there was new information from the Appellant at the hearing about how the Appellant had had "*no involvement*" with the Doctor when the Doctor had completed the original Medical Report and Assessor Report. The Panel also admits the Appellant's statement that he did not contribute to the original Medical Report and Assessor Report as new evidence because it's necessary for a full and fair disclosure of all matters relating to his appeal. As the June 15 Medical Report and the June 15 Assessor Report are clearly of relevance to the appeal, the Panel admits these two reports and assigns them significant weight.

The Ministry did not object to the Panel considering any of the new evidence included in the June 15 Medical Report or the June 15 Assessor Report, or the new information given by the Appellant at the hearing.

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 because of significant restrictions.

ANALYSIS

The Panel notes that section 24(1) of the *Employment and Assistance Act* says that, following a hearing, the Panel must determine whether the decision being appealed is reasonable. In this case, the decision being appealed is the Ministry's reconsideration decision dated June 29, 2023.

The Panel notes that the information in the June 15 Reports was not available when the Ministry issued the Decision. In addition, the Panel notes that the Ministry did not make a submission in response to the new information contained in the June 15 Reports.

However, as the Panel admitted the June 15 Reports, the following analysis of the reasonableness of the Ministry's Decision is based on the conclusions reached by the Ministry in the Decision, taking into account any new information admitted by the Panel under section 22(4) of the *Employment and Assistance Act*.

The Panel also notes that the Ministry received the June 15 Reports on July 14, 2023, which was twenty-six business days before the hearing. Nevertheless, over those twenty-six business days the Ministry, according to verbal information provided by the Ministry Rep at the hearing, did not attempt to contact the Doctor to resolve any questions it might have had based on the new information in the June 15 reports.

Severity of Impairment

"*Impairment*" is defined in the Medical Report and the Assessor Report as "*a loss or abnormality of psychological, anatomical, or physiological structure or function causing a restriction in the ability to function independently, appropriately or for a reasonable duration*". While "*Impairment*" is not defined in the legislation, the Panel considers the Ministry's definition of "*impairment*" to be a reasonable definition of the term in considering an applicant's eligibility for the PWD designation.

In determining PWD eligibility, the Ministry must consider all relevant evidence, which includes the Appellant's evidence. That said, the legislation requires the Ministry to make its decision based largely on the opinion of a prescribed professional, which includes a medical doctor.

The legislation says the Ministry must be satisfied that any impairment, whether physical or mental, 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.

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.

Physical Impairment

The Appellant's Position

The Appellant's position is that he has a severe physical impairment because he is unable to walk any distance without taking pain killers and using a cane, and he has had to shift his weight to his left side, which leaves his left hip and knee very sore. In addition, sleeping on either side is difficult and results in pain, and he is only able to sit for less than an hour at a time.

The Ministry's Position

The Ministry's position is that the Appellant does not have a severe physical impairment because the Doctor indicated in the Medical Report and the Assessor Report that the Appellant has no limitations in his functional skills, and can independently walk indoors/outdoors, climb stairs, stand, lift, carry and hold.

Panel Decision

The Ministry uses 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 both ask the prescribed professional to indicate if the person applying for PWD has any restrictions in physical functioning, and if so, to explain the restrictions or provide comments giving more detail, such as how any restrictions impact the applicant's physical abilities.

As explained above, the Panel has admitted the evidence contained in the June 15 Reports and the additional information provided by the Appellant at the hearing. The Ministry's Decision, on the other hand, was based on the information contained in the original Medical Report and the original Assessor Report.

At the hearing, the Appellant said the Doctor had provided the original Medical Report and Assessor Report without having had a recent consultation with him. The Doctor's in-person consultation with the Appellant occurred three months after the Appellant's application forms were completed. It is clear from the evidence that the Doctor either became aware of significant restrictions that he didn't know about in March 2023, or that the Appellant's physical health had significantly worsened since then. As both sets of reports were provided by the same prescribed professional, there is no other reasonable explanation for the significant differences between the information provided by the Doctor in the original application and the June 15 Reports.

Based on all the available evidence, the Panel finds that the Doctor's original reports do not accurately indicate the severity of the Appellant's impairments, their impact on his daily living activities, or his need for help.

The Panel notes that the June 15 Reports, which were also prepared by the Doctor, indicate that the Appellant's physical abilities are significantly restricted due to pain, and that he has been prescribed opioids for pain management. According to the Doctor, who has been the Appellant's family physician for 25 years, the Appellant is unable to walk any distance or climb any stairs unaided, his lifting ability is under 2 kgs., and he is only able to sit for less than one hour. In the June 15 Assessor Report, the Doctor says the Appellant requires continuous assistance or is unable to walk any distance, climb any stairs, or stand. The Appellant provided additional details of his lack of ability and mobility in these areas at the hearing.

Based on all the available evidence, the Panel finds that the Ministry's determination that the Appellant does not have a severe physical impairment was not reasonable.

Mental Functioning

In the Medical Report, the prescribed professional is asked if the applicant has any significant deficits in their cognitive and emotional functioning, and if so, in what areas. In the Assessor Report, if the applicant has a mental impairment, the prescribed professional is asked to indicate whether any impairment to the applicant's cognitive and emotional deficits are considered to have a mild, moderate, or major impacts on their mental functioning.

The Appellant's Position

The Appellant does not contend that he has a severe mental impairment.

The Ministry's Position

The Ministry's position is that the Doctor does not diagnose a mental health condition or brain injury other than to note that his opiate medication causes short term memory

issues. In addition, the Doctor did not identify significant deficient with consciousness and attention in the Medical Report, so it's unclear how major impacts to attention and concentration could have a significant impact on his mental functioning.

Panel Decision

The Doctor, as a prescribed professional, is best qualified to diagnose a person's impairments and to assess their severity. 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.

In the June 15 Reports, the Doctor says that the Appellant's memory is affected by his prescription medication, which has a major impact on his bodily functions and attention/concentration. However, the impacts are not described, making it difficult to determine whether these impairments are severe. In addition, in the June 15 Assessor Report, the Doctor says the Appellant is independent in all aspects of social functioning and has good functioning with his immediate and extended social networks.

Based on all the available evidence, the Panel finds that the Ministry reasonably determined that the Appellant does not have a severe mental impairment.

Restrictions in the Ability to Perform Daily Living Activities

The Appellant's Position

The Appellant's position is that he has significant restrictions in his ability to do most of his daily living activities. In addition, any daily living activity for which he has to move about requires that he take medication in advance, and it takes him 10 times as long with many daily living activities than it did when he was healthy.

The Ministry's Position

The Ministry's position is that, because the Doctor has indicated in the Assessor Report that the Appellant is independent in all listed daily living activities, there is not enough information to establish that the Appellant is directly and significantly restricted in his ability to perform daily living activities continuously or periodically for extended periods.

Panel Decision

After assessing the severity of an impairment, the Ministry must consider how long a severe impairment is likely to last, how much the applicant's ability to do daily living activities is restricted, and if they need help with those activities.

The legislation says the Ministry must be satisfied that a prescribed professional has said that an applicant's severe impairment *directly and significantly* restricts their daily living

activities, either *continuously or periodically for extended periods*. Daily living activities appears in the Act in the plural ("*daily living activities*"), so at least two of the daily living activities must be significantly restricted.

"*Directly*" means that a severe impairment must itself be the cause of any daily living activities restrictions. A direct restriction must also be significant and either continuous or periodic. If periodic, it must be for extended periods.

In the June 15 Assessor Report, the Doctor says that the Appellant takes significantly longer than typical with some aspects of five of the daily living activities as the term is defined in section 2(1) of the Regulation (i.e. perform personal hygiene and self care, perform housework to maintain his residence in acceptable sanitary condition, prepare his own meals, move about indoors and outdoors, and use personal transportation facilities). In addition, the Doctor indicates that the Appellant needs continuous assistance or is unable to do some aspects of the daily living activity listed in the Regulation as "shop for personal needs".

It is important to note that, where a prescribed professional's evidence lacks enough detail to satisfy the Minister, the Panel can use an appellant's evidence to provide that detail as long as that evidence is consistent with what the prescribed professional said.

At the hearing, the Appellant provided further details on his daily living activity abilities. With respect to the daily living activities of moving about indoors and outdoors and performing housework, for example, the Appellant said that he tries not to walk anywhere any more, and if he does have to walk or do housework, he can only do so if he has taken pain medication and uses a cane. This is additional information that is consistent with what the Doctor said in the June 15 Assessor Report.

As mentioned above, only two daily living activities need be directly and significantly restricted, either periodically for extended periods or continuously, for this criterion to have been met. As the admissible evidence shows that five daily living activities are directly and significantly restricted on a continuous basis, the Panel finds that the Ministry's determination that the Appellant did not meet this criterion is not reasonable.

Help with Daily Living Activities

The Appellant's Position

The Appellant's position is that he requires the use of a cane at all times to walk, and that he relies on his mother to prepare meals for him.

The Ministry's Position

The Ministry's position is that the Doctor has not indicated that the Appellant needs any help to complete daily living activities. In addition, as it has not been established that his

daily living activities are significantly restricted, it cannot be determined that significant help is required from other persons or an assistive device.

Panel Decision

Help with a daily living activity is defined in the legislation as the need for:

- An assistive device;
- The significant help or supervision of another person; or,
- The services of an assistance animal

The legislation also 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.

In the June 15 Reports, the Doctor says that the Appellant relies on friends and family for help. The Doctor also says that the Appellant is required to use a cane to ambulate. The Panel finds that a walking cane falls within the definition of "*assistive device*", (i.e. "*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*"). The Panel also notes that the use of the cane and the help provided by the Appellant's mother are required as a result of direct and significant restrictions in his ability to perform daily living activities.

The Panel finds that the Ministry's determination that the Appellant did not meet this criterion is not reasonable based on all the admissible evidence.

Conclusion

Based on all the admissible evidence, the Panel finds that the Decision was not reasonably supported by the evidence and was not a reasonable application of the legislation in the Appellant's circumstances. Therefore, the Panel rescinds the Decision and the Appellant's appeal is successful.

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 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.

Decision of panel

24(1) After holding the hearing ... 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 2023-0190

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

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

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2023/08/25

Print Name

Jennifer Armstrong

Signature of Member

Date (Year/Month/Day)

2023/08/25

Print Name

Kulwant Bal

Signature of Member

Date (Year/Month/Day)

2023/08/25