

Part C – Decision Under Appeal

This is an appeal about a Ministry of Social Development and Poverty Reduction (“ministry”) reconsideration decision, dated July 10, 2023, that denied the appellant persons with disabilities (“PWD”) designation. The ministry found that the appellant met the age (18 years or older) and duration (impairment to continue for at least 2 years) requirements. However, the ministry did not find that:

- The appellant has a severe mental or physical impairment;
- The appellant’s impairment significantly restricts his ability to perform daily living activities; and
- The appellant requires significant help or supervision to perform daily living activities.

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

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act, SBC 2022, c. 41 section 2, 2.1 (the “Act”).

Employment and Assistance for Persons with Disabilities Regulation, B.C. Reg. 265/2002, section 2 (the “Regulation”)

The full text of these sections of legislation is set out in the schedule of legislation after this decision.

Part E – Summary of Facts

An in-person hearing was held on August 9, 2023. The panel, the appellant, and a family member of the appellant all attended the hearing in-person. With permission, a representative of the ministry joined the hearing via telephone.

Evidence before the Ministry at Reconsideration

The appellant is over the 18 years of age and has applied for PWD designation. In support of the application, the appellant submitted a PWD application that included a Medical Report, an Assessor Report, and a portion of the application form entitled Applicant Information that includes a hand—written self-report from the appellant.

In addition to the application materials, the ministry also received the appellant’s Request for Reconsideration, which included further self report from the appellant and reports from three pediatric consults.

New Evidence Provided on Appeal

At the hearing, the appellant, and his family member, both provided further evidence of his present medical condition, restrictions on his daily living activities, and details regarding the amount of assistance he needs to complete those daily living activities.

The ministry did not object to the submission of this new evidence. The panel finds that much of the oral testimony of the appellant summarized evidence already before the ministry at reconsideration and is information in support of the appellant’s appeal. However, where the testimony provided further detail, the panel finds that the testimony was reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Accordingly, the panel admits all the new information as evidence pursuant to section 22(4) of the *Employment and Assistance Act*.

Summary of Relevant EvidenceDiagnoses and health history: Medical Report

The Medical Report was completed by the appellant’s doctor. The doctor has been treating the appellant since 2015; however, prior to a telephone consult to complete the Medical and Assessor Report had not seen the appellant since 2016. In the Medical Report the doctor diagnoses the appellant with depression, anxiety and PTSD and states that these diagnoses are likely to continue for two years or more.

The doctor states the following about the appellant's health history:

- chronic daily struggle with anxiety and depression;
- PTSD following MVA when in Grade 4/5 – now having trouble with transport, etc.;
- has been unable to find suitable employment;
- has not been prescribed any medications and/or treatments that interfere with ability to perform daily living activities; and
- does not require any prostheses or aids.

With respect to functional skills, the doctor states that the appellant:

- can walk unaided 4+ blocks on a flat surface;
- can climb 5+ stairs unaided;
- has no limitations with lifting;
- has no limitations remaining seated;
- has no difficulties with communication; and
- has significant deficits with cognitive and emotional function in the areas of emotional disturbance (e.g. depression and anxiety) and motivation.

Diagnoses and health history: Assessor Report

The Assessor Report was completed by the same doctor that completed the Medical Report. The doctor states that the appellant lives with family, friends or caregiver. When asked what mental or physical impairments impact the appellant's ability to manage Daily Living Activities the doctor lists anxiety and depression. The doctor states that the appellant's ability to communicate is good in all areas and marks the appellant independent with all categories of mobility and physical ability. With respect to cognitive and emotional functioning, the doctor reports that the appellant experiences no impact in the following areas:

- bodily functions;
- consciousness;
- motor activity;
- language;
- psychotic symptoms;
- other Neuropsychological problems; and
- other emotional or mental problems.

The doctor lists minimal impact in the areas of impulse control, insight and judgement, and attention/concentration. The doctor lists moderate impact in the areas of executive, memory, and motivation and both moderate and major impact in the area of emotion.

With respect to daily living activities the doctor marked the appellant independent in all areas other than transportation and social functioning.

With respect to transportation, the doctor noted that the appellant is unable to use public transport or arrange for transportation due to general anxiety disorder and PTSD. With respect to social functioning the doctor stated that the appellant required periodic support/supervision with the following:

- Interacting with others
- Dealing appropriately with unexpected demands
- Securing assistance from others

The doctor notes that the appellant has marginal functioning with both his immediate and extended social networks.

The doctor notes that the appellant gets help from family and friends to manage his daily living activities.

Diagnoses and health history: Self-Report

In the PWD application's self-report the appellant stated that he has been diagnosed with several mental disabilities, including ADHD, social anxiety, and general anxiety. He stated that he also has separation anxiety and needs to be around his safe people to go into public. He stated that he prefers to stay home where he feels safe and notes that he also has PTSD from a childhood car accident. As a result of these mental disabilities, the appellant states that he has excessive worry, anxious thoughts, trouble sleeping and getting to stay asleep and very frequent headaches. The appellant states that while he can go into public, he prefers not to and cannot do so unless he has a safe person with him and reports that afterwards he must spend time alone to calm down from the stress. The appellant also reports having panic attacks and seasonal affectation disorder. The appellant notes that he can take care of himself normally with feeding, dressing, etc. but needs help when he must go into public.

Request for Reconsideration

In his Request for Reconsideration the Appellant reiterated much of the evidence set out in the Self-Report. He also stated that he was listed as disabled on his mother's disability cheque until he turned 18 as he had ADHD and generalized anxiety disorder. He stated that if he was considered disabled then, and nothing has changed, and anxiety has gotten worse, then why would he not be considered a person with disabilities now. The appellant also stated that with depression it is less a question of being able to do things and more having the motivation to do them. With the Request for Reconsideration, the Appellant also provided the ministry with copies of three pediatric consult reports, dated September 2017, January 2018, and October 2018 (collectively, the "Pediatric Reports"). In the Pediatric Reports the pediatrician diagnosed the appellant with ADHD and generalized anxiety disorder

New evidence

At the hearing, the appellant and his family member provided oral testimony. The appellant's family member stated that when the appellant was a minor he was "designated as disabled" and the family received extra money for him on her disability benefits and child tax benefits. The family member stated that when the appellant turned 19, he had to apply for social assistance and then for disability assistance, but that it makes no sense as he was designated as disabled when he was a minor and should still be designated the same.

The appellant reiterated this information and in answer to questions from the panel provided information about his ability to perform daily living activities. When asked, the appellant stated that he has no physical impairment and can take care of himself except for situations that require him to go out in public or to speak with people he is not familiar with. He reports that in those situations he needs a safe person he feels comfortable with to be present to assist him. The appellant reported that while he has his driver's license that he has only driven alone a few times and generally needs to have a safe person with him to do so and is also unable to take transit without the presence of a safe person.

The appellant stated that he has not completed Grade 12 but would like to have the opportunity to do so.

The ministry representative also provided oral testimony at the hearing. The ministry representative reviewed the ministry decision and discussed the new evidence of the appellant and his family member. The ministry representative noted that if the appellant's appeal is not successful then the appellant may wish to return to see his doctor or a social worker to tell them the information that he told the panel as if this information was

corroborated by a prescribed professional the ministry may agree that the appellant qualifies for PWD designation.

As stated above, the panel admits this new information as evidence pursuant to section 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision**Issue on Appeal**

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 determining that the requirements of section 2(2) of the Act were not met because:

- a severe mental or physical impairment was not established;
- the appellant's daily living activities were not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and
- it has not been established that daily living activities are significantly restricted and therefore it cannot be determined that significant help is required from other persons or a device to complete restricted activities.

Panel DecisionPhysical Impairment

The ministry's position is that the evidence before it does not support a finding that the appellant has a severe physical impairment. They state that there is no diagnosis of a physical impairment and that the medical evidence set out in the medical report and assessor reports describes the appellant as someone without physical limitations. The appellant did not disagree with this position.

Given the lack of a diagnosis of any physical impairment and medical evidence indicating that the appellant has no physical limitations on physical functioning, the panel finds that the ministry's decision that the appellant does not have a severe physical impairment was reasonable.

Mental Impairment

The ministry's position is that the appellant does not have a severe mental impairment. The ministry states that although the appellant is diagnosed with anxiety, depression and PTSD following a motor vehicle accident that the medical report and assessor report do not note any major impacts to the appellant's daily cognitive and emotional functioning.

The ministry notes that the appellant is independent in almost all activities and although the appellant reports significant impact and suggests that he may have agoraphobia, the

extent of the impact of these diagnoses on the appellant's daily activities has not been confirmed by the medical evidence submitted.

The appellant disagrees and states that the diagnosed mental impairments severely impact his social functioning such that while he is physically able to perform most daily living activities that the reality is that he cannot do many of them unless he has a safe person to assist him.

The panel reviewed the evidence set out by the appellant in the self report and the Request for Reconsideration and finds that the appellant's mental impairment does significantly impact the appellant's day to day functioning. Further, the panel reviewed the evidence set out in the medical report and assessor report and notes that the appellant's doctor found that the appellant had significant deficits to cognitive and emotional function in the areas of emotion and motivation.

The panel also noted that the same doctor stated that the appellant had major/moderate impacts in emotion and moderate impacts in executive memory, and motivation. Accordingly, the panel finds that the ministry misspoke when it stated in the reconsideration decision that no major impacts to the appellant's daily cognitive and emotional functioning were reported in the medical report or assessor report.

Further, the panel notes that section 2(3) of the Act states that for the purposes of determining whether someone has a severe mental or physical impairment that "a severe mental impairment includes a person with a mental disorder...". The medical report itself, which is part of the application form prescribed by the legislation and must be completed by a medical practitioner, lists several diagnostic codes. In this list of codes are many diagnoses that fall under the category "mental disorders". The panel finds that the appellant's doctor diagnosed the appellant with codes 5.0 (PTSD), 5.3 (Depression) and 5.5 (Anxiety) in Part B of the Medical Report. These diagnoses all fall under the "mental disorder" heading. Accordingly, the panel finds that the wording of section 2(3) of the Act means that these diagnoses equate with the appellant having a severe mental impairment. Based on this finding and the reporting of significant deficits to cognitive and emotional function and moderate/major impact in the area of emotion reported above, the panel finds the appellant has a severe mental impairment and that the ministry's decision stating otherwise was unreasonable.

Restrictions in ability to perform daily living activities

The appellant's position is that while he is physically able to perform most daily living activities that his mental impairment makes it impossible for him to do so. He states that

his depression means he often lacks the motivation to complete these activities. The appellant further submits that when he can be motivated that his anxiety and PTSD prevent him from performing many daily living activities, particularly those that involve speaking with others outside of his familiar group of safe individuals or those that require him to leave his home.

The ministry's position is that while the appellant has provided a self-report that he is unable to perform many daily living activities because of his mental impairment that the evidence from the appellant is insufficient to meet the test set out in the Act. The ministry states that the Act requires this restriction to be confirmed by a prescribed professional and submits that the appellant's doctor reported the appellant independent with all daily activities other than using public transportation and noted that only periodic support / supervision was needed with respect to social functioning.

Section 2(2)(b)(i) of the Act requires that the ministry be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA 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 panel finds that while there is substantial evidence from the appellant and his family member that the appellant's severe mental impairment restricts his ability to perform numerous daily living activities, the panel notes that this restriction is not confirmed by a prescribed professional. Confirmation from a prescribed professional is required by the Act. The panel agrees with the ministry's assessment that the appellant's doctor reported the appellant independent with respect to the performance of almost all daily living activities and did not provide adequate evidence that the appellant was restricted in the significant way the appellant described in his self report. Accordingly, the panel finds that the ministry's decision that the appellant did not satisfy the daily living criterion was reasonable.

Help to perform daily living activities

The appellant's position is that his ability to perform daily living activities is significantly restricted and he regularly requires the help of his safe individuals to perform many of his daily living activities.

The ministry's position is that as the ministry did not establish that daily living activities were significantly restricted, it cannot be determined that significant help is required from other persons or a device.

As stated above, the panel has found that there is insufficient evidence from the required prescribed professionals that the appellant is significantly restricted in his ability to perform daily living activities. The panel agrees that the ministry's decision that this criterion was not met was reasonable.

Conclusion

While the panel finds that the appellant does have a severe mental impairment, the panel finds that the ministry's decision that the appellant was not eligible for PWD designation, was reasonably supported by the evidence and therefore confirms the decision. The appellant's appeal is unsuccessful.

Given the discrepancy between the appellant's evidence and the evidence of the appellant's doctor, the panel notes the ministry representative's testimony that the appellant can reapply with a new application after discussing his restrictions in detail with his doctor or another prescribed professional, such as a social worker.

Schedule of 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, or....

APPEAL NUMBER 2023-0207

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

Emily C. Drown

Signature of Chair

Date (Year/Month/Day)

2023/August/25

Print Name

Donald Stedeford

Signature of Member

Date (Year/Month/Day)

2023/August/27

Print Name

Bob Fenske

Signature of Member

Date (Year/Month/Day)

2023/August/27