

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) decision dated July 27, 2023 denying persons with disabilities (PWD) designation.

The Ministry found the Appellant met the age (over 18) and duration (likely to last more than two years) requirements. However, the Ministry found the Appellant did not meet the requirements for:

- severe mental or physical impairment
- significant restriction on the ability to perform daily living activities
- needing significant help to perform daily living activities.

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

Full text of the Legislation is in the Schedule of Legislation at the end of the Reasons.

Part E – Summary of Facts

The hearing took place in person, with the Ministry attending by telephone. The Appellant attended with a Social Worker as advocate and support person.

Evidence Before the Ministry at Reconsideration:

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

- Medical Report with some sections filled in, unsigned and undated
- Assessor Report completed by a Doctor
- Appellant's Self Report

Medical Report #1:

The Medical Report form is blank except for the Functional Skills section, which indicates that the Appellant:

- Can walk 1 to 2 blocks unaided
- Can climb 5+ stairs unaided
- Has no limitations in lifting or remaining seated
- Has no difficulties with communication
- Has significant deficits with cognitive and emotional functioning in the areas of:
 - Emotional disturbance
 - Motivation
 - Attention or sustained concentration.

Assessor Report #1:

The Doctor does not indicate how long they have known the Appellant, or how often they have seen him.

Mental or Physical Impairment:

The Doctor identifies Lupus as the mental or physical impairment that impacts the Appellant's ability to manage daily living activities.

Mobility and Physical Ability:

The Doctor indicates that the Appellant needs periodic assistance from another person for standing. They also indicate that he takes significantly longer than typical and needs periodic assistance from another person to walk indoors and outdoors.

Cognitive and Emotional Functioning:

The Doctor indicates that the Appellant's mental impairment has a major impact on bodily functions and emotion. They indicate moderate impact on attention/concentration and motivation. They comment: "depression, severe on flare up day, lack of motivation, brain fog, easily distracted, difficult [sic] concentrating, sleep disturbance which causes flare ups and happens regular basis [sic]."

Daily Living Activities:

The Doctor indicates that the Appellant takes significantly longer than typical and uses an assistive device for:

- Dressing (“has to sit when flare”)
- Grooming (“uses side of tub for support during flare ups”)
- Shopping (“need to take [breaks] after every aisle, need to use shopping cart when in a flare up”)
- Getting in and out of a vehicle (“uses seat + door for support in flare up; 2 x longer”).

They indicate that the Appellant takes significantly longer than typical for:

- Transfers in/out of bed (“2 x longer”)
- Basic housekeeping (“Has to take frequent breaks during flare”)

They indicate that the Appellant uses an assistive device for reading prices and labels. No device is specified.

The Doctor also states:

“Flare ups: very limited in what he can do when having a flare up. Flare ups used to be on an almost daily basis prior to medications, since being on medication flare ups every 2 weeks on average and last 1-2 days.”

The Doctor does not indicate any restrictions in social functioning, except that the Appellant has marginal functioning with his extended social network.

Assistance Provided for Applicant:

The Doctor indicates that help required for daily living activities is provided by the Appellant’s family. They indicate that the Appellant uses crutches as assistive devices.

Self Report #1:

The Appellant states:

- Symptoms of Lupus began in the spring of 2022.
- Pain, although less with the current medication, was “so bad that I would either be on crutches to get around, or shuffle around barely being able to lift my feet off the ground.”
- When he had a flare up, the pain in his fingers was so bad that he could not use his hands. His spouse would have to open containers and make all the meals.
- He could not sleep due to pain in his hands and hip.
- He is unable to work in his profession of Information Technology due to his symptoms, including flare ups caused by stress.
- He has gone from being healthy and fit, to being “a feeble person who some days can barely keep their eyes open, and brain fog so bad some days that I can barely concentrate.”
- As an example of his ability to perform daily living activities, he went grocery shopping and spent the rest of the day tired with a headache.
- If he does computer coding for four hours, he gets severe headaches and has to stop.

Additional Evidence:

The Doctor and the Social Worker added information to the original Medical Report and Assessor Report, with a statement attached and signed by the Doctor and the Social Worker, dated July 12, 2023. They state that, where the Social Worker has added information, she did so with permission from the Doctor. The Social Worker had mailed the Reports and attached statement, to the Ministry for the Reconsideration, but the Ministry did not receive them before making the Reconsideration Decision.

At the hearing, the Social Worker confirmed that, when she and the Doctor signed the statement, the Doctor had reviewed and approved the Reports as amended. The information in the first Reports was not deleted, and the additional relevant information is set out below. The Panel accepts the Amended Medical Report and the Amended Assessor Report as the evidence of the Doctor, with further explanation provided under Panel Reasons.

Amended Medical Report, dated July 6, 2023:

The Applicant has been the Doctor's patient since November 2022, and the Doctor has seen him between two and ten times in the past twelve months.

Diagnosis:

The Doctor provides diagnoses of Undifferentiated Connective Tissue Disorder – Lupus (onset December 2022) and “Anaemia from underlying pathology, from active bleed [secondary to] vasculitis.”

Health History:

The Doctor comments:

“Patient find [sic] difficulty walking short distances due to constant pain.
Can't stand for significant duration.
Feel dizzy walking or standing.
Brain fog and unable to concentrate for any task”

The Doctor states that the Appellant is on a medication, methotrexate, that interferes with his ability to perform daily living activities. Side effects are generalized pain, lethargy, weakness, joint pain, and low blood count. They also state that the Appellant was on prednisone but was weaned off that medication in mid-June 2023, due to side effects.

Functional Skills:

The Doctor indicates that the Appellant's ability to walk fluctuates between 1 to 2 blocks (as stated in Medical Report #1), and less than 1 block, as his pain fluctuates. They add that, for the Appellant “every walking step is in intense pain and sometimes uses crutches.”

Similarly, they indicate that the Appellant's ability to climb stairs fluctuates between 5+ steps (as stated in Medical Report #1) and 2 to 5 steps. They state that the Appellant uses a handrail to take pressure off his legs and gets winded and dizzy at times.

They indicate that the Appellant has significant deficits with cognitive and emotional function in the additional areas of language and memory. The Doctor comments that the Appellant feels increasing difficulty with cognitive function, hearing and communication. They state that the Appellant has problems forming sentences due to brain fog and has difficulty concentrating, speaking, and writing sentences, difficulty with comprehension, fluctuating mood and “no motivation for anything.”

Amended Assessor Report:

Ability to Communicate:

The Doctor states that tinnitus makes it difficult for the Appellant to hear, especially high pitches.

Mobility and Physical Ability:

- Walking indoors and outdoors: Appellant has pain, gets winded easily and is easily fatigued.
- Standing: Appellant has leg pain and dizziness and has to lean on someone.

Cognitive and Emotional Functioning:

They state:

- Bodily function: when the Appellant was taking prednisone, he always had bloody stool, and had multiple days when he spent up to eight hours in the bathroom, resulting in additional pain of hemorrhoids
- Consciousness: the Appellant has been unable to drive “multiple times due to foginess and dizziness” and “when he has a flare up, his dizziness impacts his consciousness”
- Emotion: the Appellant reports unwarranted emotional reactions such as anger or frustration “for no reason”; he also has increased depression and anxiety, as his symptoms increase
- Attention/concentration: Appellant is distractible, unable to concentrate, and has short term memory issues, often forgetting what he is saying mid-sentence
- Executive function: both “no impact” and “major impact”; Appellant has difficulty with sequencing and finds it difficult to stay on task
- Memory: both “no impact” and “major impact”; Appellant cannot remember a list of more than one or two items, or pieces of information
- Motivation: “moderate impact”; with increasing limitations, the Appellant feels hopeless and depressed, and feels defeated applying for jobs
- Motor activity: “no impact”, “minimal impact” and “major impact”; Appellant has limited ability to walk and massages his body for two to three hours a day to try to decrease physical pain
- Language: “no impact” and “minimal impact”; Appellant has disorganized speech at random times, sometimes has difficulty expressing his thoughts, and is frustrated as a result
- Other neuropsychological problems: “no impact” and “minimal impact”; vision blurring daily
- Other emotional or mental problems: “no impact” and “major impact”

Daily Living Activities:

- Dressing: “Cannot get dressed standing anymore. Has to sit down due to pain and dizziness. This happens 1-2 x/week at least. Prior to taking prednisone, he could not use his hands due to fingers being in so much pain. He was taken off prednisone mid-June and his pain has begun increasing again.”
- Bathing: uses the side of the tub to get in and out
- Toileting: uses assistive device; sometimes needs crutches to push up from the toilet, or will push off the bathroom counter
- Transfers in/out of bed: “has an issue daily getting out of bed due to pain in his feet”
- Transfers on/off chair: “uses his hands to push on and off a chair due to pain in his lower torso”
- Basic housekeeping: “takes longer because he has to sit down frequently or use furniture to hold himself up”
- Shopping: “uses anything to take weight off legs”
- Reading prices and labels: uses assistive device; occasionally vision is blurry, he uses glasses or his phone as a magnifier to read labels
- Carrying purchases home: “purchases put in vehicle”; “He would be unable to carry purchases home due to difficulty walking with pain and dizziness. He will use a shopping cart and a vehicle. At times he cannot go grocery shopping at all due to pain and dizziness.”
- Cooking: uses assistive device; has difficulty standing and may have to sit intermittently.

Assistance Provided by Other People:

Help required for daily living activities is provided by the Appellant’s spouse and parents. They state that, if no help was available, the Appellant would require grocery delivery and someone to carry groceries into the house. They add that the Appellant would be unhoused if the parents did not provide rent-free accommodation.

Additional Self Report:

The Appellant states:

- When he first applied for PWD designation he was on a high dose of prednisone and was feeling better than he is now. As he has weaned off the prednisone, his symptoms have returned.
- His ability to focus or concentrate on anything is so greatly affected that sometimes he forgets what he is writing or, if he is doing computer programming, he cannot follow through on his thoughts.
- He sometimes has trouble forming sentences or finding words.
- He has “a lot of brain fog again” and sometimes feels as if he is in a dream state.
- He gets dizzy almost every day, bending over and standing up or even when sitting.
- He gets dizzy and fatigued walking up a small hill.
- When he has a flare up, he will not drive because he is too dizzy.
- If he walks far (such as his parents’ driveway which is around 223 metres long) he gets slightly winded and has to stop or slow down.
- If he pushes himself one day, he has a flare up the next day.

- He cannot imagine what his life would be like without his spouse to help him with cooking and shopping.
- As an example of his ability to perform daily living activities, one day he went to the lab for blood tests, then to the Doctor's office, and to the Ministry office to ask about this application. When he returned home, he was fatigued, dizzy and had "fairly bad brain fog" and went to bed.
- He has to rely on his parent to carry things that the Appellant could have carried easily before his illness.
- He has been prescribed different medications since stopping prednisone, but they do not help his symptoms as much.

Appellant:

At the hearing, the Appellant stated:

- When he completed the original application, he was on prednisone and flare ups were once or twice a month.
- He has been off prednisone completely for almost two months, which has resulted in increased pain symptoms and decreased capabilities.
- The new medication does not relieve his symptoms at all, and all his symptoms have returned. When he has a flare up now, it means his symptoms go from bad to worse.
- Most nights he ends up having to use crutches, or he would be crawling on the ground, because he cannot stand up due to pain.
- He has increased memory problems and his mental health has suffered.
- He has suicidal thoughts every day, as his abilities have declined.
- If not for the impact on his spouse, he would be looking for Medical Assistance in Dying to end his life, as he sees his current condition continuing for the rest of his life.
- He is in constant pain and he cannot think clearly or remember things.
- Even a better day is painful, and he is never pain-free.
- His spouse helps with all daily living activities, including meals and groceries.
- He can no longer go grocery shopping.
- He cannot carry anything because he has difficulty walking.
- He can drive, but not if he is feeling dizzy or has brain fog.
- Since completing the Additional Self Report:
 - he can no longer walk up the small hill to his parents' home;
 - he always has to hold onto a railing walking up or down stairs;
 - every step is painful, and if he walks 60 feet he is shuffling and cannot lift his feet because of the pain;
 - by nighttime, he uses crutches inside and outside the house;
 - he is foggier and more confused.

The Social Worker stated that she has seen the Appellant's difficulty with memory, concentration, and brain fog, in conversations with him, where he will forget what he is saying mid-conversation.

Admissibility of Additional Evidence:

The Ministry did not object to the admission of the amended Medical and Assessor Reports, the additional Self Report or the oral evidence of the Appellant and the Social Worker at the hearing.

The Panel finds that the additional evidence is reasonably required for the full and fair disclosure of all matters in the appeal. Therefore, the Panel finds that the additional evidence is admissible under EAA s. 22(4).

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's decision denying the Appellant PWD designation is reasonably supported by the evidence or is a reasonable application of the legislation. The Ministry found the Appellant met the age (over 18) and duration (likely to last more than two years) requirements. However, the Ministry found the Appellant did not meet the requirements for:

- severe mental or physical impairment
- significant restriction on the ability to perform daily living activities
- needing significant help to perform daily living activities.

Appellant's Position:

The Appellant maintains that he meets the five criteria for PWD designation. He says that the effects of Lupus result in both severe mental and severe physical impairment. Since he stopped taking prednisone he is in constant, daily pain, and symptoms have increased. Along with the physical symptoms, he says he suffers from severe depression, brain fog and decreased memory and concentration. He says that these symptoms impair his ability to perform all daily living activities, and he could not manage without the help of his spouse and parents. He also uses crutches as an assistive device every day.

Ministry Position:***Additional Evidence:***

The Ministry takes the position that, while the amended Medical Report and Assessor Report provide additional information, the statement signed by the Doctor and the Social Worker does not confirm that the Doctor reviewed and approved the additional information. They maintain that it is unclear who provided the information. Therefore, the Ministry says that it "cannot say what weight to give" to the additional information.

Physical Impairment:

Based on the information in Medical Report #1 and Assessor Report #1, the Ministry maintains that the medical evidence indicates a mild, or at most moderate, physical impairment. While the Ministry acknowledges that Lupus can be debilitating at times, the Ministry says that, according to the Doctor, the Appellant has flare ups twice a month, each lasting one to two days, so is limited in his activities only two to four days a month. The Ministry says that, when the Appellant is not having a flare up of Lupus, he is independent in all daily living activities and his baseline functioning is good except for difficulty walking more than two blocks.

Mental Impairment:

The Ministry says that a severe mental impairment has not been established. They maintain that it is unclear that the Doctor has diagnosed depression. They acknowledge that the Doctor indicates the Appellant has severe depression on days when the symptoms of Lupus flare up, but again note that flare ups occur only two to four days a month. However, the Ministry says that symptoms have only a mild to moderate impact on the Appellant's functioning the rest of the time. The Ministry also says that, even on bad days, the Appellant is independent in many

areas that the Ministry argues are “related to decision making”. Therefore, the Ministry takes the position that the Appellant’s mental impairment is mild to moderate overall.

Daily Living Activities:

The Ministry also says that the information provided does not indicate direct and significant restrictions in daily living activities. The Ministry acknowledges that the Appellant is very limited in what he can do during flare up of Lupus symptoms, but again notes that the Appellant would only be limited in his ability to perform daily living activities two to four days a month. The Ministry maintains that, outside of flare ups, the Appellant is not significantly restricted in performing activities of daily living.

Help to Perform Daily Living Activities:

The Ministry acknowledges that the Appellant uses a cane [sic] when needed but says that the Doctor does not indicate that the Appellant needs or receives significant help from another person to perform daily living activities. In addition, as the Ministry determined that it has not been established that the Appellant’s ability to perform daily living activities is significantly restricted, the Ministry says it cannot determine that the Appellant needs significant help with restricted activities.

Panel Decision:

PWD Designation – Generally

The legislation provides the Ministry with the discretion to designate someone as a PWD if the requirements are met. In the Panel’s view, PWD designation is for persons who have significant difficulty in performing regular self-care activities. If the inability to work is the major reason for applying for PWD designation, the Panel encourages applicants to speak to the Ministry about other potential programs such as Persons with Persistent Multiple Barriers to Employment (PPMB) or explore federal government programs such as Canada Pension Plan disability benefits.

Some requirements for PWD designation must have an opinion from a professional, and it is reasonable to place significant weight on these opinions. The application form includes a Self Report. It is also appropriate to place significant weight on the Self Report and evidence from the Appellant, unless there is a legitimate reason not to do so.

The Panel will review the reasonableness of the Minister’s determinations and exercise of discretion.

Additional Evidence:

The Panel finds that the Ministry was not reasonable in failing to consider the additional information in the Amended Medical Report and Amended Assessor Report.

The Ministry took the position that the statement signed by the Social Worker and the Doctor did not confirm that the Doctor had reviewed and approved the additional information that the Social Worker added to those documents.

The Panel finds that the signed statement does establish that the Doctor approved the additions – while the wording could have been more specific, there is no other reason for the Social Worker and the Doctor to have prepared and signed the statement saying that information has been added with the permission of the Doctor. It would not be reasonable to assume that the Doctor was giving permission for the Social Worker to add information he did not approve, to appear on a form submitted to the government over his signature. Further, at the hearing, the Social Worker confirmed clearly that the Doctor reviewed and approved the additions to the Reports before signing the statement.

The Panel also notes that it is clear from the handwriting and typed pages which portions were written by the Doctor and which were added by the Social Worker. Yet the Ministry apparently did not give any weight even to the additional statements written by the Doctor, particularly in the Amended Medical Report, which is now completed and signed by the Doctor.

The Panel also notes that a social worker is a prescribed professional under the Act. Therefore, even if the Ministry was unclear as to whether the Doctor had reviewed and approved the additional information, all the information in the Amended Reports was written either by the Doctor or the Social Worker, and therefore was provided by a prescribed professional as required by the Act.

At the hearing, the Ministry said that it “could not say what weight to give” the additional information, but it appears that the Ministry gave the additional information no weight at all. The Ministry did not address the substance of the additional information in the Amended Reports that was provided by prescribed professionals, basing its submissions on the information in Medical Report #1 and Amended Report #1. The Panel bases its decision on the whole of the medical evidence as provided by the prescribed professionals. The Panel also finds that the Amended Medical Report and Amended Assessor Report represent the opinions and evidence of both the Doctor and the Social Worker.

The Panel gives significant weight to the detailed and more recent evidence in the Amended Reports, which were written after the Appellant had to stop taking prednisone.

Severe Mental or Physical Impairment

“Severe” and “impairment” are not defined in the legislation. The Ministry considers the extent of any impact on daily functioning as shown by limitations with or restrictions on physical abilities and/or mental functions. The Panel finds that an assessment of severity based on physical and mental functioning including any restrictions is a reasonable application of the legislation.

A medical practitioner’s description of a condition as “severe” is not determinative. The Minister must make this determination considering the relevant evidence and legal principles.

- *Physical Impairment:*

The Panel finds that the Ministry was not reasonable in its determination that, based on the information in the Doctor's reports, the Appellant's physical impairment is mild to moderate rather than severe.

The Doctor prepared Medical Report #1 and Assessor Report #1 when the Appellant was taking prednisone, which controlled Lupus symptoms to the point where the Appellant had flare ups twice a month, for one to two days at a time. In mid-June 2023, the Appellant was weaned off prednisone and his symptoms increased to the point where there is now little difference from day to day. The Ministry points out that the Doctor's statement in Assessor Report #1, that the Appellant has flare ups every two weeks on average, lasting one to two days, is repeated in the Amended Assessor Report. The panel notes the complete statement in both Reports, that flare ups were "on an almost daily basis prior to medications, since being on medication have ups [sic] every 2 weeks on average and last 1 – 2 days." The statement was written when the Appellant was taking prednisone. The Panel considers the medical evidence as a whole, which confirms that the Appellant is no longer able to take the medication that reduced his flare ups to twice a month for one to two days. Without the medication, the Doctor states that the Appellant's severe lupus symptoms occurred daily. When the Doctor completed the Amended Medical Report in July 2023, when the Appellant was no longer taking prednisone, they wrote the new information that the Appellant has "difficulty walking short distances due to constant pain" and "cannot stand for significant duration."

The Panel finds that the Appellant's symptoms on flare up days are now his daily experience. He has difficulty walking short distances, he cannot stand for any significant duration, and experiences frequent dizziness. By the end of each day, the Appellant is either walking with crutches, or crawling on the floor.

Therefore, the Panel finds that the Appellant has a severe physical impairment due to the constant pain, dizziness and fatigue resulting from Lupus.

- *Mental Impairment:*

The Panel finds that the Ministry was not reasonable in its determination that the Appellant has a mild to moderate mental impairment.

Again, on Appeal the Ministry continues to base its position on the information in Medical Report #1 and Assessor Report #1 and does not appear to give any weight to the Amended Reports. The Panel finds that the mental impairment described by the Doctor on flare up days is now the Appellant's daily experience, since he had to discontinue the prednisone.

The Panel is unclear why the Ministry states in the reconsideration decision, and again at the hearing, that "it is unclear if [the Appellant] has been diagnosed with depression." The Doctor reports depression in Assessor Report #1 and repeats the statement in the Amended Assessor Report. They describe the Appellant's depression as severe, with lack of motivation to do

anything, brain fog and difficulty concentrating. The Panel finds that the Doctor has provided a diagnosis of depression.

In the Amended Medical Report, the Doctor adds that the Appellant has increasing difficulty with cognitive function and communication. They write that the Appellant has “brain fog and [is] unable to concentrate for any task.” The Doctor and Social Worker confirm that the Appellant struggles with memory and concentration, unable to remember more than one or two items and often forgetting what he is saying mid-sentence. The Appellant describes depression so severe that he has suicidal thoughts every day and wishes he could end his life through Medical Assistance in Dying.

Again, the Panel notes that, since the Appellant stopped taking prednisone, his most severe symptoms of mental impairment occur on a daily basis, rather than twice a month, as indicated in Assessor Report #1. While the Ministry points out that, in its assessment, the Appellant is “independent with many areas related to decision making such as social functioning, meal planning, food prep and cooking, paying bills, taking and taking [sic] medications as directed and filing prescriptions, even on the bad days”, the Panel finds that it is not reasonable to give greater weight to that assessment and those individual areas of functioning, than to the opinions of the Doctor and the Social Worker about the Appellant’s struggles with cognitive function. Decision making is only one aspect of cognitive function, and the Panel gives greater weight to the more complete and recent information from the Doctor and the Social Worker, and the evidence of the Appellant, that he suffers from severe depression, lack of motivation, brain fog and impaired concentration and memory, impairing his cognitive functioning every day.

Therefore, the Panel finds that the Ministry was not reasonable in its determination that a severe mental impairment was not established.

Restrictions to Daily Living Activities (Activities):

A prescribed professional must provide an opinion that the applicant’s impairment restricts the ability to perform the daily living activities (“Activities”) listed in the legislation. The Activities that are considered are listed in the Regulation. Those Activities are:

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

For a person who has a severe mental impairment, Activities also include:

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

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

The restrictions to Activities must be significant and caused by the impairment. This means that the restriction must be to a great extent and that not being able to do the Activities without a lot of help or support will have a large impact on the person's life.

The restrictions also must be continuous or periodic. Continuous means the activity is generally restricted all the time. A periodic restriction must be for extended periods meaning frequent or for longer periods of time. For example, the activity is restricted most days of the week, or for the whole day on the days that the person cannot do the activity without help or support. To figure out if a periodic restriction is for extended periods, it is reasonable to look for information on the duration or frequency of the restriction.

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

The Ministry acknowledges that the Doctor reports in Assessor Report #1 that the Appellant is very limited in what he could do during flare ups. The Ministry did not consider the additional information from the prescribed professionals in the Amended Assessor Report. The Ministry determined that the Doctor did not report continuous restrictions in Activities, and that, as the restrictions only occurred during flare ups, for two to four days a month, those restrictions did not occur periodically for extended periods.

As the Panel has found that the Appellant has severe mental and physical impairments on a daily basis, the Panel also finds that the Ministry was not reasonable in determining that the Appellant has significant restrictions only two to four days a month.

The Panel finds that the information provided by the Doctor and the Social Worker confirms direct and significant restrictions to the Appellant's ability to perform Activities. Again, the Panel accepts the evidence in the Amended Reports, and finds that the Appellant's ability to perform the following Activities is directly and significantly restricted either continuously, or periodically for extended periods:

- Shop for personal needs: Appellant is not able to shop without assistance; he has difficulty moving around a store, stopping to rest after every aisle; without his spouse to assist, they would have to order groceries online, and he is not able to carry purchases to or from his vehicle; his ability to perform this Activity is restricted continuously
- Use public or personal transportation facilities: Appellant is unable to drive when he has symptoms of brain fog and dizziness, which can occur daily; his ability to perform this Activity is restricted periodically for extended periods
- Perform housework to maintain the person's place of residence in acceptable sanitary condition: Appellant's impaired ability to walk and stand mean that he must take frequent

breaks and takes significantly longer to perform housework; his ability to perform this Activity is restricted continuously

- Move about indoors and outdoors: Appellant has intense pain when walking and is either on crutches or on the floor every evening, as the pain increases during the day; Doctor reports that the Appellant has difficulty walking short distances due to constant pain; Appellant's ability to move about is also affected by fatigue and dizziness when walking or standing; Appellant spends two to three hours a day massaging his muscles to try to decrease pain; his ability to perform this Activity is restricted continuously
- Relate to, communicate, or interact with others effectively: Appellant has brain fog, severe depression and difficulty concentrating, which impair his ability to communicate effectively with others, as he has difficulty expressing himself and can lose track of his thoughts mid-sentence; his ability to perform this Activity is restricted continuously.

The Panel also notes that symptoms of pain, dizziness and fatigue affect the Appellant's overall ability to engage in any Activities every day for extended periods. For example, he may go to two or three appointments in the morning, and then be unable to do anything for the rest of the day, and he spends two to three hours a day just massaging his muscles to reduce pain.

Considering the whole of the medical information in the Amended Reports, the Appellant's Self Reports and his evidence at the hearing, the Panel finds that the Ministry was not reasonable in its determination that the limitations described in the Medical and Assessor Reports did not indicate a direct and significant overall restriction in the Appellant's ability to perform Activities.

Help Required:

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

The Appellant uses crutches, which are an assistive device, to move about indoors and outdoors every day. His spouse, and his parents, provide help for Activities, and without them he would not be able to shop for his personal needs. The Panel finds that the Appellant requires help, in the form of an assistive device and significant help from another person, to perform Activities. The Panel finds that the Ministry's decision that it could not determine that the Appellant needed an assistive device is not reasonably supported by the evidence.

Conclusion:

The Panel finds that the Ministry's decision to deny the Appellant PWD designation was not reasonably supported by the evidence. The Panel rescinds the reconsideration decision. The Appellant is successful in the appeal.

Schedule – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

Persons with disabilities

s. 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

s.2 (1) For the purposes of the Act and this regulation, "daily living activities",

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

(i) make decisions about personal activities, care or finances;

(ii) relate to, communicate or interact with others effectively.

(2) For the purposes of the Act, "prescribed professional" means a person who is

(a) authorized under an enactment to practise the profession of

(i) medical practitioner,

ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

(i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or

(ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*,

if qualifications in psychology are a condition of such employment.

(3) The definition of "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

Employment and Assistance Act

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

APPEAL NUMBER 2023-0236

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
Susan Ferguson

Signature of Chair

Date (Year/Month/Day)
2023/08/29

Print Name
Jennifer Armstrong

Signature of Member

Date (Year/Month/Day)
2023/08/29

Print Name
Kulwant Bal

Signature of Member

Date (Year/Month/Day)
2023/08/29