

**Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated July 13, 2023, in which the ministry found the appellant was not eligible for designation as a Person with Disabilities (“PWD”) under section 2 of the *Employment and Assistance for Persons with Disabilities Act* (“Act”). The ministry found that the appellant met the age requirement and the requirement for the impairment to continue for at least 2 years, but the ministry was not satisfied that:

- the appellant has a severe physical or mental impairment,
- the severe impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform daily living activities either continuously or periodically for extended periods; and
- as a result of restrictions caused by the impairment, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform daily living activities.

The ministry found that the appellant is not one of the prescribed classes of persons eligible for PWD designation on the alternative grounds set out in section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation* (“Regulation”). There was no information or argument on this point, and the panel considers it not to be at issue in this appeal

**Part D – Relevant Legislation**

The ministry based the reconsideration decision on the following legislation:

- Employment and Assistance for Persons with Disabilities Act* - section 2
- Employment and Assistance for Persons with Disabilities Regulation* - sections 2 and 2.1
- Employment and Assistance Act* - section 22(4)

The full text is available in the Schedule after the decision.

## Part E – Summary of Facts

The information the ministry had at the time of the reconsideration included:

1. A *Record of decision* indicating that the PWD application was submitted on May 11, 2023, and denied on June 21, 2023, with the *Decision denial summary* explaining the criteria that were not met. The ministry found that only the age and duration requirements were met.

On June 22, 2023, the appellant submitted a *Request for Reconsideration*. On July 13, 2023, the ministry completed its review and found that the criteria for a severe impairment, daily living activities and help were still not met.

2. The PWD application with 3 parts:

The Applicant Information (“self-report”) date April 27, 2023, with a handwritten submission from the appellant.

A Medical Report dated May 2, 2023, signed by a Nurse practitioner (“NP”) who has known the appellant for more than 4 years, and has seen her 2-10 times in the past 12 months, and

An Assessor Report dated May 2, 2023, also completed by the NP who based the assessment on an office interview with the appellant, medical consult reports, and file/chart information.

*Summary of relevant evidence from the application*

### **Diagnoses**

In Section A of the Medical Report, the appellant was diagnosed with degenerative disc disease; “other mental – depression,” and substance related disorders (onset for all conditions not indicated).

In Section B - *Health History*, the NP described a longstanding history of chronic pain secondary to cervical, lumbar, and facet degeneration as well as neuro foraminal narrowing. The appellant has also struggled with recurrent disc bulges at C1/T7, T3/4 and C5/6. Previous surgeries included left shoulder arthroscopy (2016) and a tibial rod fixation (2011).

The NP reported chronic thoracic back pain that radiates to the appellant's lower limbs. Previous musculoskeletal injuries have exacerbated the baseline chronic pain. The appellant attended a rehabilitation program and tried pain management strategies, but the symptoms are unrelenting.

Regarding the mental impairment, the NP reported that the appellant is in long term remission from both stimulant use and alcohol use disorders. The appellant's past medical history includes depression and Tourette's disorder.

### ***Functional skills***

#### Self-report

The appellant described "pain all the time" because "it hurts to stand, lay down, sit down, or stand up from a sitting position." The appellant said that "walking hurts, I need to take breaks." Hobbies such as fishing "are now non-existent so depression takes over."

#### Medical Report

In Section B - *Health History*, the NP described physical limitations due to chronic pain, including "impacts to both power in sensation to her arms." The appellant "struggles with static positioning as well as extended periods of walking."

In Section D - *Functional Skills*, the appellant was able to walk 2-4 steps unaided on a flat surface and climb 5+ steps unaided. The appellant was able to lift 5-15 pounds and remain seated for less than 1 hour.

Regarding the mental impairment, the NP checked "no" when asked if the appellant has difficulties with communication. When asked if there are any significant deficits with cognitive and emotional function, the NP checked "yes" with additional check marks for 3 of the 12 areas listed:

*Memory*

*Emotional disturbance*

*Other (comment, "Tourette's").*

In *Comments*, the NP described mental impacts from pain: "chronic pain exacerbates her overall mood and sense of well-being." The pain is longstanding despite medical treatments.

There was no check mark to indicate deficits for the following areas:

*Consciousness*

*Executive*

*Language*  
*Perceptual psycho-motor*  
*Psychotic symptoms*  
*Motivation*  
*Impulse control*  
*Motor activity*  
*Attention or sustained concentration*

Assessor Report

In Section B-2, the NP indicated "good" for all areas of communication: *speaking, reading, writing and hearing*.

In Section B-3, the NP assessed all areas of *Mobility and Physical Ability* as independent:

*Walking indoors*  
*Walking outdoors*  
*Climbing stairs*  
*Standing*  
*Lifting*  
*Carrying and holding* (comment, "limited to 2-7 kg").

In section B-4, *Cognitive and Emotional Functioning*, the assessor is asked to indicate the impact of a *mental impairment* on various functions. For the 14 areas listed, the NP indicated the following impacts:  
minimal impact for *impulse control* and *attention/concentration*  
moderate impact for *memory*  
major impact for *bodily functions (sleep disturbance), emotion, motivation, and motor activity*.

The NP commented, "depression/chronic pain impacted sleep every day. Memory and motivation impacted on most days." The NP checked "no impact" for the remaining functions:

*Consciousness*  
*Insight and judgment*  
*Executive*  
*Language*  
*Psychotic symptoms*  
*Other neuro-psychological problems*  
*Other emotional or mental problems.*

**Daily living activities**

The NP provided the following information:

**Medical Report**

In Section C – *Health History*, the NP indicated that cumulatively, the appellant’s various spine and shoulder issues and experience with chronic pain “impact her activities of daily living and overall sense of well-being.” The NP reported that social functioning and enjoyment of activities is also impacted by chronic pain which “exacerbates her overall mood and sense of well-being that extends into all aspects of her social and emotional relationships, ability to engage in activities of daily living as well as activities she enjoys.” The NP reported that the appellant is unable to do the work that she valued due to chronic pain.

In Section C-3, the NP checked that the appellant has not been prescribed medications or treatments that interfere with the ability to perform daily living activities. In Section G – *Additional Comments*, the NP explained that although the appellant has been “diligent in accessing care to support her chronic pain and emotional/social functioning...her symptoms continue to negatively impact her ability to engage in her everyday living, relationships, and employment.”

**Assessor Report**

In Section B-1, the NP indicated that the conditions described in the Medical Report (degenerative disc disease and depression, in particular) impact the appellant’s ability to manage daily living activities.

In Section D – *Daily Living Activities*, the NP assessed the appellant as independent with all areas of the 8 daily living activities listed in the report but said that the appellant takes 3 times longer than typical with *Personal Care* and *Basic Housekeeping*. Specifically, the NP provided the following information:

**Personal Care**

The NP checked “independent” with *dressings, grooming, bathing, toileting, feeding self, regulating diet, and transfers - bed and chair* (comment, “independent with personal care; however, takes 3 times longer than average/expected”).

**Basic housekeeping**

The NP checked “independent” with *laundry and basic housekeeping* (comment, “as above” in reference to the comment for *Personal Care*).

### **Shopping**

The NP checked "independent" for *reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home.*

*Additional Comments* for these daily living activities was left blank.

### **Meals**

The NP checked "independent" with *meal planning, food preparation, cooking, and safe storage of food.*

### **Pay Rent and Bills**

The NP checked "independent" with *banking, budgeting, and pay rent and bills.*

### **Medications**

The NP checked "independent" for *filling/refilling prescriptions, taking as directed, and safe handling and storage.*

### **Transportation**

The NP checked "independent" for all areas: *getting in/out of a vehicle, using public transit, and using transit schedules and arranging transportation.*

*Additional Comments* for these daily living activities was left blank.

### **Social Functioning**

In Section C, the NP checked "independent" for all areas of *Social Functioning*. The appellant was able to:

*make appropriate social decisions.*

*interact appropriately with others.*

*deal appropriately with unexpected demands.*

*secure assistance from others.*

The NP checked that the appellant has "good functioning" with her immediate and extended social networks (comment, "good relationships; however, impacted social participation"). The NP left the spaces blank when asked what support/supervision is required to help maintain the appellant in the community or if there are any safety issues.

For Section E - *Additional Information*, the NP said to refer to the information the Medical Report – *Health History*.

*Additional information from the appellant – daily living activities*

In the self-report, the appellant said that she “can barely go to the bathroom” because “it hurts to lay down, sit down, or stand up from sitting.” The appellant said that getting dressed takes her 3 times longer than the average person because she is unable to put on socks, pants, etc. “normally.” The appellant said that laundry also takes 3 times longer, and she needs to take breaks while cooking, doing dishes, or anything around the house that she was able to do in the past.

***Need for help***

Medical Report

In Section C-4, the NP checked “no” when asked if the applicant requires any prostheses or aids for the impairment.

Assessor Report

In Section A-1, the NP checked that the appellant lives alone. In Section E - *Assistance provided by other people* the NP wrote “n/a.” The NP also wrote “n/a” for Section D - *Assistance provided through the use of assistive devices*. The NP checked that the appellant does not have an assistance animal.

**3. A Request for Reconsideration** signed by the appellant on June 24, 2023, with a typed submission. In addition to argument for the reconsideration, the appellant added the following details:

After the PWD application was submitted she got the results of an MRI and is awaiting a consultation with a neurosurgeon.

She is not able to do dishes “without my back, neck, legs hurting and my hands going numb.”

She has tried to walk a distance but “only made it about a block.”

She is unable to sleep due to pain. She cannot roll over “without physically having to try and pull myself up, grab the side of the bed and shift my body to roll over.” If she does not do this many times throughout the night, her back “throbs in pain.” She also needs a cervical pillow because of compressed nerves in her neck.

Her arms and hands go numb due to pain and she gets a bad headache, especially on the left side which affects her eye and causes dizziness. She experiences “occipital nerve flares” every month in which she is bedridden and “can’t do anything for at least 5 days.” She cannot get dressed while standing up. She needs to either sit down or hold onto something.

### **Additional submissions**

The appellant submitted documentary evidence requiring an admissibility determination by the panel. The appellant also provided additional information at the hearing. The ministry raised no objections to any of the submissions and the panel admits the new evidence which provides historical and recent information on the appellant’s diagnoses, symptoms, available help, and treatments/interventions. The panel finds that the additional submissions are admissible as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The appellant filed a *Notice of Appeal* with a typed statement which the panel accepts as argument. Both parties provided argument at the hearing. The panel will consider the arguments in Part F-Reasons.

### **Documentary evidence**

1. Appellant Submission I, 14 pages, received at the Tribunal on August 15, 2023

**a)** A Medical Imaging Report – *Cervical Spine MRI* (exam date April 24, 2023) indicated a history of back pain with decreased power and sensation in the arms. Findings included moderate facet arthropathy throughout the cervical spine and “mostly mild” disc and vertebral change with the exception of C5-C6 and C6-C7 where there is “some loss of disc space and more prominent osteo distal bar.”

The report described “mild or non-significant minor narrowing” at several locations along the appellant’s spine, with “moderate to severe left neural exit foraminal narrowing” at C3-C4 and C5-C6 with suspected subtle or minor compression. At C6-C7 there was “severe narrowing of the right neural exit foramen and mild narrowing of neural exit foramen.”

The clinical impression indicated in the report was “possible minor compression of the exiting C6 nerve roots bilaterally.”

**b)** A Medical Imaging Report – *Cervical Spine X-Ray* (exam date January 19, 2023) indicated that “alignment was maintained at all sequences.” The report said that “range of motion



seems to be limited with flexion and extension, though this may be related to the patient's pain in combination with pre-existent multilevel degenerative changes throughout the cervical spine, particularly from C5-C7." Facet degeneration has progressed and is more extensive since the previous examination in May 2013 "but the pre-existent neural foraminal narrowing has not changed significantly. No new or acute findings. No obvious trauma."

**c)** Four Medical imaging reports (Lumbar spine CT, Thoracic/Lumbar spine MRI, Spine CT, and Cervical spine CT) dated from 2016-2020 indicated that the appellant was referred due to a history of "worsening low back pain." Findings included disc bulges described as "trivial uncomplicated disc bulges within thoracic spine;" a posterior bulge at C-7/T-1 with obvious nerve impingement, and "minor disc bulges at T-3/4 and T5/C6." Multi-level degenerative changes were observed within the lumbar and thoracic spine with "moderate degenerative disc disease at C5-6 and C6-C7. "

### **1. Appellant Submission II, 2 pages, received at the Tribunal on August 16, 2023**

A letter from a neurosurgeon dated August 11, 2023, stated that the appellant has an appointment scheduled in September 2023 and is awaiting "an upcoming surgical procedure as well."

#### **Oral testimony**

In addition to argument, the appellant provided the following information describing her current health, level of function, and restrictions to daily living activities:

The appellant said that her pain has gotten worse, and she cannot feel her hands/arm while holding a phone. She experiences daily pain, numbness, and tingling and cannot function like she used to.

The appellant described issues with bending and sitting. Her back hurts when she goes to the bathroom; she cannot have a bath or wash her hair ("because I can't lift my arms up"). She cannot vacuum or do laundry ("I can't pull the laundry out of the machine because the muscle pulls in my neck and gives me a pounding headache").

The appellant said she cannot sweep the floor due to numb fingers, or tie her shoes ("my fingers don't work so I have to slip shoes on").

The appellant described problems with sleeping. She takes medication to fall asleep but wakes up during the night "because I can't roll over properly."

The appellant said that she was diagnosed with Tourette's when she was younger. She takes medication for Tourette's as well as anxiety/depression. The appellant said that she also takes medication for borderline personality disorder which was diagnosed 10 years ago by a psychiatrist (the appellant said she did not receive a copy of the report).

The appellant said that she uses Advil/Tylenol and a non-narcotic prescription medication for pain because she wants to avoid narcotics.

In response to questions, the appellant said that her landlord//landlady helps her with some things but "other things are too embarrassing to ask." The appellant said she used a cane in the past, but the NP has not prescribed any assistive devices.

The appellant said she had done some physiotherapy and chiropractic treatment and saw the NP quite often (before the NP went on holiday for the summer). She has not had any contact with the NP for awhile since the NP is currently away.

The appellant said that she has upcoming "ACDF" surgery [Anterior cervical discectomy and fusion, "spinal fusion surgery"] that will hopefully help the numbness in her arms/hands as well as the pain. The appellant explained that surgery was discussed during a phone consultation with the neurosurgeon.

She will have an in-person appointment in September and the surgery will take place 6-12 weeks after that. The appellant said that the required surgery is related to nerve damage at the C5/C6 level of her spine which was shown on the most recent MRI (April 2023).

**Part F – Reasons for Panel Decision**

The issue on appeal is whether the ministry's decision that found the appellant ineligible for PWD designation was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. The panel's role is to determine whether the ministry was reasonable in finding that the following eligibility criteria in section 2 of the Act were not met:

The appellant has a severe mental or physical impairment.

The impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform daily living activities either continuously or periodically for extended periods; and

As a result of restrictions caused by the (mental) impairment, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform daily living activities.

**Analysis***PWD designation - generally*

The legislation provides the Minister with the discretion to designate someone as a PWD if all the requirements are met. In the ministry's view, PWD designation is for persons who have significant difficulty in performing regular self-care activities including social interaction and making decisions about personal activities, where a severe physical or mental impairment is shown.

Some requirements must have an opinion from a professional, so it is reasonable to place significant weight on those opinions. The ministry found that 2 of the 5 requirements were met because the appellant is at least 18 years of age, and a doctor has given the opinion that the impairment is likely to continue for at least 2 years.

The application form includes a self-report, so it is appropriate to place significant weight on evidence from the appellant unless there is a legitimate reason not to do so. The panel will review the reasonableness of the ministry's determinations and exercise of discretion.

*Severe 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 interpretation of the legislation. A medical practitioner’s description of a condition as “severe” is not determinative on its own. The ministry must make this determination considering the relevant evidence and legal principles.

*Restrictions to Daily living activities*

A prescribed professional must provide an opinion that the applicant’s impairment restricts the ability to perform daily living activities. The BC Supreme Court decision in *Hudson v. Employment and Assistance Appeal Tribunal* [2009 BCSC 1461] determined that at least two daily living activities must be restricted in a way that meets the requirements of the Act, and that not all activities need to be restricted.

The restrictions to daily living 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 daily 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 requirements for restrictions to daily living activities are set out in subsection 2(2)(b)(i) of the Act. Specific activities are listed in section 2(1) of the Regulation. The Medical Report and Assessor Report also list activities, and though they do not match the daily living activities in the Regulation exactly, they generally cover the same activities.

The Medical Report and Assessor Report give the professional the opportunity to provide additional details on the applicant’s restrictions. **The inability to work and financial need are not listed as daily living activities and are only relevant to the extent they impact the listed activities.**

## Help Required

A prescribed professional must provide an opinion that the person needs help to perform the restricted daily living activities. This requirement is set out in subsection 2(2)(b)(ii) of the Act. Under subsection 3, “help” means needing an assistive device, the significant help or supervision of another person, or an assistance animal to perform daily living activities. An assistance device, defined in section 2(1) of the Act, **is something designed to let the person perform the restricted daily living activities.**

## Arguments

### Severe impairment

#### *Appellant's position – physical impairment*

The appellant's position is that her physical impairment is severe because her life “is consumed by pain. All day, every day.” The appellant argued that the information from the NP was not accurate. The appellant said that the NP wrote some things in the PWD application that they did not discuss with the appellant and omitted detail in other parts of the application. The appellant said that she tried to contact the NP to clarify the information but could not get hold of them because the NP is still away.

The appellant argued that she cannot function like she used to. The numbness in her arms and hands are as much of an issue as the pain. The appellant submits that it takes her several tries to get up from sitting (“I need something to hold onto”) and it hurts to walk any distance.

The appellant submits that her “whole spine is a mess” due to stenosis and bulging discs. The appellant argued that the medical reports she submitted for the past 6-7 years confirm that her spine problems have gotten worse.

***Ministry position - physical impairment***

The ministry's position was that the evidence provided did not establish a severe impairment of physical functioning. The ministry acknowledged degenerative changes in the back, longstanding chronic pain, and daily pain with most activities but argued that "the assessment of actual functional skills and your ability to perform daily living activities represents at most a moderate impairment in physical function."

The ministry argued that the appellant's self-described limitations were not reported to the NP. At the hearing, the ministry explained that when there is a large discrepancy between the appellant's information and the evidence from a medical professional, it gives more weight to the professional's opinion.

The ministry's position on the additional medical reports was that they do not address function or daily living activities. The ministry said that it is doubtful a different decision would have been made if the ministry had had the additional evidence.

**Panel's decision - physical impairment**

The panel finds that the ministry's decision (no severe physical impairment) was reasonably supported by the evidence. The appellant's evidence was that she suffers from severe pain when walking; it takes her several tries to stand up; and she can "barely hold the phone" because her hands are painful and numb. However, in the Medical and Assessor reports, the NP indicated that the appellant is independent with all physical functions despite chronic, radiating back pain with symptoms described as "unrelenting."

In the Medical Report, the NP said that the appellant "struggles with static positioning as well as extended periods of walking," but checked that the appellant is able to walk 2-4 blocks unaided, climb 5+ steps, and lift 5-15 pounds. These ratings are, on average, at the middle range of ability on the rating scales. In the Assessor Report, these functions were checked as "independent," with carrying/holding restricted to 5-15 pounds which supports a moderate level of restriction.

The panel acknowledges that the appellant has the most difficulty with remaining seated (less than 1 hour in the Medical Report) which is consistent with the appellant's and NP's evidence about difficulties with positioning. However, in the Assessor Report, the NP checked "independent" for standing despite the appellant's reported difficulty with getting up from a seated position.

Neither the NP nor the appellant reported the use of an assistive device for sitting, standing, or walking. The appellant said that she used to have a cane but there was no indication of any current reliance on a cane or other device to assist with mobility or other physical functions.

The evidence indicates that the appellant is independent with all physical functions despite significant pain and difficulties with positioning and use of her arms/hands. The panel finds that the ministry was reasonable to conclude that the information provided indicates a moderate, rather than severe physical impairment.

The appellant argued that the NP's information was not accurate and that the medical records submitted on appeal show a severe physical impairment that has progressed to the point where she requires spinal fusion surgery in the near future. The panel finds that the medical imaging reports support the appellant's evidence regarding significant pain and numbness in her arms/hands due to degenerative disc disease, but they do not confirm the degree of limitation the appellant attributes to the impairment.

There was no information in the reports regarding limitations with walking, lifting, sitting/standing, or other physical abilities. The letter from the neurosurgeon confirmed that the appellant is awaiting surgery, but the letter did not detail the expected outcome of surgery or explain how the proposed surgery relates to the "moderate to severe" narrowing indicated in the most recent MRI.

The most recent cervical spine MRI and X-Ray from 2023 indicated "mild, non-significant, and minor" symptoms as well as the moderate to severe narrowing at C3-C4 and C6-C7 and there was no explanation regarding the overall impact on function. The Cervical spine X-Ray from January 2023 described some limitation with range of motion but there were "no new acute findings" and no further detail about restrictions with physical skills such as walking, lifting, or standing.

While it is unfortunate that the appellant was not able to follow up with the NP, the evidence from the radiologist and surgeon does not contain enough detail about functional limitations to establish a severe physical impairment. The panel has considered the evidence in its entirety and finds that the requirement under the Act for a severe impairment is not met based on physical functioning.

*Appellant's position – mental impairment*

The appellant argued that the impairment has made her depressed. She is not capable of doing the things she used to do, and she has no desire to do anything. The appellant said that the lack of proper sleep leaves her exhausted by 1:00 – 2:00 PM. Pain and depression have taken over her life.

*Ministry position – mental impairment*

The ministry argued that a severe mental impairment was not established because the appellant was assessed as “fully independent” with all functional skills and daily living activities despite depression from chronic pain that impacts her sense of well-being. The ministry noted that the appellant’s substance abuse disorder is in long term remission and argued that there was “no report that the history of substance-related disorders has impacted your current mental functioning.” The ministry acknowledged the diagnosis of Tourette’s but said there were no details about its effect on mental or social functioning.

**Panel’s decision – mental impairment**

The panel finds that the ministry’s decision was reasonably supported by the evidence. The NP provided mixed evidence on mental functioning. On the one hand, the appellant’s experience of pain has lowered her mood and sense of wellbeing that “extends into all aspects of her social and emotional relationships” (Medical Report). The appellant has been “diligent in accessing care to support her chronic pain and emotional, social functioning” but continues to be negatively impacted by symptoms.

However, in the Assessor Report, the appellant was independent with all areas of social functioning. The appellant had good functioning with her social networks despite reduced participation in social activities.

In the Medical and Assessor Reports, the appellant had significant deficits/impacts for motivation and memory “most days” due to chronic pain. The NP confirmed that depression/chronic pain also had a major impact on sleep. However, all daily living activities that involve cognitive ability and motivation were assessed as “independent.” The appellant did not have any difficulties with communication, and the impact of Tourette’s was not described by either the NP or the appellant.



At the hearing, the appellant said that she was diagnosed with borderline personality disorder and that the NP was aware of the diagnosis. However, the condition was not reported in the Medical and Assessor Reports; the psychiatric report was not submitted; and there was no information on how the impairment affects cognitive or social functioning.

The additional medical reports confirmed longstanding back pain but were not designed to provide evidence on mental functioning. The panel finds that the evidence does not establish a severe mental impairment because there was no clear explanation for why the appellant is able to function independently and socially despite her depression, low motivation, decreased memory, and sleep disturbance.

The ministry was reasonable to find that the requirement for a severe impairment under the Act was not met based on the appellant's mental health conditions or Tourette's syndrome. The ministry was reasonable to conclude that neither a severe mental nor physical impairment was established on the evidence.

### **Restrictions to daily living activities**

#### *Appellant's position*

The appellant's position is that her life is consumed by pain and restricted mobility, so she cannot get dressed without holding onto things; she can "barely go to the bathroom", and she needs to take breaks cooking, doing dishes, and anything around the house that she used to be able to do. The appellant argued that dressing and doing laundry "take 3 times longer than the average person."

#### *Ministry position*

The ministry said there was not enough evidence from the NP to confirm that a severe impairment significantly restricts daily living activities continuously or periodically for extended periods as required by the Act. The ministry acknowledged that personal care and laundry take 3 times longer to perform but noted that all daily living activities were assessed as "independent" despite unrelenting daily pain, and decreased motivation due to depression.

#### Panel's decision - daily living activities

The panel finds that the reconsideration decision was reasonable because the evidence from the prescribed professional (NP) did not establish that daily living activities are

significantly restricted. In the Medical report, the NP stated that chronic pain and depression impact the appellant's ability to engage in activities of daily living and social relationships and that "medication management is a challenge." However, in the Assessor Report, the NP checked that the appellant was independent with all daily living activities including *Medications*.

The NP confirmed that the appellant takes 3 times longer for personal care and housekeeping, but also stated that the appellant "is independent with personal care." Check marks indicated "independent" with all areas of all daily living activities and no further comments were provided.

The additional medical reports did not address daily living activities and though the appellant testified in detail about her restrictions, the self-reports were not endorsed by the NP, other than some activities taking more time to perform.

The totality of evidence including the Medical and Assessor Reports and additional information on appeal, does not show that daily living activities are directly and significantly restricted in the opinion of the NP or other professional, either continuously or periodically for extended periods as required by the Act.

The evidence from a professional indicates that the appellant is able to manage daily living activities slowly but without any assistance from other people or an assistive device. The panel finds that the ministry reasonably determined that the criteria for daily living activities were not met.

### **Help with daily living activities**

#### *Appellant's position*

The appellant's position is that she needs help with personal care and other tasks because her arms and hands "go numb" and she is limited by a lot of pain as well. The appellant acknowledged that she does not currently use an assistive device but argued that she certainly needs one.

#### *Ministry position*

The ministry's position was that it could not be determined that significant help was required as it had not been established that daily living activities were significantly restricted.

**Panel's decision - help with daily living activities**

The panel finds that the reconsideration decision was reasonable because the Medical and Assessor Reports did not indicate that the appellant needs an assistive device to manage daily living activities, or significant help and support from other people. In the Medical Report, the NP checked "no" when asked if the appellant requires any prostheses or aids for the impairment.

In the Assessor Report, the NP wrote "n/a" in the section for *Assistive devices* and the appellant confirmed that the NP had never prescribed a cane or other device. The appellant said that she has a cervical pillow for sleeping but the need for one was not confirmed by the NP. Given the extent of the appellant's pain and self-reported restrictions with movement, it is unclear why an assistive device has not been prescribed.

The appellant said that she receives limited help from her landlord/landlady, but in the Assessor Report, the NP wrote "n/a" when asked if help was required but none is available. The NP commented that the appellant received support from professionals for chronic pain and social/emotional issues, but there was no confirmation that support is currently required. No safety issues were identified, and the appellant was assessed as "independent" with social functioning.

The Act requires confirmation of direct and significant restrictions to daily living activities, directly related to a diagnosed mental or physical impairment, as a precondition for needing help to perform those activities. The totality of evidence established that daily living activities are not significantly restricted continuously or periodically for extended periods, and the appellant can manage her daily life independently. The requirement for help under the Act is not met.

**Conclusion**

The panel finds that the reconsideration decision was reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant. The appellant does not meet all 5 requirements for PWD designation under the Act because only the age and duration criteria were met.

The PWD application and additional submissions on appeal do not establish that:

The appellant has a severe mental or physical impairment.

The severe impairment significantly restricts daily living activities as confirmed by a prescribed professional, or that the appellant requires help or support to manage daily living activities.

The panel confirms the ministry decision. The appellant is not successful with her appeal.

### **Schedule – Relevant Legislation**

#### **Employment and Assistance for Persons with Disabilities Act**

**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,

APPEAL NUMBER 2023-0205

**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  
Margaret Koren

Signature of Chair

Date (Year/Month/Day)  
2023/09/07

Print Name  
Daniel Chow

Signature of Member

Date (Year/Month/Day)  
2023/09/07

Print Name  
Susanne Dahlin

Signature of Member

Date (Year/Month/Day)  
2023/09/07