

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated June 22, 2023, in which the ministry found that 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. The ministry found that the appellant has a severe (physical) impairment as required by the Act but was not satisfied that:

- the appellant has a severe mental impairment,
- the severe (physical) 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 physical 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”). As there was no information or argument on this point, 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 January 30, 2023, and denied on March 3, 2023, with the *Decision denial summary* explaining the criteria that were not met. In the original decision, the ministry found that only the age and duration requirements were met.

On June 8, 2023, the appellant submitted a *Request for Reconsideration* which the ministry accepted late due to a delay in the appellant receiving the decision. On June 22, 2023, the ministry completed its review and found that the appellant has a severe physical impairment but the criteria for daily living activities and help were still not met.

2. The PWD application with 3 parts:

The *Applicant Information* (“self-report”) dated January 4, 2023, with a hand-written submission from the appellant.

A *Medical Report* dated January 4, 2023, signed by a General practitioner (“Dr. A”) who has known the appellant for more than 5 years, and has seen her 2-10 in the past 12 months, and

An *Assessor Report* dated January 4, 2023, also completed by Dr. A who based the assessment on an office interview with the appellant.

Summary of relevant evidence from the application

Diagnoses

In Section A of the Medical Report, the appellant was diagnosed with left knee internal derangement (onset, October 2018).

In Section B - *Health History*, Dr. A described knee internal derangement with pain, ACL tear, meniscal maceration, and osteoarthritis (mild to moderate) as shown on an MRI (March 2019) and same knee arthroscopy. The doctor described the impairment as permanent as symptoms have not improved with any treatment. In the Assessor Report, the doctor reported anxiety as well as left knee chronic pain.

Additional information from the appellant - diagnoses

In the self-report, the appellant described chronic daily pain from her knee derangement, full thickness and medial meniscus tears, early onset arthritis from an injury, and ACL rupture. The appellant reported a lack of range of motion in her left knee as well as “instability” which results in being unable to bend, kneel, or squat.

Functional skills

Self-report

The appellant described “intense pain” on a daily basis which makes it difficult to sleep and led to an inability to work. The appellant described “locking” and pain in her left knee when she goes upstairs. The appellant said that she has depression and anxiety.

Medical Report

Dr. A reported limited mobility due to left knee pain that “limits [the appellant’s] capacity to walk around the house and outside.” The appellant requires a 4-point cane to assist with walking.

In Section E - *Functional Skills*, the appellant is able to walk 1-2 blocks unaided on a flat surface; and climb 5+ steps unaided. The appellant has no limitations with lifting or remaining seated. The doctor 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 doctor checked “yes” with additional check marks for 2 of the 12 areas listed:

Emotional disturbance

Motivation

There were no check marks to indicate deficits for the following areas:

Consciousness

Executive

Language

Memory

Perceptual psycho-motor

Psychotic symptoms

Impulse control

Motor activity

Attention or sustained concentration

Other

Assessor Report

In Section C-2, Dr. A indicated “good’ for all areas of communication: speaking, reading, writing, and hearing.

In Section C-3, the doctor assessed all areas of *Mobility and Physical Ability* as restricted (except for *standing* which was checked as “independent”). The reported restrictions were:
Walking indoors – uses an assistive device (4-point cane) and takes significantly longer than typical.

Walking outdoors – uses a 4-point cane and takes significantly longer than typical.

Climbing stairs – uses a handrail and takes significantly longer than typical.

Lifting – requires continuous assistance from another person or is unable.

Carrying and holding - requires continuous assistance from another person or is unable.

In section C-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, Dr. A indicated one impact:
minimal impact for *motivation*.

The doctor checked “no impact” for the remaining functions:

Bodily functions (including sleep disturbance)

Consciousness

Emotion

Impulse control

Insight and judgment

Attention/concentration

Executive

Memory

Motor activity

Language

Psychotic symptoms

Other neuro-psychological problems

Other emotional or mental problems.

Daily living activities

Dr. A provided the following information:

Medical Report

In Section C-3, the doctor checked “no” when asked if the appellant has been prescribed medications or treatments that interfere with the ability to perform daily living activities. In Section F - *Daily Living Activities* the doctor checked “yes” when asked if the impairment directly restricts the person’s ability to perform activities. Dr. A checked that 3 of 10 activities listed on the form were continuously restricted:

Basic housework

Mobility inside the home

Mobility outside the home

Dr. A checked “not restricted” for the remaining activities:

Personal self-care

Meal preparation

Management of medications

Daily shopping

Use of transportation

Management of finances

Social functioning

In Section G – *Additional Comments*, Dr. A said that knee pain limits the appellant’s capacity to do her shopping as she needs a 4-point cane. The appellant does “dishes and wiping at home but [a family member] does vacuuming and harder chores.”

Assessor Report

In Section B-1, Dr. A wrote that “anxiety and left knee chronic pain impairs some activities of daily living.”

Restricted daily living activities

In Section D, Dr. A indicated the following restrictions for 4 of the 8 daily living activities listed in the form:

Personal Care

The appellant uses a 4-point cane for *transfers* in/out of bed and on/off a chair. The appellant also takes significantly longer than typical to do these transfers.

The appellant is independent with the remaining areas: *dressing, grooming, bathing, toileting, feeding self, and regulating diet.*

Basic housekeeping

The appellant requires continuous assistance with all activities (*laundry, and basic housekeeping*).

Shopping

The appellant requires periodic assistance from another person with *going to and from stores* as well as an assistive device (4-point cane). The appellant also takes significantly longer than typical. The appellant requires continuous assistance with *carrying purchases home*.

Dr. A checked "independent" for the remaining activities: *reading prices and labels, making appropriate choices, and paying for purchases.*

Under *Additional Comments* for these daily living activities including the type and amount of assistance required, the doctor stated that the appellant requires assistance with "some laundry, basic housekeeping, shopping, and carrying. Her [family member] does all these activities and she helps as she can."

Transportation

Dr. A checked "periodic assistance" for getting in and out of a vehicle as well as "assistive device" (4-point cane) and "takes significantly longer." The doctor wrote "n/a" for the remaining activities: *using public transit and using transit schedules and arranging transportation.*

Dr. A commented that the appellant requires assistance from her [family member] and uses a cane to get in and out of a vehicle. The appellant does not use public transportation.

Dr. A checked "independent" for all areas of the remaining daily living activities:

Meals

The appellant is independent with:
Meal planning

Food preparation
Cooking
Safe storage of food

Pay rent and bills

The appellant is independent with:

Banking
Budgeting
Pay rent and bills

Medications

The appellant is independent with:

Filling/refilling prescriptions
Taking as directed
Safe handling and storage

Social Functioning

Dr. A assessed all areas as “independent”:

Appropriate social decisions
Able to develop and maintain relationships.
Interacts appropriately with others.
Able to deal appropriately with unexpected demands.
Able to secure assistance from others.

The doctor checked that the appellant has “good functioning” with her immediate and extended social networks. The doctor did not fill in the spaces that asked what support/supervision is required to help maintain the appellant in the community, and whether there were any safety issues.

Additional information from the appellant – daily living activities

In the self-report, the appellant said that she uses a commode and a shower bar or pole from ceiling to floor to assist with getting in and out of the shower. The appellant said that all activities take much longer to complete.

Need for helpMedical Report

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

Assessor Report

In Section B-1, Dr. A checked that the appellant lives with family. In Section E - *Assistance provided by other people* the doctor checked “family.” For Section D - *Assistance provided through the use of assistive devices* the doctor checked “cane” (comment, “4-point cane”) and “commode.”

Dr. A checked “no” when asked if the appellant has an assistance animal. In Section F – *Additional Comments*, the doctor indicated that the appellant has help from a family member due to her limitations with mobility.

3. A *Request for Reconsideration* signed by the appellant on May 25, 2023, with a handwritten submission in which she provided argument. The appellant submitted the following documents with the reconsideration request:

(a) A letter from the Canada Revenue Agency dated December 1, 2022 (*Notice of Determination for the Disability tax credit*). The letter said that the appellant is eligible for the tax credit for 1985 and future years.

Seven pages of a *Disability Tax credit Certificate* application form, signed by the appellant on October 25, 2022. The Medical practitioner’s section (with missing signature page) contained the following information:

The patient was diagnosed with osteoarthritis, and a full thickness tear of the ACL ligament in her left knee (both diagnosed in 2018).

The patient takes medication to aid her limitations in walking.

The patient uses a cane and receives physiotherapy.

The patient has “severe limited range of motion (often) and severe pain in knee (often).”

The patient is unable or takes an inordinate amount of time (at least 3 times longer) to walk than someone with no impediment to walking.

The patient’s impediment to walking is long term and not likely to improve.

The patient has Asperger’s syndrome (diagnosed in 1979) that impacts her ability to perform mental functions necessary for everyday life.

The patient takes medication to aid their ability to perform mental functions and is independent with taking their medication. The medication is ineffective in treating the condition.

The patient uses assistive technology and an ipad to perform mental functions necessary for everyday life.

The patient's ability or capacity to live independently (without daily supervision or support from others) is not impaired.

The following checkmarks were provided for the mental functions listed on the form:

Adaptive functioning

Adapt to change – some limitations.

No limitations were indicated for:

Express basic needs.

Go out into the community.

Initiate common, simple transactions.

Perform basic hygiene of self-care activities.

Perform necessary, everyday tasks.

Attention

Demonstrate basic impulse control – some limitations.

No limitations were indicated for *demonstrate awareness of danger and risks to personal safety.*

Concentration

Absorb and retrieve information in the short-term – some limitations.

No limitations were indicated for *focus on a simple task for any length of time.*

Goal-setting

Make and carry out simple day-to-day plans – some limitations.

No limitations were indicated for *self-direct to begin everyday tasks.*

Judgment

Recognize risk of being taken advantage of by others – very limited capacity

No limitations were indicated for:

Choose weather-appropriate clothing.

Make decisions about their own treatment and welfare.

Memory

Remember material of importance and interest to themselves – some limitations

Remember simple instructions – some limitations.

No limitations were indicated for:

Remember basic information such as date of birth and address.

Perception of reality

No limitations were indicated for:

Demonstrate an accurate understanding of reality.

Distinguish reality from delusions and hallucinations.

Problem-solving

Identify everyday problems – some limitations.

No limitations were indicated for:

Implement solutions to simple problems.

Regulation of behaviour and emotions

Behave appropriately for the situation – some limitations.

Demonstrate appropriate emotional responses for the situation – some limitations.

No limitations were indicated for:

Regulate mood to prevent risk of harm to self or others.

Verbal and non-verbal comprehension

Understand and respond to non-verbal information or cues – very limited capacity.

No limitations were indicated for:

Understand and respond to verbal information.

In question 6, the assessor was asked if the patient is unable to perform mental functions by themselves or takes an inordinate amount of time. “Yes” was checked and these problems were reported to begin in 1975.

(b) A requisition for an MRI dated November 8, 2019. Relevant history was reported as “full thickness meniscal tear, medial meniscal tear. Pain has worsened on medial area of left knee joint, worse on tibial side that was not there before.”

Additional submissions

The appellant filed a *Notice of Appeal* with a typed statement with argument and some additional information:

The appellant said that she has lived with a disability since 1985, which impacts her ability to think, make decisions, and communicate.

The appellant also submitted the following additional documents:

1. A *Colonoscopy procedure report* dated July 17, 2023. The report described the appellant’s prior medical history including diagnoses of GERD, ADHD (in childhood), and elevated cholesterol. The appellant had left knee arthroscopy, and her heart races in the bathroom.

A physical examination showed no acute distress. An endoscopy indicated moderate diverticular disease and mild to moderate hemorrhoidal tissue. The report recommended a diet medication with soluble fibre and increased hydration.

2. Additional copies of Canada Revenue Agency letter of December 1, 2022 (*Notice of Determination for the Disability tax credit*) and the *Disability Tax credit Certificate* application form, with the addition of the medical practitioner’s certification page, signed by a medical doctor (“Dr. B”) on October 25, 2022.

Admissibility

The hearing was conducted as a written hearing under the Employment and Assistance Regulation with the consent of both parties. The ministry did not raise any objections to the additional evidence. The panel admits the appellant's written submission and additional medical documents under the *Employment and Assistance Act*, as they provide additional background information on the appellant's diagnoses and past medical history. 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 ministry did not submit any new evidence. In an email to the Tribunal the ministry said that its submission on appeal would be the Reconsideration summary. The panel will consider the arguments of both parties in Part F-Reasons.

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 impairment (a severe physical impairment was established).

The (mental) 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 (physical) 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 3 of the 5 requirements were met because the appellant is at least 18 years of age, a doctor has given the opinion that the impairment is likely to continue for at least 2 years; and a severe (physical) impairment was established on the evidence.

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 mental impairment

Appellant's position

The appellant’s position is that she meets the requirement under the Act for a severe mental impairment because she has anxiety and depression and “a person with a severe mental impairment includes a person with a mental disorder.” The appellant argues that her mental health is impacted by daily severe pain and the inability to sleep.

The appellant argued that Dr. A focused on her knee injury but did not describe her longstanding mental disability which “impacts thinking, and daily life as far as making decisions, and communication.”

Ministry position

In the reconsideration decision, the ministry’s position was that the information from Dr. A did not establish a severe mental impairment because the doctor only indicated a minimal impact of function due to anxiety and specifically said that the appellant’s limitations are due to a physical rather than mental impairment. The ministry argued that the appellant’s report of anxiety and depression was not diagnosed by her doctor.

The ministry acknowledged that the *Disability tax credit information* included a diagnosis of Asperger’s syndrome and with some limits to mental functions but did not give weight to that information because it was not endorsed by a medical practitioner. The ministry noted that Dr. A did not mention Asperger’s syndrome and argued that the information from Dr. A should be given more weight based on their long-term relationship with the appellant.

Panel's decision - mental impairment

The panel finds that the ministry's decision (no severe mental impairment) was reasonably supported by the evidence. While the appellant said that anxiety and depression impact her thinking, decision-making, and communication, Dr. A did not diagnose these conditions in the Medical Report or endorse the self-reported impacts.

While the doctor mentioned that the appellant has anxiety (Assessor Report), no difficulties with communication were reported in either the Medical or Assessor Reports; no deficits or impacts to executive function (thinking) were reported, and daily living activities involving decision-making such as personal care, making appropriate choices, and social functioning were assessed as independent.

In the Medical Report, Dr. A checked "significant deficit" for *emotional disturbance* and *motivation*, but in the Assessor Report, "no impact" was indicated for *emotion*, and only a "minimal impact" was indicated for *motivation*. The panel therefore finds that the ministry was reasonable to conclude that the appellant's life was only minimally impacted by the anxiety that she and her doctor reported.

The panel gives more weight to the *Disability tax credit* information that included the endorsement by Dr. B in the appeal submissions. However, although the appellant was diagnosed with Asperger's syndrome, the appellant had "very limited capacity" with only one aspect of social functioning ("being taken advantage of by others") and one aspect of cognitive functioning ("understand and respond to non-verbal information or cues"). Dr. B assessed all other mental functions as having "no limitations" or "some limitations." For the areas with "some limitations", there was no narrative to explain whether the impact was significant.

In addition, and as noted by the ministry, Dr. A did not diagnose Asperger's syndrome in the PWD application or indicate any impacts to social and mental functions due to the condition. The panel acknowledges that the medical information for the tax credit application was more recent (Dr. B signed the form in August 2023). However, Asperger's syndrome was noted to be long-term (since the late 1970's) so it is unclear why Dr. A did not mention the condition in the PWD application when they reported some significant deficits to cognitive/emotional function in the Medical Report.

Furthermore, there was conflicting information in the tax credit application regarding the appellant's need for support due to the mental impairment. In question 4, Dr. B checked that the appellant did not have an impaired capacity to live independently, but in question 6, the doctor indicated that the appellant was unable to perform mental functions by herself or takes an inordinate amount of time for mental activities.

The evidence as a whole, does not give a clear picture of the appellant's mental impairment due to conflicting information between the appellant's and Dr. A's information on the impacts to cognitive function. In addition, a severe mental impairment could not be confirmed due to the lack of consistent information between the Medical/Assessor Reports and the *Disability tax credit* application regarding mental functions and the diagnosis of Asperger's syndrome.

The panel finds that the ministry was reasonable to conclude there was insufficient evidence of a severe mental impairment. However, the requirement for a severe impairment under the Act was met based on the appellant's physical impairment, her severe left knee derangement.

Restrictions to daily living activities

Appellant's position

The appellant's position is that she meets the requirements under the Act because she experiences daily pain that prevents her from bending or walking any distance independently (both indoors and outdoors). The appellant argued that all activities take much longer to complete.

Ministry position

In the reconsideration decision, the ministry acknowledged the appellant's use of a cane and assistance from a family member but argued that Dr. A's assessments "do not demonstrate direct and significant restrictions with daily living activities overall" because the appellant was assessed as independent with many activities and was not reported to take significantly longer "or to require even periodic help" with those activities.

The ministry argued that the need for a cane and help with activities such as housework, laundry, and shopping indicated “moderate restrictions” rather than significant restrictions with daily living activities. The ministry argued that there was not enough evidence (in the opinion of the doctor or other professional) to confirm that daily living activities were directly and significantly restricted by the appellant’s knee impairment either continuously or periodically for extended periods as required by the Act.

Panel’s decision - daily living activities

The panel finds that the reconsideration decision was not reasonable because the totality of evidence including the Medical and Assessor Reports and additional medical information from Dr. B shows that daily living activities are directly and significantly restricted. The record supports direct and continuous restrictions to daily living activities due to the appellant’s limited mobility and daily knee pain which has not improved with treatment.

In the Medical Report, Dr. A indicated continuous restrictions with housework and mobility. Although the doctor checked that shopping was not restricted, the panel gives more weight to the narrative comments in which the doctor provided a more detailed assessment. In particular, the doctor said that the appellant needs assistance with both shopping and housework due to mobility restrictions that “limit her capacity to walk around the house” or do her shopping.

In the Medical Report, the doctor said that the appellant can do some light housekeeping (“dishes and wiping”), but she relies on her family to do the vacuuming and heavier chores. Despite being able to do some lighter chores, the evidence from both Doctor A and the appellant shows that the appellant is nonetheless significantly restricted by chronic knee pain as well as her daily mobility challenges and requires assistance as a result.

The appellant’s limited range of motion in her knee and inability to bend down would limit most household chores aside from “dishes and wiping” which she could do without much bending or twisting. In the Assessor Report, Dr. A confirmed that *basic housekeeping* was continuously restricted as were the physical aspects of personal care (*transfers* – bed and chair) for which that appellant relies on her 4-point cane.

The doctor also confirmed that the appellant requires a commode for toileting, even though *toileting* was checked as “independent” in the Assessor Report. The appellant also confirmed her need for a commode and the panel finds that the evidence from Dr. A, with corroboration by the appellant, confirms a significant restriction for toileting.

Periodic restrictions were indicated for *going to and from stores*, and *getting in and out of a vehicle*, but both Dr. and the appellant confirmed reliance on the cane at all times, as well as help from a family member. The appellant tries to “help as she can” but the evidence was that these activities are restricted for extended periods because the appellant is very reliant on help.

The ministry said that the Medical and Assessor Reports did not demonstrate restrictions to daily living activities “overall” because some activities were checked as “independent.” However, as noted by the BC Supreme Court in the *Hudson* decision, the proper test is whether at least two of the daily living activities listed in the Regulation are significantly restricted, and not whether some activities are performed independently.

Summary – Daily living activities

The information from Dr. A confirms that the following activities as set out in the Regulation are directly and significantly restricted continuously, or periodically for extended periods due to the appellant’s severe left knee derangement:

shop for personal needs

use public or personal transportation facilities.

perform housework to maintain the person's place of residence in acceptable sanitary condition, and

move about indoors and outdoors.

The additional information from another prescribed professional (Dr. B - *Disability tax credit* application) confirmed that the appellant takes 3 times longer to walk anywhere due to “severe limited range of motion” and “severe knee pain.” This information further demonstrates that the appellant is significantly restricted with activities involving mobility such as shopping, and use of transportation as indicated by Dr. A.

The panel finds that the reconsideration decision is unreasonable because the requirements for restrictions to daily living activities under the Act have been established on the assessments by Dr. A with additional, more recent information from Dr. B. The requirement under the Act for significant restrictions to daily activities is therefore met.

Help with daily living activities

Appellant's position

The appellant’s position is that she meets the requirement for help under the Act because she depends on her 4-point cane and help from family to manage her daily activities.

Ministry position

The ministry argued 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 not reasonable because the totality of evidence including the Medical and Assessor Reports and additional information from Dr. B, indicates that significant help from family is required for household tasks as well as an assistive device (4-point cane) for all mobility, both indoors and outdoors. The appellant also requires an assistive device (commode) for toileting.

In the Medical Report, Dr. A checked that the appellant does not require any aids for her impairment, but in the narrative comments the doctor said that the appellant requires a 4-point cane for both indoor and outdoor mobility. She relies on the cane when shopping. This is consistent with the information in the Assessor Report. The appellant lives with family who help her with housekeeping, shopping, and carrying things.

The appellant also relies on her 4-point cane for getting in and out of a vehicle and Dr. B confirmed the use of a cane for walking. Dr. B also said that the appellant needs physiotherapy support for her knee problem.

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. In the panel's view, the totality of evidence established that daily living activities are significantly restricted continuously, and the appellant cannot manage her daily life independently without her cane and help from her family. The requirement for help under the Act is therefore met.

Conclusion

The panel finds that the reconsideration decision is not reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. The appellant meets all 5 requirements for PWD designation under the Act because the PWD medical reports and additional submissions on appeal establish that:

The appellant is at least 18 years old

The impairment is expected to continue for at least 2 more years.

The appellant has a severe physical impairment.

The severe impairment significantly restricts daily living activities as confirmed by prescribed professionals, and

The appellant requires extensive help and support from other people and an assistive device to manage her daily living activities.

The panel rescinds the ministry's decision and refers the decision back to the Minister for determination on the amount of disability assistance. The appellant is 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,

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Part G – Order

The panel decision is: (Check one) Unanimous By Majority

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

Legislative Authority for the Decision:

Employment and Assistance Act

Section 24(1)(a) 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)
2023/09/11

Print Name
Bill Haire

Signature of Member

Date (Year/Month/Day)
2023/09/11

Print Name
Corrie Campbell

Signature of Member

Date (Year/Month/Day)
2023/09/11