

### **Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) decision dated August 8, 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**Evidence Before the Ministry at Reconsideration:

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

- Medical Report and Assessor Report completed by a Doctor
- Appellant's Self Report
- Handwritten notes from a Psychiatrist dated March 31 and July 28, 2023
- Appellant's statement in the Request for Reconsideration.

Medical Report:

The Doctor states that the Appellant has been their patient since January 2020, and they have seen the Appellant between two and ten times in the past twelve months.

Diagnosis:

The Doctor provides diagnoses of Anxiety/Depression, Borderline Personality Disorder and Alcohol Use Disorder.

Health History:

The Doctor states that the Appellant:

- has Anxiety/Depression with prominent social anxiety elements
- finds it very difficult to engage with others
- cannot be engaged in gainful employment due to alcohol dependence.

Functional Skills:

The Doctor indicates the Appellant has no limitations in physical functioning but significant deficits with cognitive and emotional functioning in the areas of emotional disturbance, motivation and attention or sustained concentration. They comment that the Appellant's concentration and memory are significantly impaired due to Anxiety/Depression and Alcohol Use Disorder.

Assessor Report:Mobility and Physical Ability:

The Doctor indicates no limitations in mobility and physical ability.

Cognitive and Emotional Functioning:

The Doctor indicates that the Appellant's mental impairment has a moderate impact in the areas of emotion, attention/concentration, executive function, memory, motivation, and motor activity.

Daily Living Activities:

The Doctor states that the Appellant has no limitations in the daily living activities listed in the Assessor Report, except that the Doctor indicates that the Appellant takes significantly longer for all listed aspects of Meals and Pay Rent and Bills. The Doctor states that the Appellant takes longer because of "lack of drive/motivation, poor concentration + memory". They comment that the Appellant has social anxiety and "does not like going into public space, but does it, with difficulty."

Under Social Functioning, the Doctor indicates that the Appellant needs continuous support or supervision to develop and maintain relationships due to Borderline Personality Disorder. They indicate that the Appellant needs periodic support or supervision to interact appropriately with others, deal appropriately with unexpected demands and secure assistance from others. They indicate that the Appellant has marginal functioning with his immediate and extended social networks.

*Assistance Provided for Applicant:*

The Doctor does not say what help the Appellant needs or receives to perform his daily living activities, stating “no support available” and “manages with difficulty”. They comment that the Appellant is caring for his parent, and community help for the parent would alleviate the Appellant’s stress.

Self Report:

The Appellant states:

- Post Traumatic Stress Disorder and Borderline Personality Disorder, combined with longstanding trauma, leave him feeling useless, with low self-esteem, anger and wanting his life to end.
- Social Anxiety makes it hard for him to leave the house, engage with others, or ask for help.
- He is having some success dealing with substance use issues.
- He is in a day program and sees his counsellor and psychiatrist regularly.
- Lack of sleep, poor hygiene, debt loads, depression and anxiety affect his daily routine negatively.
- “I can’t even brush my teeth most days, eating is a chore and far too often I wait until I’m ready to faint.”

Psychiatrist’s notes:

The Psychiatrist states that the Appellant has “a complex combination of PTSD, Borderline [Personality Disorder], depression, anxiety and alcohol use disorder.” The Psychiatrist supports the Appellant’s application for PWD.

Appellant’s Statement in the Request for Reconsideration:

The Appellant states:

- He struggled to complete the application, as the Doctor said it related to mental health, and the Psychiatrist refused to fill out the Medical and Assessor Reports.
- The Doctor who filled out the Medical and Assessor Reports was never involved in treating the Appellant’s mental health issues.
- He continually struggles with suicidal ideation.
- He has difficulty caring for his parent, who has dementia and other health issues, because of his own depression, but “she’s the only thing right now keeping me going.”

Additional Evidence:Psychiatric Progress Note:

The Psychiatrist provided a letter stating:

- The Appellant has been under the Psychiatrist's care since March 2020, and has suffered with significant symptoms most of that time.
- The Appellant "continues to suffer with emotional ups-and-downs, low mood, low energy levels, high anxiety levels, and an inability to perform day-to-day tasks due to low mood and energy but also due to his anxieties. His anxiety levels tend to increase significantly during his social encounters with other people. His symptoms have been severe and disabling most of the time, and they have prevented him from being able to hold employment or even function normally in his daily life. He continues to have frequent relapses into drinking and using cocaine as a coping mechanism which then complicates and exacerbates his symptoms."
- When the Psychiatrist saw the Appellant most recently, approximately one week before the letter was written, the Appellant "reported feeling low in his mood and energy levels, not wanting to do anything for himself, having poor concentration and short term memory, and experiencing lots of emotional ups-and-downs, anger, and anxiety."

Social Worker:

A Mental Health and Substance Use Clinician who has worked with the Appellant for three years, and who is also a registered Social Worker, attended the hearing. At the hearing, they said:

- For someone to be referred to their team, the person must have a moderate to severe substance use disorder.
- The Appellant has severe depression that means he often cannot leave his residence
- The Appellant struggles with emotional regulation and stability day-to-day.
- In the 'outside world', the Appellant does not have awareness of triggers for emotional dysregulation, which has meant he cannot hold jobs.
- The Appellant has struggled with suicidal ideation, and after a recent suicide attempt, his parent was removed from his care and he lost his housing.
- The Appellant has been moved to supportive housing, where he receives support for daily living activities, including meals.
- She sees the Appellant coming to appointments with his hair not brushed or cut, with torn clothing, and it did not appear that anyone was doing his laundry.
- The Appellant goes without food, especially if he has been using alcohol or drugs.
- The Appellant struggles to use public transportation because of social anxiety.
- He cannot budget properly because he would use his money to buy alcohol or drugs.
- The Social Worker coaches the Appellant on how to have a civilized conversation, when he talks to others such as his Doctor.
- The Doctor does not seem to be supportive of mental health issues generally.
- The Appellant's condition is worse now than in the previous three years.
- At the supportive housing where the Appellant lives now, his meals and laundry are provided, and there are support workers present twenty-four hours a day to help with daily living activities and give ongoing mental health support.

- The supportive housing is expected to be long term; the Appellant may be going into a six-week treatment program next month, but after that would either return to that residence or move into another supportive housing situation.

Appellant:

At the hearing, the Appellant said:

- When he was living with his parent and trying to care for her, he could not manage the upkeep of the house.
- They ended up with a rat infestation, the floors were messy, and it was very hard for him to care for and feed his parent.
- After a suicide attempt approximately a month and a half ago, he ended up in hospital for three weeks, and his family locked him out of the parent's house and threw away all his belongings.
- The Doctor was never involved in the Appellant's mental health care, and never asked the Appellant about his mental health.

Admissibility of Additional Evidence:

The Ministry did not object to the admissibility of the letter from the Psychiatrist or the additional oral evidence of the Appellant and the Social Worker.

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 says that he meets the criteria for PWD designation. He says that he has a severe mental impairment because of depression, anxiety, PTSD, borderline personality disorder and alcohol use disorder. As a result, he struggles with all daily living activities, and receives help from his therapist and the support workers at the supportive housing where he lives.

**Ministry Position:*****Position at Reconsideration:***

At reconsideration, the Ministry was not satisfied that the Appellant had a severe physical impairment, because the medical information did not indicate any physical health conditions, injuries, or impairments, other than, possibly, a minimal hearing impairment. They determined that the Appellant had a moderate mental impairment, based on the information provided by the Doctor. The Ministry pointed out that the Doctor indicated moderate impact on six areas of cognitive and emotional functioning, but no areas with major impact, and only minimal restrictions to daily living activities. The Ministry also noted that the Appellant performs those activities almost entirely independently and with minimal assistance. Therefore, the Ministry said that there was not enough evidence to confirm that the Appellant was directly and significantly restricted in performing daily living activities either continuously or periodically for extended periods. As it was not established that the Appellant's ability to perform daily living activities was significantly restricted, the Ministry maintained that it could not determine that the Appellant needed significant help with restricted activities.

***Position at the Hearing:***

At the hearing, after hearing the additional evidence, the Ministry stated that, if it had that information at reconsideration, it would have determined that the Appellant met all five criteria for PWD designation. The Ministry says that the Appellant has a severe and disabling mental impairment, is significantly restricted in all daily living activities, and receives significant help from others to perform daily living 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.

*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 reasonable in its determination that, based on the information in the Doctor's reports, the Appellant does not have a severe physical impairment. The Doctor does not identify a physical impairment, or any physical limitations, and the Appellant does not argue that he has a physical impairment.

- *Mental Impairment:*

The Panel finds that, considering the additional evidence, the Ministry's determination that the Appellant does not have a severe mental impairment is not reasonable.

The Psychiatrist identifies "a complex combination of PTSD, borderline personality disorder, depression, anxiety, and alcohol and cocaine use disorders." They describe his symptoms as severe and disabling, preventing the Appellant from functioning normally in daily life. The Social Worker and the Appellant say he often cannot leave his residence due to severe depression.

The Appellant struggles with suicidal ideation, and recently was hospitalized after a suicide attempt. The Social Worker confirms that the Appellant's condition has been getting worse since he is no longer able to live with his parent. The Appellant now lives in supportive housing, where support staff are present twenty-four hours a day to help with daily living activities.

The Panel finds that the Appellant has a severe mental impairment.

*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.



At reconsideration, the ministry determined that the information provided by the Doctor did not confirm direct and significant restrictions to the Appellant's ability to perform Activities. However, the Panel finds that the additional evidence of the Social Worker, who is a prescribed professional under section 2(2) of the Regulation, does confirm direct, significant, and continuous restrictions on the Appellant's ability to perform Activities. The Ministry now agrees that the Appellant's ability to perform day-to-day tasks is restricted.

The Panel finds that the Appellant's ability to perform the following Activities is directly, significantly, and continuously restricted by the severe mental impairment:

- Prepare own meals: without support, the Appellant does not eat regularly, often waiting until he is almost fainting before he eats, and then not eating a full meal;
- Perform housework to maintain his place of residence in acceptable sanitary condition: when living with his parent, the Appellant did not keep the residence in a sanitary condition, to the point where there was a rat infestation, and his family has removed the parent from his care;
- Perform personal hygiene and self care: the Social Worker observes the Appellant attending appointments with uncombed and uncut hair, ripped and unwashed clothing;
- Make decisions about personal activities, care, or finances: the Appellant cannot manage his finances, as the Alcohol Use Disorder prompts him to spend money on alcohol and drugs rather than necessities of life;
- Relate to, communicate, or interact with others effectively: the Appellant cannot regulate his emotions, does not recognize emotional triggers, and needs coaching from the Social Worker to engage in reasonable conversations with others.

#### 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 lives in supportive housing where he has 24-hour support to perform Activities where his ability is restricted by his mental impairment. Some Activities, such as meal preparation, are done for him by the support workers. While he may leave that residence to enter treatment in the near future, the Social Worker indicates that they expect the Appellant will go on to live in supportive housing after treatment ends. The Social Worker also provides ongoing help and support. The Panel finds that the supportive housing workers and the Social Worker are providing significant help to perform restricted Activities. Therefore, the Panel finds that the Ministry's determination that it could not find that the Appellant needs help to perform those Activities, is not reasonable, considering the additional evidence.

#### Conclusion:

The Panel finds that the Ministry's decision to deny the Appellant PWD designation is 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.

**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/September/11

Print Name  
Shelly McLaughlin

Signature of Member

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

Print Name  
Erin Rennison

Signature of Member

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