

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated January 17, 2022, which determined the appellant was not eligible for the Persons with Disabilities (PWD) designation.

Specifically, the ministry determined:

- The appellant does not have a severe physical or mental impairment;
- The impairment does not directly and significantly restrict daily living activities continuously or periodically for extended periods; and
- The appellant does not require an assistive device, the significant help of another person, or the services of an assistance animal to perform the daily living activities.

Additionally, the ministry determined that the appellant is not one of the prescribed classes of persons who may be eligible for the PWD designation 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) section 2

Employment and Assistance for Persons with Disabilities Regulation (Regulation), section 2 and 2.1

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

Part E – Summary of Facts

The panel notes, although there is a large gap between the reconsideration decision (January 17, 2022) and the date the Notice of Appeal was received, (August 8, 2023), the appellant provided information to demonstrate that he submitted the Notice of Appeal on January 27, 2022, confirming the Notice of Appeal was submitted timely.

Relevant Evidence Before the Minister at Reconsideration**Request for Reconsideration (December 14, 2021) - summary**

The appellant states he was in a physical education accident when he was in school. A classmate hit his head and he lost his hearing on his right side. He remembers falling and could feel a high pitch ringing in his right ear. He was taken to the hospital and was diagnosed with nerve damage.

Since that incident, the appellant states he's been deaf in his right ear, has tinnitus (ringing in the ear), and migraine headaches. In addition, shortly after this he was diagnosed with Crohn's disease, which has worsened over the years due to the stress his head injury continues to cause; he has ended up in the hospital many times as a result. The appellant states his Crohn's disease has also affected his bile ducts which has caused Primary Sclerosing Cholangitis (liver disease).

He states he went from being a normal kid to his life turning upside down, which has permanently affected his mental health. He also states, this was all stated in his PWD application, backed up by his doctor.

The appellant also stated he is still going to school as a part-time student, to eventually make something of himself. The PWD designation was supposed to help him get on his feet one day, not as a long-term solution. He adds that simple tasks such as studying, taking notes and processing information are greatly impacted with his tinnitus. Concentrating with a constant high pitch noise in one's head is a challenge. Even trying to get a good night sleep has become more difficult.

In addition, the appellant states the PWD designation was designed to help people with health issues and if he must fight to get it approved there is a failure in the system. In addition, he states he has been approved for disability through student aid BC and doesn't understand why the ministry is kicking him around when his situation seems so black and white.

Letter to the Appellant from the Ministry (December 7, 2021)

-denying eligibility for PWD designation

PWD Application

Self-Report (September 19, 2021)

The appellant states he has a few different health issues that affect him daily. He has unilateral hearing loss, is deaf in his right ear and suffers from severe tinnitus. He doesn't hear any normal sound in his right ear but has constant tinnitus, so severe that he often finds himself in a battle of not losing himself in the tinnitus. It feels like his left ear is keeping him here and his right ear is trying to take him away to another dimension. Also, because of the nerve damage to his right ear, he suffers from chronic headaches, which occur multiple times a week. The headaches make it nearly impossible to stick to a routine; The pain is so severe that he must go into a dark room and lay there doing absolutely nothing. Due to his hearing loss, daily tasks like crossing the street become more complicated. A car may be coming from his right side, but he will assume it's coming from his left as that's the only remaining hearing he has. He also has Crohn's disease and receives regular infusions for it. The Crohn's disease makes it hard to leave his home for long periods of time since he doesn't have control over his bowel movements and doesn't want to risk having an accident.

Medical Report (October 18, 2021)

The appellant's doctor lists the following diagnoses related to the appellant's impairment.

A - Diagnosis	Date of onset - month/year
Crohn's disease	11/2013
Hearing loss	05/2014
Tinnitus	05/2014
Anxiety	
Headaches - migraine	

Health History

The doctor writes that the appellant was diagnosed with Crohn's disease in November 2013. He gets multiple bowel movements and recurrent abdominal pain and previously required multiple visits to the emergency department due to his pain. The appellant was admitted to the hospital in January 2020 and his colonoscopy revealed that his Crohn's disease progressed to involve his colon. His symptoms have affected his daily life and prevent him from being outside his home for prolonged periods.

The doctor also writes that since the appellant's head injury, he's had profound hearing impairment on his right side as well as tinnitus and headaches. His tinnitus gets worse with loud noise and affects his communication/interaction with others. When he gets severe headaches, he is unable to do anything and needs to stay in a dark room.

The doctor provided the following responses to the questions below.

- Has the appellant been prescribed any medications and/or treatments that interfere with his ability to perform daily living activities? - No
- Does the appellant require prostheses or aids for his impairment? - Yes, hearing aid

Degree and Course of Impairment

The doctor provided the following responses to the questions below.

- Is the impairment likely to continue for two years or more from today? - Yes
 - a) Crohn's disease is chronic – entyvio infusion helps with his symptoms.
 - b) Deafness – wears hearing aid on right side.

Functional Skills

- How far can this person walk unaided on a flat surface?
4+ blocks
- How many stairs can this person climb unaided?
5+ steps
- What are the person's limitations in lifting?
no limitations
- How long can this person remain seated?
no limitation
- Are there difficulties with communication?
yes, deafness in right ear and tinnitus
- Are there any significant deficits with cognitive and emotional function?
yes, language (auditory) and emotional disturbance
Right-sided hearing impairment. The appellant's multiple medical conditions have contributed to him feeling anxious and at times depressed.

Frequency of Contact

- How long has the appellant been your patient?
since March 2018
- How often have you seen this appellant in the past 12 months?
11 or more times

Assessor Report (October 19, 2021)

The doctor provided the following responses to the questions below.

Living Environment

The doctor indicated the appellant lives with family, friends or caregiver.

Mental or Physical Impairment

- What are the applicant’s mental or physical impairments that impact his ability to manage daily living activities?
Hearing loss in right ear and uncontrolled bowel movements which affects his interaction with others as well as restriction in time he can spend outside his house.

Ability to Communicate

Please indicate the level of ability in the following areas	Good	Satisfactory	Poor	Unable	Explain
speaking	X				
reading	X				
writing	X				
hearing			X		right-sided hearing loss

Mobility and Physical Ability

Indicate the assistance required related to impairment (that directly restricts the applicant's ability to manage in the following areas).	Independent	Periodic assistance from another person	Continuous assistance from another person or unable	Uses assistive device	Takes significantly longer than typical	Explain and specify device
Walking indoors	X					
Walking outdoors	X					
Climbing stairs	X					
Standing	X					
Lifting	X					
Carrying and holding	X					

Cognitive and Emotional Functioning

For each item indicate to what degree the applicant's mental impairment restricts his functioning.

If impact is episodic or varies over time, please explain	Impact on Daily Functioning			
	No impact	Minimal impact	Moderate impact	Major impact
Bodily functions (e.g. eating problems, toileting problems, poor hygiene, sleep disturbance)			X	
Consciousness (e.g. orientation, alert/drowsy, confusion)	X			
Emotion (e.g. excessive or inappropriate anxiety, depression etc.)			X	
Impulse control (e.g. inability to stop doing something or failing to resist doing something)	X			
Insight and judgement (e.g. poor awareness of self and health condition (e.g. grandiosity, unsafe behavior)	X			
Attention/concentration (e.g. distractible, unable to maintain concentration, poor short term memory)	X			
Executive (e.g. planning, organizing, sequencing, abstract thinking, problem-solving, calculations)	X			
Memory (e.g. can learn new information, names etc., and then recall that information, forgets over-learned facts)	X			
Motivation (e.g. lack of initiative, loss of interest)		X		
Motor activity (e.g. increased or decreased goal-oriented activity, coordination, lack of movement, agitation, ritualistic or repetitive actions, bizarre behaviours, extreme tension)	X			

Language (e.g. expression or comprehension problems (e.g. inability to understand, extreme stuttering, mute, racing speech disorganization of speech)	x			
Psychotic symptoms (e.g. delusions, hallucinations, disorganized thinking)	x			
Other neuropsychological problems (e.g. visual/spatial problems, psychomotor problems, learning disabilities etc.)	x			
Other emotional or mental problems	x			

Daily Living Activities

Indicate the assistance required related to impairment(s) that directly restrict the applicant's ability to manage in the following areas.	Independent	Periodic Assistance from another person	Continuous assistance from another person or unable	Uses assistive device	Takes significantly longer than typical	Explain/ Describe
Dressing	x					
Grooming	x					
Bathing	x					
Toileting	x					Uncontrolled bowel movement if no access to toilet
Feeding self	x					
Regulating diet	x					
Transfers (in/out of bed)	x					
Transfers (on/off chair)	x					
Basic Housekeeping						
Laundry	x					
Basic housekeeping	x					
Shopping						
Going to/from stores		x				Hearing impairment
Reading prices and labels	x					
Making appropriate choices	x					

Paying for purchase	x					
	x					
<p>Additional Comments (type and amount of assistance and any safety issues) The doctor writes the appellant does not have issues with toileting but if he does not have access to a toilet, he can have uncontrolled bowel movements due to his Crohn's. His safety can be at risk when walking on the road due to his hearing impairment.</p>						

Indicate the assistance required related to impairment(s) that directly restrict the applicant's ability to manage in the following areas.	Independent	Periodic Assistance from another person	Continuous assistance from another person or unable	Uses assistive device	Takes significantly longer than typical	Explain/ Describe
Meals						
Meal planning	x					
Food preparation	x					
Cooking	x					
Safe storage of food (ability, not environmental)	x					
Pay rent and bills						
Banking	x					
Budgeting	x					
Pay rent and bills	x					
Medications						
Filling/refilling prescriptions	x					
Taking as directed	x					
Safe handling and storage	x					
Transportation						
Getting in and out of a vehicle	x					
Using public transit		x				Loud noise aggravates tinnitus
Using transit schedules and arranging transportation	x					

Additional Comments (description of type and amount of assistance and any safety issues)

The doctor writes there is some safety risk related to hearing impairment when using public transit.

Social Functioning – only complete if applicant has an identified mental impairment

Indicate the assistance required related to impairment(s) that directly restrict the applicant's ability to manage in the following areas.	Independent	Periodic support/supervision	Continuous support/supervision	Explain/Describe
Appropriate social decisions (including avoiding situations dangerous to self or others, good social judgement)	x			
Able to develop and maintain relationships	x			
Interacts appropriately with others (e.g. understands and responds to social cues, problem solves in social context)	x			In noisy environments, he may not be able to interact with others due to his hearing impairment
Able to deal appropriately with unexpected demands	x			
Able to secure assistance from others	x			

Describe how the mental impairment impacts the applicant's relationship with his

- **immediate social network (partner, family, friends)**

The doctor checked, "good functioning – positive relationships, assertively contributes to these relationships"

- **extended social networks (neighbourhood contacts, acquaintances, storekeepers, public officials etc.)**

The doctor checked, "marginal functioning – little more than minimal acts to fulfill basic needs"

Comments: If the applicant requires help, as indicted, please describe the supportive/supervision required which would help to maintain him in the community

The doctor writes that the appellant tends to avoid gatherings due to his hearing impairment/tinnitus.

Assistance Provided for Applicant

Assistance provided through the use of devices

What equipment or devices does the applicant routinely use to help compensate for his impairment? Check appropriate items.

The doctor checked - communicative devices – hearing aid.

Please provide details on any equipment or devise used by the applicant:

The doctor wrote hearing aid used to mask tinnitus.

Assistance provided by Assistance Animals

Does the applicant have an assistance animal?

The doctor checked, no.

Approaches and Informational Sources

What approaches and information sources did you use to complete this form?

The doctor indicated, office interview with applicant and medical chart information.

Frequency of Contact

The doctor stated he first met the applicant in March 2018 and has been providing primary care since June 2020.

Report from Registered Audiologist - summary (February 5, 2019)

The report states the appellant attended a tinnitus group session on February 1, 2019. He reported the onset of unilateral, right-sided, on-pulsatile tinnitus in 2015. The appellant stated he was hit on the right side of the head in gym class and was knocked to the ground. He now has right-sided hearing loss and tinnitus, which is bothersome when trying to study and interferes with his concentration. He denied difficulties sleeping.

The appellant stated his most recent hearing assessment on August 29, 2018 indicated normal hearing in the left ear and moderate sloping to profound sensorineural hearing loss in the right ear. He reported difficulties hearing with background noise and localizing

sounds. He has a hearing aid, which he sometimes wears; it helps him to hear loud sounds better and decrease the tinnitus intrusiveness a little bit. He also reported sound sensitivity to loud sounds in his right ear, including dishes clattering and hammering sounds - these sounds cause aural fullness, dizziness and otalgia. He also reported a history of migraines.

The audiologist stated he presents with;
Tinnitus - Tinnitus Handicap Inventory score 86%
Hyperacusis
Hearing difficulties, severely intrusive

Letter to Whom It May Concern from Gastroenterology Clinical Nurse (March 16, 2018)

The nurse writes that the appellant is being followed for his diagnosis of Crohn's disease. The unpredictable nature of this illness means that he may have some "off" days even during periods when his condition is under control.

The nurse states Crohn's disease is a chronic condition that affects the lining of the digestive tract and can have a variety of symptoms such as cramps and abdominal pain, diarrhea, nausea and fatigue. Few of these symptoms are immediately evident to the observer but can be debilitating, nonetheless.

The nurse also stated they encourage the appellant to participate and be included in all school related activities. There will be times when he requires some special considerations. Strenuous physical activity may need to be modified and he may need to use the bathroom urgently and frequently. It would be helpful if the appellant were allowed to leave the classroom as unobtrusively as possible. As well, although he may need to miss school for medical appointments or exacerbations of his symptoms, they desire that the appellant fully participate in school when he is well.

Audiologic Evaluation - summary (July 17, 2015)

The evaluation states that after the appellant's gym incident, his vision went black and he had the feeling he was about to pass out. He experienced: tinnitus, imbalance with standing and Crohn's disease, and had ear surgery.

Invoice for Hearing Aides (December 1, 2015)

Total Due: \$3,795

Copy of blog – Protecting your hearing means protecting your mental health (no date)

The following is highlighted.

“Hearing loss and tinnitus (ringing in the ears) can increase one’s risk of developing mental illnesses including depression, anxiety, schizophrenia, and dementia, and can trigger episodes of extreme anger and suicide ideation. Protecting one’s hearing not only prevents or delays hearing loss, but also benefits mental wellness.”

Additional Information

Appellant

Notice of Appeal – summary (dated January 26,2022, received August 8, 2023)

The appellant writes that his health issues have been documented and backed up by his doctor and still he was denied. Having half one’s hearing taken away at such a young age is very difficult. The tinnitus is so bothersome it makes it very difficult to concentrate. The appellant states tinnitus patients will tell you how their brain goes into suicidal ideation because of how loud and disruptive the tinnitus gets. The on-going migraines make the appellant feel like he’s just seconds away from having a stroke.

The appellant states due to the stress and trauma his hearing impairment has caused, his mental health declined and caused him to develop Crohn’s disease, which means you do not have control over your body. He adds, just the thought of some horrific experiences he’s had have left a permanent scar on his mental health.

The appellant states he has on-going medical appointments (MRIs, CT scan, specialist appointments) and must go to a clinic for infusion shots for his Crohn’s disease because it is so unstable.

Submission (August 23, 2023)

The appellant states he is adding a doctor's note to further support his application. In this note his doctor outlines his health issues, discussed previously, as well as new health issues including primary biliary sclerosis liver disease and Cholecystitis, and abdominal pain associated with having gallstones

Letter to Whom It May Concern from the Appellant’s Doctor (August 23, 2023)

The doctor states this letter was written to support the appellant’s appeal for his disability application.

1. Crohn's disease: He is unable to go to public places with flareups due to pain and fecal incontinence. He needs to stay home.
2. Tinnitus and hearing impairment. He is unable to communicate with others due to background noise.
3. Primary biliary sclerosis and elevated liver function tests.
4. Cholecystitis: recurrent severe abdominal pain due to gallstones. Waiting to be seen by general surgeon.
5. Migraine headaches: He would need to rest in a dark and quiet room limiting him from going outside and doing his daily activities.
6. Anxiety related to his medical conditions and concerns about his future career.

Ministry

The ministry stated its submission in this matter will be the reconsideration summary provided in the record of ministry decision. The ministry did not raise an objection to the admission of the new information provided by the appellant.

Admissibility

The panel determined the additional information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the Act.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Specifically, did the ministry reasonably determine the appellant was not eligible for the PWD designation because:

- The appellant does not have a severe physical or mental impairment;
- The impairment does not directly and significantly restrict daily living activities continuously or periodically for extended periods; and
- The appellant does not require an assistive device, the significant help of another person; or the services of an assistance animal to perform the daily living activities?

Appellant Position

The appellant argues he's been deaf in his right ear, has tinnitus and migraine headaches. In addition, he was diagnosed with Crohn's disease which has worsened over the years due to the stress his head injury continues to cause. He has ended up in the hospital many times as a result. The appellant argues further that his Crohn's disease has also affected his bile ducts which has caused liver disease.

The appellant also argues that simple tasks such as studying, taking notes and processing information are greatly impacted with his tinnitus. Concentrating with a constant high pitch noise in one's head is a challenge. Even trying to get a good night sleep has become more difficult and having to go through all this has permanent effects on his mental health.

In addition, the appellant argues further that this was all stated in his PWD application, backed up by his doctor.

Ministry Position**Severe Physical or Mental Impairment**

The ministry argues it is not satisfied that the information provided establishes a severe impairment.

The ministry states it acknowledges the appellant's diagnosis of serious medical conditions. However, with no reported restrictions or limitations to his mobility and physical abilities, the ministry argues it cannot establish a severe impairment of his physical functioning.

Although the ministry acknowledges the appellant is impacted due to his medical conditions it argues that when considering the appellant's deficits, impacts and communication abilities in conjunction with his daily living activities, a severe degree of mental impairment is not established. The appellant is reported to be independent in all activities related to making decisions regarding personal activities, care, and finances, as well as social functioning.

Daily Living Activities

The ministry states the appellant's doctor reports that the appellant's hearing loss and uncontrolled bowel movements affect his interactions with others and restrict the amount of time he can spend outside his house and highlighted safety concerns regarding the ability to walk on the road or take transit, and that he requires periodic assistance going to/from stores and taking transit. However, the ministry argues the frequency, duration and nature of assistance was not reported, which prevents the ministry from confirming the appellant is significantly restricted in these areas. As well, the ministry argues the appellant is reported to be independent in all other aspects of daily living, including personal care, basic housekeeping, shopping (reading prices/labels, making appropriate choices, paying for purchases, carrying purchases home), meals, finances, medication, and transportation (getting in/out of vehicles, using transit schedules and arranging transportation).

The ministry argues that based on the information provided by the appellant's doctor, it is not satisfied that the appellant has a severe impairment that, in the opinion of a prescribed professional, directly and significantly restricts the appellant's ability to perform the daily living activities set out in the legislation.

Help Required with Daily Living Activities

The ministry argues that although the appellant's doctor reports he receives assistance from a hearing aid, as it has not been established that daily living activities are significantly restricted, it cannot be determined that significant help is required from other persons or a device.

Panel Analysis

Section 2(2) of the Act states that, as one requirement, the minister may designate a person as a PWD if the minister is satisfied that the person has a severe mental or physical impairment.

Mental Impairment

The panel notes in the letter (August 23, 2023) the appellant's doctor (a prescribed professional) states the appellant suffers from anxiety related to his medical conditions and in the medical report lists anxiety as a diagnosis and states that the appellant's multiple medical conditions have contributed to him feeling anxious and at times depressed. In the assessor's report, the doctor indicated a moderate impact on daily functioning for bodily functions and emotion and minimal impact for motivation. However, "no impact" was indicated for the other 11 categories.

The panel notes the appellant provided a copy of a blog, which states that hearing loss and tinnitus can increase one's risk of developing mental illnesses including depression, anxiety, schizophrenia, and dementia, and can trigger episodes of extreme anger and suicide ideation. However, the panel notes that this information is generic and does not address the appellant's functioning.

The panel finds that although the appellant's doctor indicated that the appellant's bodily functions and anxiety have some impact on daily functioning, it finds there is insufficient evidence to conclude that the appellant has a severe mental impairment and finds that the ministry reasonably concluded that the evidence does not show that the appellant has a severe mental impairment.

Physical Impairment

The panel notes in the self-report, the appellant states he is deaf in his right ear and suffers from severe tinnitus. He states it feels like his left ear is keeping him here and his right ear is trying to take him away to another dimension. As well, because of the nerve damage to his right ear, he suffers from chronic headaches, multiple times a week. The appellant states the headaches make it nearly impossible to stick to a routine; the pain is so severe that he must go into a dark room and lay there doing absolutely nothing. The panel finds the information in the appellant's self-report assists the panel in understanding the severity of his physical impairment.

Evidence from the appellant's doctor shows that the appellant suffers from Crohn's disease, tinnitus and hearing impairment, Primary Biliary Sclerosis and elevated liver function tests, Cholecystitis, severe abdominal pain due to gallstones and migraine headaches. The doctor states that when having severe headaches, the appellant is unable to do anything and needs to stay in a dark room. In their letter (August 23, 2023), the doctor adds that the appellant is waiting to be seen by a general surgeon.

In the medical report the doctor writes that the appellant's Crohn's disease causes multiple bowel movements and recurrent abdominal pain and previously required multiple visits to the emergency department due to the pain. The appellant was admitted to the hospital in January 2020 and his colonoscopy revealed that his Crohn's disease has progressed to involve his colon.

With the above information, the panel finds the evidence demonstrates that the appellant has a severe physical impairment and finds the ministry decision that the appellant's physical impairment is not severe, unreasonable.

Restrictions in Ability to Perform Daily Living Activities

Section 2(2) of the Act also states the minister must be satisfied that a severe physical impairment directly and significantly restricts the person's ability to perform daily living activities continuously, or periodically for extended periods. The Act requires the opinion of a prescribed professional. The Regulation defines daily living activities in section 2.

In the assessor's report, regarding personal care, the doctor stated the appellant does not have issues with toileting but if he does not have access to a toilet, he can have uncontrolled bowel movements due to his Crohn's.

Under physical mobility, the doctor stated the appellant was independent for all the criteria listed (walking indoors/outdoors, climbing stairs, standing, lifting and carrying and holding). In the medical report, the doctor stated that the appellant can walk more than four blocks and climb more than five stairs unaided and has no limitations with lifting or remaining seated.

The doctor also stated the appellant is independent with all criteria for personal care and basic housekeeping and independent with most criteria for shopping (except he would need period assistance for going to and from stores). The doctor also indicated the appellant is independent with all criteria involved with meals, paying rent and bills and medication. For transportation the doctor indicated the appellant requires period assistance from another person as the loud noise aggravates his tinnitus and there is some safety risk related to hearing impairment when using public transit.

The panel finds that although the information from the audiologist and the Gastroenterology Clinical nurse provide expanded information on the appellant's hearing

loss and Crohn's disease, it provides insufficient information, regarding how these conditions impact the appellant's ability to perform the daily living activities as defined in

the legislation. As well, the audiologist and Gastroenterology clinical nurse are not prescribed professionals, as required by the legislation.

The panel finds the above evidence shows the only tasks that the appellant needs period assistance with, due to his severe physical impairment, are going to and from stores and using public transportation, and there is insufficient evidence to suggest the appellant requires period assistance for extended periods of time, as required by the legislation.

Therefore, considering the above, the panel finds the evidence does not demonstrate that the appellant has a severe physical impairment that directly and significantly restricts his ability to perform daily living activities continuously, or periodically for extended periods and finds the ministry determination reasonable.

Help to Perform Daily Living Activities

The panel notes section 2(2) of the Act includes the requirement of an assistive device. Although in the assessor's report, the appellant's doctor stated the appellant receives assistance with a hearing aid, as the panel determined the evidence did not demonstrate that the appellant's impairment directly and significantly restricts his ability to perform daily living activities, it cannot be determined that an assistive device is required as a result of significant restrictions.

Conclusion

In conclusion, the panel finds that the ministry's decision that the appellant does not have a severe physical impairment was not reasonably supported by the evidence. However, the panel finds that the ministry's decision that the appellant was not eligible for PWD designation because his severe physical impairment does not directly and significantly restrict his ability to do daily living activities resulting in the need for help was reasonably supported by the evidence.

The panel confirms the ministry's decision. The appellant is not successful on appeal.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Act

Persons with disabilities

2 (1) In this section:

"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person is in a prescribed class of persons or that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal....

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...

Part 1.1 — Persons with Disabilities

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2

(2) [*persons with disabilities*] of the Act:

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act*;
- (d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act* to assist that family in caring for the person;
- (e) a person who is considered to be disabled under section 42 (2) of the *Canada Pension Plan* (Canada).

APPEAL NUMBER 2023-0237

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

Connie Simonsen

Signature of Chair

Date (Year/Month/Day)

2023/09/11

Print Name

Bill Farr

Signature of Member

Date (Year/Month/Day)

2023/09/11

Print Name

Kevin Ash

Signature of Member

Date (Year/Month/Day)

2023/09/11