

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the “**Ministry**”) dated July 26, 2023 (the “**Reconsideration Decision**”), in which the Ministry denied the Appellant a 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; and
- needing significant help to perform daily living activities.

The Ministry also 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* (the “**Act**”) – section 2
- *Employment and Assistance for Persons with Disabilities Regulation* (the “**Regulation**”) – section 2

Note: The full text is available after the Decision.

Part E – Summary of Facts**(a) The Reconsideration Decision**

The evidence before the Ministry at the Reconsideration Decision consisted of:

- an Applicant Information Form completed on April 1, 2023;
- a Medical Report completed by the Appellant’s doctor (the “**Doctor**”) completed on April 2, 2023;
- an Assessor Report completed by a registered nurse (the “**RN**”) completed on April 1, 2023;
- the Appellant’s Canada Pension Plan Disability Benefit Form (“**CPPDB Form**”) completed on July 1, 2023; and
- a personal written statement from the Appellant submitted with his request for reconsideration dated on July 5, 2023;

(i) Applicant Information Form (“Self-Report”)

On review of the Appellant’s Self-Report, he checked the box marked “*I choose not to complete this self-report*”. As a result, the body of the Self-Report was left blank.

The Self-Report was signed by the Appellant and witnessed by the RN.

(ii) Medical Report

The Doctor states that the Appellant has been their patient since mid February 2023, and they have seen the Appellant 2 to 10 times in the past 12 months prior to completing the Medical Report. However, there is an additional notation that the Appellant has attended the Doctor’s clinic since June 2014, presumably under the care of another physician.

Diagnosis:

The Doctor diagnoses “*lower backache*”; however, they do not specify the onset of the backache.

Health History:

The Doctor states that the Appellant experiences “*severe backache due to L5/S1 [spondylolisthesis] due to PARS defect*”. For clarity, spondylolisthesis is a spinal disorder in which one vertebra (spinal bone) slips onto the vertebra below it and PARS defect is a stress fracture of the bones of the lower spine. The Doctor marked “*no*” to the questions of whether the Appellant (i) had been prescribed any medication and/or treatments that interfere with their ability to perform daily living activities and (ii) required any prostheses or aids for their impairment.

Degree and Course of Impairment:

The Doctor states that the Appellant's impairment is likely to continue for 2 years or more and that surgical fixation is needed.

Functional Skills:

The Doctor indicates that the Appellant can walk 4+ blocks unaided, climb 5+ stairs unaided, and can remain seated without limitation. However, the Appellant is unable to lift anything. The Doctor also states that the Appellant does not suffer from any significant deficits with cognitive and emotional functioning.

Daily Living Activities:

The Doctor indicates that it is unknown as to whether the Appellant's impairment restricts any of his daily living activities. The Doctor does not provide any further explanation.

Additional Comments:

The Doctor does not provide any additional comments.

(iii) Assessor Report

In preparation for drafting the Assessor Report, the RN met the Appellant once to conduct a nursing assessment, namely an office interview, and they reviewed the Appellant's back x-ray dated February 27, 2023. Otherwise, the Assessor Report does not specify any other medical records reviewed by the RN.

Mental or Physical Impairment:

The RN states that the Appellant's mental or physical impairments are as follows:

- fractured vertebrae;
- chronic anterolisthesis L5 and S1 (bilateral pars defects);
- chronic degenerative disc disease;
- post traumatic stress disorder ("**PTSD**") and anxiety;
- irritable bowel syndrome;
- brain injury arising from a ski accident, assault, and horse accident;
- learning disability in terms of slow processing and memory defects.

Ability to Communicate:

The RN indicates that the Appellant's speaking is satisfactory; however, his reading, writing, and hearing are poor. The RN explains that the Appellant is a non-reader with poor memory and focus, and has remedial level grammar and spelling. The RN also writes that the Appellant has "*tinnitus 50% time*".

Mobility and Physical Ability:

The RN indicates that the Appellant can walk indoors and outdoors independently for up to a maximum of 30 minutes. With respect to climbing stairs, the RN explains that the Appellant requires periodic assistance from another person. With respect to standing, lifting, and carrying and holding, the RN writes that the Appellant requires continuous assistance from another person or that he is unable to complete these activities; however, the Appellant is able to:

- stand for 5 to 20 minutes;
- lift a maximum of 20 lbs.; and
- carry and hold between 5 lbs. to 10 lbs. for up to 10 minutes.

In the explanation section, the RN notes that *"Due to severe chronic back pain x 8 yrs + severe pain flare ups 60-70% of the time."*

Cognitive and Emotional Functioning:

The RN indicates that the Appellant's cognitive and emotional functioning are impacted by his impairments as follows:

- bodily functions (major impact);
- consciousness (moderate impact);
- emotion (major impact)
- impulse control (no impact);
- insight and judgment (no impact);
- attention/concentration (major impact);
- executive (major impact);
- memory (major impact);
- motivation (moderate impact)
- motor activity (no impact);
- language (moderate impact);
- psychotic symptoms (minimal impact);
- other neuropsychological problems (major impact); and
- other emotional or mental problems (major impact).

In the additional comments section, the RN writes, *"Sleep affected by back pain – cannot get comfortable to sleep. 15 days/month client will only sleep less than 2 hrs/night"*.

Daily Living Activities:

The RN indicates that, due to the impairments, the Appellant needs periodic assistance from another person for:

- dressing, grooming, bathing, toileting, feeding self, and regulating diet;
- laundry;
- going to and from stores;
- getting in and out of a vehicle; and
- using transit schedules and arranging transportation.

The RN further indicates that, due to the impairments, the Appellant needs continuous assistance from another person for:

- basic housekeeping;
- reading prices and labels;
- carrying purchases home;
- meal planning, food preparation, and cooking;
- banking and budgeting;
- filling/refilling prescriptions; taking prescriptions as directed and the safe handling and storage of medications; and
- using public transit.

In the additional comments section, the RN writes, *"With back flare ups – client is unable to move even an inch due to incapacitating pain lasting for a hours to days. Neuropathic pain – numbness and tingling to legs"*.

In terms of social functioning, the RN indicates that, due to the mental impairments, the Appellant needs the support of another person as follows:

- appropriate social decisions (continuous support);
- able to develop and maintain relationships (continuous support);
- interacts appropriately with others (periodic support);
- able to deal appropriately with unexpected demands (continuous support); and
- able to secure assistance from others (continuous support).

The RN recommends that the Appellant have mental health supports for anxiety and social isolation. In the additional comments section, the RN writes, *"Extreme isolation with severe back pain puts client @ risk of not being able to get help or do ADL's"*.

Assistance Provided for Applicant:

The RN indicates that the Health Authority Professionals (walk in Doctor) provide help to the Appellant for daily living activities. The RN, again, notes that the Appellant is very isolated and requires assistance, but that no assistance is available. In addition, the RN writes that the Appellant requires chronic pain management services for "... *lifting, carrying, shopping, cooking, laundry, housekeeping, prompts for personal care, emotional + social supports...*"

The RN also advises that the Appellant uses the following to compensate for his impairments: Dr. Ho massage impulse machine, back supports, and hot/cold packs. For clarity, the RN notes that the Appellant uses back supports for backpain flareups. In addition, the RN suggests that the Appellant may require a wheelchair for backpain flare ups.

(iv) CPPDB Form**Duration of relationship with the patient:**

The Doctor states that he has provided care for the Appellant for less than one (1) year. Between the span of February and July 2023, the Doctor has seen the Appellant a total of four (4) times.

Medical conditions, impairments, functional limitations and treatment:

The Doctor's only diagnosis is "*Anterolisthesis of L5 on S1, grade 1-2*". For clarity, anterolisthesis is an abnormal alignment of bones in the spine which usually affects the lower back. In terms of impairments, the Doctor states, "*Chronic backache - causing immobility from time to time, needing bed rest.*" In describing the Appellant's functional limitation, the Doctor states, "*Unable to perform minor tasks around his house and work without pain.*" The doctor describes the frequency of the Appellant's condition as "*continuous*" with an expected duration of "*more than 1 year*". While noting that the Appellant awaits prolotherapy treatment to treat his condition, the Doctor notes that no medications have been prescribed to him.

Other relevant information:

The Doctor states, "*If prolotherapy fails we be referred for possible spinal fusion of chronic anterolisthesis of L5 on S1, grade 1-2, related to bilateral pars defects.*"

Supporting documents:

The Doctor relies on "*X-rays done of back*".

(v) Personal Statement

The Appellant writes:

"I am requesting reconsideration because my physical impairment is far beyond what was described in the decision summary.

The impairment I experience is more than simply backache, but is rather nerve pain caused by inflammation and a fractured and slipped vertebrae.

Further, while the physical limitations described in the decision summary might accurately describe my abilities on my best days, I am regularly completely incapacitated by swelling and nerve pain when my back is inflamed. During these episodes, I am practically immobile, usually including one or two days of being completely bedridden and unable to complete the simplest tasks, including making phone calls, dealing with paperwork, or any daily living activities (cooking, cleaning, shopping, moving about, etc).

I would estimate, depending on my physical activity between episodes, I am in such a immobile state roughly 10 days per month. These episodes, however, are unpredictable and can happen, at any time, brought on by something as leisurely as walking on the sidewalk.

During these episodes, to complete any daily living activities such as moving about, managing personal finances and keeping the home clean I would require need total assistance from another person. However; given that I live on my own, these activities are instead simply postponed until my spasms have subsided and I am mobile again, unless somebody does assist me. Though an assistive device in the form of a walking aide would be required in order to perform certain daily living activities, I generally forgo those activities as I do not wish to rely on assistive devices, and instead simply use the supports around me (walls, furniture, etc.). As such, I often do not go out during bad episodes as those who see me offer help when I'm walking and I find it embarrassing."

(b) The Appeal

On August 1, 2023, the Appellant filed a Notice of Appeal (the "**Appeal Notice**"). In the Appeal Notice, the Appellant wrote, "... after 35 years serving my community pouring concrete Im no longer capable of working full days and some days I cant work at all with a sliped (sic) vert (sic) that fractured and degenerative disks (sic) leaves me incapasitated (sic) several days of the month. Im (sic) going to require surgery..."

The Appellant's written Appeal hearing was held on September 7, 2023.

The Ministry referred to and relied upon the Appeal Record which largely consisted of the Reconsideration Decision.

The Panel determined that the Appellant's limited submissions contained in the Appeal Notice were provided as argument in support of his Appeal. To the extent that the submissions can be considered as additional evidence, the Panel has determined that the submission are admissible pursuant to section 22(4) of the *Employment and Assistance Act* as it was reasonably required for a full and fair disclosure of all matters related to the decision under Appeal.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's decision denying the Appellant a 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; or
- needing significant help to perform daily living activities.

Appellant's Position

The Appellant says that he has a severe physical impairment due to lower backpain arising from diagnosed medical issues related to his lower spine and vertebrae, namely in the L5 on S1 region. As a result, the Appellant argues that he suffers from significant restrictions on his ability to perform daily living activities thereby needing significant help to perform them. Therefore, the Appellant believes he qualifies for a PWD designation.

Ministry's Position

The Ministry maintains that the Appellant does not qualify for a PWD designation for the reasons stated in its Reconsideration Decision. In coming to its conclusion, the Ministry contrasts the Medical Report and Assessor Report which provide an inconsistent picture of the Appellant's condition. As the Ministry believes that the Appellant has a more established relationship with the Doctor, given their multiple visits together, it prefers the Medical Report over the Assessor Report that was completed by the RN who only saw the Appellant once. Overall, the Ministry submits that there is not enough evidence to confirm if the Appellant:

- has a severe mental or physical impairment;
- suffers from significant restriction on his ability to perform daily living activities; or
- needs significant help to perform daily living activities.

Panel Decision

The legislation provides the Ministry with the discretion to designate someone as a PWD if the requirements are met. In the Panel's view, a PWD designation is for persons who have significant difficulty in performing regular self-care activities, commonly referred to as daily living activities. If the inability to work is the major reason for applying for PWD designation, the Panel encourages the applicant 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. In this Appeal, the Appellant chose not to complete the Self-Report, but he provided a written statement, which the Panel accepts as a Self-Report.

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

(a) Conflicting Reports

The Panel notes that the Medical Report and Assessor Report (collectively, the “**Reports**”) contain conflicting information. As a result, the Ministry preferred the Medical Report over the Assessor Report given its belief that the Appellant and the Doctor had a more established relationship.

As an example of the conflicting information found in the Assessor Report, the RN writes that the Appellant suffers from numerous mental health conditions whereas the Medical Report is notably absent with any reference to such conditions. Further, the Medical Report suggests that the Appellant is unable to lift anything whereas the Assessor Report suggests that the Appellant can lift a maximum of 20 lbs. Even further, the Assessor Report suggests that the Appellant suffers from significant deficits with cognitive and emotional dysfunction, and issues with communication, whereas the Medical Report explicitly indicates that no such issues exist. In sum, the Medical Report and Assessor Report provide two (2) different accounts of the Appellant.

Despite their differences, the Medical Report and Assessor Report do contain some consistent information. For example, both documents indicate that the Appellant suffers from lower backpain that arises from the L5/S1 region of the Appellant’s spine. Further, both Reports’ findings respecting the Appellant’s ability to walk unaided and climb stairs are largely consistent.

The Panel finds the Ministry’s preference for the Medical Report over the Assessor Report to be unreasonable in the circumstances. Here, the Ministry preferred the Medical Report over the Assessor Report given its belief that the Appellant and the Doctor had a more established relationship as the Appellant has known the Doctor longer. When the Medical Report was completed, the Doctor had seen the Appellant between one (1) and four (4) times; however, a review of CPPDB Form suggests that, at the material time, the Doctor had seen the Appellant at least once, but not more than three (3) times. Conversely, the RN met the Appellant only once to complete a nursing assessment. While the Doctor likely met the

Appellant more times in comparison to the RN by the time the Reports were completed, there is nothing on its face to suggest that the Appellant had a more established relationship with the Doctor as the Ministry suggests; indeed, the Appellant's history of contact with both professionals was minimal at the material time. While the Appellant may have been a patient of the clinic where the Doctor practices since 2014, there is nothing in the records to suggest that the Appellant's prior attendance at the clinic played any factor in the Doctor's assessment other than with respect to the diagnosis listed in the Medical Report. Further, it is unclear as to what observations, clinical data, and experience the Ministry relied on to make its determination respecting the weight it put on the Medical Report over the Assessor Report.

Further, there is nothing to suggest that the Doctor spent more cumulative time with the Appellant in comparison to the RN. The Panel notes that the detailed notes and comments included in the Assessor Report supports the view that time and effort went into the RN's assessment.

In sum, the Panel finds that it cannot be said that the Appellant had a more established relationship with the Doctor; rather, it can only be said that the Appellant saw the Doctor a few more times than he had seen the RN by the time the Reports were written.

(b) 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.

(i) Physical Impairment

The Panel has reviewed the Reports and notes that both documents refer to an impairment of the Appellant's L5/S1 joint. In the case of the Medical Report, the Appellant's lower back impairment is diagnosed as "*lower backache*". The severity of the Appellant's impairment is described as "*severe backache due to L5/S1 [spondylolisthesis] due to PARS defect*". According to the Doctor, the Appellant is unable to lift anything; however, the Doctor notes that the impact of the Appellant's physical impairments on his ability to perform daily living activities is unknown.

In the Assessor Report, the Appellant's lower back impairment is described as, "*fractured vertebrae, chronic anterolisthesis L5 and S1 (bilateral pars defects) chronic degenerative disc*

disease..." According to the RN, the Appellant's ability to lift, stand and carry/hold items is limited; as a result, he requires periodic assistance from another person to assist with personal care, basic housekeeping, shopping, meals, paying of bills, his medications, and using transportation.

While the Reports describe a similar impairment, the Panel notes that CPPDB Form, which was more recently completed by the Doctor, helps bridge the gap between the two documents as it lists the Appellant's physical impairment as "*anterolisthesis of L5 on S1, grade 1-2*". As a result, the Doctor states that the Appellant suffers from "*chronic backache - causing immobility from time to time, needing bed rest*".

In addition, the Appellant provides the following additional information in his personal statement to better explain his impairment and limitations arising thereof:

- his backache is caused by inflammation and a fractured and slipped vertebrae;
- he is regularly completely incapacitated by swelling and nerve pain when his back is inflamed; and
- when his backpain flares up, he is physically immobile and completely bedridden and unable to complete the simplest of daily living activities.

On review of the totality of the evidence, the Panel finds that it cannot be said that the Appellant does not suffer from a severe physical impairment. To the contrary, and to the extent that the Reports differ, the Panel finds that a review of all the reports (Medical Report, Assessor Report, CPPDB Form) and the Appellant's personal statement confirm that, when the Appellant's lower back issue is triggered, he suffers from a severe physical impairment that renders him immobile and unable to perform daily living activities.

As a result, the Panel finds that the Ministry's decision finding that the Appellant did not establish a severe physical impairment to be an unreasonably supported by the evidence before it.

(ii) Mental Impairment

The Panel has reviewed the Reports and notes that, while the Assessor Report indicates that the Appellant has several mental impairments, the Medical Report does not.

On review of the Assessor Report, it is unclear as to how the RN determined or verified that the Appellant suffers from PTSD, brain injuries arising from several accidents, or a learning disability. As noted in the Assessor Report, the RN's assessment was limited to interviewing the Appellant and reviewing an x-ray of his back. Put differently, there is nothing to suggest that the RN ever reviewed any of the Appellant's clinical records where a diagnosis or reference to PTSD would likely be found. Put differently, the RN had had nothing before

them which could support or verify that the Appellant suffers PTSD, brain injuries, or a learning disability.

On review of the CPPDB Form, there is also no reference to any condition that could be characterized as a mental impairment. As for the Appellant's personal statement, the Appellant only writes about his physical impairment relating to his lower back and nothing else.

While the RN lists the Appellant's mental impairments relating to PTSD, brain injuries, and a learning disability in the Assessor Report, the Panel notes that, pursuant to section 2 of the *Act*, the diagnosis of a mental impairment can only be made by a medical practitioner or a nurse practitioner, not a RN. As the Appellant has been a patient of the clinic where the Doctor practices for some time, it can reasonably be assumed that, if the Appellant was diagnosed with PTSD, brain injuries, or a learning disability, such diagnoses would be contained in the Appellant's historical clinical records, even if it treated by another doctor at the Doctor's clinic. In this case, the Panel was not directed to any record that could confirm the Appellant's stated mental impairments. Importantly, the Doctor has not provided a diagnosis of mental impairment.

Absent any diagnosis from a medical practitioner or a nurse practitioner, or an assessment, document or record otherwise confirming the Appellant's PTSD, brain injuries, and a learning disability, the Panel finds that the Ministry's decision finding that the Appellant did not establish a severe mental impairment to be a reasonably supported by the evidence before it.

(c) Restrictions to Daily Living Activities

A prescribed professional must provide an opinion that the applicant's impairment restricts their ability to perform the daily living activities listed in the legislation. Those daily living 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; and
- manage personal medication.

For a person who has a severe mental impairment, daily living activities also include:

- make decisions about personal activities, care, or finances; and
- relate to, communicate, or interact with others effectively.

At least two (2) daily living activities must be restricted in a way that meets the requirements. Not all daily living activities, or even the majority, need to be restricted.

The restrictions to daily living activities must be significant and directly caused by the impairment. This means that the restriction must be to a great extent and that not being able to do the daily living 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 daily living activities that are considered are listed in the *Regulation*. The Medical and Assessor Reports 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 and Assessor Reports provide the professional with an opportunity to provide additional details on an applicant's restrictions. The inability to work and financial need are not listed as daily living activities and are only relevant to the extent that they impact listed daily living activities.

The information about daily living activities provided by the Doctor in the Medical Report and by the RN in the Assessor Report is inconsistent. For example, in the Medical Report, the Doctor indicates that it is "*unknown*" as to whether the Appellant's physical impairment restricts any of his daily living activities.

Conversely, the Assessor Report indicates that the Appellant requires either periodic or continuous assistance with most, if not all, daily living activities. However, on review of the Assessor Report, the RN provides various explanations for the causes of the Appellant's restrictions; as a result, it cannot be said that the Appellant's restricted ability to perform daily living activities is directly and significantly related to the Appellant's severe physical impairment in every instance. For example, the RN writes, "... *Due to depression + pain. Motivation to groom and personal care is low...*"; as a result, it is unclear if the Appellant's restrictions related to personal grooming are directly and significantly related to his lower backpain. In the additional comments section, the RN notes that the Appellant's ability to perform daily living activities is restricted when his backpain flares up; however, the RN indicates that the flareups could last as little as a few hours or, in some cases, days. For

further context, the RN also notes, "... *severe pain flare ups 60-70% of the time...*" which suggests that the Appellant's occur more frequently than not.

Given the inconsistencies between the Reports, the Panel must turn to the Appellant's personal statement and CPPDB Form to better understand the extent of any restrictions to the Appellant's daily living activities. The CPPDB Form suggests that the Appellant's lower backpain impedes his ability to perform daily living activities from "*time to time, needing bed rest*". Conversely, the Appellant's personal statement suggests that the Appellant is rendered completely immobile and incapable from performing daily living activities "... *roughly 10 days per month...*"

On review, the Panel finds that the documents collectively read together suggest that, when the Appellant's lower back pain flares up, that he is likely restricted for performing at least two (2) daily living activities, namely activities that may require lifting such as shopping or cleaning. However, that does not end the analysis, as the restrictions to perform daily living activities must be either be continuous or periodic for extended periods of time. The Panel finds that the term flareup suggests periodic restrictions; therefore, the question becomes whether the Appellant's restrictions are for extended periods of time given that the Doctor does not specify duration, and the RN notes that flareups giving rise to the restrictions could last as little as a few hours to days. In this case the Panel finds that the CPPDB Form and personal statement do fill in the gaps left by the Reports by establishing that the Appellant's ability to perform daily living activities are impaired for extended periods of time when his lower back impairment flares up; indeed the Appellant clarifies that he is rendered completely immobile for days, roughly 10 days a month, which aligns with the RN's notation regarding duration and consistency of the Appellants' flareups.

As a result, the Panel finds that the Ministry's decision finding that the Appellant did not establish that his physical impairment directly and significantly restricted his ability to perform daily living activities periodically for extended periods of time was unreasonably supported by the evidence before it.

(d) Help Required

A prescribed professional must provide an opinion that the person needs help to perform the restricted daily living activities. Put differently, the issue is whether help is needed not whether help is provided.

Help means using an assistive device, the significant help or supervision of another person, or using an assistance animal to perform the restricted daily living activities. An assistive device is something designed to let the person perform restricted daily living activities.

The information about help required by the Appellant provided by the Doctor in the Medical Report and by the RN in Assessor Report is, again, inconsistent. The Doctor did not provide any details of help the Appellant may need or receive. Conversely, the RN recommends that

the Appellant receive the assistance of another person for lifting, carrying, shopping, cooking, laundry, housekeeping, and for person care. Further, the RN notes that the Appellant currently uses a back support brace; however, it is unclear if back support brace is required to assist the Appellant with his performance of daily living activities.

Given the Panel's finding that the Appellant does suffer from a severe physical impairment that significantly restricts his ability to perform daily living activities, the Panel finds that there is a logical connection between the Appellant's impairment, his restrictions, and the need for assistance as recommended by the RN.

Conclusion

The Panel finds that the Ministry was unreasonable in finding that the Appellant does not:

- have a severe physical impairment;
- have significant restrictions on the ability to perform daily living activities; or
- need help to perform daily living activities.

The Panel rescinds the Ministry's decision to deny the Appellant a PWD designation as the denial was unreasonably supported by the evidence. The Appellant is successful in the Appeal.

Legislation

Employment and Assistance for Persons with Disabilities Act, SBC 2002, c 41

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.

(4) The minister may rescind a designation under subsection (2).

Employment and Assistance for Persons with Disabilities Regulation, BC Reg 265/2002

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, 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.

APPEAL NUMBER 2023-0235

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

Anil Aggarwal

Signature of Chair

Date (Year/Month/Day)

2023/09/07

Print Name

Kevin Ash

Signature of Member

Date (Year/Month/Day)

2023/09/07

Print Name

Robert McDowell

Signature of Member

Date (Year/Month/Day)

2023/09/07