

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) decision dated July 26, 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

The hearing took place by teleconference. The Appellant attended with a Social Worker who also acted as Advocate.

Evidence Before the Ministry at Reconsideration:

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

- Medical Report dated March 14, 2023, completed by a Doctor
- Assessor Report dated March 10, 2023, completed by the Social Worker
- Hospital Discharge Report dated April 25, 2023
- Appellant's statement in Request for Reconsideration.

Medical Report:

The Doctor states that the Appellant has been their patient since January 30, 2013, and has seen them between two and ten times in the past twelve months.

Diagnosis:

The Doctor provides diagnoses of ischemic heart disease (onset November 2022), heart failure (onset November 2022), diabetes mellitus (onset February 2023), anxiety and depression (onset December 2022).

Health History:

The Doctor states "Critical Heart Disease, affects shortness of breath, poor energy, reduced mobility and strength."

Functional Skills:

The Doctor indicates that the Appellant can:

- Walk 4+ blocks unaided on a flat surface
- Climb 5+ stairs unaided
- Lift under 2 kilograms
- Remain seated 1 to 2 hours.

The Doctor also indicates that the Appellant has difficulties with communication due to poor vision. They indicate the Appellant has significant deficits with cognitive and emotional function.

Daily Living Activities:

The Doctor indicates that the Appellant's ability to perform the following daily living activities is directly and continuously restricted by their impairment:

- Personal self care
- Meal preparation
- Basic housework
- Daily shopping
- Mobility inside the home
- Mobility outside the home.

They state that activities of daily living are “impacted negatively by cardiac decline, decreased energy, need for frequent breaks.”

Additional Comments:

The Doctor states that the Appellant has been hospitalized due to cardiac issues, lifting is limited to two pounds due to stent, and the Appellant needs to rest frequently, especially when walking outside the house.

Assessor Report:

The Social Worker states that he has known the Appellant since November 25, 2022, and has seen the Appellant between two and ten times in the past twelve months, for medical and social work supports. He indicates that the Appellant lives alone and rents a room.

Mental or Physical Impairment:

The Social Worker states that the Appellant’s impairments are diabetes, heart disease, heart failure, trouble breathing, anxiety, depression, poor vision and “lacks energy.” He indicates that the Appellant has poor ability to read due to “lack of vision.”

Mobility and Physical Ability:

The Social Worker indicates that, while the Appellant is independent in all aspects of mobility and physical ability, he takes significantly longer than typical to walk indoors and outdoors and climb stairs, stating that the Appellant “takes at least twice as long as typical due to heart disease, shortness of breath” and the Appellant must rest after climbing three stairs. He indicates that the Appellant takes significantly longer than typical to lift, carry, and hold, and is limited to two pounds.

Cognitive and Emotional Functioning:

The Social Worker indicates that the Appellant’s mental impairment has a major impact on motivation. He indicates that the impairment has a moderate impact on bodily functions and emotions. He indicates minimal impact on:

- Consciousness
- Impulse control
- Insight and judgement
- Attention/concentration
- Executive function
- Memory
- Motor activity
- Language
- Other emotional or mental problems (not specified).

Daily Living Activities:

The Social Worker indicates that the Appellant takes significantly longer than typical for:

- Personal Care: grooming and bathing
- Basic Housekeeping: laundry and basic housekeeping
- Shopping: going to and from stores (slow mobility), carrying purchases home
- Meals: food preparation and cooking.

He indicates that the Appellant needs periodic assistance from another person to read prices and labels, due to poor vision, and to carry purchases home from the store (limited to two pounds).

He indicates that the Appellant has marginal functioning with immediate and extended social networks because he lacks energy and motivation, only leaving the house for medical appointments and to get groceries.

Assistance Provided for Applicant:

The Social Worker does not indicate any help for daily living activities being provided or required. He states that the Appellant “would benefit from use of a cane.”

Additional Information:

The Social Worker states that, due to heart disease, the Appellant has a lack of energy and shortness of breath, and “must take frequent breaks during all tasks, cooking, food prep, housekeeping, laundry, mobility.”

Hospital Discharge Report:

The report indicates that the Appellant attended the hospital on April 25, 2023, due to sudden onset of dizziness. The diagnosis is syncope/near syncope.

Request for Reconsideration:

The Appellant states:

- On April 25, 2023 he had another cardiovascular episode.
- He has had “decreased health and mobility” since then.
- He has worsened Edema to both legs, “decreased breath” and “struggles to breathe at times.”
- He can no longer navigate stairs, and “mobility is decreased to less than a block.”
- He can no longer do any lifting.

Additional Evidence:

Appellant:

The Appellant provided an additional letter from the Doctor, dated August 18, 2023, in which the Doctor states:

- “[The Appellant’s] health has significantly declined in recent months due to Ischemic Heart Disease, and severe Edema to both legs. Further to this, [the Appellant] has shortness of breath, and is easily fatigued. [The Appellant] can no longer safely navigate stairs, can no longer walk a block, and needs help with many daily living activities. [The Appellant] needs help with preparing meals, housekeeping, laundry, lifting and carrying.”

At the hearing, the Social Worker and the Appellant said:

- The Appellant lives alone and rents a room from his parent.
- His parent provides all help for daily living activities: they prepare all meals, do housekeeping and laundry for him, and shop with him.

- The Appellant does not use a cane, mostly due to pride, even though the Doctor says the Appellant should use one.

Admissibility of Additional Evidence:

The Ministry did not object to the admissibility of the additional letter from the Doctor and the oral evidence of 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 reconsideration 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 maintains that he meets all five criteria for PWD designation. He says that he has a severe physical impairment due to heart disease, and his condition has worsened since the episode that took him to hospital in April 2023. He says that he cannot walk one block, climb any stairs, or lift anything. He needs significant help from another person to prepare meals, shop and perform housework. His parent provides the help he needs, and he does not leave his home except to shop with his parent and go to medical appointments.

At the hearing, the Social Worker stated that, while the Appellant is stressed, and suffers from anxiety and depression, they do not maintain that the Appellant has a severe mental impairment.

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

At Reconsideration, the Ministry determined that the Appellant had a moderate physical impairment, noting that the Appellant could walk 4+ blocks and climb 5+ stairs unaided. They maintained that, as the Appellant took only twice as long to perform restricted daily living activities, and only required minimal assistance, the Appellant had not demonstrated a severe physical impairment. They also noted that, although the Appellant said his condition was worse since the episode that took him to hospital in April 2023, he had not provided an update from a medical practitioner or other prescribed professional to confirm his condition.

The Ministry determined that the Appellant's mental impairment was mild-to-moderate, rather than severe. They acknowledged that the Appellant has anxiety and depression but noted that there was major impact on only one area of cognitive functioning, and "the vast majority of daily functioning [was] reported to be minimally impacted." Therefore, the Ministry said that a severe mental impairment was not established.

The Ministry also says that the information provided did not indicate direct and significant restrictions in daily living activities. The Ministry noted that, although the Doctor reported that the Appellant had continuous restrictions in many daily living activities, they were not satisfied that the level of restrictions was significant. The Ministry determined that the Appellant's impairments caused only "mild-to-moderate impacts" on the Appellant's ability to manage daily living

activities independently. Therefore, the Ministry found there was not enough evidence that, in the opinion of a prescribed professional, the Appellant was directly and significantly restricted in his ability to perform daily living activities continuously or for extended periods.

The Ministry said that the assessments from the Doctor and the Social Worker did not establish that the Appellant needed significant help to perform daily living activities. Further, the Ministry said that, as it had not been established that daily living activities were significantly restricted, it also could not determine that the Appellant needed significant help with restricted activities.

Position at the Hearing:

At the hearing, having reviewed the additional letter from the Doctor, 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 it is satisfied that the Appellant has a severe and disabling physical impairment, is significantly restricted in the daily living activities listed by the Doctor in the letter 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.

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.

1. Physical Impairment:

The Panel finds that the medical evidence from the Doctor confirms that the Appellant has a severe physical impairment, due to heart disease and diabetes. The Doctor says that the Appellant's condition has worsened since April 2023. He has shortness of breath and is easily

fatigued. He has severe edema in both legs. The Appellant cannot walk one block or navigate stairs safely, and he cannot lift, carry, or hold any weight. The Panel finds that these limitations are a severe restriction on the Appellant's ability to function. Therefore, the Panel finds that, considering the whole of the medical evidence, including the additional evidence from the Doctor, the Ministry's determination that the Appellant has a moderate, rather than a severe, physical impairment, is not reasonably supported by the evidence.

2. Mental Impairment:

Although the Doctor provides diagnoses of depression and anxiety, the Appellant confirmed at the hearing that he does not maintain that he has a severe mental impairment. The main impact appears to be on motivation, which results in social isolation. However, neither the Doctor nor the Social Worker indicate severe impairment of functioning as a result. Therefore, the Panel finds that the Ministry was reasonable in its determination that the information provided does not indicate 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.

The Panel finds that the information provided by the Doctor and the Social Worker confirms direct and significant restrictions to the Appellant's ability to perform Activities. The Doctor indicated that the Appellant's ability to perform the following Activities is continuously restricted, with additional information provided by the Social Worker:

- Prepare own meals
- Perform housework to maintain the Appellant's place of residence in acceptable sanitary condition
- Shop for personal needs: in March, the Appellant could not lift more than two pounds; by the time of the hearing, the Appellant could not lift any weight
- Move about indoors and outdoors: Appellant cannot navigate stairs safely, cannot walk one block, has shortness of breath, and is easily fatigued
- Perform personal hygiene and self-care.

While the Doctor did not give details of specific restrictions for all Activities, the Panel notes that the overall restrictions the Doctor describes, including shortness of breath, becoming fatigued easily, being unable to lift or carry any weight, and severe edema in both legs, would reasonably be expected to significantly restrict the Appellant's ability to perform the Activities listed.

The Panel finds that, considering the medical evidence as a whole, including the additional letter from the Doctor and the evidence of the Appellant and the Social Worker at the hearing, the Ministry's determination that the Appellant's ability to perform Activities was not significantly restricted, is not reasonably supported by the evidence.

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.

In the additional letter, the Doctor states that the Appellant needs help with preparing meals, housekeeping, laundry, lifting and carrying. In the Assessor Report, the Social Worker did not indicate what help the Appellant receives or needs to perform Activities. However, at the hearing, the Social Worker and the Appellant stated that the Appellant's parent prepares all the Appellant's meals, does his housework and laundry, and helps him with shopping. The Social Worker also stated that the Appellant should use a cane for mobility, but so far has refused. Therefore, the Panel finds that the Appellant needs, and receives, significant help from another

person to perform Activities. The Panel also finds that the Appellant needs an assistive device (even though he is not using one) to move about indoors and outdoors.

The Panel finds that, considering the additional information in the Doctor's letter and the evidence of the Social Worker and the Appellant at the hearing, the Ministry's determination that it could not find that the Appellant needs help to perform restricted Activities is not reasonably supported by the evidence.

Conclusion:

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

APPEAL NUMBER 2023-0233

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)
2023/09/18

Print Name
Wesley Nelson

Signature of Member

Date (Year/Month/Day)
2023/09/18

Print Name
John Pickford

Signature of Member

Date (Year/Month/Day)
2023/09/18