

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) Reconsideration Decision dated May 29, 2023, in which the ministry found the appellant was not eligible for designation as a Person with Disabilities (“PWD”) under section 2 of the *Employment and Assistance for Persons with Disabilities Act* (“Act”). The ministry found that the appellant met the age requirement, but the ministry was not satisfied that:

- the impairment is likely to continue for at least 2 years (in the opinion of the doctor),
- the appellant has a severe physical or mental impairment,
- the severe impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform daily living activities either continuously or periodically for extended periods; and
- as a result of restrictions caused by the impairment, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform daily living activities.

The ministry found that the appellant is not one of the prescribed classes of persons eligible for PWD designation on the alternative grounds set out in section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation* (“Regulation”). There was no information or argument on this point, and the panel considers it not to be at issue in this appeal.

Part D - Relevant Legislation

The ministry based the reconsideration decision on the following legislation:

Employment and Assistance for Persons with Disabilities Act - section 2

Employment and Assistance for Persons with Disabilities Regulation - sections 2 and 2.1

The full text is available in the Schedule after the decision.

Part E – Summary of Facts

The information the ministry had at the time of the reconsideration included:

1. A *Record of decision* indicating that the PWD application was submitted on February 23, 2023, and denied on April 12, 2023, with the *Decision denial summary* explaining the criteria that were not met. The ministry found that only the age requirement was met.

On April 28, 2023, the appellant submitted a *Request for Reconsideration*. The ministry approved the appellant's request for an extension of time to submit additional information. On May 29, 2023, the ministry completed its review and found that 4 criteria were still not met (duration, severe impairment, daily living activities and help).

2. The PWD application with 3 parts:

The *Applicant Information* ("self-report") dated December 12, 2022, with a handwritten submission from the appellant.

A *Medical Report* dated January 16, 2023, signed by a general practitioner ("Dr. A") who had seen the appellant 2-10 times in the past 12 months. The appellant had been attending the walk-in clinic since June 2022.

An *Assessor Report* dated December 12, 2022, completed by a registered social worker who had known the appellant for 3 weeks and had seen her once in the past 12 months. The social worker said that the appellant was referred by Dr. A. The social worker based the assessment on an office interview with the appellant (over 3 sessions) as well as the appellant's medical chart.

Summary of relevant evidence from the application

Diagnoses

In Section B of the Medical Report, the appellant was diagnosed with foot pain "NYD" (not yet determined), onset January 2022; facial pain (onset October 2022), and anxiety (onset January 2022).

In Section C - *Health History*, Dr. A indicated that blood tests and X-rays had not identified the cause of foot pain. The foot pain has caused anxiety. The facial pain may be trigeminal neuralgia. In Section E, the doctor noted that "pain is variable – present 24 hours/day to some extent."

In the Assessor Report, the social worker reported that facial pain includes “episodes of intense jaw and gum pain 2-3 times/week, lasting 30-40 minutes.” The appellant suffers from foot pain “24/7” affecting her left ankle and foot. The appellant takes extra strength Tylenol for the pain “but is uncertain if it is helping.”

The social worker said that the pain also causes anxiety; “the uncertainty of what is causing the foot pain and client not wanting to cause additional strain seems to be causing anxiety and stress.” The appellant “is concerned that foot pain is ongoing and does not seem to be improving at all over the past 10 months since pain first started.”

Additional information from the appellant

In the self-report, the appellant described “foot discomfort” including nerve pain in her left ankle, toes, and mid-foot. Jaw pain affects the left side of her face and is so intense that she had to go to the hospital three times in a week, two weeks in a row for pain relief medication. The appellant is exploring pain relief options with her doctor for trigeminal neuralgia.

The appellant said that anxiety occurs both during and following episodes of facial nerve pain which “occurs throughout the day off and on.” The appellant reported that anxiety is caused by the “high degree of pain.”

Degree and course of impairment

In Section D, when asked if the impairment is likely to continue for 2 years or more, Dr. A wrote “unknown.” The doctor explained that “due to a lack of clarity of her diagnosis, the prognosis and duration is unknown.” In Section G – *Additional Comments*, the doctor said that the appellant “awaits further investigation and consultation to sort this out.”

Functional skills

Self-report

Physical function

The appellant said that foot pain affects her walking speed due to “pressure put on foot during movement and having to be aware of the condition of foot at all times – discomfort, pain level.” The appellant said that she walks at a slow pace because she has to be aware of the amount of weight she puts on her foot. The appellant said that she can

lift 50 pounds including laundry and groceries, but she uses a shopping cart to carry items from the store.

Mental function

The appellant reported that her concentration is affected by both foot and jaw pain. The appellant said that her pain levels affect her concentration and ability to focus “throughout tasks.”

Medical Report

In Section E - *Functional Skills*, the appellant was able to walk 5+ blocks unaided on a flat surface and climb 5+ steps unaided. Dr. A reported no limitations with lifting or remaining seated. In *Comments*, the doctor said that walking causes foot pain and that the appellant has “difficulty carrying heavy items any distance due to foot pain.”

Regarding a mental impairment, Dr. A checked “no” when asked if the appellant has difficulties with communication. When asked if there are any significant deficits with cognitive and emotional function, the doctor checked “yes” with additional check marks for 2 of the 12 areas listed:

Emotional disturbance (“anxiety”)

Attention or sustained concentration (“due to foot pain”).

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

Consciousness

Executive

Language

Memory

Perceptual psycho-motor

Psychotic symptoms

Motivation

Impulse control

Motor activity

Other

Assessor Report

In Section B-2, the social worker indicated “satisfactory” for all areas of communication: *speaking, reading, writing, and hearing*. The social worker did not fill out Section C – *Cognitive and Emotional Functioning* – impacts due to a mental impairment.

In Section C3 - *Mobility and Physical Ability*, the social worker assessed "walking indoors" as independent. The social worker reported the following limitations with the other listed functions:

Walking outdoors: the appellant needs periodic assistance from another person and takes 2-3 times longer (comment, "walks 2-3 times slower due to foot pain and anxiety re-causing more pain and strain").

Climbing stairs: the appellant needs periodic assistance from another person and uses an assistive device (comment, "relies on elevator"). In further comments, the social worker said that the appellant "avoids stairs" and takes the elevator to "prevent pressure and strain put on left foot."

Standing: the appellant needs periodic assistance from another person (comment, "avoids standing in one place for more than 15 minutes and avoids line ups due to foot pain").

Lifting, and carrying and holding: the appellant needs continuous assistance from another person or is unable, and she uses an assistive device (comment, "avoids due to foot pain and anxiety about causing more pain if foot under pressure. Relies on grocery cart with wheels to transport items instead of lifting/carrying").

Daily living activities

Dr. A provided the following information:

Medical Report

In Section C - *Health History*, the doctor checked that the appellant has not been prescribed medications or treatments that interfere with the ability to perform daily living activities.

In Section F - *Daily living activities*, the doctor checked that 4 out of 8 activities were continuously restricted:

Personal self-care

Daily shopping

Mobility outside the home

Use of transportation (comment, "needs family to drive her to the stores").

In *Comments*, the doctor indicated periodic restrictions, "might do less things if her foot is really sore."

Dr. A checked that the following activities were not restricted:

Meal preparation

Management of medications

Basic housework

Mobility inside the home

Management of finances

Social functioning

Regarding social functioning, the doctor commented that “anxiety does interfere with activities all the time but does not prevent her doing them.”

Assessor Report

In Section D – *Daily Living Activities*, the social worker assessed the appellant as independent with all areas for 2 of the 8 daily living activities listed in the report:

Personal care: the appellant is “independent” with *dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers* (in/out of bed), and *transfers* (on/off a chair). For *bathing*, the social worker wrote that the appellant “takes shorter showers to avoid [foot] pain and strain.”

Meals: the social worker checked “independent” with *meal planning, food preparation, cooking, and safe storage of food*. For *food preparation* the social worker wrote that the appellant “is only able to prepare small portions for herself – avoids standing for more than 15 minutes due to pain.”

Restricted activities

The social worker indicated restrictions for 5 out of 8 daily living activities:

Basic housekeeping: the appellant needs periodic assistance from another person for both areas: *laundry* and *basic housekeeping*. For *laundry*, the social worker commented, “periodically postpones due to foot pain; periodically relies on relatives.”

The social worker further explained that “laundry is downstairs 3 flights of stairs – client does minimally approximately once a month. Periodically a relative will pick her up and she is able to do laundry at their house.” For *basic housekeeping*, the social worker said that the appellant “periodically postpones due to foot pain too intense and will wait to do another day when not so intense.”

Shopping: the appellant needs continuous assistance with 2 areas of *shopping: going to and from stores and carrying purchases home*. The social worker said that “foot pain prevents walking long distances, relies on bus or relatives to drive her. Relatives drive her 2-3 times per week...pain prevents [carrying purchases], relies on shopping cart with wheels to transport home.”

The social worker checked “independent” for the remaining areas of *shopping: reading prices and labels, making appropriate choices, and paying for purchases*.

Pay Rent and Bills: the appellant needs periodic assistance with *banking* (comment, “pain episodes periodically prevent going to bank, postpones for 1-2 days”).

The social worker checked “independent” for *budgeting*, and *pay rent and bills* (comment, “experiencing financial strain from not being able to work”).

Medications: the appellant needs periodic assistance with *filling/refilling prescriptions* (comment, “pain episodes periodically prevent. Relies on bus or family to give her a ride”).

The social worker checked “independent” for *taking as directed*, and *safe handling and storage*.

Transportation: the social worker checked “independent” with *getting in/out of a vehicle*, but the appellant takes significantly longer than typical (comment, “2 times slower”). In the self-report, the appellant added that she does not drive “as nerve pain could affect driving.”

The social worker checked “periodic assistance” in *using public transit* and the appellant takes significantly longer (comment, “must walk 1 block to bus – takes 2 times longer; need to sit on bus due to pain. Periodically unable to take bus due to foot pain and will postpone going, and/or rely on relatives to give her a ride, 2-3 times per week”).

The social worker checked “independent” for the remaining area of *transportation: using transit schedules and arranging transportation*. *Additional Comments* (including any safety issues) was left blank.

Social Functioning: the social worker did not provide any check marks or information for any area of *Social Functioning*. The social worker did not comment on the appellant’s ability to function with her social networks.

Need for helpSelf-report

The appellant reported that her family “assists with some weekly transportation so I can walk less, including to stores, and with some laundry. A monthly bus pass would be very helpful.”

Medical Report

In Section C-4, Dr. A checked “no” when asked if the applicant requires any prostheses or aids for the impairment. In Section F, the doctor commented that the appellant’s family “drives her, sometimes laundry is assisted with.”

Assessor Report

In Section A-1, the social worker checked that the appellant lives alone. In Section C-1, the social worker said that the appellant “relies on support from relatives with transportation, laundry, house cleaning, and filling prescriptions.”

In Section E - *Assistance provided by other people* the social worker said that the appellant relies on relatives for assistance with transportation to do errands 2-3 times per week. The appellant “could benefit from a discounted bus pass if on PWD.” The social worker indicated that the appellant could benefit from a mental health assessment/consult but has declined at this time.

In Section E - *Assistance provided through the use of assistive devices*, the social worker checked “other” (comment, “shopping cart with wheels to transport grocery items”). The social worker checked that the appellant does not have an assistance animal.

3. A Request for Reconsideration signed by the appellant on April 28, 2023, with a request for an extension of time for submissions. The ministry noted that no additional information was submitted.

Additional submissions

The appellant filed a *Notice of Appeal* with a hand-written statement affirming that she experiences foot pain 24 hours per day and cannot drive because of pain. The appellant stated that her ability to work and concentrate are also affected because the foot pain “is very distracting.” The panel finds that the appeal submission is admissible as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Procedural matters

In the months before the hearing the Tribunal granted two adjournments because the appellant requested more time to have a further discussion with Dr. A (and specialists) regarding the ongoing nerve pain in her foot. The appellant said that she needed two additional months “to provide further details regarding the current and ongoing status of the nerve condition.”

In emails to the Tribunal, the appellant indicated that it was difficult to get an appointment at the clinic due to her doctor’s limited schedule. The appellant said that she wanted to meet with Dr. A before the hearing to discuss a diagnosis of Morton’s neuroma as the possible cause of the foot pain. No additional submissions or medical documents were submitted and there was no further request for additional time to meet with the doctor.

Two days before the hearing the appellant sent an email to the Tribunal requesting to dismiss the appeal. The appeal was not dismissed because a *Consent to Dismiss* form was not submitted prior to the hearing.

The appellant did not attend the hearing. After confirming that the appellant was notified of the hearing date and time the panel proceeded in the absence of a party as it is allowed to do under the Employment and Assistance Regulation.

The ministry provided argument at the hearing and did not submit any new evidence. The panel will consider the arguments of both parties in Part F-Reasons.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision that found the appellant ineligible for PWD designation was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. The panel's role is to determine whether the ministry was reasonable in finding that the following eligibility criteria in section 2 of the Act were not met:

- the impairment is likely to continue for at least 2 years (in the opinion of the doctor),
- the appellant has a severe physical or mental impairment,
- the severe impairment, in the opinion of a prescribed professional, directly and significantly restricts the appellant's ability to perform daily living activities either continuously or periodically for extended periods; and
- as a result of restrictions caused by the impairment, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform daily living activities.

Analysis*PWD designation - generally*

The legislation provides the Minister with the discretion to designate someone as a PWD if all the requirements are met including confirmation from the applicant's doctor that the impairment is long term. In the ministry's view, PWD designation is for persons who have significant difficulty in performing regular self-care activities where a severe physical or mental impairment is shown.

Some requirements must have an opinion from a professional, so it is reasonable to place significant weight on those opinions. The ministry found that 1 of the 5 requirements were met because the appellant is at least 18 years of age.

The application form includes a self-report, so it is appropriate to place significant weight on evidence from the appellant unless there is a legitimate reason not to do so. The panel will review the reasonableness of the ministry's determinations and exercise of discretion.

Severe impairment

"Severe" and "impairment" are not defined in the legislation. The ministry considers the extent of any impact on daily functioning as shown by limitations with or restrictions on physical abilities and/or mental functions. The panel finds that an assessment of severity based on physical and mental functioning including any restrictions, is a reasonable

interpretation of the legislation. A medical practitioner's description of a condition as "severe" is not determinative on its own. The ministry must make this determination considering the relevant evidence and legal principles.

Restrictions to Daily living activities

A prescribed professional must provide an opinion that the applicant's impairment restricts the ability to perform daily living activities. The BC Supreme Court decision in *Hudson v. Employment and Assistance Appeal Tribunal* [2009 BCSC 1461] determined that at least two daily living activities must be restricted in a way that meets the requirements of the Act, and that **not all activities need to be restricted**.

The restrictions to daily living activities must be significant and caused by the impairment. This means that the restriction must be to a great extent, and that not being able to do daily activities without a lot of help or support will have a large impact on the person's life.

The restrictions also must be continuous or periodic. Continuous means the activity is generally restricted all the time. A periodic restriction must be for extended periods, meaning frequent or for longer periods of time. For example, the activity is restricted most days of the week, or for the whole day on the days that the person cannot do the activity without help or support. To figure out if a periodic restriction is for extended periods, it is reasonable to look for information on the duration or frequency of the restriction.

The requirements for restrictions to daily living activities are set out in subsection 2(2)(b)(i) of the Act. Specific activities are listed in section 2(1) of the Regulation. The Medical Report and Assessor Report also list activities, and though they do not match the daily living activities in the Regulation exactly, they generally cover the same activities.

The Medical Report and Assessor Report give the professional the opportunity to provide additional details on the applicant's restrictions. **The inability to work and financial need are not listed as daily living activities and are only relevant to the extent they impact the listed activities.**

Help Required

A prescribed professional must provide an opinion that the person needs help to perform the restricted daily living activities. This requirement is set out in subsection 2(2)(b)(ii) of the Act. Under subsection 3, “help” means needing an assistive device, the significant help or supervision of another person, or an assistance animal to perform daily living activities. An assistance device, defined in section 2(1) of the Act, **is something designed to let the person perform the restricted daily living activities.**

Arguments

Impairment to continue for at least 2 years

Appellant's position

The appellant's position was that her foot pain and facial pain are ongoing. The appellant argued that the conditions are not improving despite pain medication.

Ministry position

The ministry's position was that the duration requirement was not met because Dr. A has not confirmed that the appellant's impairment is likely to continue for at least 2 more years.

Panel's decision - duration of impairment

The panel finds that the decision regarding the duration of the impairment was reasonably supported by the evidence. The Act requires confirmation by the doctor that the impairment is long term, but in the Medical Report, Dr. A wrote “unknown” regarding the duration of the appellant's foot pain. Dr. A explained that the cause of the pain is not yet determined and awaits further investigation.

There was also no confirmation that the appellant's facial pain or anxiety will continue for at least 2 more years. The facial pain was a newly diagnosed condition (onset, October 2022) and anxiety was diagnosed at the same time as foot pain (January 2022). The appellant indicated that her pain conditions and anxiety (caused by the pain) are ongoing, but this had not been confirmed by Dr. A.

The appellant asked for extensions of time to provide additional information from her doctor/specialists but did not submit any new medical evidence or update on the uncertain prognosis. The requirement under the Act is not met.

Severe impairment

Appellant's position - physical impairment

The appellant's position was that she has a severe physical impairment because she experiences some degree of pain "24 hours a day." The appellant argued that she is limited with walking because she needs to walk slowly and always focus on how much pressure and stress she puts on her left foot. The appellant acknowledged that she can lift 50 pounds but argued that she needs a shopping cart to carry the load.

Ministry position - physical impairment

The ministry's position was that the evidence provided was not clear enough to establish a severe impairment of physical functioning. The ministry argued that the inconsistencies between the doctor and social worker's reports made it difficult to determine the degree of impairment. The ministry acknowledged that the appellant experiences pain and is slower with mobility and physical tasks but argued that taking 2-3 times longer and using a shopping cart for assistance did not represent a *severe* physical impairment.

Panel's decision - physical impairment

The appellant's evidence was that she suffers from severe discomfort with nerve pain throughout her foot that makes walking slow. However, in the Medical Report, Dr. A indicated the highest level of ability on the rating scale for all physical functions including walking and climbing stairs.

The appellant was able to walk 5+ blocks and climb 5+ steps without any assistance despite walking exacerbating her foot pain. The appellant said that she is able to lift substantial weight, but she relies on a shopping cart to transport items. The doctor confirmed that the appellant had difficulty carrying "heavy items" any distance due to pain, but did not indicate any restrictions with smaller loads, or prescribe an assistive device.

In the Assessor Report, the social worker indicated a greater degree of impairment. The social worker reported that the appellant needed periodic assistance with walking outdoors, climbing stairs, and standing and avoids these functions by taking the elevator, avoiding line ups, and not standing for more than 15 minutes at a time. Walking also took the appellant 2-3 times longer than typical.

No new evidence was submitted to explain the discrepancy between the Medical Report and Assessor Report regarding the ability to walk and climb stairs. The panel finds that the ministry was reasonable to conclude that taking 2-3 times longer for mobility does not represent a "severe" impairment given the doctor's information that the appellant could walk a reasonable distance unassisted. The appellant was also able to stand for up to 15 minutes and was therefore not significantly limited in that regard.

In addition, the evidence for lifting was inconsistent between the reports. Dr. A indicated "no limitations" for lifting and the appellant acknowledged that she can lift 50 pounds. However, the social worker indicated "continuous assistance" for lifting and that the appellant avoids lifting to reduce pressure on her foot. There was no new evidence to explain the discrepancy between the reports.

The evidence was consistent between the reports regarding the appellant's continuous pain and difficulty with carrying items. However, a severe physical impairment was not established because there was no clear picture regarding the restrictions with mobility, and most of the evidence for lifting indicated a high degree on ability. The panel has considered the evidence in its entirety and finds that the requirement under the Act for a *severe* impairment is not met based on physical functioning. The panel finds that the ministry's decision (no severe physical impairment) was reasonably supported by the evidence.

Appellant's position - mental impairment

The appellant's position was that her facial pain is causing anxiety. The appellant argued that both foot pain and trigeminal neuralgia restrict her ability to concentrate.

Ministry position - mental impairment

The ministry's position was that a severe mental impairment was not established on the evidence because the appellant has no communication difficulties and there was no information from the assessor regarding the impact of anxiety on concentration or other mental functions.

Panel's decision – mental impairment

The panel finds that the ministry's decision was reasonably supported by the evidence. Dr. A diagnosed the appellant with anxiety (caused by pain) and both the doctor and social worker noted that the appellant is anxious and stressed about the uncertainty of her condition.

The appellant and her doctor indicated significant deficits with concentration. The appellant said that it is difficult to concentrate and focus "throughout tasks" due to pain and anxiety. However, the social worker did not indicate any impact for cognitive functions due to anxiety. The social worker said that the appellant could benefit from a mental health assessment which suggests that a mental impairment requires further investigation.

While the panel acknowledges the appellant's concentration issues and anxiety due to pain and uncertainty, the focus of the PWD application was on a physical rather than a mental impairment. The ministry was therefore reasonable to find that the requirement for a severe impairment under the Act was not met based on the anxiety diagnosis. The ministry was reasonable to conclude that neither a severe mental nor physical impairment was established on the evidence.

Restrictions to daily living activities*Appellant's position*

The appellant's position was that her daily living activities are restricted due to pain because she is unable to work or drive and she needs a bus pass so that she can do errands. The appellant said that she can lift laundry, but family helps her with some laundry as well as transportation to errands so that she won't have to walk as much.

Ministry position

The ministry's position was that the restrictions reported by the doctor and social worker are not "significant" as required by the Act. The ministry acknowledged that family helps the appellant with transportation but argued that the appellant could shop and do errands independently if she had a bus pass to manage outings on her own.

The ministry argued that talking twice as long to walk to the bus stop, and needing to sit down while on the bus, do not represent a significant restriction with *getting in and out of a vehicle, or using public transit*. The ministry argued that periodic restrictions for an

extended period were not established on the evidence because the appellant was able to manage her daily living activities by temporarily postponing them until her foot pain became less intense. The ministry further argued that it was unclear why the appellant could not go downstairs to do laundry and needed assistance with housekeeping, when the doctor indicated no limitations with stairs or lifting, and no restrictions with indoor mobility.

Panel's decision - daily living activities

The panel finds that the reconsideration decision was reasonable because the evidence from prescribed professionals did not establish that restrictions are significant as required by the Act. The panel acknowledges that both Dr A and the social worker indicated restrictions to several daily living activities but finds that the ministry was reasonable to conclude that there was not enough evidence to explain why activities were restricted.

The panel finds that the ministry reasonably determined that the evidence did not confirm any difficulty with making decisions about personal activities, care or finances or relating to, communicating, or interacting with others effectively. Neither the doctor nor the social worker indicated any communication or social problems. Dr. A specifically stated that the appellant could participate in activities despite anxiety.

Dr. A indicated that personal self-care was continuously restricted but did not provide any more detail. The social worker indicated that the appellant is independent with all areas of personal care but takes shorter showers to avoid foot pain. Both the doctor and social worker indicated continuous restrictions with shopping and transportation. The doctor also indicated that the appellant may do more when her foot is less sore even though she relied on her family to drive her to and from stores.

The evidence for housekeeping was inconsistent between and withing the Medical Report and Assessor Report. The doctor indicated that *basic housekeeping* was not restricted, but family sometimes helps the appellant with laundry. It was unclear why the appellant needed help as she had no difficulty with stairs or mobility indoors. The social worker indicated a need for periodic assistance with housekeeping and laundry but also checked that the appellant was independent with *walking indoors*.

The social worker indicated that the appellant only does laundry at home once a month to avoid stairs. However, the appellant will do laundry at a relative's place periodically. The social worker indicated that the appellant relied on the bus or a ride from relatives to do her banking and other errands, but the appellant would also postpone errands for 1-2 days until her foot pain became less intense.

The evidence from both Dr. A and the social worker indicated that the appellant was able to manage her daily living activities by briefly postponing them until her foot pain was less severe. The appellant would further limit the impact of pain by taking the bus or getting a ride rather than walking.

The evidence from professionals did not establish that daily living activities were *significantly* restricted either continuously or periodically for extended period as required by the Act because the appellant was able to manage most activities independently. The panel finds that the ministry reasonably determined that the criteria for daily living activities were not met.

Help with daily living activities

Appellant's position

The appellant's position was that she needs help with transportation because waking causing her pain. The appellant argued that she relies on a shopping cart as an "assistive device" to help her carry items.

Ministry position

The ministry's position was that it could not be determined that significant help was required as it had not been established that daily living activities were significantly restricted.

The ministry acknowledged that the appellant got help from relatives and relied on a shopping cart to transport items. The ministry acknowledged that a shopping cart makes shopping easier but argued that it does not meet the definition of "assistive device" under the Act because it is "not a device designed to enable a person with a severe impairment to perform a daily living activity...A grocery cart is a device intended to make grocery shopping more convenient and comfortable for all consumers."

Panel's decision - help with daily living activities

The panel finds that the reconsideration decision was reasonable because the evidence did not establish significant restrictions to daily living activities. The Medical and Assessor Reports indicated that the appellant relied on her family for transportation to errands, and to sometimes assist with laundry. Dr. A indicated that the appellant did not need any prostheses or aids for the impairment, but the social worker indicated that the appellant relied on a shopping cart and elevator as assistive devices.

The panel finds that the ministry reasonably determined that the appellant's wheeled shopping cart is not an "assistive device" under the Act because it is designed for everyone's use, it is not specifically an aid for a severe impairment. While using the elevator to avoid stairs would put less pressure on the appellant's foot, an elevator is not a device designed to assist with daily living activities under the Act.

The Act requires confirmation of direct and significant restrictions to daily living activities, directly related to a diagnosed mental or physical impairment, as a precondition for needing help to perform those activities. The totality of evidence established that daily living activities were not significantly restricted continuously or periodically for extended periods because the appellant managed her daily life by minimizing walking and standing, and postponing activities until her pain was less intense. The requirement for help under the Act is not met.

Conclusion

The panel finds that the reconsideration decision was reasonably supported by the evidence and is a reasonable application of the legislation in the circumstances of the appellant. The appellant does not meet all 5 criteria for PWD designation under the Act because only the age requirement was met.

The PWD application and appeal submission did not establish that:

- the impairment is likely to continue for at least 2 more years,
- the appellant has a severe mental or physical impairment,
- the severe impairment significantly restricts daily living activities as confirmed by a prescribed professional, and
- the appellant requires help or an assistive device to manage daily living activities.

The panel confirms the ministry decision. The appellant is not successful with her appeal.

Schedule – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

Employment and Assistance for Persons with Disabilities Regulation

Definitions for Act

2 (1) For the purposes of the Act and this regulation, "daily living activities",

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

- (i)** prepare own meals;
- (ii)** manage personal finances;
- (iii)** shop for personal needs;
- (iv)** use public or personal transportation facilities;
- (v)** perform housework to maintain the person's place of residence in acceptable sanitary condition;
- (vi)** move about indoors and outdoors;
- (vii)** perform personal hygiene and self-care;
- (viii)** manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

- (i)** make decisions about personal activities, care or finances;
- (ii)** relate to, communicate or interact with others effectively.

(2) For the purposes of the Act, "prescribed professional" means a person who is

(a) authorized under an enactment to practise the profession of

- (i)** medical practitioner,
- (ii)** registered psychologist,
- (iii)** registered nurse or registered psychiatric nurse,
- (iv)** occupational therapist,
- (v)** physical therapist,
- (vi)** social worker,
- (vii)** chiropractor, or
- (viii)** nurse practitioner,

Part G – Order

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

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

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

Legislative Authority for the Decision:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name

Margaret Koren

Signature of Chair

Date (Year/Month/Day)

2023/09/26

Print Name

Gordon Thompson

Signature of Member

Date (Year/Month/Day)

2023/09/26

Print Name

Wesley Nelson

Signature of Member

Date (Year/Month/Day)

2023/09/26