

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated September 13, 2023, which determined the appellant was not eligible for the Persons with Disabilities designation.

Specifically, the ministry determined:

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

Additionally, the ministry determined that the appellant is not one of the prescribed classes of persons who may be eligible for the Persons with Disabilities designation on alternative grounds. As there was no information or argument on this point, the panel considers it not to be an issue in this appeal.

Part D – Relevant Legislation

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

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

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

Part E – Summary of Facts**Relevant Evidence Before the Minister at Reconsideration****▪ Request for Reconsideration (August 23, 2023) - summary**

The appellant states that due to limited mobility he needs a lot of support for most of his daily activities; he has a chronic condition affecting his whole life. He adds that he lives every day with a lot of pain and has difficulty sleeping. The pain and suffering have resulted in depression.

The appellant adds that he cannot walk 15 minutes straight; the maximum is 2-3 minutes as he has to rest 3-4 times. As well, he states he cannot sit for more than one minute as he needs to lay down, to relieve pressure in his back. He requires support from his wife to complete his daily living activities.

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

The doctor states the appellant's wife informed them that there was a misunderstanding and that the appellant has to sit and take breaks and that he cannot walk 15 minutes straight.

She also informed them that her husband relies on her to do banking, go to the pharmacy, pay rent and bills, and cook and clean. The doctor adds that the appellant's wife advised them that initially this was due to a language barrier and in the past couple of years the appellant's low mood symptoms and low motivation have affected him in performing these activities.

▪ PWD Application***Self-Report (August 5, 2023) - summary***

The appellant states he has limited movement due to severe pain in his knees, lower back, legs and arms. He states he has been in constant pain after bombs exploded on him during a war and put him in the hospital for six months; his nerves were severed, and his bones were crushed. He has had many surgeries but still has shrapnel in his legs, arms and hands.

The appellant states he tried hard to push himself at work, but could not get past the pain, resulting in many days off. He states he woke up to go to work with a lot of pain and as soon as he put his socks and shoes on, heat started in his legs and swelling in his knees. He worked with different companies hoping to find something suitable, but things got worse especially after he was diagnosed with arthritis and the pain increased. The

appellant states it is like knife-stabbing pain making him lose his balance. He also experienced buckling in his knees causing him to fall down multiple times. Once he fell on sharp items and injured his hand.

He recently stopped working. All this has caused depression and stress because financially he is not able to support himself and his family.

Medical Report (May 4, 2023) – signed by the appellant’s doctor

The doctor (general practitioner) provided the following information.

Diagnosis	Date of onset – year
Mechanical back pain/sciatica	2016
Mechanical knee pain	2020
Mechanical hand pain	2020

Health History

The doctor states the appellant worked as a heavy-duty mechanic. Over the years, he reported experiencing knee and back pain, which limited his ability to work and lower back pain radiating down his right leg was aggravated by walking up stairs and bending. The pain was relieved by laying down. He also reported chronic right-hand pain aggravated by lifting objects and relieved by rest. In the past few months the appellant reported pain in his arm and hand in keeping with neuropathy. The appellant was diagnosed with patellofemoral osteoarthritis but no major signs of inflammatory arthritis, by a rheumatologist.

The doctor provided the following responses to the questions below.

- Has the appellant been prescribed any medications and/or treatments that interfere with his ability to perform daily living activities? – no, the appellant discontinued pain medication due to feeling dizzy and groggy.
- Does the appellant require prostheses or aids for his impairment? – no

Degree and Course of Impairment

- Is the impairment likely to continue for two years or more from today? – yes
- What is the estimated duration of the impairment and are there remedial treatments that may resolve or minimize the impairment?

The appellant would benefit from physiotherapy, active rehabilitation and occupational therapy. Unfortunately, these treatments are not covered under the

Medical Services Plan and the appellant advised he cannot afford to attend these treatment sessions.

Functional Skills

- How far can this person walk unaided on a flat surface? – unknown, appellant reports pain after walking for 15 minutes.
- How many stairs can this person climb unaided? – 2-5 steps, the appellant advised he can walk up 3 steps, then stops due to pain.
- What are the person's limitations in lifting? – 2-7 kg
- How long can this person remain seated? – less than 1 hour, the appellant reported pain after 20 minutes
- Are there difficulties with communication? – no
- Are there any significant deficits with cognitive and emotional function? – no

Functional Skills Comments

The doctor referred to the assessment from a physiotherapist, below.

Functional Assessment (March 20, 2023)

The physiotherapist states the appellant has constant pain due to surgery in his leg and feet. The pain is increasing, and the knee is swelling. An x-ray showed arthritis in his knee, which was the main concern.

Pain/Altered Sensation

Intensity, right now: 7/10

Character: sharp stabbing pain

Disturbed sleep: yes

Aggravated by: bending forwards, kneeling, going upstairs, kneeling, squatting

Duration: constant

Pattern: day

Eased by: rest, painkillers

Abilities

Walking: reported pain after 15 minutes

Standing: reported pain after standing for 15 minutes

Limited use of left hand (gripping): 44 lbs.

Limited use of right hand (gripping): 6 lbs., 7-8/10

Comments:

Lifting with bad positioning/biomechanics

Carry, right hand grip is not good

Push-pull – 30 lbs.: pain 5/10 with push, pull: felt pain at lumbar back, 7/10

Squat: could not squat, felt stabbing pain 7-8 (1st repetition)

Kneeling: felt stabbing pain with 1st repetition when kneeling

Additional comments

The doctor states the appellant has had several years of chronic pain, which has affected his mood. The doctor’s assessment is that this is in keeping with moderate depression and mild anxiety.

Assessor Report (May 4, 2023) – signed by the appellant’s doctor

The doctor provided the following responses to the questions below.

Mental or Physical Impairment

- What are the appellant’s mental or physical impairments that impact his ability to manage daily living activities?
Can shower, dress and toilet independently.
Can walk independently but reports limited walking over 15 minutes due to pain.

Ability to Communicate

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

Mobility and Physical Ability

Indicate the assistance required related to impairment (that directly restricts the applicant’s ability to manage in the following areas).	Independent	Periodic assistance from another person	Continuous assistance from another person or unable	Uses assistive device	Takes significantly longer than typical (describe how much longer)	Explain and specify device
Walking indoors	X				X	As per the appellant, he has to take breaks due to knee and back pain
Walking outdoors	X				X	
Climbing stairs	X				X	
Standing	X				X	
Lifting	X				X	
Carrying and holding	X				X	

Cognitive and Emotional Functioning

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

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

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

Comments: The appellant is fluent in Arabic but has difficulty understanding and speaking English.

Daily Living Activities

Indicate the assistance required related to impairment(s) that directly restrict the applicant's ability to manage in the following areas.	Independent	Periodic Assistance from another person	Continuous assistance from another person or unable	Uses assistive device	Takes significantly longer than typical (describe how much longer)	Explain/ Describe (include a description of the type and amount of assistance required)
Personal Care						
Dressing	x					
Grooming	x					
Bathing	x					
Toileting	x					
Feeding self	x					
Regulating diet	x					
Transfers (in/out of bed)	x					
Transfers (on/off chair)	x					
Basic Housekeeping						
Laundry					x	Knee and back pain
Basic housekeeping					x	Bending and carrying objects
Shopping						
Going to/from stores					x	" "
Reading prices and labels	x					

Making appropriate choices	x					
Paying for purchase	x					
Carrying purchases home					x	“ ”
Additional Comments						
The doctor referred to the functional assessment from the physiotherapist						
Meals						
Meal planning					x	The appellant advised the doctor he has to sit after standing for 5 minutes and pain in his right hand limits him from repetitive movement like cutting
Food preparation					x	
Cooking					x	
Safe storage of food (ability, not environmental)					x	
Pay rent and bills						
Banking	x					
Budgeting	x					
Pay rent and bills	x					
Medications						
Filling/refilling prescriptions	x					
Taking as directed	x					
Safe handling and storage	x					
Transportation						
Getting in and out of a vehicle	x					
Using public transit	x				x	The appellant advised the doctor he has to sit after standing more than 15 minutes due to knee and back pain
Using transit schedules and arranging transportation	x					

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

Indicate the assistance required related to impairment(s) that directly restrict the applicant’s ability to manage in the following areas.	Independent	Periodic support/supervision	Continuous support/supervision	Explain/Describe
Appropriate social decisions (including avoiding situations dangerous to self or others, good social judgement)	x			
Able to develop and maintain relationships	x			
Interacts appropriately with others (e.g. understands and responds to social cues, problem solves in social context)	x			
Able to deal appropriately with unexpected demands	x			
Able to secure assistance from others	x			

Describe how the mental impairment impacts the applicant’s relationship with his – immediate social network (partner, family, friends)

The doctor checked, “good functioning – positive relationships: assertively contributes to these relationships”.

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

The doctor checked, “good functioning – positively interacts with the community; often participates in activities with others”.

Assistance Provided for Applicant

The doctor states assistance is provided by family.

Comments: the appellant’s wife does the cooking and household chores.

- **Letter from the Appellant’s Doctor (December 5, 2022)**

The doctor writes that nineteen years ago, because of bombing during a war, the appellant reported shrapnel and tendon injury to his right forearm.

- **Note from Orthopedic Surgeon (July 28, 2020)**

Diagnosis: bilateral non-traumatic knee pain and swelling with possible inflammatory arthritis.

Information Received after Reconsideration Decision

Appellant

Notice of Appeal (September 18, 2023)

In the Notice of Appeal the appellant reiterated the information in the request for reconsideration.

At the hearing, the appellant again stated that he has a difficult disability and as a result is in a lot of pain. He can't wear shoes because of swelling and can't bend his knees. When he tries to carry something with his right hand, it falls, and he drops it. The appellant states three or four years ago he used to help with groceries etc. but now his life alternates between sitting and laying down. He states he depends on his wife twenty-four hours/day, seven days/week. His disability affects the whole family. The appellant added that his condition has worsened since May 2023.

The appellant also stated that the physiotherapist report does not reflect his abilities, as the assessment was done in a room. For example, there is no shower to assess this ability and the appellant can walk around a room; however, this is not the same as walking in his personal environment.

The appellant added that he understands the doctor didn't include enough information but thought he could further explain his situation at the hearing.

Ministry

At the hearing, the ministry relied on its record and provided the following summary.

Physical impairment – The information from the appellant, doctor and physiotherapist doesn't align. As well, it was unclear whether the assessment was from the doctor or from the appellant or his wife.

Mental impairment – There was no diagnosis and little information; therefore, insufficient evidence.

Daily living activities – the ministry relies on the opinion of medical professionals to determine whether there is a significant restriction to daily activities.

More details are needed from a physician to demonstrate that help is needed.

Admissibility

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

Part F – Reasons for Panel Decision

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

Specifically, did the ministry reasonably determine the appellant was not eligible for the Persons with Disabilities designation because:

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

Appellant Position

The appellant argues that due to limited mobility he needs a lot of support for most of his daily activities as he has a chronic condition affecting his whole life. He adds that he lives with a lot of pain every day and the pain and suffering have resulted in depression.

The appellant adds that all his daily living activities are done by his wife.

Ministry PositionMental Functioning

The ministry argues it is not satisfied the appellant has a severe mental impairment.

The ministry acknowledges the appellant is experiencing limitations to his cognitive and emotional functioning due to his pain. However, this does not appear to severely impair his mental function. No significant deficits or major impacts to the appellant's daily cognitive and emotional functioning were reported. And the appellant has no difficulties with communication attributed to a medical condition. The appellant's doctor provides assessments suggesting the appellant has moderate depression and mild anxiety.

Further, the ministry argues the appellant's doctor has not confirmed that his mental health conditions are likely to continue for two or more years, as they hope this will improve now that the appellant has been prescribed medication for these conditions.

Physical Functioning

The ministry argues it is not satisfied that the appellant has a severe physical impairment. Although the appellant's doctor provides information related to his ability to work, employability is not a factor when considering persons with disabilities designation, as this is not included in the criteria set out in both the Act and Regulation.

The ministry argues that many of the functional skills reported in the medical and assessor reports are difficult for the ministry to interpret, as the appellant's doctor states what the appellant has reported to be his capacity, rather than what the doctor has assessed them to be.

The ministry adds that the doctor reported that the appellant must stop and take breaks due to knee and back pain, taking longer to perform activities. However, it is not reported how much longer the appellant takes to complete any tasks (e.g. twice as long, or four times as long, etc.).

The ministry acknowledges that the appellant has some limitation to his physical abilities due to his medical conditions, which cause chronic pain. However, the range of mobility and physical abilities reported do not confirm a severe degree of impairment. Although the appellant is reported to be unable to walk longer than 15 minutes, with breaks, it is hard to assess the severity of this limitation as it is not reported how far he can walk, nor how much longer than typical it takes the appellant to walk that distance. For example, if the appellant is able to walk four or more blocks within the 15 minutes, this may not be considered to be a severe degree of impairment. The information presented suggests that the appellant is able to stand and sit for durations long enough to meet his basic requirements, such as cooking simple meals, or doing basic light daily housekeeping or personal care.

The ministry adds that while it is reported that his wife helps the appellant with all his activities, this is not directly attributed to his physical health conditions, nor is it clear that this help is required due to his pain and inability to complete these tasks independently.

Further, a full assessment from the appellant's doctor has not been provided, but rather the assessment is attributed to the appellant or the physiotherapist. The reports provided were not interpreted to indicate how these would impact the areas assessed in the application.

Daily Living Activities

The ministry argues it is not satisfied that the appellant has a severe impairment that, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform the daily living activities set out in the legislation. "Directly" means that there must be a causal link between the severe impairment and the restriction and the direct restriction must also be significant.

In the medical report the doctor indicates the appellant has not been prescribed any medications or treatments that interfere with his ability to perform daily living activities. In the assessor report, the doctor writes that the appellant can shower, dress, and toilet independently.

Although the doctor reports the appellant takes longer for laundry, basic housekeeping, shopping, meal preparation and transportation, it has not been reported how much longer the appellant takes to complete these activities, nor that he requires assistance with these tasks. Therefore, the ministry cannot confirm this presents a significant restriction in the appellant's ability to complete these activities.

The doctor reports the appellant is independent in all other activities, including personal care, shopping (reading prices/labels, making appropriate choices, paying for purchases), paying rent/bills, medication, transportation (getting in/out of a vehicle and arranging transportation), and social functioning.

In the letter submitted at reconsideration, the doctor reports that the appellant's wife states the appellant relies on her for banking, filling prescriptions, paying rent and bills, and cooking and cleaning. She reports this was initially due to a language barrier but now the appellant's low mood symptoms and motivation have affected him in carrying out these activities. However, it is not clear if this is in the opinion of the appellant's doctor or if they are simply reiterating the appellant's wife's account. Under legislation, this criterion relies on the opinion of a prescribed professional. Further, it is not clear to what extent any limitation in these activities is related to the appellant's medical condition rather than a language barrier. Therefore, the ministry finds it difficult to establish that the appellant has significant restrictions in these areas as a direct result of a medical condition.

Help Required with Daily Living Activities

The ministry argues that although the doctor reports that the appellant's wife does the cooking and household chores, as it has not been established that daily living activities are significantly restricted, it cannot be determined that significant help is required from another person.

Panel Analysis

Section 2(2) of the Act sets out the requirements that must be met for the minister to designate a person as a Person with Disabilities. One requirement is that the minister is satisfied that the person has a severe mental or physical impairment.

Mental Impairment.

In the self-report, the appellant states his chronic pain and inability to work has caused depression and stress because he is not able to support himself and his family.

In the medical report, the doctor states the appellant's mood has been affected by his pain and the doctor's assessment is that this is in keeping with moderate depression and mild anxiety. The panel notes, the doctor's assessment is moderate depression and mild anxiety, not severe.

In the assessor's report, the doctor states there is moderate impact to daily functioning in the areas of emotion, attention/concentration and motivation and in the comments section states the appellant is fluent in Arabic but has difficulty understanding and speaking English. The panel finds it is unclear whether the appellant experiences moderate impact in these areas because of mental impairment or because of his difficulty understanding and speaking English. Regardless, the panel finds this evidence does not demonstrate a severe impairment.

Considering the above, the panel finds there is insufficient evidence to establish a severe mental impairment. The panel finds the ministry decision that it was not satisfied that the appellant has a severe mental impairment, reasonable.

Physical Impairment

In the self-report, the appellant states he has limited movement due to severe pain in his knees, lower back, legs and arms. In the request for reconsideration, he states he can't walk 15 minutes straight and can't sit for more than one minute.

In the functional assessment, the physiotherapist, states the appellant has constant pain in his leg and feet; the pain is increasing, and the knee is swelling. An x-ray showed arthritis in his knee and he has difficulty doing his job tasks.

In the medical report, the doctor states the appellant reported knee and back pain, difficulty kneeling and squatting for prolonged periods, lower back pain radiating down

his right leg, and chronic right-hand pain. In the medical report, the doctor stated that the appellant was diagnosed, by a rheumatologist, with patellofemoral osteoarthritis but no major signs of inflammatory arthritis. A note from an orthopedic surgeon shows a diagnosis of bilateral non-traumatic knee pain and swelling with possible inflammatory arthritis.

In the assessor's report, the doctor stated the appellant is independent in walking indoors/outdoors, climbing stairs, standing, lifting carrying and holding, and although he takes significantly longer to perform these activities, no details are provided.

The panel acknowledges that the appellant has mobility issues due to knee, back and arm pain and that he has limitation when walking and sitting. However, the panel finds that the inability to walk for 15 minutes straight, knee and back pain and difficulty kneeling and squatting for prolonged periods does not in itself confirm a severe physical impairment, especially when the doctor stated the appellant can perform these physical activities independently.

As well, the panel notes neither the rheumatologist nor the orthopedic surgeon indicate a severe physical impairment.

The panel finds there is insufficient evidence to confirm that the appellant's physical impairment is severe and finds the ministry decision, that it was not satisfied that the appellant has a severe physical impairment, reasonable.

Restrictions in Ability to Perform Daily Living Activities

Section 2(2) of the Act also states the minister must be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the person's ability to perform daily living activities continuously, or periodically for extended periods. Daily living activities are defined in section 2(1)(a) of the Regulation.

The appellant's doctor, a prescribed professional, states in the assessor's report that the appellant is independent in all areas concerning walking indoors/outdoors, paying rent and bills, personal care, and medication.

Regarding laundry and basic housekeeping, the doctor states the appellant takes significantly longer due to knee and back pain but did not describe the type and amount of assistance required.

Regarding shopping, the doctor stated the appellant was independent in all areas except going to and from stores and carrying purchases home, due to knee and back pain but did not describe the type and amount of assistance required.

Regarding meals, the doctor stated the appellant advised them that he takes significantly longer than typical as he has to sit after standing for five minutes. As well, the doctor stated the appellant told them that pain in his right hand limits him from doing repetitive movements like cutting.

Regarding transportation, the doctor stated the appellant was independent in all areas except for using public transit, where he takes significantly longer and requires assistance. The appellant advised the doctor he has to sit after standing 15 minutes due to knee and back pain.

The above information, from the doctor, states the appellant is either independent, or there is insufficient information concerning the extent of the restriction, including how much longer the appellant takes to do an activity or the assistance required. Although it's routine for patients to provide information to their doctor, the panel finds the information in the medical report does not include sufficient details to confirm that the doctor endorses the restrictions as stated by the appellant and his wife.

The panel also notes that in the letter submitted with the request for information the doctor states the appellant's wife informed them that there was a misunderstanding and that the appellant has to sit and take breaks and that he cannot walk 15 minutes straight. The panel finds as this information states what the appellant's wife stated, it does not confirm that the doctor agrees with this assessment.

As the panel found the ministry reasonably determined it was not satisfied that the evidence demonstrated a severe mental or physical impairment, the panel finds it follows that there is insufficient evidence to demonstrate that a severe impairment directly and significantly restricts the appellant's ability to perform daily living activities continuously, or periodically for extended periods.

The panel appreciates that the appellant provided further details to expand on the information provided by the doctor and physiotherapist; however, the legislation requires that the opinion regarding the restrictions to daily living activities, must come from prescribed professionals (not the appellant or someone else).

As well, in the functional assessment, although the physiotherapist is a prescribed professional, and describes the pain associated with movement, they do not link the restrictions with the specific daily living activities, as defined in the Regulation.

For the above reasons, the panel finds the ministry determination that it was not satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the person's ability to perform daily living activities continuously, or periodically for extended periods, reasonable.

Help to Perform Daily Living Activities

The panel notes section 2(2) of the Act requires that as a result of significant restrictions with daily living activities, a person needs help, which includes the significant help or supervision of another person. Although, at the hearing, the appellant stated he depends on his wife twenty-four hours/day, seven days/week, as it has not been established that a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform daily living activities continuously, or periodically for extended periods, the panel finds it cannot be determined that assistance is needed.

Conclusion

In conclusion, the panel finds that the ministry's decision that the appellant was not eligible for Persons with Disabilities designation was reasonably supported by the evidence.

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

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Act

Persons with disabilities

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

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

Employment and Assistance for Persons with Disabilities Regulation

Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

- (iii)shop for personal needs;
 - (iv)use public or personal transportation facilities;
 - (v)perform housework to maintain the person's place of residence in acceptable sanitary condition;
 - (vi)move about indoors and outdoors;
 - (vii)perform personal hygiene and self care;
 - (viii)manage personal medication, and
- (b)in relation to a person who has a severe mental impairment, includes the following activities:
- (i)make decisions about personal activities, care or finances;
 - (ii)relate to, communicate or interact with others effectively.

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

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

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

Part 1.1 — Persons with Disabilities

Alternative grounds for designation under section 2 of Act

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

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

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

APPEAL NUMBER 2023-0279

Part G – Order

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

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

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

Legislative Authority for the Decision:

Employment and Assistance Act

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

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

Part H – Signatures

Print Name

Connie Simonsen

Signature of Chair

Date (Year/Month/Day)

2023/10/13

Print Name

Bill Farr

Signature of Member

Date (Year/Month/Day)

2023/10/13

Print Name

Julie Iuvancigh

Signature of Member

Date (Year/Month/Day)

2023/10/13