

### **Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) reconsideration decision dated August 3, 2023 (the Decision) denying the Appellant the persons with disabilities (PWD) designation.

The Ministry found that the Appellant met the age (over 18) and duration (impairment to last 2 years) requirements.

However, the Ministry found:

- The Appellant did not have a severe physical or mental impairment;
- The Appellant's daily living activities aren't directly and significantly restricted; and,
- The Appellant doesn't need significant help to do daily living activities because of significant restrictions.

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* (the Act), section 2

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

*Employment and Assistance Act*, section 22(4)

**The legislation is in the Appendix at the end of this decision.**

**Part E – Summary of Facts**

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

- The Medical Report, dated February 21, 2023, completed by the Appellant's Doctor (the Doctor). Details of the evidence included in the Medical Report are provided in the appropriate section below;
- The Assessor Report, dated March 31, 2023, also completed by the Doctor. Details of the evidence included in the Assessor Report are provided in the appropriate section below;
- The Self Report, dated February 1, 2023 and completed by the Appellant. Details of the evidence included in the Self Report are provided in the appropriate section below; and,
- The Appellant's request for reconsideration (the First Reconsideration Request), dated June 30, 2023. In the First Reconsideration Request, the Appellant asks for a ten day extension of the deadline for submitting her reconsideration request.

***Diagnoses***

In the Medical Report, the Doctor says the Appellant has anxiety and depression, but does not provide a date of onset.

**Physical Impairment**

In the Medical Report, the Doctor does not indicate that the Appellant has any physical impairments, noting that it is unknown how far the Appellant can walk, climb, lift or remain seated.

In the Assessor Report, the Doctor says the Appellant is independent with walking indoors and outdoors, requires periodic assistance from another person with standing, lifting and climbing stairs, and needs continuous assistance from another person, or is unable to carry or hold.

In the Self Report, the Appellant says she has bad knees as a result of falling off a bicycle as a child, and can't kneel or get up from kneeling. She also writes "*I ... now find it difficult to walk (or) stand (because) of my arthritis.*"

**Mental Impairment**

In the Medical Report, under Health History, the Doctor writes "*(The Appellant has) frequent agoraphobia and panic episodes impairing her ability to focus/concentrate. This is made worse following the recent death of her husband.*"

In the Medical Report, the Doctor also indicates that the Appellant has significant deficits with memory, emotional disturbance, and motivation, adding the comment *"Her anxiety/depression constantly affects her ability to stay motivated; poor focus concentration. Had been diagnosed with a learning disability in the past that impairs her learning ability. Had been dependent on (her) husband since marriage. Since his death, things have been difficult."* The Doctor also says the Appellant's mental impairments also impair her social skills.

In the Assessor Report, the Doctor says the Appellant's writing, speaking, reading, and hearing abilities are good. No major impacts are identified. The Doctor says the Appellant's mental impairment has a moderate impact on her emotional functioning and other neuropsychological problems, and a minor impact on her consciousness, motivation and motor functioning activities. The Doctor also says there are no impacts in any other areas.

In the Self Report the Appellant says her mother had mental health problems, and that the Appellant was affected by *"shock treatment"* and medications her mother received when she was pregnant with the Appellant. The Appellant says *"my nerves stop me from thinking straight"*, that she can't sleep when she is worried or upset, and that she is *"worried about my future and what it holds"*. The Appellant also says she has fears of thunderstorms, being alone, and rejection, and those fears affect her ability to work.

### **Restrictions in the Ability to Perform Daily Living Activities**

In the Medical Report, the Doctor says the Appellant has not been prescribed any medications that interfere with her ability to do daily living activities.

In the Assessor Report, the Doctor says that the Appellant has the following abilities with daily living activities:

- **Perform personal hygiene and self care** – Independent (no assistance required);
- **Perform housework to maintain the person's place of residence in acceptable sanitary condition** – Independent with laundry, but requires periodic assistance from another person with housework;
- **Shop for personal needs** – Independent with most functions, but requires continuous assistance from another person or is unable to carry purchases home;
- **Prepare own meals** – Independent;
- **Use public or personal transportation facilities** – Independent;
- **Move about indoors and outdoors** – See Doctor's comments in the "Physical Impairment" section above;
- **Make decisions about personal activities, care, or finances** – Independent; and,

- **Relate to, communicate or interact with others effectively** – Independent with most functions, but requires periodic assistance or support from another person in making appropriate social decisions. Good functioning with immediate and extended social networks.

In the Self Report the Appellant says her physical impairments make it very difficult for her to do house and yard work.

### **Need for Help**

In the Medical Report, the Doctor says they are not aware of any assistance the Appellant requires with daily living activities.

In the Assessor Report, the Doctor says the Appellant gets help with her daily living activities from friends and community services agencies, does not use any assistive devices, and does not have an assistance animal.

### **Additional Information Submitted after Reconsideration**

Section 22(4) of the *Employment and Assistance Act* says that a panel can consider evidence that is not part of the record when the Ministry made the Decision. But first the panel must decide if the new information is relevant. Once a panel has determined if any new evidence can be admitted, it must decide if the Decision was reasonable considering the new evidence.

The notice of appeal can potentially include new information, but the Appellant did not provide any new information there.

The Appellant provided four submissions after the Decision, three of which were late because they were received within one business day of the written hearing date. Of the four late submissions, one was not accepted by the Panel because it did not contain any relevant new information.

### **The First Appellant Submission**

On September 8, 2023, the Appellant provided a submission (the Appellant First Submission). New evidence contained in the First Appellant Submission included:

- A one-page e-mail from the Appellant to the Employment and Assistance Appeal Tribunal (the Tribunal), dated September 8, 2023 (the September 8 email), in which the Appellant says:
  - Apparently with reference to a photograph included in the Appellant Submission (see First Photograph below) *“these are my ankles today, this is why I can’t walk, do any activity or stand without a cane now”*; and,

- That she has decided to reapply for a PWD designation.
- The first and third pages of an assessment, dated February 21, 2018 and prepared by an unidentified clinician at a health authority, and referring to the Appellant (the Assessment). The first page of the Assessment says, in part, that the Appellant *"is experiencing feelings of anxiety and depression as a result of her husband's diagnosis and treatment (for) colon cancer"*, and that she *"reports having a lot of friends and has been active as a volunteer in the community"*. Page three of the Assessment says that the Appellant's:
  - Thought process *"appears quite slow"*;
  - Memory is *"intact"*;
  - Attention is *"good"*;
  - Comprehension shows *"moderate deficits"*;
  - Insight is *"limited"*; and,
  - Reasoning/judgement shows a *"moderate impairment"*.

The Assessment also provides a diagnosis of anxiety, depression and grief, and says *"rule out Post-traumatic Stress Disorder (historical physical and sexual abuse)"*;

- Several documents relating to the Appellant's deceased husband, including a death certificate, a federal notice of death form, the couple's marriage certificate, and copies of an annual mortgage statement in the names of the Appellant and her spouse;
- A copy of the first and fourth pages of a four page federal medical report (the Federal Medical Report). The fourth page of the Federal Medical Report is signed by a medical practitioner and dated July 29, 2018. The Federal Medical Report says, in part, that the Appellant has been diagnosed with an anxiety disorder, schizoaffective disorder, depression, borderline mental capacity, and a learning disorder. In a section titled *"Relevant/significant medical history relating to the main medical condition"*, the medical practitioner has written, in part, *"Client is a 54 year old lady who has been experiencing feelings of anxiety and depression which has gotten worse as a result of her husband's illness. Before marriage, she was receiving PWD benefits which stopped when she got married ..."*. In the section of the Federal Medical Report titled *"Prognosis of the main medical condition of this patient"*, the medical practitioner has written *"unsure"*;
- Three pages from an undated, multi-page employment assessment report, one page of which is signed by a vocational rehabilitation specialist (the Employment Assessment Report);

- Four pages of an eight page unspecified and undated document which appears to contain information provided by a medical professional on one page and by the Appellant on the other three pages (the Four Page Document). The information on the page completed by the medical professional provides details of the subject's medical condition. The other three pages appear to be a self-assessment of the Appellant's physical functioning abilities and physical and mental impairments;
- An undated photograph of the Appellant's feet and ankles (the First Photograph);
- A request for reconsideration form, signed and dated by the Appellant on September 24, 2023 (the Second Reconsideration Request). The section of the Second Reconsideration Request that asks the reasons for the request has been completed by the Doctor, who has written *"This is additional information pertaining to the physical health of (the Appellant). (Details about her mental health have been elaborated on). She is having ongoing chronic back pain, hip pain and knee pain that seems to impact her day to day function. Recent imaging reveals moderate spondylolisthesis and degenerative disc disease (DDD) of the lumbar spine at L3 – L4 and L5 – S1; moderate to severe (bone on bone articulation) osteoarthritis on her knees bilaterally. These may be the reasons for her physical disability with regards to her gait/ambulation → unable to walk long distances; she tells me she sometimes needs additional support with the use of a walking aid for balance improvement."*;
- A one-page e-mail from the Appellant to the Tribunal, dated September 18, 2023 (the September 18 email), in which the Appellant says *"Every day my body is getting worse and my depression is very bad."* The Appellant mentions the medications she is taking, and that she had her gall bladder removed on July 24, 2023;
- A one-page e-mail from the Appellant to the Tribunal, dated September 15, 2023 (the September 15 email), in which the Appellant says (apparently referring to a photograph included in the Appellant Submission - see Second Photograph below) *"This is me in 2019 with a bad fall (as a result of) arthritis in my legs and hips . My balance (is) unstable. (I) fell in my driveway. (I went) to (the) hospital but they sent me home with salve to put on. (I am also) full of depression. (I fell on) my right side."*; and,
- A photograph of the Appellant's face following the fall described above (the Second Photograph).

### **The First Ministry Submission**

On September 28, 2023, the Ministry provided a submission (the First Ministry Submission). The First Ministry Submission provided the following assessment in response to the new information contained in the First Appellant Submission:

- Regarding the documents relating to the Appellant's deceased husband, the Ministry said the documents "*were not considered further*" because marital and financial status are not requirements for PWD designation;
- Regarding the information in the Assessment, the Ministry said the documents recorded the Appellant's anxiety and depression in 2018. The Ministry also said that the documents "*reported moderate deficits in comprehension and moderate impairment in reasoning and judgement*";
- Regarding the Employment Assessment Report, the Ministry said the document was incomplete and difficult to read; and,
- Regarding the information in the Federal Medical Report, the Ministry summarized the information in the document;

The Ministry provided its analysis of the new information in the documents identified above, indicating that it "*is not satisfied that the information suggests a severe degree of mental impairment. These documents provide information about the Appellant's mental health in 2017 and 2018. While a learning disability is mentioned, the impact of this is not discussed apart from moderate deficits in comprehension and moderate impairment in reasoning and judgement. In the (Assessor Report, the Doctor identifies) two moderate impacts to daily cognitive and emotional function ... in emotion and other (neuropsychological problems). All other areas had no impact or minimal impact on daily functioning ... Further, ... (the Doctor reports that) the Appellant retains independence in almost all aspects of daily living activities, including all aspects of making decisions about personal activities, care, and finances, and almost all aspects of social functioning.*"

In the First Ministry Submission, the Ministry also summarizes the new information in the First Photograph, the Second Reconsideration Request, the September 15 Email, the September 18 Email, and the Second Photograph. The Ministry points out that "*information was not provided by a health professional regarding a physical health condition*" in the Medical Report, and the Ministry "*acknowledges that the Appellant experiences chronic pain in her spine and knees. However, the restrictions noted do not confirm a severe degree of physical impairment. She can mobilize shorter distances, only occasionally relying on an unspecified mobility device. Further, her ability to lift, stand, carrying and hold and complete daily living activities was not discussed further in this information to gain a clear picture of the degree to which she is impaired.*"

### **The Second Appellant Submission**

On September 29, 2023 and October 1, 2023, the Appellant made two additional submissions (collectively, the Second Appellant Submission).

The September 29, 2023 submission was a one-page email from the Appellant to the Employment and Assistance Appeal Tribunal (the September 29 email). In the September 29 email, the Appellant said she couldn't lift any groceries or get out of the bath "for at least 5 minutes". In addition, she wrote "I can't even lift myself off the floor without a stool ... I can't (stand) because of back and leg (injuries). I was a care giver for my husband before he died ... I got injured taking care of him." Regarding help, the Appellant said she has no help in her community because she lives in a rural area.

The October 1, 2023 submission was a one-page email from the Appellant to the Tribunal (the October 1 email). In the October 1 email, the Appellant said she has arthritis in both her shoulders, and her right side is more severe. She says she "can't stand, do dishes, vacuuming, door, windows, sweep, can't lift and groceries." She also says it's too painful to stand, reach, or bend. Regarding help, the Appellant says she needs an assistant "to help me or even change bed sheets."

### **The Second Ministry Submission**

On October 5, 2023, the Ministry made a second submission (the Second Ministry Submission). The Second Ministry Submission says "The Ministry's submission in this matter will be the reconsideration summary provided in the Record of Ministry Decision and the Ministry response dated September 29, 2023."

### **The Third Appellant Submission**

On October 5, 2023, the Appellant made a third submission (the Third Appellant Submission). The Third Appellant Submission comprised an email from a friend of the Appellant (the Friend).

In the Third Appellant Submission, the Friend writes "I am sending this without consulting (with the Appellant) ... I had been helping (the Appellant) with the house ... We neighbours try to help out - however we live a number of miles away ... we worry about her - insisting that she take her cell phone with her everywhere ... (if the Appellant) does fall, she has a terrible time getting up by herself, needing to pull herself up with the help of a chair or some other device - even if she needs to crawl over to the nearest thing ... and as she uses a cane, she has to really 'juggle things' like groceries to even get them into the house without help. As (the Appellant) is handicapped about simple things like walking - we also try to help by doing things like helping with washing floors ... I read the submission from her current doctor and although I am not a doctor, I must comment that being in BC means that having a doctor who actually 'knows us' is actually not possible. (The Doctor) only has a very short history with (the Appellant) as (the Doctor) has only been in (the Appellant's community) for a few months, and I can't believe (they) would know 'all' of (the Appellant's medical) history as ... it is not possible to 'really be able' to understand/read/ explain entire files in the 15 minutes that we have with the doctor ... (The

*Appellant) only goes out when she absolutely 'needs things like groceries' or to see her councillor or doctor and she tries to do some of this over the phone ... as neighbours we help where we can - but we also have families to tend to, and therefore (the Appellant) necessarily needs to be as independent as possible, which she does. We know that she needs help with these types of daily activities - however, here in (the Appellant's community) there simply aren't many options."*

### **The Third Ministry Submission**

On October 17, 2023, the Ministry made a third submission (the Third Ministry Submission). The Third Ministry Submission says *"The Ministry's submission in this matter will be the reconsideration summary provided in the Record of Ministry Decision and the letter dated September 29, 2023."*

### **Admissibility of New Evidence**

New evidence in the First Appellant Submission comprises:

- The Appellant's comment in the September 8 email that she can no longer walk, do any activity, or stand without a cane, and the related First Photograph;
- The vital documents relating to the Appellant's deceased husband;
- Information in the Assessment regarding the Appellant's social functioning and degree of mental impairment;
- Some of the mental health diagnoses included in the Federal Medical Report;
- Some of the information in the Employment Assessment Report;
- Some of the information in the Four Page Document;
- Additional information from the Doctor about the Appellant's physical functioning skills and diagnoses of physical impairments in the Second Reconsideration Request;
- Information in the Appellant's September 18 email about her then-current state of health, medications, and that she had had her gall bladder removed in July 2023; and,
- Information in the Appellant's September 15 email about the bad fall she had in 2019 as a result of arthritis in her legs and hips.

Relevant new information is anything that provides more detail relating to the criteria that the Ministry found had not been met. These criteria are found in section 2 of the *Act*. The requirements that the Ministry found had not been met in the Decision were evidence from a prescribed professional of:

- A severe mental or physical impairment;

- That directly and significantly restrict a person's ability to do daily living activities either continuously or periodically for extended periods; and
- That, as a result of those restrictions, the person needs help or assistance.

The Panel does not admit the new information in the Appellant's deceased husband's vital documents or the Employment Assessment Report. This information is not relevant to the Decision because it does not provide any additional information relating to the criteria that the Ministry found had not been met. The Panel also does not admit the new information in the Assessment, the Federal Medical Report, or the Four Page Document because the information is incomplete, the person providing the information is not identified, and/or the date of the assessments is either unknown or the information is more than five years old.

The Panel admits the information provided by the Doctor in the Second Reconsideration Request, and the information in the September 8 email, the September 15 email, and the September 18 email because they provide more current information on the Appellant's physical impairments and the severity of those impairments than what was contained in her original PWD application. In addition, the information in the Second Reconsideration Request is provided by the Doctor, who is a medical practitioner.

All of the information in the Second Appellant Submission concerns the Appellant's self assessment of her physical functioning and daily living activity abilities at the end of September 2023 (six months after she submitted her PWD application), and is therefore admitted by the Panel because it is relevant to the legislative criteria and the Ministry's findings as set out in the Decision.

All of the information in the Third Appellant Submission is the Friend's assessment of the Appellant's ability to do daily living activities and need for help with those activities and is also admitted by the Panel because it is relevant to the need for help criterion.

The weight assigned to any new admissible evidence is provided in the "Reasons for Panel Decision" section below.

**Part F – Reasons for Panel Decision**

The issue in the appeal is whether the Decision was reasonable based on all the evidence or whether the legislation was reasonably applied in this case. In other words, was it reasonable for the Ministry to determine that:

- The Appellant doesn't have a severe mental or physical impairment;
- The Appellant's daily living activities aren't directly and significantly restricted either continuously or periodically for extended periods due to the severe impairment; and,
- It couldn't be determined that the Appellant needs help to do daily living activities because of significant restrictions.

**ANALYSIS**

The Ministry has determined that both the duration of the impairment criterion and the Appellant's age criterion have been met, so they are not at issue in this appeal.

**Severity of Impairment**

In determining PWD eligibility, the Ministry must consider all relevant evidence, which includes the Appellant's evidence. That said, the legislation requires the Ministry to make its decision based largely on the opinion of a prescribed professional, which includes a medical doctor.

The legislation says the Ministry must be satisfied that any impairment, whether physical or mental, is severe..

**Physical Impairment***The Appellant's Position*

The Appellant's position is that she has bad knees from an accident, and the arthritis in her shoulders and her hips is severe and getting worse as time goes by. Due to her arthritis she is no longer able to stand or walk any distance without the use of a cane.

*The Ministry's Position*

The Ministry's position, as set out in the Decision, is that the Doctor had not diagnosed or described a physical impairment in the Appellant's original application. After reviewing the information in the Second Reconsideration Request, the Ministry acknowledges that the Appellant experiences chronic pain in her spine and knees. However, the Ministry's position remains that the restrictions do not confirm a severe degree of physical impairment because she can mobilize shorter distances, and only occasionally relies on an unspecified mobility device.

*Panel Decision*

The Ministry uses two reports to measure physical impairment based on someone's ability to function physically. The two reports are the Medical Report and the Assessor Report. In this case, both reports were completed by the Doctor. The Medical Report and Assessor Report both ask the prescribed professional to indicate if the person applying for PWD has any restrictions in physical functioning, and if so, to explain the restrictions or provide comments giving more detail, such as how any restrictions impact the applicant's physical abilities.

As indicated by the Ministry in the decision, the Panel notes that the Doctor did not diagnose any physical impairments in the Medical Report. The Panel also notes that the Doctor did not provide any information about what approaches or information sources (office interview, home assessment, file or chart information, etc.) they referred to when preparing the Assessor Report, which was completed eight months ago.

However, the Panel notes that details about the Appellant's physical functioning restrictions are provided in the Second Reconsideration Request, which was completed by the Doctor in late September 2023. The Doctor refers to the results of "*recent imaging*", which presumably occurred after the original Medical Report was completed. In the Second Reconsideration Request, the Doctor diagnoses the following physical impairments: DDD of the lumbar spine, and "*moderate to severe*" bone-on-bone osteoarthritis on both knees, which "*may be the reason for her physical disability*". The Panel assigns full weight to the Doctor's assessment of the Appellant's physical functioning as expressed in the Second Reconsideration Request because the Doctor is a medical practitioner.

In addition, the opinions expressed in the Second Reconsideration Request are supported by the Appellant's and the Friend's information, as they both describe the Appellant's physical functioning abilities as having progressed in recent months to the point where the Appellant is unable to walk at all without a cane, she experiences frequent falls, she is unable to get up by herself when she falls, and the Friend's statement about their insistence that she take her cell phone with her everywhere she goes. While these observations are not those of a prescribed professional, they are consistent with the information provided by the Doctor in the Second Reconsideration Request, and are therefore assigned moderate weight by the Panel.

Based on all of the available evidence, the Panel finds that the Ministry's determination that a severe physical impairment has not been established is not reasonable.

**Mental Functioning***The Appellant's Position*

The Appellant's position is that she has severe depression and anxiety which she thinks are the results of treatments her mother received when she was pregnant with the Appellant. The Appellant says her nerves stop her from thinking straight, that she can't sleep when she is worried or upset, and she is worried about her future. The Appellant also says her mental impairments affect her ability to work.

*The Ministry's Position*

The Ministry's position is that it acknowledges that the Appellant is experiencing impacts to cognitive and emotional functioning due to her medical condition, but the Doctor has not identified any major impacts to social or emotional functioning, nor does the Doctor describe the frequency of the periodic support or supervision the appellant requires with making appropriate social decisions. Therefore, based on the Doctor's assessment in the PWD application and the Appellant's Self Report, a severe impairment of her mental functioning has not been established.

*Panel Decision*

In the Medical Report, the prescribed professional is asked if the applicant has any significant deficits in their cognitive and emotional functioning, and if so, in what areas. In the Assessor Report, if the applicant has a mental impairment, the prescribed professional is asked to indicate whether any impairment to the applicant's cognitive and emotional deficits are considered to have a mild, moderate, or major impacts on their mental functioning. The legislation doesn't define what mild, moderate or major impacts are.

If the applicant has an identified mental impairment, the prescribed professional is also asked in the Assessor Report to indicate whether the applicant requires support or supervision in several areas of social functioning. The Doctor, as a prescribed professional, is best qualified to diagnose a person's impairments and to assess their severity.

The Panel notes that, while the Doctor indicates that the Appellant has significant deficits with memory, emotional disturbance, and motivation, no major impacts to her mental functioning are identified in the Assessor Report. In addition, the Doctor has indicated that the Appellant has good functioning with her immediate and extended social networks. While the Doctor has indicated that the Appellant requires periodic support or supervision making appropriate social decisions, no description of the degree or duration of support or supervision is made by the Doctor in the space provided in the Assessor Report.

In addition, the Panel notes that in the Third Appellant Submission, the Friend says that the Friend and other neighbours of the Appellant help the Appellant with her daily living activities when they can, which also suggests that the Appellant has good functioning with her extended social network.

Based on all of the available evidence, the Panel finds that the Ministry reasonably determined that a severe mental impairment has not been established.

### **Restrictions in the Ability to Perform Daily Living Activities**

#### *The Appellant's Position*

The Appellant's position is that her arthritis keeps her from doing dishes, vacuuming, cleaning the home, or carrying purchases home.

#### *The Ministry's Position*

The Ministry's position is that basic housekeeping and carrying purchases are daily living activities that are mainly dependent on a person's physical ability, and the Doctor has not described a medical condition that would be expected to result in impacts to the Appellant's physical ability. In addition, the information provided by the Doctor in the Second Reconsideration Request regarding the Appellant's ability to do daily living activities was not addressed. Had it been addressed, it would have given the Ministry a clearer picture of the degree to which she is impaired.

#### *Panel Decision*

After assessing the severity of an impairment, the Ministry must consider how much the applicant's ability to do daily living activities is restricted.

The legislation says the Ministry must be satisfied that a prescribed professional has said that an applicant's severe impairment *directly and significantly* restricts their daily living activities, either *continuously or periodically for extended periods*. Daily living activities appears in the Act in the plural ("daily living activities"), so at least two of the daily living activities must be significantly restricted. "*Directly*" means that a severe impairment must itself be the cause of any daily living activities restrictions.

As mentioned above, the Panel has given full weight to the new information provided by the Doctor in the Second Reconsideration Request. The Panel has also determined that that new information reasonably describes a severe physical impairment.

Section 2(1)(a)(v) of the Regulation identifies one of the daily living activities to be "*perform housework to maintain the person's place of residence in acceptable sanitary condition*". The Panel notes that "*housework*" could include several tasks that might reasonably be considered cleaning activities necessary to maintain a person's place of residence in an

acceptable sanitary condition. These include activities such as doing laundry, sweeping, vacuuming or washing floors, walls, windows or doors, and changing bedsheets, among others.

In the Assessor Report part of the PWD application form, the Ministry has asked the prescribed professional to indicate if any assistance is required with “laundry” or “basic housekeeping”, which are listed in the Assessor Report as the only two tasks associated with the section 2(1)(a)(v) daily living activity.

The Panel notes that the Doctor indicated in the Assessor Report that the Appellant requires periodic assistance from another person with housework but not with laundry. As this was a written hearing, the Panel did not have an opportunity to ask the Appellant how she was able to do laundry but not other housekeeping tasks.

While neither the Doctor, the Appellant nor the Friend have indicated how the Appellant is able to do laundry but nevertheless periodically requires the assistance of another person for other housekeeping tasks, the Panel notes that there might be a reasonable explanation. For example, if the Appellant does small, light loads of laundry from a sitting position, she might reasonably be able to perform laundry-related tasks without assistance, while still not being able to do other more strenuous housecleaning tasks periodically for extended periods.

The Panel notes that both the Appellant and the Friend have listed several housekeeping tasks for which the Appellant needs periodic assistance. These include several strenuous tasks that must be done in a standing position, such as changing bedsheets and washing floors.

In summary, the Doctor has indicated the Appellant requires continuous assistance from another person or is unable to carry purchases home, and periodic assistance from another person to perform housework. These restrictions relate to two separate daily living activities, as described in section 2 of the Regulation (i.e. shop for personal needs, and perform housework to maintain her place of residence in acceptable sanitary condition). Both the Appellant and the Friend have provided more detail on these restrictions in the various Appellant submissions. Based on all of the information provided by the Doctor, difficulty with these two daily living activities are also directly the result of the Appellant’s severe physical impairment. And as previously mentioned, the Appellant has confirmed in the October 1 email that she is unable to do housework or carry purchase home due to her arthritis.

Based on all of the available evidence, the Panel finds that the Ministry’s determination that severe restrictions in the Appellant’s ability to do daily living activities as a direct result of a severe physical impairment is not reasonable.

**Help with Daily Living Activities***The Appellant's Position*

The Appellant's position is she needs an assistant to help her with basic housework, that she is unable to carry things without assistance, and that she needs to use a cane to ambulate.

*The Ministry's Position*

The Ministry's position is that it cannot be determined that significant help is required because it has not been established that daily living activities are significantly restricted.

*Panel Decision*

Help in relation to a daily living activity is defined in the legislation as the need for:

- An assistive device;
- The significant help or supervision of another person; or,
- The services of an assistance animal.

The legislation also says that a person must need help to do daily living activities *as a result of direct and significant restrictions in their ability to perform daily living activities*. So direct and significant daily living activities restrictions must be the cause of the need for help. Help must be needed, which doesn't necessarily mean that the applicant is currently receiving needed help.

The Panel notes that the Doctor says the Appellant gets help with her daily living activities from friends and community services agencies. In the Third Appellant Submission, the Friend has said that the Appellant's neighbours help her where they can with daily living activities, such as washing floors and carrying groceries.

In the Second Reconsideration Request, the Doctor says the Appellant has told the Doctor that she sometimes needs additional support with the use of a walking aid for balance improvement. The Doctor has not indicated that they doubt this is the case. In the First Appellant Submission, the Appellant says she can no longer walk, do any activity, or stand without the use of a cane. This is confirmed by the Friend, who says in the Third Appellant Submission that the Appellant uses a cane.

Based on all of the available evidence, the Panel finds that the Ministry's determination that the Appellant does not need help with at least two daily living activities is not reasonable.

**Conclusion**

Based on all the evidence and legislation, the Panel finds that the Decision was not reasonably supported by the evidence and therefore rescinds the Decision. The Appellant's appeal, therefore, is successful.

## Appendix

### Relevant Legislation

The criteria for being designated as a PWD are set out in Section 2 of the *Act* as follows:

#### **Persons with disabilities**

**2** (1) In this section:

**"assistive device"** means a device designed to enable a person to perform a daily living activity that, because of a

severe mental or physical impairment, the person is unable to perform;

**"daily living activity"** has the prescribed meaning;

**"prescribed professional"** has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

The Regulation provides as follows:

**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 ...

The *Employment and Assistance Act* provides as follows:

**Panels of the tribunal to conduct appeals**

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 2023-0265

**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

**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

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2023/10/22

Print Name

Sarah Bijl

Signature of Member

Date (Year/Month/Day)

2023/10/22

Print Name

Glenn Prior

Signature of Member

Date (Year/Month/Day)

2923/10/22