

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated August 31, 2023, which determined the appellant was not eligible for the Persons with Disabilities designation because she did not meet the following criteria:

- Severe Impairment
- Direct and Significant Restrictions to Daily Living Activities
- Significant Help Required with daily living activities

The Ministry found the appellant was not one of the prescribed classes of persons eligible for Persons with Disabilities 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

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 (no date) - summary**

The information is provided by the appellant's doctor.

The doctor writes that the appellant is having increased demands for support by family. She is increasingly dependent on assisted daily living and now needs a cane to ambulate on bad days. She needs assistance bathing and washing her hair. The appellant is unable to do grocery shopping without assistance due to worsening mobility and pain to upper limbs. A recent fall over a month ago, due to poor balance, resulted in an injury to her ankle and subsequent cellulitis, which required antibiotics and wound care.

The doctor adds that due to poor mobility, the appellant needs someone to bring her to appointments, do grocery shopping, go to the bank etc. The doctor anticipates with time and natural disease progression, the appellant will be increasingly dependent on others and more disabled.

Person with Disabilities Application (application)***Self-Report (May 9, 2023)***

The appellant states the onset of paralyzing pain begins throughout her body, from morning and gets worse throughout the day. She has been diagnosed with rheumatoid arthritis. This condition has gravely affected the quality of her life emotionally, psychologically, physically and mentally. She adds that the inflammation on her right side (including her right shoulder throughout her arm into her fingers) has become so severe that she loses all use of that side of her body. On her worst days this debilitating pain is in her ankle and toes. She literally freezes and cannot move. She states that even completing this form she's having extreme difficulty. Her daily living activities such as brushing her teeth, getting in the shower, bathing and getting dressed/grooming are becoming extremely difficult. Housework has become extremely difficult. Grocery shopping has become extremely difficult, and embarrassing as her fingers lock as she attempts to push the shopping cart. The appellant adds that as a very active person this diagnosis has stripped away her livelihood.

Medical Report (May 18, 2023) – signed by the appellant’s doctor

The doctor (general practitioner) provided the following information and responses to the questions below.

Diagnosis	Date of onset – month/year
Seronegative rheumatoid arthritis	

Health History

Please indicate the severity of the medical conditions related to this person's impairment. How does the medical condition impair this person?

Weekly methotrexate injections, poor mobility instability with walking and requires mobility aid/orthotics, limited use of upper limbs. Family helps with housework, dressing.

- Has the appellant been prescribed any medications and/or treatments that interfere with her ability to perform daily living activities? - no
- Does the appellant require prostheses or aids for her impairment? – yes, custom shoes and orthotics from podiatrist

Degree and Course of Impairment

- Is the impairment likely to continue for two years or more from today? – yes, life-long condition, will need medication indefinitely.

Functional Skills

- How far can this person walk unaided on a flat surface?
1-2 blocks
- How many stairs can this person climb unaided?
5+ steps
- What are the person’s limitations in lifting?
2-7 kgs
- How long can this person remain seated?
no limitation
- Are there difficulties with communication?
no
- Are there any significant deficits with cognitive and emotional function?
no

Daily Living Activities

Does the impairment directly restrict the person’s ability to perform Daily Living Activities?

- yes

Daily Living Activities	Is activity restricted?		If yes, the restriction is:		
	yes	no	unknown	continuous	periodic
Personal self care	x			x	
Meal preparation		x			
Management of medications		x			
Basic housework	x			x	
Daily shopping	x			x	
Mobility inside the home	x			x	
Mobility outside the home	x			x	
Use of transportation	x			x	
Management of finances		x			
Social functioning – daily decision making; interacting, relating and communication with others		x			

Please provide additional comments regarding the degree of restriction:

- limited use of arms due to rheumatoid arthritis

What assistance does your patient need with daily living activities?

- help with dressing, shoes, taking her to appointments

Additional comments

The patient needs to steady themselves against a wall or surfaces when walking. She always has a friend or family member bring her to appointments due to poor mobility.

Frequency of Contact

- How long has the applicant been your patient? - over 3 years
- How often have you seen this applicant in the past 12 months? - 11 or more times

Assessor Report (June 1, 2023) – signed by the appellant’s doctor

The doctor provided the following information and responses to the questions below.

Living Environment

The doctor indicated the appellant lives with family, friends or caregiver.

Mental or Physical Impairment

- What are the applicant’s mental or physical impairments that impact her ability to manage daily living activities? - rheumatoid arthritis

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	Explain and specify device
Walking indoors		X				
Walking outdoors		X				
Climbing stairs		X				
Standing		X				
Lifting		X				
Carrying and holding		X				

Cognitive and Emotional Functioning

For each item indicate to what degree the applicant’s mental impairment restricts her 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			

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	Explain/ Describe
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				
Basic housekeeping		x				
Shopping						
Going to/from stores		x				
Reading prices and labels	x					
Making appropriate choices	x					
Paying for purchases	x					
Carrying purchase home		x				

Additional comments

rheumatoid arthritis, poor mobility and use of hands. Needs someone to take to any appointments, shopping. Difficulty carrying things. Unsteady gait.

Meals						
Meal planning	x					
Food preparation		x				
Cooking		x				
Safe storage of food (ability, not environmental)	x					
Pay rent and bills						
Banking	x					needs help to get to appointments
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	Not applicable					
Using transit schedules and arranging transportation						

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			
	x			

Able to deal appropriately with unexpected demands				
Able to secure assistance from others	x			

Describe how the mental impairment impacts the applicant’s relationship with
- immediate social network - good functioning – positive relationships assertively contributes to these relationships
- extended social networks - good functioning – positively interacts with the community; often participates in activities with others

Assistance Provided for Applicant

The doctor states that the help required for daily living activities is provided by family and friends.

Assistance provided through the use of devices

What equipment or devices does the applicant routinely use to help compensate for her impairment?

Custom shoes and orthotics

Additional Information

The doctor states that rheumatoid arthritis has significantly impacted the appellant’s ability to walk and use her upper limbs. She comes to the office weekly for methotrexate injections but always requires a friend or family to bring her. The appellant is very unsteady and uses walls and surfaces to balance herself. She is seeing a physiotherapist, rheumatologist and podiatrist.

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.

Did the ministry reasonably determine the appellant was not eligible for the Persons with Disabilities designation because:

- She 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 she has been diagnosed with rheumatoid arthritis and this condition has gravely affected the quality of her life emotionally, psychologically, physically and mentally.

Daily living activities such as brushing her teeth, getting in the shower, bathing and getting dressed/grooming, housework, and grocery shopping are becoming extremely difficult.

Ministry Position

Mental Functioning

The ministry acknowledges that the appellant's self-report states that the medical condition affects her emotionally, mentally and psychologically; however, as no deficits are reported by the appellant's doctor, the ministry is unable to establish that the appellant's medical condition is causing a mental impairment.

Physical Functioning

The ministry acknowledges impairments reported with mobility, balance, upper body and hands, and the need for a cane on 'bad days'; however, argues the doctor demonstrates more of a moderate overall physical impairment. The ministry also acknowledges that the appellant's self-report appears to be much more limiting than the information reported by her doctor. However, as this level of impairment is not reported by the doctor, the ministry is unable to conclude the appellant has a severe physical impairment.

Daily Living Activities

The ministry argues that as a severe impairment has not been established it also cannot be established that the impairment directly and significantly restricts daily living activities. As reported by the doctor, the appellant does not have mental deficits or restrictions to daily living activities because of any mental impairments.

The ministry recognizes that continuous restrictions are reported with personal self-care, basic housework, daily shopping, mobility inside and outside of the home and transportation. However, without details, it is difficult to establish that the impairment is causing direct and significant restrictions to the appellant's ability to complete her daily living activities continuously or periodically for extended periods of time. Although the ministry recognizes the appellant's self-report, this information needs to be demonstrated by the doctor.

Help Required with Daily Living Activities

The doctor reports the need for orthotics, custom shoes, and a cane periodically on bad days. In addition, they state the appellant requires some help from family, especially related to getting to/from appointments and when shopping. However, the ministry argues that 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 or a device.

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 medical report, the doctor states the appellant has no difficulty with communication and there are no significant deficits with cognitive and emotional function.

In the assessor's report, under cognitive and emotional functioning, the doctor is asked to indicate to what degree the applicant's mental impairment restricts her functioning. The doctor indicated there was no impact on daily functioning. Under social functioning, the doctor indicates the appellant is independent in all areas and stated the appellant has good functioning with her immediate and extended social networks. The panel notes in the self-report, the appellant states her condition has gravely affected the quality of her life emotionally, psychologically and mentally.

Although the appellant reports mental struggles due to her medical condition, the panel finds this information does not provide sufficient detail to fully explain her mental struggles. As well, the doctor has not diagnosed a medical condition related to a mental impairment, and has not indicated any impairment of cognitive and emotional functioning. Therefore, the panel finds the ministry reasonably determined that the appellant does not have a severe mental impairment.

Physical Impairment

In the assessor's report, the doctor states that rheumatoid arthritis has significantly impacted the appellant's ability to walk and use her upper limbs. She comes to the office weekly for methotrexate injections but always requires a friend or family to bring her. The appellant is very unsteady and uses walls and surfaces to balance herself. She is seeing a physiotherapist, rheumatologist and podiatrist. In the self-report, the appellant adds that her condition has also gravely affected the quality of her life physically. She states that the inflammation on her right side has become so severe that she loses all use of that side of her body. On her worst days this results in debilitating pain in her ankle and toes. She literally freezes and cannot move.

The ministry argues that the doctor's evidence demonstrates more of a moderate overall physical impairment. However, the panel finds the appellant's explanation in the self-report, which assists the panel in further understanding the degree of severity of her impairment and how it affects her daily life, provides a description of a more severe impairment. As well, the information from the doctor, in the assessor's report, describes the difficult physical challenges the appellant endures, with her limited mobility, in daily life.

The panel finds there is sufficient 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, not reasonable. While the doctor indicated that the appellant can walk 1-2 blocks and climb 5+ stairs independently, the doctor also described the impact on the appellant's ability to walk as significant. The doctor also indicated that they have regularly observed that the appellant is very unsteady and has to support herself with walls, and that a cane is needed on bad days. Additionally, the doctor described the impacts on the appellant's ability to use her upper limbs as significant. All of these impacts should be considered together when looking at the severity of impairment. The panel also finds that the appellant's self-report gives more detailed, descriptive evidence about her functioning that is consistent with the doctor's description of significant impacts. In particular, that the inflammation on her right side has become so

severe that she loses all use of that side of her body and on her worst days this results in debilitating pain in her ankle and toes. The panel finds that, considering the whole of the medical evidence and the additional detail the appellant provides in the self-report, it is not reasonable to place greater weight on a few ticked boxes than on the extensive and otherwise consistent medical evidence.

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 physical or mental 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. At least two activities must be restricted in a way that meets the requirements. To be significant, the restriction must be to a great extent, such as not being able to do the activities without a lot of support. Continuous means the activity is generally restricted all the time and periodic for extended periods means frequently or for longer periods of time.

With the information below, the panel finds there is sufficient evidence to establish that that the appellant's severe physical impairment directly and significantly restricts her ability to perform the following daily living activities continuously, or periodically for extended periods.

shop for personal needs

In the request for reconsideration, the doctor states the appellant is unable to do grocery shopping without assistance due to worsening mobility and pain to upper limbs. In the medical report the doctor states daily shopping is continuously restricted and in the assessor's report, states the appellant needs periodic assistance going to/from stores and carrying purchases home as she has poor mobility and use of her hands.

use public or personal transportation facilities

In the medical report the doctor states use of transportation is continuously restricted and in the assessor's report states the appellant needs periodic assistance getting in and out of a vehicle.

perform housework to maintain the person's place of residence in acceptable sanitary condition

In the medical report the doctor states basic housework is continuously restricted and in the assessor's report states the appellant requires periodic assistance for laundry and basic housekeeping. The doctor also states the appellant has limited use of her arms due to rheumatoid arthritis.

move about indoors and outdoors

In the medical report the doctor states, mobility (inside/outside) is continuously restricted and in the assessor's report, states the appellant needs periodic assistance from another person when walking indoors and outdoors. She has an unsteady gait, uses custom shoes and orthotics, and needs to steady herself against walls or surfaces when walking.

perform personal hygiene and self care

In the medical report the doctor states the appellant is continuously restricted with personal self-care; she needs help to dress, bathe and wash her hair.

Therefore, the panel finds the ministry was unreasonable in concluding it is not satisfied that a severe physical impairment directly and significantly restricts the appellant's ability to perform daily living activities continuously, or periodically for extended periods, as per section 2(2) of the Act.

Help to Perform Daily Living Activities

The panel notes section 2(2) of the Act also requires that as a result of those restrictions, the person requires help to perform those activities and in order to perform them, the person requires an assistive device or the significant help or supervision of another person. "Assistive device" is defined as a device designed to enable a person to perform a daily living activity that, because of a severe physical impairment, the person is unable to perform.

In the request for reconsideration, the doctor states the appellant needs a cane to ambulate on bad days, and in the medical report, states she requires custom shoes and orthotics from a podiatrist for her impairment. The panel finds the appellant requires these assistive devices to perform her daily living activities.

As well, the panel finds the following information confirms that as a result of the appellant's severe physical restrictions, she needs the significant help from other people to perform daily living activities. In the request for reconsideration, the doctor writes that the appellant needs assistance bathing and washing her hair and is unable to do grocery shopping without assistance due to worsening mobility and pain to upper limbs. The doctor states that family helps with housework, and the appellant needs to have another person bring her to medical appointments due to her foot instability. The doctor anticipates with time and natural disease progression, the appellant will be increasingly dependent on others and more disabled.

Conclusion

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

The appellant is 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 2023-0290

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)

2023/10/25

Print Name

Susan Ferguson

Signature of Member

Date (Year/Month/Day)

2023/10/25

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2023/10/25