

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) reconsideration decision dated August 28, 2023, denying persons with disabilities (PWD) designation.

The Ministry found the Appellant met the age (over 18) and duration (likely to last more than two years) requirements. However, the Ministry found the Appellant did not meet the requirements for:

- severe mental or physical impairment
- significant restriction on the ability to perform daily living activities
- needing significant help to perform daily living activities.

The Ministry found the Appellant was not one of the prescribed classes of persons eligible for PWD on alternative grounds. As there was no information or argument on this point, the Panel considers it not to be an issue in this appeal.

Part D – Relevant Legislation

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

Employment and Assistance for Persons with Disabilities Regulation (Regulation), s. 2

Employment and Assistance Act (EAA), s. 22(4)

Full text of the Legislation is in the Schedule of Legislation at the end of the Reasons.

Part E – Summary of Facts

The hearing took place in person, with the Ministry attending by video link. The Appellant attended with an Advocate.

Evidence Before the Ministry at Reconsideration:

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

- Medical Report and Assessor Report completed by a Doctor
- Appellant's Self Report, with an additional letter from the Appellant, undated, submitted on Reconsideration.

Medical Report:

The Doctor says they have seen the Appellant between two and ten times in the past twelve months.

Diagnosis:

The Doctor provides diagnoses of anxiety and depression, onset February 2020.

Health History:

The Doctor states:

- The Appellant has severe anxiety and depression because of "constant X spouse yelling [and] their conflict"
- The Appellant was unable to concentrate at work and lost his job
- The Appellant cannot afford to pay rent
- Financial problems make his anxiety and depression worse.
- The Appellant is taking medication to decrease his anxiety and depression and must take this medication "until solving these stressors and finding job"

Degree and Course of Impairment:

The Doctor indicates that the impairment is likely to continue for two years or more and adds the explanation: "If stressor and conflict with x-wife continue and he cannot [afford] to relocate to new place it will continue."

Functional Skills:

The Doctor indicates no physical limitations. They indicate significant deficits with cognitive and emotional function in the areas of executive function, emotional disturbance, motivation, and attention or sustained concentration. Under Functional Skills Comments, they add "low concentration, bad sleep, anxiety all decrease his function/no energy to do daily activity."

Daily Living Activities:

The Doctor indicates that the Appellant is continuously restricted in Social Functioning. They state: "He cannot even seat [sic] and listen to me because of agitation and anxiety and hopeless." Under "additional comments regarding the degree of restriction" the Doctor states "severe." In answer to the question "What assistance does your patient need with Daily Living Activities?" the Doctor states "Nothing but need counsellor & psychologist."

Additional Comments:

The Doctor states:

"He needs financial assistant[sic] for daily life, renting home".

Assessor Report:

The Doctor states that they have known the Appellant for several months and have seen them eleven or more times in the past twelve months. They state that they are the Appellant's family physician and "visit [the Appellant] for walking."

Mental or Physical Impairment:

The Doctor repeats that the Appellant's impairments are anxiety and depression.

Mobility and Physical Ability:

The Doctor indicates the Appellant is independent in all listed areas of mobility and physical ability.

Cognitive and Emotional Functioning:

The Doctor indicates that the Appellant's mental impairment has a major impact on the Appellant's functioning in the areas of:

- emotion
- attention/concentration.

They indicate moderate impact in the areas of:

- insight and judgment
- executive function
- memory
- motivation
- motor activity
- other neuropsychological problems (unspecified).

They indicate minimal impact in the areas of:

- consciousness
- impulse control.

They comment: "He has bad sleep that is effect [sic] his daily life."

Daily Living Activities:

The Doctor indicates that the Appellant is independent in all daily living activities listed on the form except Social Functioning. They comment:

- "He can only go home at night to sleep and because of conflict with my recommendation does not go home in day time. He cannot able to bath regularly. [sic]"
- "He is not able to cook because does not have access to kitchen."

They indicate that the Appellant needs periodic support/supervision for:

- making appropriate social decisions
- developing and maintaining relationships
- interacting appropriately with others
- dealing appropriately with unexpected demands.

For all areas of Social Functioning where periodic support or supervision is indicated, they comment: "His anxiety and depression prevent him from normal act and relationship."

They indicate that the Appellant has marginal functioning with immediate and extended social networks. In answer to the question "If the Applicant requires help, as indicated above, please describe the support/supervision required which would help to maintain them in the community" the Doctor states "counsellings" [sic]. The Doctor says that the Appellant is currently accessing counselling.

Assistance Provided for Applicant:

The Doctor states that help required for daily living activities is provided by "other", and comments that the Appellant "is going to separate need [sic] his parents and sibling in [another country]"

Self Report:

The Appellant states that his disability is severe and makes it difficult to do the following daily activities:

- bathing, shaving, washing his face, and doing basic hygiene regularly
- getting ready for bed and getting dressed (sometimes)
- cleaning his bedroom
- stopping himself from buying things he does not need
- interacting with strangers in public
- dealing with unexpected situations
- taking public transit
 - remembering which stop to get off at
 - understanding bus and train schedules
- making decisions and planning ahead

- doing important tasks first and finishing tasks
- remembering appointments and other information
- understanding what he reads
- hearing what others say to him.

He also states:

- He has a lot of anxiety, stress, confusion, and depression
- He is sensitive to loud sounds
- He feels anxious or scared when he speaks or listens to others
- He needs help from counsellors, friends, and health professionals.

In the additional letter submitted on Reconsideration, the Appellant adds:

- Since submitting the application, his ex-spouse has left the home, taking with them the children and the contents of the home.
- While the change has been helpful for him, in that he “no longer had to endure the yelling, shouting and intimidation”, now he is unable to see or speak to his children, leaving him “even more stressed, anxious, and depressed.”
- The change in his situation “has been helpful for me in one sense, but its [sic] also been triggering and caused my mental state to escalate and heighten to uncontrollable and unmanageable degrees, preventing me from successfully performing certain daily living activities.”
- “It is honestly the most debilitating it has ever been.”
- He has “immense trouble sleeping at night, keeping up with daily hygiene, loss of appetite with no motivation to cook nor have the motivation to even try and complete the simplest chores and basic housekeeping.”
- He has been “told by various community support workers that [he is] lacking with impulse control, especially with finances.”
- He has had to “access various community organizations for services, support, and any help that [he] can get, just so [he] can make it through another day.”

Additional Evidence:

Note from the Doctor, Sept. 1, 2023:

The Doctor states:

- “The above impairment is severe and significantly affect his daily life because he is not able to see his children that cause severe anxiety and panic attack for him and made him nervous and depression that affects his daily activity and cause daily living activities hard and needs assistance.

Sleep patterns are totally changed and wakes up in the middle of the night and falling asleep in the middle of the day. Energy levels are very low. He is doing weekly counselling to keep his mental health in check. Makes a lot of panic calls to social worker on a daily basis to get some reassurance. Impulsive control issues on spending habits due to anxiety." [sic]

Letter from the Advocate, Sept. 5, 2023:

The Advocate, who is an Outreach Worker with a mental health organization, stated:

- They have known the Appellant since April 2023, when he was referred by an urgent care centre for services and support "because he and his ex-[spouse] were separating and the living arrangements were becoming precarious and toxic, therefore negatively affecting [the Appellant's] mental health."
- The Appellant's "mental state was so affected by the negativity and undue stress of the living arrangements and the duration that he was subject to these conditions, that his mental health took quite a turn for the worse and he began showing signs/symptoms of extreme anxiety, panic attacks and inability to regulate his emotions. This unfortunately led to the termination of his employment."
- During their time working with the Appellant, it has been apparent to them that his mental health impairment is severe, and directly and significantly affects his daily living activities.
- The Appellant requires additional help to be able to "relatively manage living his day to day life."
- They have had to "abruptly and assertively (only to ensure that [their] point gets across and so he is able to retain what is being said to him) establish firm workplace and professional relationship boundaries with him to continue to provide the services and supports."
- When the Appellant is under stress, he is unable to regulate his emotions and it is "extremely challenging to work with him, as he not only lacks concentration and becomes very easily distracted, but he is unable to hear or listen or even follow basic instructions, as well as completely bombards the [organization's] cell phone with calls, voicemails, and text messages."
- If the Advocate does not answer or respond, the Appellant shows up at the office.
- The Appellant has sent 15 to 20 text messages to the organization's cell phone during the night, including photos of his children, as late as 4:36 a.m.
- They need to consistently remind the Appellant about their boundaries, the reason those boundaries are important, and what is considered appropriate communication.
- They also give prompting instructions for various tasks and daily living activities on a regular daily basis.

Letter from Practicum Student Counsellor, Sept. 11, 2023:

The Student Counsellor states:

- The Appellant has attended 15 therapy sessions with them between June 8 and September 8, 2023.
- “He presents with emotional distress that negatively influences his day-to-day functioning. His reported challenges include sleep difficulties, panic attacks and feelings of depression. He would benefit from further therapy and intends to continue in therapy with me to work through and resolve these issues.”

Advocate:

At the hearing, the Advocate said:

- The Appellant makes it seem as if he can take care of himself, but he struggles and “it takes its toll.”
- They provide assistance with daily living activities, not daily but regularly, in the areas of impulse control and emotional regulation, through phone calls and in-office visits.
- They give support and guidance, but the Appellant does not retain their directions about appropriate communications; he may send multiple communications by text and phone one night, they set boundaries, and then the next night he repeats the behavior.
- Their reminders and prompts for daily living activities include asking if he has eaten or showered, how long he slept the night before, what he has done towards accomplishing his goals, and referring him to the Doctor or the Counsellor.
- They contact the Appellant every two or three days, or “as often as I can.”
- Sometimes the Appellant will have done the activity they ask about, but sometimes they will see him appearing as if he has not showered in a week, and it will take prompting from the Advocate to get him to shower or eat.

Appellant:

At the hearing, the Appellant said:

- He struggles with disrupted sleep patterns, mainly due to anxiety, where he wakes up with panic attacks every two or three days, or has anxiety early in the morning, and sleeps at odd hours during the day.
- He has been unemployed since May 2023 because he cannot control his emotions.
- He sees his Doctor and the Counsellor every week.
- He described the trauma arising from the behavior of his ex-spouse, who screamed at him and will not let him see his children.
- He has made calls to the Advocate at all hours.
- He tries to bathe five times a week, sometimes skipping one or two days, or does not shave for a couple of days.

- His Counsellor goes through affirmations with him and he tries to have a conscious routine at home.
- Some days he is exhausted and cannot even walk.
- He tries to have one good meal a day but finds it too stressful to cook; for example, the day before the hearing he skipped breakfast and lunch and was very hungry, so he had dinner at a restaurant.

Admissibility of Additional Evidence:

The Ministry did not object to the admissibility of the additional written evidence from the Doctor and the Advocate, and the additional oral evidence of the Appellant and the Advocate.

The Panel finds that the additional evidence is reasonably required for the full and fair disclosure of all matters in the appeal. Therefore, the Panel finds that the additional evidence is admissible under EAA s. 22(4).

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's decision denying the Appellant PWD designation is reasonably supported by the evidence or is a reasonable application of the legislation. The Ministry found the Appellant met the age (over 18) and duration (likely to last more than two years) requirements. However, the Ministry found the Appellant did not meet the requirements for:

- severe mental or physical impairment
- significant restriction on the ability to perform daily living activities
- needing significant help to perform daily living activities.

Appellant's Position:

The Appellant maintains that he meets the five criteria for PWD designation. He says that his depression and anxiety are severe and cause significant restrictions in his ability to perform daily living activities. He says that he receives significant help from his Counsellor and the Advocate to perform daily living activities that are restricted due to severe mental impairment.

Ministry Position:

The Ministry determined that a severe physical impairment had not been established because the Doctor did not diagnose a physical health condition. The Ministry acknowledges that the Doctor reported that the effects of bad sleep, lower concentration and anxiety decreased the Appellant's ability to do daily tasks, but says that limitation shows, at most, a mild physical impairment.

At Reconsideration, the Ministry said that the Doctor's report of the effects of anxiety and depression would indicate moderate-to-severe mental impairment. However, as the Doctor reported that the Appellant is independent in all daily living activities except Social Functioning, the Ministry determined that the Appellant has only a mild-to-moderate mental impairment.

At the hearing, the Ministry stated that they were satisfied that the Appellant has a severe mental impairment, based on the additional note from the Doctor and the oral evidence of the Appellant and the Advocate.

However, the Ministry maintains that there is not enough evidence to establish that the Appellant's ability to perform daily living activities is directly and significantly restricted by that impairment. They argue that the Doctor does not report any restrictions to daily living activities other than Social Functioning, which is not significant overall when the Appellant is independent in all other daily living activities.

The Ministry says that, as it has not been established that daily living activities are significantly restricted, it cannot determine that the Appellant needs significant help with restricted activities. The Ministry also says that the Doctor has not reported that the Appellant receives or requires significant help from another person to perform daily living activities.

Panel Decision:

PWD Designation – Generally

The legislation provides the Ministry with the discretion to designate someone as a PWD if the requirements are met. In the Panel's view, PWD designation is for persons who have significant difficulty in performing regular self-care activities. If the inability to work is the major reason for applying for PWD designation, the Panel encourages applicants to speak to the Ministry about other potential programs such as Persons with Persistent Multiple Barriers to Employment (PPMB) or explore federal government programs such as Canada Pension Plan disability benefits.

Some requirements for PWD designation must have an opinion from a professional, and it is reasonable to place significant weight on these opinions. The application form includes a Self Report. It is also appropriate to place significant weight on the Self Report and evidence from the Appellant, unless there is a legitimate reason not to do so.

The Panel will review the reasonableness of the Minister's determinations and exercise of discretion.

Severe Mental or Physical Impairment

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

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

Physical Impairment:

The Panel finds that the Ministry was reasonable in its determination that, based on the information in the Doctor's reports, the Appellant does not have a severe physical impairment.

The Doctor does not diagnose a physical health condition, and they do not report limitations in physical function other than low energy and sleep disturbance. They report that the Appellant is independent in daily living activities, other than Social Functioning. Therefore, the Panel finds that the Ministry reasonably determined that the Appellant does not have a severe physical impairment.

Majority Panel Decision:

Mental Impairment:

On Appeal, the Ministry says that the additional evidence establishes that the Appellant has a severe mental impairment. The Majority Panel agrees. The Majority Panel finds that the Ministry's determination at Reconsideration that the Appellant has a mild-to-moderate mental impairment is not reasonably supported by the evidence.

The Doctor states that the Appellant has severe depression and anxiety, with deficits in executive function, emotional disturbance, motivation, and attention or sustained concentration. They report that the Appellant has panic attacks, disturbed sleep patterns and low energy. The Doctor reports that the Appellant's mental impairment has major impact on emotion and attention/concentration, and moderate impact on insight and judgement, executive function, memory, motivation, and motor activity. They state that the Appellant cannot even sit and listen to the Doctor because of agitation, anxiety, and hopelessness. At Reconsideration, the Ministry determined that this information supported a determination of moderate-to-severe mental impairment.

The Advocate also reports that they have found the Appellant extremely challenging to work with because the Appellant lacks concentration and is very easily distracted. For example, the Advocate has observed that the Appellant does not appear to retain their assertions about appropriate communication – the nature and frequency of his texts, voice messages and visits to the office confirm that the Appellant is not communicating appropriately or effectively. The Advocate's evidence supports the Doctor's assertion that the Appellant's depression and anxiety are severe and impair his mental functioning.

The Majority Panel notes that, while the Appellant's depression and anxiety appear to have been triggered initially by the stress of separating from his spouse while continuing to live in the same residence in a state of conflict, the Appellant says that his condition has worsened since his spouse left the family home because the spouse will not permit any contact with the children. At Reconsideration, the Ministry said that, without an update from the Doctor, it could not take that change into consideration. The Doctor has now provided an update, in his additional note,

confirming that the Appellant continues to have severe anxiety and depression with significant impacts on his daily living activities.

At Reconsideration, the Ministry appears to have placed greater weight on the Doctor's indication that the Appellant is independent in daily living activities other than Social Functioning, and determined on that basis that the Appellant's mental impairment was only mild-to-moderate. The Ministry stated: "A person having a significant impairment to social functioning, with no significant impacts to their ability to perform and complete their other [daily living activities], does not demonstrate a severe mental impairment overall." The statement suggests that the Ministry is placing greater weight on the ability to perform daily living activities (the physical act of doing it) than on the inability to make daily decisions to perform the activity, when making its determination of whether the evidence demonstrates a severe mental impairment. The Majority Panel finds that the Ministry's assessment of the significance of impaired social functioning is not a reasonable application of the legislation in the Appellant's circumstances, as the legislation does not give greater weight to physical impairment over mental impairment and does not give greater significance to some daily living activities over others.

Further, the Majority Panel finds that the conclusion that the Appellant's impaired social functioning does not have significant impacts on his ability to perform other daily living activities, is not reasonably supported by the evidence. For example, the Appellant may be independent in personal care, in that he is able to bathe himself, but due to mental impairment, he lacks the energy or motivation to do so. Both the Doctor and the Advocate report that the Appellant does not appear to bathe regularly. At the hearing, the Appellant said that he bathes every few days, but in his Self Report, the Appellant admitted that he has not been bathing, shaving, or washing his face regularly because he feels depressed and lacks motivation. The Majority Panel finds that the Appellant tried to present himself in a positive light at the hearing, but the Majority Panel places greater weight on the consistent and objective observations of the Doctor and the Advocate.

The Majority Panel also notes the additional evidence from the Doctor, that the Appellant "has impulsive control issues on spending habits due to anxiety." The Advocate confirms that one of her prompts or reminders to the Appellant is whether he has made impulsive grocery purchases that exceed his funding. Therefore, the Ministry's assumption, at Reconsideration, that there is no direct impact to the Appellant's ability to make decisions about personal activities and finances, (apparently because the Doctor did not report that the Appellant takes significantly longer to complete tasks that have a component of decision-making) is not reasonably supported by the evidence.

The Doctor indicates continuous restriction in Social Functioning, which is defined in the Medical Report as “daily decision-making; interacting, relating and communicating with others.”

“Continuous” is defined in a footnote as: “Continuous assistance - refers to needing significant help most or all of the time for an activity.” In the additional note from the Doctor submitted on Appeal, the Doctor states that the Appellant’s impairment is severe and significantly affects his daily life. The Majority Panel finds that the Doctor’s indications in the Medical and Assessor Reports that the Appellant is independent in daily living activities listed on the forms, other than Social Functioning, reflect the Appellant’s physical abilities, and are not inconsistent with the Doctor’s report of severe mental health issues affecting decision-making and interacting with others.

The Majority Panel notes again that, at the hearing, the Ministry advised that it has changed its position and is satisfied that the Appellant has a severe mental impairment. The Majority Panel finds that the Ministry’s determination at Reconsideration that the Appellant does not have a severe mental impairment is not reasonably supported by the evidence.

Restrictions to Daily Living Activities (Activities):

A prescribed professional must provide an opinion that the applicant’s physical or mental impairment restricts the ability to perform the daily living activities (“Activities”) listed in the legislation. The Activities that are considered are listed in the Regulation. Those Activities are:

- Prepare own meals
- Manage personal finances
- Shop for personal needs
- Use public or personal transportation facilities
- Perform housework to maintain the person’s place of residence in acceptable sanitary condition
- Move about indoors and outdoors
- Perform personal hygiene and self care
- Manage personal medication.

For a person who has a severe mental impairment, Activities also include:

- Make decisions about personal activities, care, or finances
- Relate to, communicate, or interact with others effectively.

At least two Activities must be restricted in a way that meets the requirements. Not all Activities, or even the majority, need to be restricted. The inability to work and financial need are not listed as Activities and are only relevant to the extent that they impact listed Activities.

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

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

The Medical Report and Assessor Report also have activities that are listed, and though they do not match the list in the Regulation exactly, they generally cover the same activities. The Medical Report and Assessor Report provide the professional with an opportunity to provide additional details on the applicant's restrictions.

As noted above, there are two Activities specific to severe mental impairment:

- make decisions about personal activities, care, or finances, and
- relate to, communicate, or interact with others effectively.

In the Medical Report, the Ministry's form combines those two Activities as "Social Functioning", defined as "daily decision making; interacting, relating and communicating with others" and states that the category only applies for persons with an identified mental impairment or brain injury. For Social Functioning, the Doctor indicates continuous restriction, defined on the form as "needing significant help most or all of the time for an activity."

The Majority Panel finds that the information provided by the Doctor confirms direct and significant restrictions to the Appellant's ability to perform Activities. The Doctor indicates that the Appellant's ability to perform the following Activities is continuously restricted, with additional information provided by the Advocate and the Appellant in his Self Report:

- Make decisions about personal activities, care or finance:
 - Doctor reports significant deficits in executive function (planning, organizing, sequencing, calculations, judgement) and motivation (loss of initiative or interest)
 - Doctor also notes "impulsive control issues on spending habits due to anxiety" and reports that the Appellant "makes a lot of panic calls to social worker on a daily basis to get some reassurance"
 - Advocate calls the Appellant as often as their schedule and appropriate work boundaries allow, to prompt actions the Appellant is physically able to do independently, but lacks energy and motivation to perform, such as personal hygiene and shopping for food

- Appellant reports he has difficulty making decisions, planning ahead, doing important things first, finishing tasks and remembering appointments.
- Interacting, relating and communicating with others:
 - Doctor reports:
 - “his anxiety and depression prevent him from normal act and relationship”
 - the Appellant cannot sit and listen to the Doctor because of agitation, anxiety and hopelessness
 - the Appellant has marginal functioning with immediate and extended social networks
 - Advocate says that, when the Appellant is experiencing high anxiety, “he is unable to hear or listen or even follow basic instruction, as well as completely bombards the [organization’s] cell phone with calls, voicemails, and text messages. If I don’t answer or respond to his way of contact due to being in the middle of other appointment(s) working with other clients or busy with previously scheduled engagement(s), or even when we close the office and lock up for staff breaks and/or lunch hour, then {the Appellant] feels as though he needs to resort to just randomly showing up at the office to speak with me. It has even gotten to a point where the [organization’s] cell phone received more than 15 to 20 text messages throughout an entire night, including receiving pictures of his children and the last text message sent at 4:36am.”
 - The Appellant’s behavior with the Advocate persists despite clear and assertive statements about workplace and professional working relationship boundaries.
 - The Appellant reports that he lost his employment due to emotional dysregulation at work. (While employability is not a consideration in determining PWD designation, the Panel may consider behavior in a workplace setting that relates to the ability to perform Activities.)

The Ministry acknowledges that the Doctor reports mental impairments restricting Social Functioning but places greater weight on the absence of restrictions on other Activities, stating that the restriction on Social Functioning “is not significant overall given that [the Appellant is] reported to be independent with all other [Activities].” However, Social Functioning covers two Activities listed in section 2(1)(b) of the Regulation, and the Majority Panel finds that the evidence shows that the restrictions on those two Activities due to severe mental impairment, as reported by the Doctor and further described in the evidence of the Advocate and the Appellant, are significant and continuous.

Help Required:

A prescribed professional must provide an opinion that the person needs help to perform the restricted Activities. Help means using an assistive device, the significant help or supervision of

another person, or using an assistance animal to perform the restricted Activities. An assistive device is something designed to let the person perform restricted Activities.

In the Reconsideration Decision, the Ministry states that the Doctor does not report that the Appellant needs significant help of another person to perform restricted Activities. This statement is incorrect. In their additional note, the Doctor states that the Appellant needs counselling "to keep his mental health in check". In the Assessor Report, under the heading Social Functioning, the Doctor indicates that the Appellant needs periodic support or supervision for making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, and dealing appropriately with unexpected demands. They specify that the help the Appellant needs in these areas is counselling.

The Majority Panel finds that the Appellant receives significant assistance from the Counsellor, whom he has been seeing weekly, and the Advocate, who calls the Appellant as often as her work schedule permits, to prompt and remind him to do basic activities. The Advocate's time is limited, and the Appellant seeks help more often than he can receive it, as he calls the Advocate repeatedly. Part of the help the Advocate provides is guidance in setting appropriate boundaries for interacting, communicating, and relating effectively with others.

Considering the Doctor's opinions in the Assessor Report and the additional note, with further information provided by the Advocate, the Majority Panel finds that the Appellant requires help to perform restricted Activities. The Majority Panel finds that the Ministry's determination that Appellant does not require the significant help of another person to perform restricted Activities is not reasonably supported by the evidence.

Dissenting Decision:

In order to determine if a person has a severe mental impairment, the legislation requires a prescribed professional, which includes a registered medical professional, to complete a Medical Report and in this case the same medical professional, the family doctor, also completed the Assessor's Report. These requirements provide independent qualified opinions as to the mental impairment of the person. How does the ministry determine the degree of severity? The legislation and regulations identify certain Daily Living Activities (DLA's) for which the prescribed professional must answer how these DLA's are performed; with or without restrictions and whether or not the restrictions are continuous or periodic.

As noted in the majority panel's decision, the Medical Report noted all DLA's were performed without restrictions, with the exception of Social Functioning. At least two DLA's must be restricted in a way that meets the requirements. Not all DLA's need to be restricted. While the

Medical Report and Assessor Report do not match the list in the Regulation exactly, they generally cover the same activities. The legislation requires:

- s.2 (1) For the purposes of the Act and this regulation, "daily living activities",
- (a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:
 - (i) prepare own meals;
 - (ii) manage personal finances;
 - (iii) shop for personal needs;
 - (iv) use public or personal transportation facilities;
 - (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
 - (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self care;
 - (viii) manage personal medication, and
 - (b) in relation to a person who has a severe mental impairment, includes the following activities:
 - (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.

DLA's noted in 2(1)(b) for persons with mental impairment are in ADDITION to 2(1)(a) meaning all DLA's apply to persons with a mental impairment. The Medical Report combines 2(b)(i) and (ii) above into one category entitled Social Functioning, which the doctor identified as the only DLA that was restricted.

The entire panel agrees with the ministry that there are no physical impairments. This is not disputed by the appellant.

The majority panel agree that the requirements of 2(1)(b) (i) and (ii) are met and therefore meets the requirement of having at least two DLA's restricted and therefore meets the requirements for designation of a Person with Disabilities.

As the dissenting panel member, I do not agree that the requirements under 2(1)(b)(i) are met. The majority panel argues that dining at a restaurant the evening prior to the hearing constitutes making poor decisions about finances. The majority panel argues that bathing 2-3 times a week and not shaving regularly constitutes making poor decisions about personal care. I do not agree that the requirements listed in the legislation under 2(b)(i) were met.

While I sympathize with the appellant's marital struggles and the affect the marital breakup has had on his mental health, I confirm the ministry's decision that the evidence provided, at the

time of reconsideration and at the hearing, does not support a severe mental impairment for a designation of a Person with Disabilities.

Conclusion:

The Majority Panel finds that the Ministry's decision to deny the Appellant PWD designation is not reasonably supported by the evidence. The Majority Panel rescinds the reconsideration decision. The Appellant is successful in the appeal.

Schedule – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

Persons with disabilities

s. 2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

Employment and Assistance for Persons with Disabilities Regulation

Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

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

(i) make decisions about personal activities, care or finances;

(ii) relate to, communicate or interact with others effectively.

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

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

(i) medical practitioner,

ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

(i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or

(ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*,

if qualifications in psychology are a condition of such employment.

(3) The definition of "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

Employment and Assistance Act

s. 22 (4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part G – Order

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

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

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

Legislative Authority for the Decision:

Employment and Assistance Act

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

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

Part H – Signatures

Print Name
Susan Ferguson

Signature of Chair

Date (Year/Month/Day)
2023/10/01

Print Name
Daniel Chow

Signature of Member

Date (Year/Month/Day)
2023/10/02

Print Name
Diane O'Connor (dissenting member)

Signature of Member

Date (Year/Month/Day)
2023/10/06