Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated September 27, 2023. The ministry denied the appellant designation as a person with disabilities (PWD). They determined that the appellant met the age requirement (18 years or older) and the duration requirement (impairment is likely to continue for at least 2 years). However, the ministry was not satisfied that the evidence establishes that

- the appellant has a severe physical or mental impairment;
- the appellant's impairment significantly restricts the ability to perform daily living activities; and
- the appellant requires the significant help or supervision to perform daily living activities.

The ministry also found the appellant was not one of the prescribed classes of persons eligible for PWD on the 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

The full text of these sections of legislation is set out at the end of the decision.

Part E – Summary of Facts

Evidence Before the Ministry at Reconsideration

1) The appellant's PWD application:
- The Medical Report and Assessor Report sections (June 5, 2023) completed by a general practitioner (the doctor) who has known the appellant for 5 years and has seen the appellant 11 or more times in the past 12 months.
- To complete this form, the doctor used an office interview and file/chart information.
- The appellant did not complete the Applicant Information (Self Report) section.

2) The appellant's Request for Reconsideration

3) Reports from various medical professionals:
- X-Ray Abdomen (March 4, 2022)
- X-Ray Chest (March 4, 2022)
- History and Physical Note (May 4, 2022)
- X-Ray Ribs Left (May 11, 2022)
- X-Ray Lumbar Spine, Sacrum and Coccyx (May 11, 2022)
- CT Scan Lumbar Spine (June 4, 2022)
- History and Physical Examination (July 3, 2022)
- Internal Medicine (August 3, 2022)
- X-Ray Chest (August 3, 2022)
- CT Scan Abdomen Pelvis (August 3, 2022)
- MRI Lumbar Spine (August 4, 2022)
- Page 2 of a report [page 1 is not provided] (August 19, 2022)
- Psychiatry (August 25, 2022)

4) Doctor's note (May 8, 2023)

5) Discharge Prescription (August 18, 2022)

6) List of prescribed medications for the period of January to April 2023

7) A form from a charitable organisation regarding equipment on loan.

New Evidence Provided on Appeal and Admissibility

The appellant submitted a Notice of Appeal that contained no new evidence.

The advocate wrote a letter to the doctor and provided them with a checklist and a comment to sign. The doctor checked all boxes and signed (October 27, 2023).

At the hearing, the appellant and advocate answered questions from the panel. The ministry did not provide additional evidence but provided an explanation concerning their decision.

The ministry did not object to the admission of the new evidence. The panel finds that the new information from the doctor and the information from the appellant and advocate on appeal and at the hearing is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, because it provides more information on the appellant's impairments. The panel therefore admits this information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

Summary of Relevant Evidence

Medical Report

Diagnoses:

- Spinal Stenosis with Peripheral Neuropathy (onset February 2022)
- Degenerative Disc Disease lumbar spine (onset February 2022)
- Severe Anxiety (related to bankruptcy) (onset August 2022)

Health History:

- "Severe peripheral neuropathy, such that walking is affected due to poor balance and proprioception. Has had multiple falls, with resulting sacral and rib fractures and head injury.
- Moderate spinal stenosis and disc degeneration with leg weakness and impaired control of bladder and bowel movements.
- Bankruptcy, partly due to prolonged hospitalization, is causing extreme anxiety with loss of appetite and insomnia. Not able to afford to eat regular meals."
- The appellant has not been prescribed any medication and/or treatments that interfere with her ability to perform daily living activities.
- The appellant does not require any prostheses or aids for her impairment.

Degree and Course of Impairment:

- "The impairments are likely to be permanent. No resolution or substantial minimization of symptoms expected."

Functional Skills:

- Can walk 1-2 blocks unaided on a flat surface.
- Climb more than 5+ steps unaided.
- Has no limitations with lifting.
- Has no limitations with remaining seated.
- Has no difficulties with communication.
- Has significant deficits with cognitive and emotional function in the area of emotional disturbance (e.g. depression, anxiety)
    - "She is overwhelmed emotionally by her bankruptcy, and her physical deterioration."

Additional Comments:

- "Prolonged admission to [a hospital] from 3/8/22 to 18/8/22."

Assessor Report

The appellant lives alone.

Impairments that impact ability to manage Daily Living Activities:

- "Impaired walking due to severe peripheral neuropathy."

Ability to Communicate:

- Speaking, reading, writing, and hearing abilities are good.

Mobility and Physical Ability:

- The appellant is independent with walking indoors and standing.
- She needs periodic assistance from another person with walking outdoors ("prone to falls"), climbing stairs, lifting, and carrying ("frail, weak legs").

Cognitive and Emotional Functioning (impact on daily functioning)

- "Severe anxiety related to economic problems. Insomnia, poor appetite, poor concentration and motivation."
- Major impact on emotion.
- Moderate impact on bodily functions, attention/concentration, executive.
- Minimal impact on impulse control, insight and judgment, memory, motivation.

- No impact on consciousness, motor activity, language, psychotic symptoms, other neuropsychological problems, other emotional or mental problems.

Daily Living Activities:

- Personal Care: all tasks (dressing, grooming, bathing, toileting, feeding self, regulating diet, and regulating diet, transfers in/out of bed and transfers on/off chair) are managed independently.
- Basic Housekeeping: both tasks (laundry and basic housekeeping) require periodic assistance form another person.
- Shopping: Reading prices and labels, making appropriate choices, and paying for purchases are independently managed. Going to and from stores and carrying purchases home require periodic assistance from another person.
- "Friends help with transport and carrying groceries."

"Not able to drive beyond her local neighborhood due to her neuropathy affecting her proprioception in her legs."

- Meals: all tasks (meal planning, food preparation, cooking, safe storage of food) are managed independently.
- Pay Rent and Bills: all tasks (paying rent and bills, banking, and budgeting) are managed independently.
- Medications: all tasks (filling/refilling prescriptions, taking as directed, and safe handling and storage) are managed independently.
- Transportation: all tasks (getting in and out of a vehicle, using public transport, and using transit schedules and arranging transportation) are managed independently.
- Social Functioning:
    - Appropriate social decisions and interacting appropriately with others are managed independently. Developing and maintain relationships ("Cluster B personality traits"), dealing appropriately with unexpected demands, and securing assistance from others require periodic support/supervision.
    - Marginal functioning with immediate and extended social networks.

Assistance Provided:

- The appellant receives help from family and friends.
- There is no indication that the appellant uses equipment or a device to help compensate for her impairment.
- The appellant does not have an assistance animal.

Programs or services provided to the appellant:

- "Referrals, prescriptions. Primary health care, regular B12 injections."

Request for Reconsideration

The appellant wrote:

- Her medical conditions make her day-to-day living very difficult.
- She suffers from spinal stenosis with severe peripheral neuropathy. She also has Cauda Equina compression and has lost control of her bowel and bladder. She also has severe anxiety.
- Her doctor told her that her impairments are likely to be permanent.
- Her doctor told her that her entire nervous system is affected by severe neuropathy, made worse by anxiety.
- She has frail weak legs. She has pain at every step, and she walks very slowly.
- She has the use of a cane. When she got palsy in her hand it has been very difficult to use, "[her] doctor gave her a requisition for a 4 W/D walker Apr. 12/2023. It was from Canadian Red Cross. I had to have it returned as it was 35 lbs – way too heavy for me. Never used it! I could not lift it."
- Her friends and family help her get to appointments and to go shopping. They drive her and assist her to get in and out of their vehicle. They hold her arm when she walks.
- When she needs something, they pick it up and deliver it to her many times.
- They also help her buying groceries that she cannot afford to pay for. They buy, deliver and unpack.
- She has limitations lifting – she can lift "maybe under 5 lbs".
- She also has limitations sitting – she can sit for a very short time and always sits "on a couple of blankets". She gets very bad pain "in [her] lower lumbar and buttocks."
- At least every second day she ends up staying on the couch all day because she is in so much pain.
- When she is in this state, she calls her friends of family to her place for help. They make food for her, help her go to the bathroom and with household duties.
- She feels her body is deteriorating more each day due to her nerve damage in feet and legs, the palsy in her hand, and her constant excruciating pain.
- She has uncontrollable explosive diarrhea and has been wearing adult diapers for the past 1 ½ years.
- She is prone to falls. She has fainted many times, waking up with contusions on her head. She lives by herself, and this is scary. Sometimes it is difficult to get up because she is so weak.
- Although she is taking major pain medication she is still in a lot of pain. Now she cannot afford to pay for 1 of the ones she is supposed to take.

- Her depression, stress and anxiety is not only related to bankruptcy but is also related to the deterioration of her body. She has no appetite. If she eats the food does not stay in her stomach; she ends up vomiting or with explosive diarrhea.
- She used to own a successful store. After her injury 1 1/2 years ago her health started to deteriorate, she has been in so much pain that she was not able to continue and had to close her store.
- Now she must rely on friends and family for regular and continued help and support.

Reports from various medical professionals

X-Ray report (March 4, 2022):

- "RAD Abdomen Multi Views"
- "ABDO discomfort: Hx of Diverticulitis"
- "There is a nondisplaced fracture laterally on the left 10th rib.
- Degenerative changes involve the lower lumbar dis spaces and facets.
- The bowel gas pattern is preserved, without dilated loops, air-fluid levels, or gross free air.
- The soft tissue contours are preserved, without underlying mass or abdominal calcification."

X-Ray Chest (May 4, 2022)

- "Lt lateral chest pain: Fall on Saturday pain to left side."
- "A subtle nondisplaced fracture is noted laterally at the left 10th rib.
- The bony thorax is otherwise clear, without secondary fracture, although dedicated rib views are not obtained.
- The lung fields, pleural spaces, mediastinal contours are preserved.
- No acute or significant traumatic intrathoracic abnormality."

History and Physical Note (May 4, 2022)

- "Chief complaint: Chest pain."
- "The patient had a fall at home about a week ago. She landed heavily on her left chest and she has had some pain in the left upper chest ever since. It is worse with deep inspiration, movement or bending. The pain is improving. She has had no fever hemoptysis or shortness of breath. She has noticed that she been [sic] more constipated for the last few days. She has also noticed with her constipation that she has had some fecal leaking without actual bowel movement. There has been a little bit of blood. She has had no nausea vomiting. She is eating well. She did have a bowel movement in the emergency department. She is not sure if her urination has

been normal. For pain she has been taking some ibuprofen but she has recently stopped that.

- Past history: She is usually in good health. She has a history of high blood pressure, diverticulitis. Medications Please see Pharmanet. On physical exam she was well and in no distress. Her vital signs were normal. She was well hydrated. She had a slightly tender anterior lateral chest wall with no subcutaneous air entry bilaterally and good excursion. Her work of breathing was normal. Heart sounds were normal. She had a soft nontender abdomen. She was not distended.
- Impression and plan: I suspect the patient has a chest wall contusion, possibly a fractured rib. However, her pain is improving and she has no respiratory symptoms. Her blood work is unremarkable. Will get a chest x-ray and an abdominal view. This patient has a single fractured rib on the left. There is pneumo or hemothorax. She mobilized well in the emergency department and her pain is well controlled. She will be discharged home for follow-up with her GP."

X-Ray Ribs Left (May 11, 2022)

- "History: follow up left rib fracture still hurts after 2 months also had fall onto her buttocks March 15 query fracture coccyx or l spine.
- Findings: Comparison is made to previous study performed March 3, 2022. Left 10th rib fracture anterolaterally is again seen. This again shows minimal displacement. There is some external callus formation which is developed about the fracture site, however solid bridging union is not yet evident. The remainder of the exam is unremarkable and unchanged."

X-Ray Lumbar Spine, Sacrum and Coccyx (May 11, 2022)

- "History: follow up left rib fracture still hurts after 2 months also had fall onto her buttocks March 15 query fracture coccyx or l spine.
- Findings: no previous studies are available for comparison. There are 5 lumbar type vertebrae in relatively normal alignment. There is multilevel degenerative disc disease. This is mild-to-moderate at the L4/L5 level and mild at the L2/L3 and L3/L4 levels. Multilevel facet degenerative change suspected at the lower 3 lumbar levels, minimal. Pedicles are intact. Sacroiliac joints are congruent. The sacrum appears reasonably well defined, however there is focal acute angulation to the anterior cortical contour at the 3rd sacral segment and suspicious for a minimally comminuted impacted fracture in this region. No significant displacement. No presacral soft tissue swelling."

CT Scan Lumbar Spine (June 4, 2022)

- Findings: The vertebral heights are maintained. There is grade 1 anterolisthesis of L4 on L5. The alignment is otherwise maintained. There is severe intervertebral dis space narrowing at L4-5, mild at L5-S1 and moderate at the remainder of the lumbar levels…
- Impression: Multilevel lumbar spondylosis most pronounced at L4-L5 where there is moderate disc bulge with superimposed left paracentral disc extrusion resulting in moderate central canal stenosis and moderate bilateral foraminal narrowing."

History and Physical Examination (July 3, 2022)

- "1 day history of urinary frequency dysuria urgency. No fever no chills no nausea no vomiting no flank pain no hematuria."
- "Physical Examination: 1. General: Alert, Appropriate. 2. Respiratory: Good breath sounds. Equal. No adventitious sounds. 3. Abdomen: Soft. Nontender. No masses. No rebound or guarding. 4. Cardiovascular: Normal S1.S2. No murmurs. Good peripheral pulses. Extremities warm and pink. No peripheral edema."
- "… patient was started on Cipro 5000 patient was started on Tylenol 3 follow up family doctor 1 week if chest pain shortness of breath back pain return to emergency department."

Internal Medicine (August 3, 2022)

- "Past medical history: 1. Hypertension , managed on antihypertensives. 2. Unclear if the patient has diverticulosis or diverticulitis history… 3. Many abdominal surgeries…
- Social history: Patient lives in [a city] and manages a [retail] store. She stopped drinking a few months ago before that was drinking an alcoholic beverage every few days. She denies any smoking, recreational or IV drug history. She has received 3 COVID vaccinations. She is independent for her activities of daily living…
- Assessment: overall, [the appellant] … in the context of two previous falls approximately 5 months ago, has ongoing bilateral back pain that extends into her feet. She was also concurrently found to have mild hyponatremia and mild anemia that is macrocytic in nature…"

X-Ray Chest (August 3, 2022)

- "History: ?Cancer back pain weight loss"
- "Findings: The lungs are clear with no pleural effusions or pneumothoraces. The cardiomediastinal and hilar contours are within normal limits. No acute or aggressive osseous abnormalities are demonstrated."

CT Scan Abdomen Pelvis (August 3, 2022)

- "History: ?Cancer, 30 lbs. wt loss back pain"
- "Impression:
    - 1. Incompletely characterized partially exophytic left renal lesion measuring 1.2 cm in the interpolar region. This may represent a hyperdense cyst …
    - 2. Mild intrahepatic and extrahepatic biliary duct dilatation, with CBD remaining dilated to level of ampullary no obstructing stone cause identified." Page 2 of a report dated August 3, 2022
    - "3. Multilevel degenerative changes in the lumbar spine with multilevel moderate spinal canal stenosis and severe subarticular recess narrowing L4-5 with probable compression of the traversing left L5 nerve root. This would be better characterized with dedicated MRI of the lumbar spine, if indicated."

MRI Lumbar Spine (August 4, 2022)

- "Impression: 1. Mild degenerative central spine stenosis at L3-4. 2. Moderate degenerative central spinal stenosis at L4-5. 3. Marked right foraminal narrowing at L4-5 with probable nerve root compression."

Page 2 of a report [page 1 has not been provided] (August 19, 2022)

- "who felt that she had a mostly resolved delirium and was safe discharge and also identified likely cluster B personality. They will arrange for her to have further psychiatric followup and support in the community. [The appellant] was quite keen for discharge with her 2 [children] who will keep an eye on her over the next few days given her recent delirium. She is aware of what symptoms to monitor in regard to her back pain and spinal stenosis. I have asked her to follow up with her family physician regarding her hospital stay and to ensure her electrolytes remain stable."

Psychiatry (August 25, 2022)

- "Reason for referral: Assessment and management of possible underlying bipolar affective disorder and evaluation of possible ongoing delirium."
- "[The appellant's child] reports that [the appellant] has remained relatively functional in the community with the ability to own [a store]. [The appellant] describes independence in her basic and instrumental activities of daily living. She manages her own personal and business-related bills. … She reports a good relationship with various clientele at her store…She was future oriented with a plan to return home and to re-open her store… it will be difficult to fully diagnose a personality disorder from a 1-time encounter with possible residual delirium… current psychosocial stressors due to her medical issues, limiting her ability to continue operation of her store on a regular basis."

A doctor's note states that the appellant was hospitalized from August 2 – August 19, 2022 "for an acute medical illness".

Doctor's submission (new evidence, October 27, 2023)

The doctor signed the following prepared statement: "It is my medical opinion that [the appellant] has severe conditions that will last for more than 2 years. I have checked the appropriate boxes where I confirm that she is directly and significantly restricted in her ability to perform her daily living activities and requires significant help to perform the activities, noted above." The doctor checked all boxes and initialed each page.

"This is to confirm, in my medical opinion that [the appellant] suffers from severe conditions including:

☐ Spinal Stenosis with Severe Peripheral Neuropathy
☐ Degenerative Disc Disease of the lumbar Spine
☐ Hypertension
☐ GERD
☐ Anxiety
☐ Depression
☐ [The appellant] is directly and significantly restricted in her ability to do her daily living activities continuously, as a result of the conditions noted above.

Restrictions and assistance needed:

☐ **Basic mobility & Climbing stairs**: significant restrictions walking more than 1 block or climbing more than 5 stairs without taking a break to chronic shooting pain and weakness in legs, back pain, and numbness in both feet. Due to the numbness in feet, there are often times when [the appellant] is walking and has been unable to feel her shoes or slippers coming off her feet. She must be holding onto the railing for support going up or down the stairs. [The appellant] takes 3X longer with basic mobility and uses a cane when feeling weak or dizzy.
☐ **Lifting, carrying & Holding**: directly restricted from lifting, carrying, or holding more than 5 lbs. due to chronic pain and weakness. Requires continuous assistance from her children and friends.
☐ **Sitting & Standing:** significant restrictions sitting longer than 30 minutes due to chronic back pain. [The appellant] constantly readjusts her position and sits on pillows or blankets due to pressure on her lower lumbar and buttocks. She is unable to stand longer than 2-3 minutes at a time due to increased pain, weakness, fatigue, and numbness in her feet.

☐ **Dressing, Grooming & Bathing:** direct restrictions with personal care due to chronic pain and weakness. [The appellant] must sit when getting dressed, neglects doing her hair or make-up most of the time and has difficulty standing in the shower. She holds onto the shower wall for support and sits on the toilet lid when drying off afterwards. She would benefit from using a shower chair. Additionally, [the appellant] must always wear shoes due to numbness in her feet.

☐ **Toileting:** direct restrictions with toileting due to incontinence. [The appellant] experiences daily bowel and bladder issues and wears adult incontinence products. (Depends). She must always be near a washroom and takes 2X longer transferring on and off the toilet.

☐ **Feeding self:** direct restrictions due to lack of appetite. [The appellant] usually eats only one meal per day.

☐ **Transfers:** Takes 2-3X longer to get in and out of bed or on and off chairs due to chronic pain, weakness, and fatigue.

☐ **Laundry & Housekeeping**: significant mobility restrictions with all laundry and cleaning duties due to chronic pain. [The appellant's] mobility issues prevent her from lifting and carrying baskets of laundry, and her ability to sweep, mop, vacuum, or stand to wash dishes. Her children provide continuous assistance.

☐ **Shopping:** significant restrictions with shopping due to mobility issues. [The appellant] is unable to drive beyond a few blocks to the nearby store due to neuropathy. She has difficulty standing in line-ups to pay for her items and requires continuous assistance carrying her purchases into her home.

☐ **Meals:** significant restrictions with food preparation and cooking due to mobility issues and lack of appetite. [The appellant] mostly prepares quick/easy meals or snacks. She also has difficulties standing longer than 2-3 minutes and takes breaks to sit down. Friends and family also bring her meals 1-2X per week.

☐ **Banking:** direct restrictions with accessing the bank due to mobility issues. [The appellant] experiences increased anxiety when budgeting her money and paying her bills.

☐ **Medications:** direct restrictions with accessing medical appointments and going to the pharmacy due to mobility issues. [The appellant] forgets to take her medications 1-2X per week and only remembers after waking up during the night in severe pain.

☐ **Transportation:** mobility issues getting in and out of a vehicle. [The appellant] holds onto the car door for support and takes 2X longer. She avoids taking transit and requires transportation from her children or friends to access the community if driving more than a few blocks. Further, [the appellant] uses a handicap parking permit.

☐ **Social Functioning:** [The appellant] requires continuous support dealing with unexpected demands as she becomes easily overwhelmed and anxious. Maintaining relationships is difficult due to her medical impairments.

Mental Health:

☐ **Sleep Disturbances:** Major impact. [The appellant] suffers from insomnia and only gets 3 hours of broken sleep per night. She was prescribed sleeping medication but stopped taking it after a few nights due to feeling groggy.
☐ **Consciousness:** Moderate impact. Experiences dizziness and drowsiness related to her medications.
☐ **Emotion:** Major impact. [The appellant] experiences severe anxiety, panic attacks, and depressive moods.
☐ **Impulse control:** Minimal impact.
☐ **Insights & judgement:** Minimal impact
☐ **Attention & concentration:** Moderate impact. Difficulty focusing and poor short-term memory. [The appellant] sometimes forgets important appointment dates.
☐ **Executive function:** Moderate impact.
☐ **Memory**: Minimal impact.
☐ **Lack of motivation:** Minimal impact."

At the Hearing

To questions by the panel the appellant answered that sometimes she uses a cane. She has to stay all day on the couch all at least twice a week, depending on how much sleep she gets the night before. The appellant and advocate explained that they had 2 phone conferences where they discussed the information in the PWD application and determined which information was missing. Then the appellant saw her doctor on October 27, 2023, and discussed the new information with them. The doctor agreed with the written statements that were presented to them, checked the boxes, signed and initialed each page.

The ministry explained that, had the new information from the doctor been available to them at reconsideration, they would have found the appellant eligible for PWD designation because she meets all 5 legislated criteria. They would have found that the appellant has a severe physical as well as severe mental impairment.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision that the appellant was ineligible for PWD designation was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. That is, was the ministry reasonable when it determined that

- the appellant does not have a severe physical or mental impairment;
- the appellant's impairment does not significantly restrict her ability to perform daily living activities; and
- the appellant does not require the significant help or supervision to perform daily living activities.

Panel Decision

Severity of Impairment – Physical or Mental

Section 2 of the Act requires the Minister to be satisfied that the appellant has a severe impairment. "Severe" and "impairment" are not defined. 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 daily physical and mental functioning including any restrictions is a reasonable interpretation of the legislation. However, the panel notes that frequency and/or duration of impairment is not required in the assessment of severity by the legislation at this stage of the legislative test. The panel also notes that the legislation does not identify employability or financial limitations as considerations when determining PWD eligibility.

Physical Impairment

Positions of the Parties

The appellant argues that she has a severe physical impairment which makes her day-to-day living very difficult. She is prone to falls, has fainted many times and injured herself as a result. Sometimes she has difficulties getting up because she is so weak. Most days she has to stay on the couch because she is in so much pain. She can only lift less than 5 lbs. She can only sit for a very short time and always sits on blankets because of her pain. She walks very slowly because she is always in pain. She has no appetite, and when she eats the food does not stay in her system. Her health is deteriorating, and although she is taking strong pain medications she is in a lot of pain. She must rely on friends and family for regular and continued help and support.

The ministry's position at reconsideration was that, based on the information provided, it could not determine that the appellant has a severe physical impairment. The ministry determined that the assessments provided by the doctor indicate that due to leg weakness and poor balance, walking is difficult for the appellant which speaks to a moderate rather than a physical impairment. The ministry further based their decision on the following medical evidence: The appellant requires no aids or prosthesis; the appellant can walk 1 to 2 blocks unaided on a flat surface and climb 5+ steps unaided; there are no limitations on how much weight she can lift and on how long she can remain seated. She is independently able to manage walking indoors and standing and requires periodic assistance from another person to manage walking outdoors, climbing stairs, lifting, and carrying and holding. At the hearing the ministry said that, considering the new evidence of the doctor, the appellant would have met this criterion.

Panel analysis

The panel finds that the ministry's determination that the appellant does not have a severe physical impairment is not reasonably supported by the evidence. In the PWD application, the appellant's doctor confirms that she is prone to falls which in the past have resulted in bone fractures and a head injury. In their new information, the doctor confirms all the following: The appellant cannot walk more than 1 block or climb more than 5 stairs without taking a break due to pain, weakness in her legs, and numbness in both feet. Due to this numbness, the appellant is often unable to feel her shoes or slippers coming off her feet. The appellant uses a cane when she feels weak or dizzy. She cannot lift, carry, or hold more than 5 lbs. due to chronic pain and weakness. She cannot sit longer than 30 minutes due to chronic back pain, needs to constantly readjust her position and has to sit on pillows or blankets due to the pressure on her lower lumbar spine and buttocks. She is unable to stand longer than 2-3 minutes at a time due to pain, weakness, fatigue, and numbness in her feet. She requires continuous assistance from her children and friends.

The panel notes that there are substantial inconsistencies between the doctor's initial information, their new information and information from medical reports. For example, initially, the doctor did not mention the appellant's back pain which they mentioned later, and which is also mentioned in several medical reports. Initially the doctor confirmed the appellant does not need any assistive device and has no limitations with lifting and sitting, while later on they confirm she needs a cane and is restricted with lifting and sitting. Initially, the assistance required was periodic, not continuous. The doctor's initial assessment and several medical reports note that the appellant had multiple falls, while the doctor's later assessment makes no mention of falls. The doctor's evidence would have

been clearer had they explained these inconsistencies. However, despite these inconsistencies, the panel finds that the doctor's original description of severe peripheral neuropathy, poor balance, repeated falls, and weak, frail legs is consistent with the doctor's recent assessment of severe limitations in the appellant's ability to mobilize and with the appellant's description at reconsideration and appeal.

Mental Impairment

Position of the Parties

The appellant's position is that she has a severe mental impairment caused by depression, stress and anxiety.

At reconsideration the ministry determined that the information provided does not establish that the appellant has a severe mental impairment. Based on the following evidence, the ministry found that the level of the appellant's independence was not indicative of a severe mental impairment:
According to the doctor, the appellant experiences a significant deficit with her cognitive and emotional functioning in the area of emotional disturbance. "Severe anxiety related to economic problems. Insomnia, poor appetite, poor concentration, and motivation." This deficit impacts her cognitive and emotional functioning as follows: 1 major impact in the area of emotion; 3 moderate impacts in the areas of bodily functions, attention/concentration, and executive; 4 minimal impacts in the areas of impulse control, insight and judgement, memory, and motivation; and no impacts in the remaining areas. The appellant does not have any difficulties with communication and her levels of speaking, reading, writing, and hearing are good. "Cluster B personality traits." The appellant requires periodic support/supervision with developing and maintaining relationships, dealing appropriately with unexpected demands, and securing assistance from others. However, the doctor does not describe the degree and duration of support/supervision to determine if this represents a significant restriction to the appellant's overall level of social functioning. The appellant has marginal functioning with both her immediate and extended social networks; however, the doctor does not describe what help is required to maintain her in the community. The doctor indicates the appellant is independent with daily living activities that would typically be difficult for someone who experiences significant restrictions to their mental functioning, such as making decisions about personal activities, care, or finances, as well as relating to, communicating, or interacting with others effectively. Further, the appellant has no difficulties with communication, can independently make appropriate social decisions, and interact appropriately with others.

At the hearing the ministry said that considering the new evidence the appellant would have met this criterion.

Panel Analysis

The panel finds that, based on all the evidence, the ministry reasonably determined that the appellant does not have a severe mental impairment. The doctor initially diagnosed her with severe anxiety causing insomnia, poor appetite, poor concentration and motivation, and notes Cluster B personality traits. In their new evidence the doctor adds depression as a severe medical condition and confirms that the appellant only gets 3 hours of broken sleep per night, has panic attacks and depressive moods. They also indicate that the appellant requires continuous support dealing with unexpected demands as she becomes easily overwhelmed and anxious. The panel acknowledges that the appellant experiences restrictions because of her severe anxiety, but these restrictions do not add up to a severe mental impairment.

The panel notes that there are inconsistencies between the doctor's initial information and their new information. For example, in their initial assessment the doctor indicates the appellant needs periodic assistance, while later they indicate she needs continuous support dealing with unexpected demands as she becomes easily overwhelmed and anxious. The doctor's evidence would have been clearer had they explained these inconsistencies. There is no information from the appellant that explains these inconsistencies.

Restrictions in the ability to perform daily living activities

Positions of the parties

The appellant's position is that due to her pain she is significantly restricted in her ability to perform daily living activities, and these restrictions are continuously getting worse. She has to rely on friends and family for regular and continued help and support. They help her with getting to appointments and with shopping. They drive her and assist her with getting in and out of their vehicle. They hold her arm when she walks. Often, they pick up and deliver things she needs. They also help her out with buying and paying for groceries she cannot afford. They buy, deliver, and unpack. On days when she has to stay on the couch (that is the majority of the days), she calls on her friends or family for help. They make food for her, help her with household chores and assist her with toileting.

The ministry's position at reconsideration is that there is not enough evidence to confirm that the appellant's impairment significantly restricts her ability to perform daily living

activities continuously or periodically for extended periods. The doctor indicates the appellant has not been prescribed medication/treatment that interferes with her ability to perform daily living activities. She requires periodic assistance from another person to manage laundry, basic housekeeping, and carrying purchases home. She is not able to drive beyond her local neighborhood. The doctor has not confirmed the additional information that the appellant provided in her Request for Reconsideration regarding the restrictions she has managing her daily living activities. At the hearing the ministry said that considering the new medical evidence the appellant would have met this criterion.

Panel Analysis

Section 2(2)(b) of the Act requires that the ministry be satisfied that in the opinion of a prescribed professional, a severe physical or mental impairment directly and significantly restricts the appellant's ability to perform daily living activities either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether it is satisfied, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and restriction. The direct restriction must also be significant.

The panel finds that based on all the evidence, the ministry was not reasonable when it found that the information from the appellant's doctor does not establish that a severe impairment significantly restricts her ability to perform daily living activities continuously or periodically for extended periods.

In reaching this decision, the panel notes that for the reasons discussed above, the panel accepted that the information showed that the appellant has a severe physical impairment. Similarly, the panel has placed more weight on the Doctor's recent assessment of the restrictions on the appellant's daily living activities, which is more consistent with the appellant's severe physical functional limitations.

The panel finds that the appellant is significantly and continuously restricted with moving about indoors and outdoors: Her doctor confirms that she is prone to falls and cannot walk more than 1 block or climb more than 5 stairs without taking a break due to pain, weakness in her legs, and numbness in both feet. Due to this numbness, the appellant often does not feel her shoes coming off her feet. She takes 3 times longer than typical with tasks of basic mobility and uses a cane when she feels feeling weak or dizzy. She takes 2-3 times longer than typical to get in and out of bed or on and off chairs due to chronic pain, weakness, and fatigue. She cannot lift or carry more than 5 lbs. due to

chronic pain and weakness and requires continuous assistance from her family and friends.

The panel finds the appellant is significantly and continuously restricted with housework: Her doctor confirms that chronic pain prevents her from cleaning tasks such as sweeping, mopping, vacuuming, or standing to wash dishes. She cannot do laundry because her mobility issues prevent her from lifting and carrying baskets of laundry. Her family must provide her with continuous assistance in these areas.

The panel finds the appellant is significantly and continuously restricted with shopping, due to her mobility issues**:** Her doctor confirmed that she has difficulty standing in line-ups and requires continuous assistance carrying her purchases into her home. She is unable to drive to the nearby store due to her neuropathy.

The panel notes that there are substantial inconsistencies between multiple medical reports, the doctor's initial information, and their new information. For example, the internal medicine report (August 3, 2022) and the psychiatry report (August 25, 2022) state the appellant is independent in her activities of daily, while in their initial assessment, the doctor indicates the appellant needs periodic assistance with few tasks, and while later on they indicate she requires continuous support with several legislated daily living activities. The doctor's evidence would have been clearer had they explained these inconsistencies. The panel notes that these inconsistences, in conjunction with the appellant's statement that she feels her body is continuously deteriorating, demonstrate that the appellant's daily living activities are becoming increasingly restricted.

Help to perform daily living activities

Section 2(2)(b)(ii) of the Act requires that, as a result of direct and significant restrictions in the ability to perform daily living activities, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform daily living activities.

Establishing direct and significant restrictions with daily living activities is a precondition of the need for help criterion. The panel found that the ministry was not reasonable, based on the new information, to decide that direct and significant restrictions in the appellant's ability to perform daily living activities have not been established. The panel notes that at the hearing the ministry said that considering the new evidence the appellant would have met this criterion.

For the reasons discussed under severe physical impairment, the panel placed more weight on the doctor's recent information and finds that the new evidence of the doctor confirms that the appellant needs the use of a cane and significant assistance from her friends and family to perform daily tasks of housekeeping, shopping, and mobility.

For these reasons, the panel also finds that the ministry was not reasonable to decide that the appellant did not require the significant help of another person or an assistive device to perform daily living activities that are directly and significantly restricted.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was not reasonably supported by the evidence, and therefore rescinds the decision. The appellant is successful on appeal.

Appendix – Relevant 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.

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

Employment and Assistance for Persons with Disabilities Regulation

Definitions for Act

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

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

activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

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

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

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

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

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

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

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

(i) medical practitioner,

(ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner ...

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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 Inge Morrissey	
Signature of Chair	Date (Year/Month/Day) 2023/10/30

Print Name Jan Broocke	
Signature of Member	Date (Year/Month/Day) 2023/10/30
Print Name Bob Fenske	
Signature of Member	Date (Year/Month/Day) 2023/11/02