

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the “**Ministry**”) dated September 11, 2023 (the “**Reconsideration Decision**”), in which the Ministry denied the Appellant a 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 (“**DLAs**”); and
- needing significant help to perform DLAs.

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

Part D – Relevant Legislation

- *Employment and Assistance for Persons with Disabilities Act* (the “**Act**”) – section 2
- *Employment and Assistance for Persons with Disabilities Regulation* (the “**Regulation**”) – section 2

Note: The full text is available after the Decision.

Part E – Summary of Facts

(a) The Reconsideration Decision

The evidence before the Ministry at the Reconsideration Decision consisted of:

- a signed Applicant Information Form dated September 28, 2022;
- a Medical Report completed by the Appellant’s doctor (the “**Doctor**”) signed and dated September 21, 2021 (the “**First Medical Report**”);
- a Medical Report completed by the Doctor signed and dated September 21, 2022 (the “**Second Medical Report**”);
- an Assessor Report completed by a registered nurse (the “**RN**”) signed and dated June 9, 2023 (the “**Assessor Report**”);
- a partially completed a Disability Tax Credit Certificate Form dated March 2, 2023 (the “**Tax Credit Form**”);
- an unsigned statement from an individual dated February 15, 2023;
- a discharge summary and post-operation instruction form from an orthopedic surgeon;
- a physiotherapist referral form;
- a Radiology Results Report dated July 12, 2022; and
- clinical records from the Doctor.

(i) **Applicant Information Form (“Self-Report”)**

On review of the Appellant’s Self-Report, he described his disabilities as follows:

“... had a plate put into the right sholder (sic), neck injury musels (sic), both sholder (sic) musels (sic), elbows, wrists, thumbs knees a little bit injured from bickel (sic) accident...”

The remainder of the Self-Report was left blank. The Self-Report was signed by the Appellant; however, it was not witnessed or signed by the Doctor.

(ii) **First Medical Report**

The First Medical Report was dated September 21, 2021, and signed by the Doctor. The Doctor noted that the Appellant had been their patient since October 2010. In describing their frequency of contact with the Appellant, the Doctor wrote that they had seen the Appellant between 2 and 10 times in the last 12 months.

Diagnosis:

The Doctor circled diagnostic code “13.0 Musculoskeletal system – other”.

Health History:

The Doctor wrote that the Appellant experiences:

1. *"Frozen shoulder post bicycle accident May 2022"*
2. *"Restricted + painful range of motion [right] shoulder"*
3. *"Painful + decreased range of motion [right] wrist"*
4. *"Restricted range of motion neck with neck pain"*

In describing the Appellant's restrictions, the Doctor wrote:

1. *"Cannot work with arms above his shoulders"*
2. *"Cannot lift anything more than 10 pounds"*
3. *"Cannot sit longer than 5 minutes due to neck pain and shoulder pain"*
4. *"He is a laborer with lots of manual work"*

The Doctor noted that the Appellant had been referred for physiotherapy and to an orthopedic surgeon for *"hardware removal"*. However, the Doctor answered *"no"* to the question of whether the Appellant had been prescribed any medications or treatments that interfered with his ability to perform DLAs. Further, the Doctor noted that the Appellant did not require any prostheses or aids for his impairments.

Degree and Course of Impairment:

While the Doctor checked *"yes"* to the question of whether the Appellant's impairment is likely to continue for 2 or more years, they qualified their statement by writing, *"Possibly – but would need reassessment after hardware removal shoulder"*.

Functional Skills:

The Doctor indicated that the Appellant can walk 4+ blocks unaided, climb 5+ stairs unaided, lift between 2 kg to 7 kg, and can remain seated for less than 1 hour.

The Doctor checked *"no"* to the question of whether the Appellant experienced difficulties with communications. The Doctor also checked *"no"* to the question of whether the Appellant experienced any significant deficits with cognitive and emotional functioning.

Daily Living Activities:

The Doctor checked *"no"* to the question of whether the Appellant experienced restrictions with the following DLAs:

- personal self-care;

- meal preparation;
- management of medications;
- basic housework;
- daily shopping;
- mobility inside the home;
- mobility outside the home;
- use of transportation;
- management of finances; and
- social functioning.

Additional Comments:

The Doctor noted:

- *"labourer"*;
- *"restricted painful range of motions shoulder [right]"*;
- *"cannot lift, carry, push + pull"*;
- *"limited range of movement shoulder + wrist"*; and
- *"expected decreased activities one to two years"*.

(iii) Second Medical Report

The Second Medical Report is identical to the First Medical Report; however, the Doctor identified September 21, 2022 as the date they signed the Second Medical Report. For all purposes, the First and Second Medical Reports will be collectively referred to as the "Medical Report".

(iv) Assessor Report

The RN completed the Assessor Report on June 9, 2023 by way of a home assessment. The RN noted that, at the time of completing the Assessor Report, they had seen the Appellant only once, for the sole purpose of completing the Assessor Report.

Living Environment:

The RN notes that the Appellant lives with his brother-in-law who is 79 years old.

Mental or Physical Impairment:

The Appellant's physical impairments are described in the first person as follows, "... *Due to an injury obtained awhile ago, I have a hard time lifting anything, such as 5lbs, walking, certain ways I move is difficult, I feel pain on both sides of my neck and stiff in my arms...*"

Ability to Communicate:

The RN indicated that the Appellant's ability to speak and read are "good". However, the RN described the Appellant's ability to write as "satisfactory" and his ability to hear as "unable".

Mobility and Physical Ability:

The RN indicated that the Appellant requires the periodic assistance of another person to perform the following activities:

- walking indoors ("*can... stand for 2 minutes until I have to sit down...*");
- walking outdoors ("*... uses bike outside as can't walk far by himself (can walk only half a block)...*");
- climbing stairs ("*...has to take one stope @ a time surgery right leg...*");
- standing ("*... stands for 2 mins then needs to find a chair to sit down...*"); and
- carrying and holding ("*... takes breaks when having to carry anything...*").

In terms of lifting, the RN wrote that the Appellant requires the continuous assistance of another person. Further, the RN wrote, "... *inflamed when standing too long lifting anything more than 5 lbs is difficult...*"

Cognitive and Emotional Functioning:

The RN noted that this section of the Assessor Report was "(N/A)".

Daily Living Activities:

The RN indicated that the Appellant was independent with respect to the following DLAs:

- grooming;
- bathing;
- toileting;
- feeding self;
- regulating diet;
- transfers (in/out of bed)(in/out of chair);
- laundry;
- basic housekeeping;

- reading prices and labels;
- making appropriate choices; and
- pay for purchases.

With respect to dressing, the RN does not indicate the level of assistance required by the Appellant. However, they note that the Appellant takes significantly longer to dress as follows, "... *extra 10 minutes to dress self...*"

The RN noted that the Appellant requires the continuous assistance of another person for:

- going to and from stores ("*... has brother in law... do grocery shopping as cant walk far...*"); and
- carrying purchases home ("*... has had brother in law carry things home...*").

The RN also provided the following additional comments:

- "*Relies on brother-in-law to do some household tasks/shopping/carrying, daily*";
- "*[The Appellant] reports transferring himself in/out of bed, he has to roll out of bed to do so, unable to stand up to do so, and experiences pain/discomfort while doing so*".

The RN further advised that the Appellant is generally independent in his performance of the following DLAs:

- paying rent and bills (banking, budgeting, and paying rent and bills);
- medications (filling/refilling, taking as directed, and handling/storage); and
- transportation (getting in/out vehicle, using public transit, using transit schedules).

Otherwise, the Appellant requires the continuous assistance of another person in the performance of matters relating to meal planning, food preparation and cooking. In the additional comments section, the RN wrote, "... *Relies on brother-in-law to do meal planning, food preparation + cooking as he is unable to stand, walk. His brother-in-law is an older gentleman who also deals with some mobility issues. This can pose a safety concern if they were to hurt themselves. No one would be around to assist.*"

Social Functioning:

The RN noted that this section of the Assessor Report was "(N/A)".

Assistance Provided for Applicant:

The RN indicated that the Appellant's family provides him with help in the performance of his DLAs. The RN indicated that the Appellant required assistance as follows, "... *having someone come by daily to help with daily activities such as cleaning, cooking, doing tasks that are outside of the house so [the Appellant] can remain at home (grocery, shopping, etc.)...*"

The RN noted that the Appellant uses a bicycle as an assistive device for "... *transportation when necessary... experiences pain while on bike...*" In addition, the RN noted that the Appellant needed a walker; however, the RN wrote that the Appellant "*desired*" a "*4 wheeler walker w/ a seat*".

The RN noted that the Appellant does not have an assistance animal.

Additional Information:

The following is noted in the first person, "... *It's difficult for me to ride a bike, do my daily activities to survive. Sometimes I choose to stay inside because it hurts when I move. It is hard for me to rely on others to do task to help me survive. I am uncomfortable and in pain when I am standing or sitting. It is hard for me to feel a second of peace. I cant (sic) sit still because it hurts, and I cant (sic) move because it hurts. I don't know what I would do if I didn't have my brother-in-law to help me daily.*"

(v) Unsigned Statement

The Appellant also submitted an unsigned statement from an individual dated February 15, 2023 (the "**Statement**"). Generally, the writer of the Statement advises that the Appellant assisted their child who was placed under psychiatric assessment at a hospital given that the child was involved in an altercation which resulted in property damage. It appears that the Appellant has agreed to assist the child with the payment of damages; however, the writer advises, "... *[the Appellant] is currently injured at this time and unable to pay for all the damages...*"

(vi) Radiology Result Report

The Appellant also submitted a Radiology Results Report arising from a July 12, 2022 exam (the "**Radiology Report**"). Pursuant to the Radiology Report, there was no "*hardware abnormality*" as it related to matters impacting the Appellant's right shoulder.

(vii) Physiotherapy Referral Form

The Appellant also submitted a "*Physio, Massage & OT Referral*" form dated September 21, 2022. On review, the Appellant was referred to a physiotherapist for "*Pre & Post-surgical rehabilitation*".

(viii) 2022 Clinical Record

The Appellant also submitted a clinical record from the Doctor arising from a visit on September 21, 2022 (the "**2022 Clinical Record**"). Pursuant to the 2022 Clinical Record, the Doctor noted the Appellant attended the Doctor's office to complete the Medical Report. In addition to listing the Appellant's subjective reports which are found in the Medical Report, the Doctor provided the following objective findings as it related to the Appellant's shoulder:

"Shoulder ROM:

-Flexion 110 degrees right, 180 degrees left.

-Abduction 105 degrees right, 180 degrees left.

-External rotation 30 degrees right, 45 degrees left.

-Extension 30 degrees left and right.

-Painful passive movements as well with also resistance."

Under "Assessment Note" and "Plan Note" the Doctor wrote:

"Assessment Note FROZEN SHOULDER (R)

FACET ARTHROSIS NECK

ONGOING PAIN RIGHT WRIST

Plan Note

Forms will be completed. I do not suspect it is going to be permanent. Referral.... For removal of hardware in the November Referral PT.

(ix) Orthopedic Surgeon Report

The Appellant also submitted a discharge summary and post-operation instruction form from their orthopaedic surgeon dated December 12, 2022 (the "**Discharge Report**"). While the Discharge Report is generally difficult to read, it notes that the Appellant underwent surgery to his right shoulder. In terms of post-operation instructions, the Appellant was referred to physiotherapy to address the range of motion in his right shoulder.

(x) Tax Credit Form

The Appellant also submitted a Tax Credit Form dated March 3, 2023. Other than the Appellant's name, address and social insurance number, the Tax Credit Form is otherwise incomplete.

(xi) Request for Reconsideration

In his Request for Reconsideration dated August 9, 2023, the Appellant wrote (in part):

"... I feel that I require a greater level of support and have more significant limitations than what is presented in the denial decision summary. I am willing to get further documentation of my limitations to substantiate my request. I struggle to walk because of a pain on my left side; I need to be able to walk because I have no mode of transportation other than walking and biking. In the summer, the use of a bike as an assistive device is addressed. Due to being unable to walk several blocks to get food, I am forced to use the bicycle. Without use of a bicycle, I feel

that I would need a walker. My limitation in carrying weight also impede my ability to get food, as I have to carry them home. In the summary, the level of support I have at home is exaggerated. At home, I only have support from an aging relative (age 80) who helps with the cooking. This support is not enough for me to complete some activities of daily living. My injuries are from knee to the neck [illegible] help with daily living function..."

(b) The Appeal

On September 11, 2023, following reconsideration, PWD designation was denied.

Pursuant to the Reconsideration Decision, 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; and
- needing significant help to perform daily living activities.

On October 4, 2023, the Appellant filed a Notice of Appeal (the "**Appeal Notice**"). In the Appeal Notice, the Appellant provided no reason for the Appeal.

The Appellant's Appeal hearing was held on November 2, 2023 via teleconference.

(i) New Evidence and Written Submissions

In advance of the Hearing, the Appellant submitted new evidence which consisted of a clinical record from the Doctor dated October 23, 2023 (the "**2023 Clinical Record**"). The 2023 Clinical Record was accompanied by a cover letter from the Doctor's office which stated, "... As per our conversation yesterday, I have attached note from [the Doctor's] visit with [the Appellant]. I spoke with the [the Appellant], and he gave me permission to fax on his behalf..."

Pursuant to the 2023 Clinical Record, the Doctor noted the Appellant's subjective reports as follows:

"His disabilities stem from him being injured in a bicycle accident.

Complains about pain from his shoulders down to his fingers, as well as back pain, hip pain and knee pain.

He does not have any difficulties with hearing, speaking, eating or feeding.

Difficulties with walking, dressing, carrying, lifting, pulling and pushing.

...

Shoulders:

- *He cannot lift anything more than 2-5 lbs.*
- *He cannot lift or pull or push or carry anything more than 2-5 lbs.*
- *This causes upper body pain, as well as shoulder pain radiating down to his fingers.*

Walking:

- *Only able to walk 1 city block.*
- *He has to stop due to hip and knee pain.*
- *He needs to stop of half an hour.*
- *It takes him 15 minutes to complete 1 city block.*

Dressing:

- *Takes him 10 minutes to fully dress."*

The Doctor also noted his objective assessment of the Appellant as follows:

"He looks quite comfortable, in NO distress.

Does not use any walking aids and able to get onto examination couch without any pain to be examined.

Demonstrating severe pain during the examination indicating pain all over his body.

Do get the impression that he is not truthful.

The Doctor also made the following assessment note:

"- ? Truthfulness of his reported [symptoms] and pain during examination

- *Impression he is exaggerating..."*

(ii) The Witness

During the Hearing, the Appellant called one (1) witness, his brother-in-law (the "**Witness**"). The Witness explained that he and the Appellant shared a living space together. The Witness provided his account of the Appellant's bicycle accident which gave rise to the Appellant's shoulder-related issues. In describing the Appellant's ability to carry out DLAs, the Witness advised:

- sometimes the Appellant cannot do things like wash the floor, but he can vacuum;

- the Appellant can grocery shop, but he cannot lift much;
- the Appellant cannot lift above his head; and
- the Appellant can perform some cleaning around the house.

The Witness noted that the Appellant's son does aid the Appellant when he visits their residence. However, the primary purpose of the Appellant's son's visits is not to provide assistance.

(iii) The Appellant's Submissions

The Appellant confirmed his preferred pronouns as he/him. He explained that he has been in excruciating pain since his bicycle accident. He regularly takes Naproxen, Tylenol and other muscle pain relief medication. The Appellant explained that:

- it takes him 10 minutes to get dressed;
- he cannot cut his own toenails;
- it's hard for him to wash dishes;
- it's hard for him to grip things;
- on a pain scale of 1 to 10, 10 being the most pain, his pain is normally between 5 or 6;
- on the date of his hearing, his pain was 9 because he had mopped the day before.

When asked about the Doctor's objective comments found in the 2023 Clinical Record, the Appellant stated that he could not believe the Doctor's comment regarding his pain.

In describing the circumstances under which the Assessor Report was completed by the RN, the Appellant explained that he and the RN met for 30 minutes at his home where the RN asked him the question found on the Assessor Report. The Appellant explained that no test or assessments were performed by the RN; rather, she only asked him question and recorded his responses.

When asked if he had successfully applied for Canada Pension Plan Disability, which would mean the Appellant was in a prescribed class that might allow designation as a PWD designation, the Appellant answered that he did not know that he could apply for Canada Pension Plan Disability.

(iv) The Ministry's Submissions

The Ministry referred to and relied upon the Appeal Record which largely consisted of the Reconsideration Decision. The Ministry explained that it preferred the Medical Report over

the Assessor Report given that the Doctor had a more established relationship with the Appellant.

The Ministry stated that the evidence showed that the Appellant's impairments were moderate, not severe.

The Ministry advised that the Appellant could reapply for a PWD designation at a future time. In addition, the Ministry suggested that the Appellant could, subject to an assessment, qualify for other potential programs such as the Persons with Persistent Multiple Barriers to Employment ("PPMB") program.

(v) Decision on New Evidence

The Ministry had no objection to the Appellant's oral submissions or additional evidence. The Panel determined that the Appellant's submissions and evidence were admissible as additional evidence pursuant to section 22(4) of the *Employment and Assistance Act* as they were reasonably required for a full and fair disclosure of all matters related to the decision under Appeal. More specifically, the additional evidence contributed to the Panel's understanding of the circumstances surrounding the Appeal.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's decision denying the Appellant a 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:

- (a) severe mental or physical impairment;
- (b) significant restriction on the ability to perform daily living activities; or
- (c) needing significant help to perform daily living activities.

Appellant's Position

The Appellant says that he has severe physical impairments; as a result, he argues that he suffers from significant restrictions with his ability to perform DLAs thereby needing significant help to perform them. Therefore, the Appellant believes he qualifies for a PWD designation.

Ministry's Position

The Ministry maintains that the Appellant does not qualify for a PWD designation for the reasons stated in the Reconsideration Decision. Given the information found in the Medical and Assessor Reports, the Ministry submits that there is not enough evidence to confirm if the Appellant:

- (a) has a severe mental or physical impairment;
- (b) suffers from significant restriction on his ability to perform DLAs; or
- (c) needs significant help to perform DLAs.

Panel Decision

The legislation provides the Ministry with the discretion to designate someone as a PWD if the requirements are met. In the Panel's view, a PWD designation is for persons who have significant difficulty in performing regular self-care activities, commonly referred to as DLAs. If the inability to work is the major reason for applying for PWD designation, the Panel encourages the Appellant to speak to the Ministry about other potential programs such as PPMB or explore federal government programs.

A person applying for a PWD designation must provide an opinion from a prescribed professional, and it is reasonable to place significant weight on that opinion. 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. In

this Appeal, the Appellant chose not to complete the Self-Report, but he provided a written statement, which the Panel accepts as a Self-Report.

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

(a) Report Preferences

The Panel notes that the Ministry preferred the Medical Report over the Assessor Report given its belief that the Appellant and the Doctor had a more established relationship. In this case, the Panel finds the Ministry's preference for the Medical Report over the Assessor Report to be reasonable in the circumstances.

Here, the RN met the Appellant only once to complete the Assessor Report. In response to questions from the Panel, the Appellant clarified that he met the RN once for 30 minutes. During their meeting, the RN asked the Appellant the questions found on the Assessor Report and conducted no independent assessments. On review of the Assessor Report, it contains information in different handwriting and, on occasion, is written in the first person. Overall, the Panel finds the Ministry's comments and observations of the Assessor Report to be reasonable in the circumstances. As a result, the Panel finds that it cannot be said that the RN had an established relationship with the Appellant.

Conversely, a review of the Medical Report indicates that, at the time the Medical Report was completed, the Doctor had seen the Appellant between 2 and 10 times in the last 12 months. Further, the Doctor and the Appellant have known each other since October 2010. In addition, the Appellant provided the 2022 and 2023 Clinical Records which demonstrate the Doctor's experience, knowledge, and observations of the Appellant. In short, the Panel finds that the Medical Report was completed by the Doctor who has a history of contact with the Appellant and, as result, was better positioned to comment on the Appellant given their knowledge, observations, clinical data, and experiences with him.

In sum, the Panel finds the that the Ministry's preference for the Medical Report over the Assessor Report to be reasonably supported by the evidence.

(b) 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.

(c) Physical Impairment

The Panel has reviewed the Medical Report and Assessor Report.

The Panel notes that, while the Medical Report (which was completed in 2022) identifies the Appellant's physical impairments, it contains contradictory information which makes it difficult to assess whether the Appellant's physical impairments are severe. For example, the Doctor lists the Appellant's physical impairments as follows, "*... Frozen shoulder post bicycle accident May 2022... Restricted + painful range of motion [right] shoulder... Painful + decreased range of motion [right] wrist... Restricted range of motion neck with neck pain*". However, the Doctor also indicated that the Appellant can walk 4+ blocks unaided, climb 5+ stairs unaided, lift between 2 kg to 7 kg, and can remain seated for less than 1 hour. Further, the Doctor answered "*no*" to the question of whether the Appellant experienced restrictions with this his DLAs. Despite providing answers which suggest moderate impairment, the Doctor also made the following comments about the Appellant's physical impairments, "*... restricted painful range of motions shoulder [right]... cannot lift, carry, push + pull... limited range of movement shoulder + wrist... expected decreased activities one to two years...*". On review of the Medical Report, it is difficult to understand the Appellant's level of physical impairment at the time the Medical Report was completed.

In contrast, the Assessor Report described the Appellant's physical impairments as follows, "*... Due to an injury obtained awhile ago, I have a hard time lifting anything, such as 5lbs, walking, certain ways I move is difficult, I feel pain on both sides of my neck and stiff in my arms...*" The RN also noted that Appellant can generally perform most DLAs independently. While the RN noted that the Appellant requires the periodic assistance of another person for walking, climbing stairs and standing, it is unclear if the periodic assistance is required for extended periods of time. Further, the RN noted that the Appellant requires continuous assistance for lifting and carrying. On review of the Assessor Report, there is some conflict with the Medical Report in terms of the extent of the Appellant's level of physical impairment and limitations in the performance of his DLAs.

To clarify or dispel any discrepancies found in the Medical Report and Assessor Report, the Panel can review and place weight on the Appellant's self-report; however, the Panel finds that there may be a legitimate reason to not place significant weight on the Appellant's self-report. In the 2023 Clinical Record, the Doctor provided their most recent assessment of the Appellant. While recording the Appellant's subjective complaints which suggest complete disability, the Doctor questioned the truthfulness of the Appellant's claims and symptoms. Again, the Doctor made the following observations under their objective notes and assessments, "*... He looks quite comfortable, in NO distress... Does not use any walking aids and able to get onto examination couch without any pain to be examined.... Demonstrating severe pain during the examination indicating pain all over his body... Do get the impression that he is not truthful... ? Truthfulness of his reported [symptoms] and pain during examination...*"

Impression he is exaggerating... While the Doctor questions the Appellant's truthfulness, the Panel notes that the Doctor also indicated that there were positive tests for pain, and a plan to investigate the Appellant's circumstances to dispel concerns about exaggeration. While the Doctor's recent comments, alone, are not determinative on the question of severe physical impairment, they serve to suggest that the extent of the Appellant's pain and impairment remains unclear.

The Panel does not dispute that the Appellant suffers from pain arising from his physical conditions. However, on review of the totality of the evidence, the Panel finds that it cannot be said that the evidence establishes that the Appellant suffers from a severe physical impairment. Again, the Panel places greater weight and reliance on the Medical Report as the Doctor has known the Appellant longer, seen him more frequently, and performed objective physical assessments on him. Conversely, the RN only visited the Appellant once, and the information contained in the Assessor Report was solely based on answers provided by the Appellant, not any objective assessments.

As a result, the Panel finds, on review of all the evidence, the Ministry's decision finding that the Appellant did not establish a severe physical impairment to be reasonably supported by the evidence.

(d) Mental Impairment

On review of the Medical Report and Assessor Report, neither the Doctor nor the RN suggest that the Appellant suffers from any mental health diagnosis or medical impairments, severe or otherwise.

Pursuant to the Medical Report, the Doctor checked "*no*" to the question of whether the Appellant experienced difficulties with communications. The Doctor also checked "*no*" to the question of whether the Appellant experienced any significant deficits with cognitive and emotional functioning.

As it relates to the Assessor Report, the RN stated that the "*Cognitive and Emotional Functioning*" section of the Assessor Report was "(N/A)". Even if the RN did identify a mental impairment, which they did not, the Panel finds that, pursuant to section 2 of the *Act*, the diagnosis of a mental impairment can only be made by a medical practitioner or a nurse practitioner, not a RN.

Absent any diagnosis from a medical practitioner or a nurse practitioner, or an assessment, document or record otherwise confirming a mental impairment, the Panel finds that the Ministry's decision finding that the Appellant did not establish a severe mental impairment to be a reasonably supported by the evidence.

(e) Restrictions to Daily Living Activities

A prescribed professional must provide an opinion that the applicant's impairment restricts their ability to perform the DLAs listed in the legislation. Those daily living activities are:

- (a) prepare own meals;
- (b) manage personal finances;
- (c) shop for personal needs;
- (d) use public or personal transportation facilities;
- (e) perform housework to maintain the person's place of residence in acceptable sanitary condition;
- (f) move about indoors and outdoors;
- (g) perform personal hygiene and self-care; and
- (h) manage personal medication.

At least two (2) DLAs must be restricted in a way that meets the requirements. Not all DLAs, or even the majority, need to be restricted.

The restrictions to DLAs must be significant and directly caused by the impairment. This means that the restriction must be to a great extent and that not being able to do the DLAs 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 DLAs that are considered are listed in the *Regulation*. 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 an applicant's restrictions. The inability to work and financial need are not listed as daily living activities and are only relevant to the extent that they impact listed daily living activities.

The information about DLAs provided in the Medical Report and Assessor Report generally suggest that the Appellant is able to complete the vast majority of his DLAs independently; however, he may require some assistance periodically. In contrast, the Appellant submits that he is unable to complete his DLAs.

On review of the totality of the evidence, the Panel finds that, while the Appellant's physical impairments directly restrict his ability to perform DLAs, it cannot be said that the Appellant is significantly restricted from performing his DLAs. Again, the Panel finds that the evidence from the Medical Report, Assessor Reports, and 2023 Clinical Record, which suggest moderate restrictions, contradicts the Appellant's account and there is no evidence that can help reconcile these differences. As a result, more information is required to assess if the Appellant's physical impairments directly and significantly restrict his ability to perform DLAs.

As a result, the Panel finds that the Ministry's decision finding that the Appellant did not establish that his physical impairments directly and significantly restricted his ability to perform DLAs was reasonably supported by the evidence.

Help Required

A prescribed professional must provide an opinion that the person needs help to perform the restricted DLAs. Put differently, the issue is whether help is needed not whether help is provided.

Help means using an assistive device, the significant help or supervision of another person, or using an assistance animal to perform the restricted DLAs. An assistive device is something designed to let the person perform restricted DLAs.

While both the Medical Report and Assessor Report suggest that the Appellant receives assistance from his family members, it cannot be said that such assistances is required because the Appellant's physical impairments directly and significantly restricted his ability to perform DLAs. The Panel notes that, as the Appellant and his brother-in-law reside together, it is reasonable for them to share household chores; indeed, the Appellant cleaned the floors the day before his hearing. As it relates to the Appellant's son, the Appellant and the Witness explained that the Appellant's son visits the Appellant regularly for social purposes; put differently, any help or assistance provided by the Appellant's son is incidental to his visit.

On review of the totality of the evidence, the Panel finds that, while the Appellant may benefit from having assistance with the completion of his DLAs, it cannot be said that the Appellant requires or needs such assistance or help. As a result, more information is required to assess if the Appellant needs or requires assistance to perform his DLAs. Additionally, the need for help must be due to significant restrictions with DLAs, which was not established.

As a result, the Panel finds that the Ministry's decision finding that the Appellant did not establish that he needs help to perform her DLAs was reasonably supported by the evidence before it.

Conclusion

The Panel finds that the Ministry was reasonable in finding that the Appellant does not:

- (a) have a severe physical or mental impairment;
- (b) have significant restrictions on the ability to perform daily living activities; or
- (c) need help to perform daily living activities.

The Panel finds that the Ministry's decision to deny the Appellant a PWD designation was reasonably supported by the evidence. The Appellant is unsuccessful in this Appeal.

The Panel sympathizes with the Appellant. To that end, the Panel notes the Ministry's suggestion that the Appellant may be eligible for other programs, namely the PPMB program. The Panel encourages the Appellant to contact the Ministry to better determine the options available to him. That said, the Appellant can also reapply for a PWD designation.

Legislation***Employment and Assistance for Persons with Disabilities Act, SBC 2002, c 41*****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, BC Reg 265/2002

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, 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.

2023-0291

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

Anil Aggarwal

Signature of Chair

Date (Year/Month/Day)

2023/11/02

Print Name

Margarita Papenbrock

Signature of Member

Date (Year/Month/Day)

2023/11/21

Print Name

Wesley Nelson

Signature of Member

Date (Year/Month/Day)

2023/11/02