

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

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

- Severe impairment
- Impairment will continue for two years or more
- Direct and significant restrictions to daily living activities
- Significant help required with daily living activities

The ministry also found the appellant was not one of the prescribed classes of persons eligible for Persons with Disabilities designation on alternative grounds. As there was no information or argument on this point, the panel considers it not to be an issue in this appeal.

### **Part D – Relevant Legislation**

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

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

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

## Part E – Summary of Facts

### Relevant Evidence Before the Minister at Reconsideration

#### Request for Reconsideration (July 31, 2023) – summary

The appellant writes that he was able to get his medical history proving his condition will last and has lasted two years and more.

#### Chart Summary (provided by appellant's doctor) (July 31, 2023)

*August 7, 2018*

- refill on medication (for chronic pain)

The appellant is on chronic pain medication (long time) - Gabapentin, Tylenol, with Codeine, Voltaren

*September 6, 2018*

- back and legs issue, ongoing pain for months since work related injury  
note: in obvious distress and pain, bent over and using a cane

*February 23, 2020*

- chronic pain syndrome

*March 11, 2021, x-ray of lumbosacral spine*

- prominent disc space narrowing present at the L4-L5 and to a mild degree at the L5-S2 level in keeping with degenerative disc disease

*August 11, 2021, computed tomography of lumbar spine*

reason for exam – chronic back pain sudden, getting worse without any injury.

conclusion: presence of a focal disc protrusion is noted on the left at the L4-L5 level

*August 31, 2021, computed tomography*

- shows focal disc protrusion on the left L4-L5 level impinging on the L5 nerve root in the lateral recess

*November 26, 2021*

- Anxiety

*February 13, 2022*

- skeletal x-ray of wrist and hand

conclusion: no acute bone or joint injury, simple cortical cyst most likely posttraumatic involves the lunate

*April 6, 2022* - computed tomography (facet joint injection, left)

- chronic back pain getting worse on certain times, for steroid injection
- history of L4-L5 disc protrusion with degenerative changes in the posterior facet joints at this level

*August 31, 2022*

- depressive disorder

*May 2, 2023*

mental visit:

- history of anxiety/depression, has been stable
- history of chronic back pain seems to be resolved for some time but recently started to act up
- patient sounds okay, over the phone – not in distress

The appellant is calm and cooperative, speaks coherently with normal pace and denies any hallucination or delusions. No suicidal ideation. He expresses good insight and judgement. Mood and affect are good and congruent.

*May 21, 2023 – August 19, 2023*

medications:

Ach-Escitalopram, Gabapentin, Tylenol with Codeine

*June 1, 2023*, x-ray of lumbosacral spine

- significant disc space narrowing present at the L4-L5 and to a mild degree at the L5-S1 level - in keeping with degenerative disc disease.

*July 10, 2023*

- chronic back pain, not improving
- morning stiffness
- no other joint involvement
- patient states he cannot stand and work full duties

note: looks well, gait is normal, able to stand up from sitting position, back exam flexion is good, hyperextension with limitation, able to bend forward and finger to floor is about 20 centimetres, twisting back is okay

note – musculoskeletal back pain, anxiety seems to be well controlled

**Letter to the Appellant's Doctor, from a Health Clinic (January 21, 2019)**

The writer states that the appellant describes a one-year history of low back pain. At work he picked up a piece of equipment, felt immediate back pain and has had back pain ever since.

The writer states that the appellant notes pain in the lower lumbar region, which is worse on the left than on the right. He states, the pain can also radiate down the left leg laterally and into the dorsum of the foot and big toes. The pain is constant and never resolves. He describes the pain as a tight sensation that can be stabbing in the leg as well - rated as 7-8/10 in severity. The appellant states his pain is aggravated by walking, moving, and putting weight on the back. He gets some relief when lying down and resting. Overall his symptoms have been relatively stable with time and he does not tend to have pain on the right side.

As well, the appellant states he has constant numbness in the great toe of the left foot. This is not painful and there are no other areas of numbness. He feels the left leg is weak and he will occasionally stumble on that leg. He confirms morning stiffness, which resolves in less than an hour.

*note from appellant's social worker (included in Request for Reconsideration)*

The social worker states it is evident the appellant has been diagnosed with scoliosis, degenerative disc disease and chronic pain, all of which significantly limit his ability to work or perform basic daily living activities. As well, due to the nature of his condition, he cannot often take care of his personal hygiene, uses a cane at times, and has chronic and ongoing pain. The level of pain he experiences can fluctuate and often leaves him immobile.

**Person with Disabilities Application (application)**

***Self-Report (February 28, 2023)***

The appellant writes that he has degenerative disc disease, arthritis, scoliosis and sciatica. He is capable of about one hour of physical activity before pain accumulates and immobilizes him for a while. Sometimes, depending on the task, he is bedridden for a day or two.

***Medical Report (April 7, 2023) – signed by the appellant's doctor***

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

<b>A - Diagnosis</b>	<b>Date of onset - month/year</b>
lower back pain, osteoarthritis	year 3
bulging disc	
anxiety	

**B - Health History**

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

The appellant's back limits him at times.

- Has the applicant been prescribed any medications and/or treatments that interfere with his ability to perform daily living activities? – yes  
The appellant is on Tylenol 3, which can affect his abilities - although the doctor states he didn't believe this was the case when he examined the appellant.
- If yes, what is the anticipated duration of medications and/treatments? – long term
- Does the appellant require prostheses or aids for his impairment? – no

**C - Degree and Course of Impairment**

- Is the impairment likely to continue for two years or more from today? – no

**D - Functional Skills**

- How far can this person walk unaided on a flat surface? - unknown
- How many stairs can this person climb unaided? - unknown
- What are the person's limitations in lifting? - unknown
- How long can this person remain seated? - unknown
- Are there difficulties with communication? - no
- Are there any significant deficits with cognitive and emotional function? – no

**E - Daily Living Activities** – not completed

**F- Additional Comments:**

While examining the appellant the doctor states he had not seen any significant concerns.

**G - Frequency of Contact**

- How long has the applicant been your patient? – no response
- Prior to today, how often have you seen this applicant in the past 12 months? – once

**Assessor's Report (April 12, 2023) – signed by the appellant's social worker**

**A - Applicant Information**

The appellant's social worker provided the following information and responses to the questions below.

**B - Living Environment**

The social worker states the appellant lives alone.

**C - Mental or Physical Impairment**

- What are the applicant's mental or physical impairments that impact his ability to manage daily living activities?

The appellant has degenerative disc disease, scoliosis, and rheumatoid arthritis. He also indicated he has depression and his tinnitus impacts his hearing and speaking ability.

**Ability to Communicate**

Please indicate the level of ability in the following areas	Good	Satisfactory	Poor	Unable	Explain
speaking		X			tinnitus which impacts his hearing and speaking ability
reading					
writing					
hearing			X		tinnitus which impacts his hearing and speaking ability

**Mobility and Physical Ability**

Indicate the assistance required related to impairment (that directly restricts the applicant's ability to manage in the following areas).	Independent	Periodic assistance from another person	Continuous assistance from another person or unable	Uses assistive device	Takes significantly longer than typical	Explain and specify device
Walking indoors					X	major impact
Walking outdoors					X	"
Climbing stairs					X	"
Standing		X				
Lifting		X				
Carrying and holding		X				

**Cognitive and Emotional Functioning**

For each item indicate to what degree the applicant’s mental impairment restricts his functioning.

If impact is episodic or varies over time, please explain.	Impact on Daily Functioning			
	No impact	Minimal impact	Moderate impact	Major impact
Bodily functions (e.g. eating problems, toileting problems, poor hygiene, sleep disturbance)		X		
Consciousness (e.g. orientation, alert/drowsy, confusion)		X		
Emotion (e.g. excessive or inappropriate anxiety, depression etc.)		X		
Impulse control (e.g. inability to stop doing something or failing to resist doing something)	X			
Insight and judgement (e.g. poor awareness of self and health condition (e.g. grandiosity, unsafe behavior)	X			
Attention/concentration (e.g. distractible, unable to maintain concentration, poor short-term memory)	X			
Executive (e.g. planning, organizing, sequencing, abstract thinking, problem-solving, calculations)	X			
Memory (e.g. can learn new information, names etc., and then recall that information, forgets over-learned facts)	X			
Motivation (e.g. lack of initiative, loss of interest)	X			
Motor activity (e.g. increased or decreased goal-oriented activity, coordination, lack of movement, agitation, ritualistic or repetitive actions, bizarre behaviours, extreme tension)	X			

Language (e.g. expression or comprehension problems (e.g. inability to understand, extreme stuttering, mute, racing speech disorganization of speech)	X			
Psychotic symptoms (e.g. delusions, hallucinations, disorganized thinking)	X			
Other neuropsychological problems (e.g. visual/spatial problems, psychomotor problems, learning disabilities etc.)	X			
Other emotional or mental problems		X		

**D - Daily Living Activities**

Indicate the assistance required related to impairment(s) that directly restrict the applicant's ability to manage in the following areas.	Independent	Periodic Assistance from another person	Continuous assistance from another person or unable	Uses assistive device	Takes significantly longer than typical	Explain/ Describe
Dressing		X				
Grooming		X				
Bathing	X					
Toileting	X					
Feeding self	X					
Regulating diet	X					
Transfers (in/out of bed)		X				
Transfers (on/off chair)		X				
<b>Basic Housekeeping</b>						
Laundry	X					
Basic housekeeping		X				
<b>Shopping</b>						
Going to/from stores	X					
Reading prices and labels	X					
Making appropriate choices	X					
Paying for purchases	X					
Carrying purchases home		X				
Additional comments (including a description of the type and amount of assistance required and identification of any safety issues) - no response						



<b>Meals</b>					
Meal planning	x				
Food preparation	x				
Cooking	x				
Safe storage of food (ability, not environmental)	x				
<b>Pay rent and bills</b>					
Banking	x				
Budgeting	x				
Pay rent and bills	x				
<b>Medications</b>					
Filling/refilling prescriptions	x				
Taking as directed	x				
Safe handling and storage	x				
<b>Transportation</b>					
Getting in and out of a vehicle	x				
Using public transit	x				
Using transit schedules and arranging transportation	x				

Additional comments (including a description of the type and amount of assistance required and identification of a safety issues) – no response

**Social Functioning** – only complete if applicant has an identified mental impairment

Indicate the assistance required related to impairment(s) that directly restrict the applicant’s ability to manage in the following areas.	Independent	Periodic support/supervision	Continuous support/supervision	Explain/Describe
Appropriate social decisions (including avoiding situations dangerous to self or others, good social judgement)	x			
Able to develop and maintain relationships	x			
Interacts appropriately with others (e.g. understands and responds to social cues, problem solves in social context)	x			

Able to deal appropriately with unexpected demands	x			
Able to secure assistance from others	x			
Other (please specify)	x			

**Describe how the mental impairment impacts the applicant’s relationship with**  
**- immediate social network** - marginal functioning – little significant participation/communication: relationships often minimal and fluctuate in quality  
**- extended social networks** – marginal functioning – little more than minimal acts to fulfill basic needs

**E - Assistance Provided for Applicant**

**Assistance provided by other people**

- no information provided

**Assistance provided through the use of devices**

What equipment or devices does the applicant routinely use to help compensate for his impairment? – no information provided

**F - Additional Information**

As a result of chronic pain, the appellant often cannot get out of bed to perform daily activities. He cannot shower some days, or leave the house for groceries or to see friends or family. His arthritis flares at times, such as after physical activity. He has developed tinnitus in both ears and as a result often cannot hear many sounds, such as other people talking. This has impacted his ability to maintain relationships. Due to chronic pain issues, the appellant’s family doctor has diagnosed him with major depressive disorder.

**H - Frequency of Contact**

Is this your first contact with the applicant – no

How long have you known this applicant – 10 months

How often have you seen the applicant in the past 12 months? – 11 or more times.

**Information received after Reconsideration Decision**

Appellant

**Notice of Appeal (September 19, 2023)**

In the Notice of Appeal, the appellant states he has been living with his condition for years. He just spent a week in bed because his back decided to act up again. He adds that

this happens every day to varying degrees and that he can't stand longer than one hour. The appellant adds that he is not capable of working.

At the hearing, the appellant stated that he would not be able to sustain any employment with his health issues. He added that each day he has to make choices as to what he can manage. If he engages in increased activity he may be bedridden. The less he does, the better he feels, but if he's stuck at home for days this affects his mental health. Recently he is seeing a psychiatrist.

The appellant stated his condition was worse before he received an injection in his back, but his foot is now numb. When he shops for groceries, he makes multiple trips over a few days. Showering and getting ready in the morning takes a long time because he needs his medication to work. Cleaning the house takes a day. He has to think about managing his activities 24/7 and 3/5 days are "bad days". The appellant added that he has no help. His grandmother is elderly. Other family members will help when needed but are busy.

The appellant also stated that the letter dated January 21, 2019 was written to the doctor he had at the time, but he wasn't sure by whom. His work injury that caused his health issues occurred in 2016.

### Ministry

The ministry relied on its record and added that if the physician doesn't specifically say the impairment will continue for two years or more, the ministry can't approve the application. As well, if someone who is not a prescribed professional provides information that a prescribed professional did not, the ministry cannot consider it.

The ministry added that the appellant may also want to consider the ministry's Persons with Persistent Multiple Barriers benefit.

### **Admissibility**

The panel determined the additional information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

**Part F – Reasons for Panel Decision**

The issue on appeal is whether the ministry's reconsideration decision was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

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

- does not have a severe impairment;
- does not have an impairment that will continue for two years or more;
- does not have an impairment that directly and significantly restricts daily living activities, and
- does not require significant help with daily living activities?

The panel notes all the above criteria is required, as per section 2(2) of the Act.

**Appellant Position**

The appellant argues that his scoliosis, degenerative disc disease and chronic pain, all significantly limit his ability to perform basic daily living activities. He is capable of about one hour of physical activity before pain accumulates and immobilizes him for a while. Sometimes, depending on the task, he is bedridden for a day or two.

When he shops for groceries, he makes multiple trips over a few days. Showering and getting ready in the morning takes a long time. Cleaning the house takes a day. Three out of five days are "bad days". In addition, he states he has no help. His grandmother is elderly and although other family members will help when needed, they are busy.

**Ministry Position**Mental Functioning

The ministry argues that the appellant's diagnosis of anxiety was assessed to be well controlled in the most recent medical notes. In addition, the information does not confirm a severe degree of impairment or impact to daily functioning.

Physical Functioning

The ministry notes that when the appellant's workplace injury first occurred several years ago, he walked with a cane and had difficulty mobilizing, forward flexion, and was in obvious distress and pain. However, the ministry argues this has not continued in more recent medical notes. While the appellant's social worker highlights the appellant's

pain levels in 2019, the ministry argues this does not confirm the appellant currently experiences a severe degree of physical impairment, nor does the occasional use of a cane.

#### Duration

The ministry argues that in the application, the appellant's doctor indicates his impairment is not likely to continue for two years.

#### Daily Living Activities

The ministry argues that although the appellant's doctor indicates the appellant has been prescribed medications that could affect his daily living activities, this did not appear to be the case during his appointment and the medical report does not discuss the appellant's daily functioning.

The appellant's social worker reports that the appellant requires periodic assistance in some areas of personal care, basic housekeeping and shopping. However, the details as to how often the appellant requires help were not reported.

#### Help Required with Daily Living Activities

The ministry argues that the appellant's doctor does not state that the appellant requires help and the appellant's social worker has not specified what help is required. In addition, as it has not been established that daily living activities are significantly restricted, it cannot be determined that significant help is required.

### **Panel Analysis**

Section 2(2) of the Act sets out the requirements that must be met for the minister to designate a person as a person with disabilities. One requirement is that the minister is satisfied the person has a severe mental or physical impairment.

#### **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 restrictions on physical abilities and/or mental functions. The panel finds an assessment of severity based on physical and mental functioning (including restrictions) a reasonable application of the legislation.

*Mental Impairment*

The panel notes in the self-report the appellant does not indicate any restrictions caused by a mental impairment. In the medical report, although the doctor shows anxiety as a diagnosis, they do not provide any information on the severity of this medical condition.

In the assessor's report, the social worker states the appellant indicated he has depression and that the appellant's family doctor has diagnosed him with major depressive disorder. However, as there is no confirmation from the doctor on this diagnosis, the panel finds this statement alone is insufficient to establish a severe mental impairment. As well, the social worker indicates there were no major or moderate impacts on daily cognitive and emotional functioning, no communication problems related to mental impairment, and independent social functioning.

The panel finds there is insufficient evidence to conclude that the appellant has a severe mental impairment. Therefore, the panel finds the ministry decision, that it was not satisfied the appellant has a severe mental impairment, reasonable.

*Physical Impairment*

The panel notes that in the medical report the doctor states the appellant's back limits him at times but didn't know the appellant's functional abilities. As well, in the July 10, 2023 note, the doctor added that the appellant looks well, gait is normal, he is able to stand up from a sitting position, back exam flexion is good, there is hyperextension with limitation, the appellant is able to bend forward, his finger to the floor is about 20 centimetres, and twisting the back is okay - musculoskeletal back pain seems to be well controlled.

In the assessor's report, the social worker states there is major impact with walking indoors/outdoors and climbing stairs. The appellant takes significantly longer than typical for these tasks, and needs periodic assistance from another person when standing, lifting and carrying and holding. However, insufficient details were provided to indicate how much longer, and how often assistance was needed.

The letter to the appellant's doctor (2019) describes pain rated as 7-8/10 in severity - constant and never resolves. Although the panel finds this description demonstrates a more severe physical impairment, the panel gives this evidence less weight than the information in the application as the letter is dated in 2019 and the information in the application was completed in 2023.

In the self-report, the appellant writes that he has degenerative disc disease, arthritis, scoliosis and sciatica. He adds that he is capable of about one hour of physical activity

before pain accumulates and immobilizes him for a while. Sometimes, depending on the task, he is bedridden for a day or two. In the Notice of Appeal, the appellant states he can't stand longer than one hour and adds that he is not capable of working. The panel acknowledges that the appellant is incapacitated at times. However, although the appellant stated he has to lay in bed for the day to alleviate the pain, he did not state he was unable to move, just that this is his way of handling his pain. As well, the legislation, in this appeal, does not require a person to be capable of working.

The panel finds, with the above information, there is insufficient evidence to support a severe physical impairment. Therefore, the panel finds the ministry decision, that it was not satisfied the appellant has a severe impairment, reasonable.

### **Impairment will Continue for Two years or more**

Another requirement under section 2(2) of the Act is that the person has a severe mental or physical impairment that in the opinion of a medical practitioner is likely to continue for at least two years.

In the medical report, in response to the question, "Is the impairment likely to continue for two years or more from today?", the doctor answered, "no". However, the doctor (a medical practitioner) also stated the anticipated duration of medications and treatments is long term. As the panel finds the above information to be somewhat contradictory it relies on other information to assist it in determining the projected duration of the impairment. The panel notes the appellant's medical history confirms his condition has lasted several years (since at least 2018). With the doctor's statement, that the anticipated duration of medication and treatment is long term, coupled with the appellant's health history, the panel finds it reasonable to conclude that the appellant's impairment will continue for two years or more.

Therefore, the panel finds the ministry decision, that it was not satisfied the appellant has a mental or physical impairment that is likely to continue for at least two years, unreasonable.

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

Section 2(2) of the Act also states the minister must be satisfied that in the opinion of a prescribed professional, a severe physical or mental impairment directly and significantly restricts the person's ability to perform daily living activities continuously, or periodically for extended periods.

At least two activities must be restricted in a way that meet the requirements. To be significant, the restriction must be to a great extent, such as not being able to do the

activities without a lot of support. "Continuous" means the activity is generally restricted all the time and "periodic for extended periods" means frequently or for longer periods of time.

Daily living activities are defined in section 2(1)(a) of the Regulation, as shown below.

*prepare own meals*

In the assessor's report, the social worker states the appellant is independent with meal planning, food preparation, cooking and safe storage of food.

*manage personal finances*

In the assessor's report, the social worker states the appellant is independent with banking, budgeting and paying rent and bills.

*shop for personal needs*

In the assessor's report, the social worker states the appellant is independent with going to and from stores, reading prices and labels, making appropriate choices and paying for purchases. They also state the appellant needs periodic assistance from another person with carrying purchases home. The appellant stated at the hearing that he takes several days to shop for groceries.

*use public or personal transportation facilities*

In the assessor's report, the social worker states the appellant is independent with getting in and out of a vehicle, using public transit and using transit schedules and arranging transportation.

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

In the assessor's report, the social worker states the appellant is independent with laundry but needs periodic assistance with basic housekeeping. At the hearing, the appellant indicated that cleaning the house takes a day.

*move about indoors and outdoors*

In the assessor's report, the social worker states there is major impact with walking indoors/outdoors and climbing stairs; the appellant takes significantly longer than typical for these tasks.

*perform personal hygiene and self care*

In the request for reconsideration, the social worker states the appellant cannot often take care of his personal hygiene and in the assessor's report states the appellant cannot shower some days. As well, in the assessor's report the social worker states the appellant is independent with bathing and toileting, but requires period assistance with dressing



and grooming. At the hearing, the appellant stated that showering and getting ready in the morning takes a long time.

*manage personal medication*

In the assessor's report, the social worker states the appellant is independent with filling/refilling prescriptions, taking medication as directed and safe handling and storage of medication.

Although the social worker states that the appellant needs periodic assistance with shopping, basic housekeeping and self-care and the appellant stated he takes several days to do grocery shopping, and it takes a long time to get ready in the morning, the panel finds there is insufficient information to determine how long and how much assistance is needed (i.e., occasionally, frequently or for longer periods of time?).

As well, although the panel acknowledges that the appellant struggles with mobility indoors and outdoors, the above information does not provide sufficient detail for the panel to understand the degree of restriction (e.g., how much longer than typical?, what assistance is needed to perform these tasks?).

Therefore, the panel finds there is insufficient evidence to establish that that the appellant has a mental or physical impairment that directly and significantly restricts his ability to perform at least two daily living activities continuously, or periodically for extended periods.

The panel finds the ministry was reasonable in concluding it is not satisfied that a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform daily living activities continuously, or periodically for extended periods.

**Help to Perform Daily Living Activities**

Section 2(2) of the Act also requires that as a result of those restrictions, the person requires help to perform those activities and in order to perform them, the person requires an assistive device or the significant help or supervision of another person. The panel notes in the assessor's report although the social worker indicated in several places that periodic assistance from another person was required, the panel finds no details, (as to what type of assistance was needed), were provided. As well, although the social worker stated the appellant uses a cane at times, this does not confirm the appellant requires a cane to perform his daily living activities.

In addition, as the panel determined that the appellant does not have a severe mental or physical impairment that directly and significantly restricts his ability to perform daily

living activities continuously, or periodically for extended periods, it follows that it cannot be concluded that assistance is required.

At the hearing, the ministry indicated that the appellant could consider the ministry's Persons with Persistent Multiple Barriers benefit. The panel encourages the appellant to explore this option.

### **Conclusion**

In conclusion, the panel finds the ministry's decision that the appellant was not eligible for Persons with Disabilities designation was a reasonable application of the legislation in the circumstances of the appellant.

The panel confirms the ministry's decision, in accordance with section 2(2) of the Act.

The appellant is not successful on appeal.

## Schedule of Legislation

### Employment and Assistance for Persons with Disabilities Act

#### **Persons with disabilities**

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

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal....

### Employment and Assistance for Persons with Disabilities Regulation

#### **Definitions for Act**

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

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

(i) prepare own meals;

(ii) manage personal finances;

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

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

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

- (i)medical practitioner,
- (ii)registered psychologist,
- (iii)registered nurse or registered psychiatric nurse,
- (iv)occupational therapist,
- (v)physical therapist,
- (vi)social worker,
- (vii)chiropractor, or
- (viii)nurse practitioner...

## **Part 1.1 — Persons with Disabilities**

### **Alternative grounds for designation under section 2 of Act**

**2.1** The following classes of persons are prescribed for the purposes of section 2

(2) [*persons with disabilities*] of the Act:

- (a)a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b)a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c)a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act*;
- (d)a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act* to assist that family in caring for the person;
- (e)a person who is considered to be disabled under section 42 (2) of the *Canada Pension Plan* (Canada).

APPEAL NUMBER 2023-0283

**Part G – Order**

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

The Panel     Confirms the Ministry Decision     Rescinds the Ministry Decision

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

**Legislative Authority for the Decision:**

*Employment and Assistance Act*

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

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

**Part H – Signatures**

Print Name

Connie Simonsen

Signature of Chair

Date (Year/Month/Day)

2023/November/18

Print Name

Janet Ward

Signature of Member

Date (Year/Month/Day)

2023/November/18

Print Name

Bob Fenske

Signature of Member

Date (Year/Month/Day)

2023/November/20