

**Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated August 28, 2023, in which the ministry found the appellant was not eligible for designation as a Person with Disabilities (“PWD”) under section 2 of the *Employment and Assistance for Persons with Disabilities Act* (“Act”). The ministry found that the appellant met the age requirement and the requirement for the impairment to continue for at least 2 years. The ministry was not satisfied that: the appellant has a severe physical or mental impairment, the severe impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform daily living activities either continuously or periodically for extended periods; and as a result of restrictions caused by the severe impairment, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform daily living activities.

The ministry found that the appellant is not one of the prescribed classes of persons eligible for PWD designation on the alternative grounds set out in section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation* (“Regulation”). As there was no information or argument on this point, the panel considers it not to be at issue in this appeal.

**Part D – Relevant Legislation**

The ministry based the reconsideration decision on the following legislation:

*Employment and Assistance for Persons with Disabilities Act - section 2*

Employment and Assistance for Persons with Disabilities Regulation - sections 2 and 2.1

*Employment and Assistance Act - section 22(4)*

*The full text is available in the Schedule after the decision.*

**Part E – Summary of Facts**

The information the ministry had at the reconsideration included:

1. A *Record of decision* indicating that the PWD application was submitted on May 31, 2023, and denied on July 5, 2023, with the *Decision denial summary* explaining the criteria that were not met.

On July 21, 2023, the appellant submitted a *Request for Reconsideration* with additional information. On August 28, 2023, the ministry completed its review and found that the criteria for *severe* impairment, daily living activities and help were still not met.

2. The PWD application with 3 parts:

The *Applicant Information* ("self-report"- signed by the appellant on January 5, 2023, and May 25, 2023) with identical submissions from the appellant for both reports.

Two *Medical Reports*: "Medical Report 1", dated January 4, 2023; and "Medical Report 2", dated May 11, 2023. The reports were signed by a general practitioner ("Dr. A") who has known the appellant for 6 months, and has seen him 2-10 times in the past 12 months, and

An *Assessor Report* dated April 19, 2023, also completed by Dr. A who based the assessment on an office interview with the appellant.

*Summary of relevant evidence from the application*

**Diagnoses*****Medical Report 1***

In Section A, the appellant was diagnosed with peripheral artery disease and social anxiety (onset 2015).

***Medical Report 2***

In Section A, the appellant was diagnosed with post-traumatic stress disorder ("PTSD" onset 2019) and idiopathic peripheral neuropathy.

**Functional skills**Self-report – physical impairment

The appellant reported problems with both his balance and his neck. The appellant said that he only sleeps for an hour at a time because his neck seizes up. The appellant reported frequent falls, and his toes bleed and curl every day despite medication.

The appellant reported a lot of difficulty with walking uphill and he has no feeling in his feet except “electrical shocks” and pain. The appellant said that lifting anything heavy “causes shooting pains in my feet and I lose my balance.”

Self-report – mental impairment

The appellant described a history of trauma and abuse. He received provincial disability in another province before moving to British Columbia. The appellant described being “stressed out” easily with any type of conflict or burden. The appellant required new medications to prevent self-harm (“cutting”) and most days he “just wants to give up.”

The appellant said that he does not trust authority due to blame for things he didn’t do. The appellant described being bullied by his landlord (currently). The appellant reported getting anxious around people and quick to anger when “people get in my face or ask questions I don’t understand.” The appellant said that he gets confused easily and taken advantage of, including having his things stolen when he trusts too readily.

The appellant described a history of suicide attempts due to feeling humiliated. The appellant said that he has no family, close relatives, or friends. The appellant said he had to move due to feeling depressed, isolated, and hopeless. He feels a little more hopeful with his new medication but has severe anxiety around groups of people or crowds.

Medical Report 1 – physical impairment

In Section B - *Health History*, Dr. A reported “pain in feet on standing more than 3 hours Dizzy when closing eyes...Walking is impaired. Very poor balance.”

In Section D - *Functional Skills*, the appellant was able to walk 1-2 blocks unaided on a flat surface; and climb 5+ steps unaided. The appellant had no limitations with lifting or sitting.

Medical Report 2 – physical impairment

In Section B - *Health History*, Dr. A said that “idiopathic peripheral neuropathy causes neurogenic claudication resulting in pain when [the appellant] walks for more than 30 minutes. Also causes some balance issues.”

In Section D - *Functional Skills*, the appellant was able to walk 2-4 blocks unaided on a flat surface and climb 5+ steps unaided. The appellant was limited with lifting (maximum 5 to 15 pounds). He had no limitations with remaining seated.

Assessor Report – physical impairment

In Section B-3, the doctor assessed all areas of *Mobility and Physical Ability* as independent (comment, “all are limited to about 1 hour duration due to pain and peripheral neuropathy”):

*Walking indoors*

*Walking outdoors*

*Climbing stairs*

*Standing*

*Lifting*

*Carrying and holding*

In Section F – *Additional information*, Dr. A wrote that neuropathy limits the appellant’s mobility. Despite medications the appellant “still faces significant limitations.”

Medical Report 1 – mental impairment

The doctor checked “no” when asked if the appellant has difficulties with communication. When asked if there are any significant deficits with cognitive and emotional function, the doctor checked “yes” with an additional check mark for 1 of the 12 areas listed: *Emotional disturbance* (comment, “has depression currently controlled with meds”).

There was no check mark to indicate deficits for the following areas:

*Consciousness*

*Executive*

*Language*

*Memory*

*Perceptual psycho-motor*

*Psychotic symptoms*

*Motivation*

*Impulse control*

*Motor activity*

*Attention or sustained concentration*

*Other*

Medical Report 2 – mental impairment

The doctor checked “yes” when asked if the appellant had difficulties with communication and indicated that the cause was cognitive. When asked if there were any significant deficits with cognitive and emotional function, the doctor checked “yes” with an additional check mark for 1 of the 12 areas listed: *Emotional disturbance*.

Assessor Report – mental impairment

In Section B-2, Dr. A indicated “good” for two areas of communication: *speaking*, and *hearing*. The appellant’s *writing* was “satisfactory”, and *reading* was “poor.”

In section C-4, *Cognitive and Emotional Functioning*, the assessor was asked to indicate the impact of a *mental impairment* on various functions. For the 14 areas listed, Dr. A indicated the following impacts:

**minimal impact** for *emotion, impulse control, insight and judgment, attention/concentration, executive, and other emotional or mental problems*. No **moderate** or **major** impacts were indicated.

The doctor checked **no impact** for the remaining functions:

*Bodily functions*

*Consciousness*

*Memory*

*Motivation*

*Motor activity*

*Language*

*Psychotic symptoms*

*Other neuro-psychological problems*

In Section F – *Additional information*, Dr. A wrote that the appellant suffers from “sub-optimally treated PTSD” due to past traumas. The appellant “has struggled with anxiety, depression, and distrust from authority since then...and has developed maladaptive behaviours.”

***Daily living activities***

Dr. A provided the following information:

Medical Report 1

In Section B – *Health History*, the doctor wrote that social anxiety “limits [the appellant’s] ability to interact effectively with others.” The appellant can be “impulsive in responses which can get him in trouble at times.”

In Section B-4, the doctor checked “no” the appellant has not been prescribed medications or treatments that interfere with the ability to perform daily living activities.

In Section E - *Daily Living Activities* the doctor checked “no” when asked if the impairment directly restricts the person’s ability to perform activities. In the checklist, the doctor checked that *social functioning* is restricted (comment, “situational around people, can get agitated. Won’t go to anywhere there are lots of people”).

In Section F – *Additional Comments*, the doctor said that a “combination of low education, social anxiety, depression, and physical symptoms related to peripheral artery disease” restricts employment.

#### Medical Report 2

In Section C – *Health History*, Dr. A indicated that the appellant’s ability “to get groceries and do housework” was limited by living outside town. The doctor wrote that PTSD gives the appellant “a short fuse.” The appellant is “quick to anger and struggles with interpersonal interactions.”

In Section F - *Daily Living Activities*, the doctor checked that the appellant was restricted with *basic housework* and *daily shopping*. No check marks or comments were provided to indicate if the restriction was continuous or periodic. Section G – *Additional Comments* was left blank.

#### Assessor Report - Restricted daily living activities

In Section C, Dr. A indicated that the appellant requires periodic assistance or support for 4 of the 8 daily living activities listed in the form:

#### **Personal Care - Regulating diet**

The doctor checked “independent” for the remaining areas: *dressing, grooming, bathing, toileting, feeding self*, and *transfers* (bed and chair).

**Shopping** – *Carrying purchases home* (comment, “pain with walking”).

The doctor checked "independent" for the remaining areas: *going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases.*

Under *Additional Comments* for these daily living activities including the type and amount of assistance required, the doctor wrote, "lives a ways out from the shopping centers. Cabs are unreliable and can't afford. Carrying groceries home is too painful."

**Meals** – *meal planning, food preparation, and cooking* (comment, "is starting to learn to cook from roommate but basically has no skills there"). The doctor checked "independent" for the remaining area: *safe storage of food.*

**Social Functioning** – *appropriate social decisions, interacts appropriately with others, and able to deal appropriately with unexpected demands.*

When asked what support/supervision was required to maintain the appellant in the community, Dr. A wrote, "has struggled with authority for much of his life. Tends to react quickly with aggression or anger." The doctor checked that the appellant had "marginal functioning" with his immediate and extended social networks.

Dr. A checked "independent" for the remaining areas of social functioning:  
*Able to develop and maintain relationships.*  
*Able to secure assistance from others.*

Dr. A checked "independent" for all areas of 4 daily living activities listed in the Assessor Report:

**Basic housekeeping** - *laundry and basic housekeeping*

**Pay Rent and Bills** - *banking, budgeting, and pay rent and bills.*

**Medications** - *filling/refilling prescriptions, taking as directed, and safe handling and storage.*

**Transportation** – *getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation.*

*Additional information from the appellant – daily living activities*

In the self-report, the appellant indicated that he has difficulty shopping and taking public transit because they require walking uphill. The appellant explained that the shops are a mile away uphill, and the bus stops are uphill as well. The appellant said that he does "light housekeeping" to try to "keep busy to keep myself from going down." The appellant



detailed his history of being bullied as well as negative interactions with authority figures including the police.

### ***Need for help***

#### Medical Report

In both Medical Reports, Dr. A checked “no” when asked if the applicant requires any prostheses or aids for the impairment. In Medical Report 1, Section E, the doctor wrote “none” when asked what assistance the patient needs with daily living activities.

#### Assessor Report

In Section D - *Assistance provided by other people* the doctor checked “community service agencies” (comment, “food bank”). When asked what assistance was required when none is available, the doctor wrote, “crisis line.” The doctor wrote “none” when asked about assistance provided or required through assistive devices. The doctor checked “no” the appellant does not have an assistance animal.

#### *Additional information from the appellant – need for help*

In the self-report, the appellant stated that he has recently started seeing a counsellor for anger management.

**3.** A *Request for Reconsideration* signed by the appellant on August 14, 2023, with hand-written and typed submissions. In addition to argument for the reconsideration, the appellant provided the same information as the earlier self-report. The appellant also submitted the following documents with his request for reconsideration:

**4.** A letter from a legal advocate, dated July 20, 2023. In addition to argument for the reconsideration, the advocate described the appellant’s history of physical and mental abuse resulting in PTSD. The advocate stated that the appellant had attempted suicide “multiple times” because of his mental health concerns. The advocate reported that the appellant has “significant struggles with his balance, pain, lack of sleep, terrible neuropathy in his feet.”

5. A hospital record dated February 3, 2022, confirming peripheral arterial disease/arterial vascular disease; foot pain; and “peripheral neuropathy and pain with walking since 2015.”

6. A statement of deposit confirming receipt of disability assistance from another province.

7. A letter from Dr. A (undated) stating that the appellant suffers from peripheral neuropathy and neurogenic claudication. As a result, the appellant’s “ability to exert himself is quite limited. He can’t be on his feet for more that 30-60 minutes before his toes go numb and he started getting some pain.”

The doctor said that the appellant also experiences some balance issues which “limits his abilities to go out and get groceries as well as doing some housework.” The letter said that the appellant suffers from anxiety and has difficulties with interpersonal interactions. The appellant was “quick to anger, likely as a defense mechanism from his anxiety.” The appellant therefore has challenges with people he doesn’t know.

8. A letter from Dr. A dated August 1, 2023, written in support of the reconsideration. The doctor explained that they are new to British Columbia and did not fill out the PWD forms to capture the full extent of the appellant’s disability. The letter provided the following information:

The appellant has idiopathic peripheral neuropathy which “severely affects his everyday functioning.” For example:

*he cannot walk from his place of residence to get food due to the pain from the neuropathy as well as the balance issues that he gets from it. He cannot afford a taxi and there is no public transportation. As a result of this, he has lost a significant amount of weight due to food scarcity. In my initial application, I indicated that he was independent in all areas of mobility and physical ability which is not the case. He is significantly disabled.*

Dr. A explained that the original PWD reports were not clear “about the degree of impairment [the appellant] has as a result of his PTSD.” The doctor stated that they “mistakenly indicated that all cognitive and emotional functions are only minimally or not impacted.” The appellant has “severe PTSD” which results in “no ability to cope with stress or conflict. This impacts all areas of his existence when dealing with people, be it socially or in a work environment.”

The letter said that the appellant “also has difficulties asking for and obtaining help. [The appellant] is significantly impacted by this on a daily basis.” In addition, the appellant “requires assistance with daily activities on a daily basis. ”

The doctor explained that both PTSD and peripheral neuropathy are long-term conditions “with the peripheral neuropathy having only deterioration as a prognosis.” The appellant “will require assistance with daily activities long-term, even indefinitely.”

### **Additional submissions**

With the consent of both parties the hearing format was a written hearing. In his *Notice of Appeal* with a handwritten submission dated September 14, 2023, the appellant said that he cannot cook or clean without support and he cannot be on his feet for more than 30-60 minutes due to peripheral neuropathy and neurogenic claudication.

The appellant submitted four letters on appeal, received at the Tribunal on November 16, 2023, and summarized as follows:

1. A letter from the legal advocate, dated October 11, 2023. In addition to argument, the advocate explained that Dr. A is new to British Columbia; is very busy in their daily practice; had little experience with PWD forms and made some errors in the initial application.
2. A letter from Dr. A dated October 11, 2023, confirming that they were unfamiliar with the PWD forms as they had only been practicing in British Columbia for 6 months. The doctor stated that the way they filled out the original forms “did not adequately capture [the appellant’s] disabilities.” The doctor explained that there were “supposed to be discrepancies between what I had written in the application and what I had included in my [reconsideration] letter” because the initial application was not filled out correctly.

The letter stated that the appellant cannot wait to reapply with new forms because “his health is deteriorating as the result of the lack of funds.” The appellant is “severely disabled cognitively (low formal education), emotionally (PTSD, depression, anxiety), and physically (hereditary peripheral neuropathy).”

3. A copy of Dr. A’s August 1, 2023 letter that was previously submitted for the reconsideration.

4. A letter from an employment program facilitator (“employment worker”) dated October 18, 2023. The worker explained that the appellant had participated in the employment program since September 2022. The appellant reported “frequent falls related to neuropathy in his feet, difficulty navigating curbs and uneven surfaces, and increasing difficulty performing everyday tasks that he was comfortable with and capable of only a year ago.”

The employment worker stated that they observed the appellant’s difficulty “with walking any distance beyond a few blocks, carrying small furniture or other heavy/awkward loads, bending, squatting, standing up from a seated position, and most recently, the loss of ability to flex his left foot after a particularly bad fall...He falls more frequently now.”

The worker reported that the appellant “cancels shifts frequently due to falls, related bruising, bleeding toes, and associated pain in his feet and hands.” The appellant had also reported “loss of feeling/tingling and loss of fine motor control in both hands which results in dropping things.”

The worker stated that the appellant “relies on the support and intervention of myself and the housing facilitator [for the program] to navigate many daily issues emerging with his relationships in the community.” The appellant relies on a neighbour “to shop, cook, and clean on a daily basis. Prior to receiving this assistance [the appellant] was unable to consistently maintain health and self-care.”

The worker explained that the appellant’s complex PTSD symptoms “result in noticeable emotional dysregulation that impacts all of his relationships with friends and service providers.” The worker witnessed “frequent angry outbursts, alienation and despair.” The worker reported that the appellant “is receiving medical and counselling support to mitigate the effects of his trauma and physical disabilities.”

#### *Admissibility of additional information*

The ministry did not have any objections to the letters and maintained in an email to the Tribunal that its submission on appeal would be the reconsideration record of decision. The panel finds that the letters add breadth and depth to the circumstances around the original PWD application as well as detailed information about the appellant’s current functioning. The panel finds that the additional submissions are admissible under the *Employment and Assistance Act* as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

**Part F – Reasons for Panel Decision**

The issue on appeal is whether the ministry's decision that found the appellant ineligible for PWD designation was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. The panel's role is to determine whether the ministry was reasonable in finding that the following eligibility criteria in section 2 of the Act were not met:

The appellant has a severe physical or mental impairment.

The impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform daily living activities either continuously or periodically for extended periods; and

as a result of restrictions caused by the severe impairment, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform daily living activities.

**Analysis***PWD designation - generally*

The legislation provides the Minister with the discretion to designate someone as a *Person with Disabilities* if all the requirements are met. In the ministry's view, PWD designation is for persons who have significant difficulty in performing regular self-care activities including social interaction and making decisions about personal activities, where a severe physical or mental impairment is shown.

Some requirements must have an opinion from a professional, so it is reasonable to place significant weight on those opinions. The ministry found that only 2 of the 5 requirements were met because the appellant is at least 18 years of age, and a doctor has given the opinion that the impairment is likely to continue for at least 2 years.

The application form includes a self-report, so it is appropriate to place significant weight on evidence from the appellant unless there is a legitimate reason not to do so. The panel will review the reasonableness of the ministry's determinations and exercise of discretion.

*Severe 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 interpretation of the legislation. A medical practitioner's description of a condition as "severe" is not determinative on its own. The ministry must make this determination considering the relevant evidence and legal principles.

### *Restrictions to Daily living activities*

A prescribed professional must provide an opinion that the applicant's impairment restricts the ability to perform daily living activities. The BC Supreme Court decision in *Hudson v. Employment and Assistance Appeal Tribunal* [2009 BCSC 1461] determined that at least two daily living activities must be restricted in a way that meets the requirements of the Act, and that **not all activities need to be restricted**.

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

The restrictions must also 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 requirements for restrictions to daily living activities are set out in subsection 2(2)(b)(i) of the Act. Specific activities are listed in section 2(1) of the Regulation. The Medical Report and Assessor Report also list activities, and though they do not match the daily living activities in the Regulation exactly, they generally cover the same activities.

The Medical Report and Assessor Report give the professional the opportunity to provide additional details on the applicant's restrictions. **The inability to work and financial need are not listed as daily living activities and are only relevant to the extent they impact the listed activities.**

### *Help Required*

A prescribed professional must provide an opinion that the person needs help to perform the restricted daily living activities. This requirement is set out in subsection 2(2)(b)(ii) of the Act. Under subsection 3, “help” means needing an assistive device, the significant help or supervision of another person, or an assistance animal to perform daily living activities. An assistance device, defined in section 2(1) of the Act, **is something designed to let the person perform the restricted daily living activities.**

## Arguments

### Severe impairment

#### *Appellant's position*

The appellant's position is that he meets all the requirements for disability status in British Columbia. The appellant argued that his doctor did not fill out the PWD forms correctly because they were new to British Columbia and weren't aware of the “proper protocol.” The appellant said that Dr. A apologized and has now provided the required information.

The legal advocate argued that Dr. A's letter of August 1, 2023, was not given significant consideration at the reconsideration. The advocate argued that the appellant should be granted disability in British Columbia because his severe physical and mental health concerns were recognized by doctors as well as the government in another province. The advocate argued that the ministry did not give enough consideration to the appellant's self-report which “clearly stated the impacts” on every aspect of his daily life.

In their most recent letter (October 11, 2023), Dr. A argued that the appellant is severely disabled by the combination of physical and mental conditions which are exacerbated by stressors such as low education and not being able to work. The doctor said they have seen “the spectrum of disability” in over 20 years of practice and feel that the ministry disregarded the letter submitted for the reconsideration. The doctor argued that the appellant is “being penalized for my error in filling out the initial application which is not fair to him at all.”

#### *Ministry's position - physical impairment*

The ministry's position is that the information from Dr. A did not establish a severe physical impairment because the assessments in the two Medical Reports indicated sufficient ability to do errands and lift household objects. The ministry accepted the assessments in Medical Report 2 “as the most current and accurate assessment” but

argued that the ability to walk 2-4 blocks unaided, climb 5+ steps, and lift 5-15 pounds is not a significant functional restriction. The ministry argued that the appellant “could perform acts of mobility and physical ability for up to one hour” as indicated in the Assessor Report.

The ministry further argued that living outside town and not being able to afford transportation do not demonstrate a severe impairment due to a medical condition. The ministry acknowledged Dr. A’s more recent letter (August 1, 2023) that indicated a greater degree of impairment but argued that the information was inconsistent with the earlier reports that said the appellant could walk for 30-60 minutes and perform other physical functions with little or no limitation.

The ministry said that it considered the letter from the advocate and the appellant’s self-reports in conjunction with the information from Dr. A. The ministry acknowledged impacts to physical functioning but argued that a *severe* impairment of physical functioning was not established on the evidence.

### **Panel’s decision - physical impairment**

The panel finds that the ministry’s decision (no severe physical impairment) was not reasonably supported by the evidence at the reconsideration. Dr. A’s letter of August 1, 2023, gave a more recent and detailed account of significant physical restrictions due to peripheral neuropathy. In particular, the doctor said the appellant is not independent with his physical functions due to pain and balance issues.

The doctor also noted that the appellant has lost a lot of weight because he is unable to walk to buy food. Furthermore, the appellant’s condition continues to deteriorate due to a poor prognosis for peripheral neuropathy.

The appellant’s evidence details his restrictions with walking. While the appellant may be able to walk a short distance, he experiences frequent falls due to uneven sidewalks, as well as significant challenges with uphill terrain which makes it very difficult to go to stores or even to the bus stop. The appellant also reported that his toes curl and bleed everyday despite medication.

The appeal submissions are further confirmation of the appellant’s difficulties with mobility and other physical functions. The letter from the employment worker gave detailed examples of the appellant’s decreasing ability to manage his physical functions. While not a medical opinion, the worker had observed firsthand the appellant’s struggle to



walk “any distance beyond a few blocks...difficulty navigating curbs and uneven surface. Falls more frequently now [causing bruising and injury].” While the appellant could presumably lift lighter weight objects, he reported a loss of feeling and spasms in both hands which results in dropping things.

The panel finds that the detailed examples from the employment worker support Dr. A's professional opinion of “severe disability.” In their most recent letter (October 11, 2023), Dr. A. explained that the appellant is “severely disabled” by peripheral neuropathy combined with his other medical conditions as well as social factors.

The panel acknowledges that the checkmarks in the Medical and Assessor Reports as well some of Dr. A's narrative comments in the reports indicate a greater degree of physical ability. The panel acknowledges the inconsistencies but gives more weight to the letters submitted for the reconsideration and appeal which provide a more fulsome and detailed account of the appellant's impairment with specific examples of his worsening peripheral neuralgia that limits walking, standing, and lifting/carrying.

Dr. A, as well as the appellant and legal advocate, gave a thorough and consistent explanation for the inconsistencies between the PWD application and the letter of August 1, 2023. It was not reasonable for the ministry to focus on the inconsistencies between the original medical information and the letter without assessing the reasons for the discrepancy. Dr. A explained in the letter, that the forms “did not properly capture the disability” because errors were made in filling out the application. The doctor explained this in greater detail in the appeal letter, but the ministry did not change its position.

In addition, some of the information in the original PWD medical reports was consistent with the doctor's recent evidence. In Medical Report 1 (Section B - *Health history*), Dr. A indicated that “walking is impaired, very poor balance” despite the appellant being able to walk for 1-2 blocks on a flat surface. The doctor also noted balance issues in Medical Report 2 despite stating that the appellant could walk for up to 30 minutes.

The panel finds that the totality of the evidence establishes a severe physical impairment. The most recent and detailed information indicates worsening peripheral neuropathy that makes it especially difficult to walk due to problems with balance. The appellant has experienced falls on uneven surfaces. These issues also create a safety concern. Dr. A explained that the appellant is not independent with any of his physical functions. The requirement for a *severe* impairment under the Act is therefore met based on a physical impairment.

**Ministry's position - mental impairment**

The ministry's position is that the medical information for the PWD application did not establish a severe mental impairment because there was not enough information about what support/supervision the appellant requires for social functioning and the appellant was assessed as independent in managing interpersonal relationships and securing assistance from others. The ministry acknowledged that the doctor described problems with relationships and anger management but argued that the cumulative impact to cognitive and emotional functioning (as indicated by check marks on the forms) was not indicative of a severe mental impairment.

The ministry noted that Dr. A checked *minimal/no impact* for most areas of cognitive and emotional functioning (Assessor Report) and only one significant deficit (*emotional disturbance*) was checked in the Medical Reports. The ministry argued that the application focused on the ability to be employed which is not taken into consideration in PWD determination.

The ministry summarized the mental health information in Dr. A's letter of August 1, 2023, but argued that a serious medical condition does not in itself establish a severe impairment. The ministry said that it considered the letter from the advocate and the appellant's self-report in conjunction with the information from Dr. A. The ministry acknowledged impacts to cognitive and emotional functioning but argued that a *severe* impairment of mental functioning was not established on the evidence.

**Panel's decision - mental impairment**

The panel finds that the ministry's decision (no severe mental impairment) was not reasonably supported by the evidence at the reconsideration. The appellant was diagnosed with PTSD, depression, and social anxiety. In the narrative comments, the doctor described significant difficulties with interpersonal relationships due to problems with impulse control ("short fuse...quick to anger"). The doctor described lifelong struggles with authority figures. In the self-report, the appellant described a history of abuse and being taken advantage of, including current bullying by his landlord.

The ministry gave more weight to the check marks on the forms which indicated minimal cognitive and emotional impacts for the most part. However, the narrative provides a clearer, more detailed account of the appellant's emotional and interpersonal struggles.

Dr. A's letter of August 1, 2023, further clarifies the appellant's difficulties in communicating with people he doesn't know and dealing with stress. The appellant "has no ability to cope with stress or conflict...be it socially or in a work environment." Dr. A said that the appellant also has difficulty asking for and obtaining help and "is significantly impacted by this on a daily basis." Therefore, the frequency and duration of the support required with interpersonal relationships was explained; the appellant requires daily support.

The appellant's PTSD was described as "severe" and "complex" due to serious past traumas that he is still learning to cope with. The appellant has a history of suicide attempts as well. The totality of the evidence on emotional functioning establishes a severe mental impairment. The requirement for a *severe* impairment under the Act is also met based on a mental impairment.

### **Restrictions to daily living activities**

#### *Appellant's position*

The appellant's position is that his physical and mental health conditions severely limit his ability to do daily tasks. The appellant said that he cannot cook or clean without support due to neuropathy and neurogenic claudication. The appellant argued that transportation is also restricted because he can't walk uphill to the bus stop. The appellant argued that he is socially isolated, easily taken advantage of, and vulnerable to abuse and anger.

#### *Ministry's position*

The ministry's position is that there was not enough evidence from a prescribed professional (Dr. A) to confirm that a severe impairment significantly restricts daily living activities continuously or periodically for extended periods as required by the Act. The ministry argued that Dr. A assessed most activities as independent. The ministry argued that where periodic assistance was indicated for daily living activities, no additional information was provided to explain the type, frequency, or degree of support that is needed.

### **Panel's decision - daily living activities**

The panel finds that the reconsideration decision is not reasonably supported by the evidence because the Medical and Assessor Reports and additional letters on physical and psychological functioning, viewed together, show that daily living activities are

significantly restricted by a severe impairment. In particular, the recent letters from Dr. A with additional details from the appellant and employment worker support continuous restrictions to daily living activities due to peripheral neuropathy, PTSD, depression, and anxiety.

The evidence that establishes restrictions to daily living activities includes:

#### *Medical and Assessor Reports*

In Medical Report 1, Dr. A checked that *basic housework* and *daily shopping* are restricted. The panel acknowledges that the doctor said that living outside of town and not having the means to pay for transportation limit the appellant's ability to do errands. However, the report also indicated that the ability to shop is compounded by symptoms of peripheral neuropathy ("very poor balance") and in the Assessor Report, "carrying groceries home is too painful."

Dr. A explained the appellant's restrictions with social functioning in all the reports. In Medical Report 1, the doctor checked that *social functioning* is restricted due to social anxiety that "limits [the appellant's] ability to interact effectively with others." The appellant has issues with anger management and "won't go anywhere where there are lots of people."

In Medical Report 2, the appellant "struggles with interpersonal interactions" due to PTSD. In the Assessor Report, the doctor explained that PTSD is "sub-optimally treated" resulting in longstanding depression and anxiety and distrust of authority.

The Assessor Report indicated that only periodic support is required for *personal care (regulating diet), shopping, cooking, and social functioning*. In addition, *basic housekeeping, transportation, and most areas of shopping* were checked as independent. In the self-report, the appellant indicated that he is able to do light housekeeping to try and keep busy to manage his mental health symptoms.

However, the doctor (and appellant) described continuous restrictions to these daily living activities in the submissions for the reconsideration and appeal as the appellant cannot walk to the store and needs daily help and support to perform physical tasks and deal with other people. The panel gives more weight to the more recent evidence which the doctor said is the most current and accurate assessment of the appellant's disability.

#### *Dr. A's letters*

In the letter of August 1, 2023, Dr. A described significant restrictions with *shopping* and *personal care (regulating diet)*. The appellant has lost significant weight because he is unable to travel to stores due to peripheral neuropathy which makes it very difficult to walk, especially uphill.

The doctor provided further information about the appellant's struggles with social functioning. The appellant has a lot of difficulty dealing with people and conflict, not only in an employment situation but in "all areas of his existence when dealing with people."

The doctor further stated that the appellant "requires assistance with daily activities on a daily basis...long term, even indefinitely." The evidence therefore confirms significant restrictions to daily living activities that are continuous. In the letter of October 11, 2023, the doctor repeated that the appellant is "severely disabled" by his medical conditions.

#### *Summary - daily living activities*

The panel finds that the information from Dr. A (with additional details from the appellant) provides sufficient evidence of significant and continuous restrictions to daily living activities due to a severe a severe physical and mental impairment. The evidence, viewed in its entirety, indicates that the appellant is continuously restricted with at least two daily living activities, especially *shop for personal needs, use public or personal transportation facilities, and relate to, communicate, or interact with others effectively* as described in the Regulation.

The restrictions are directly the result of worsening peripheral neuropathy, as well as PTSD and other mental health conditions that persist despite treatment. The panel finds that the reconsideration decision is unreasonable because the requirements for restrictions to daily living activities under the Act have been established on the evidence from a prescribed professional.

#### **Help with daily living activities**

##### *Appellant's position*

The appellant's position is that he is unable to independently manage his daily life due to mobility and balance issues from peripheral neuropathy, as well as interpersonal struggles due to PTSD and other mental health conditions.

*Ministry's position*

The ministry took the position that it could not be determined that significant help was required as it had not been established that daily living activities were significantly restricted.

**Panel's decision - help with daily living activities**

The panel finds that the reconsideration decision was not reasonable because the totality of evidence including the Assessor Report, and letters from Dr. A, with additional information from the appellant and the employment worker, indicate that the appellant needs significant support to manage his daily life.

In the Assessor Report, Dr. A. indicated that a roommate assists the appellant with cooking, but it was unclear whether help was required due to the appellant's medical conditions or because of a lack of skills as stated by the doctor. However, in the letter of August 1, 2023, Dr. A. confirmed that although the appellant has difficulty asking for and obtaining help, he does need assistance with daily living activities long term and "on a daily basis."

The letter from the employment worker details the help the appellant relies on from a neighbour "to shop, cook, and clean on a daily basis." The worker explained that prior to receiving this assistance, the appellant was "unable to consistently maintain health and self care."

The evidence indicates that the appellant requires a great deal of psychological support to function in his daily life. In the Assessor Report, Dr. A stated that the appellant needs a "crisis line" when no help is available. The appellant stated that he is finally receiving counselling for anger management and the letter from the employment worker noted that the appellant relies on support from program staff as well as counselling to manage "daily issues" with relationships in the community.

The Act requires confirmation of direct and significant restrictions to daily living activities, directly related to a diagnosed mental or physical impairment, as a precondition for needing help to perform those activities. In the panel's view, the evidence establishes that daily living activities are significantly restricted continuously by the appellant's physical and mental health conditions, and the appellant cannot manage his daily life independently. The requirement for help under the Act is therefore met.

**Conclusion**

The panel finds that the reconsideration decision is not reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. The appellant meets all 5 requirements for PWD designation under the Act

because the PWD medical reports and additional submissions when considered together, establish that:

The appellant is at least 18 years old

The impairment is expected to continue for at least 2 more years.

The appellant has severe physical and mental impairments.

The severe impairment significantly restricts daily living activities as confirmed by a prescribed professional, and

The appellant requires extensive help and support from other people to manage his daily living activities.

The panel rescinds the ministry's decision and refers the decision back to the Minister for determination on the amount of disability assistance. The appellant is successful with his appeal.

### **Schedule – Relevant Legislation**

#### **Employment and Assistance for Persons with Disabilities Act**

**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,

**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  
Margaret Koren

Signature of Chair

Date (Year/Month/Day)  
2023/11/29

Print Name  
Kenneth Smith

Signature of Member

Date (Year/Month/Day)  
2023/11/29

Print Name  
Richard Franklin

Signature of Member

Date (Year/Month/Day)  
2023/11/29