

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) decision dated August 24, 2023, denying persons with disabilities (PWD) designation.

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

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

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

Part D – Relevant Legislation

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

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

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

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

Part E – Summary of Facts

The hearing took place by teleconference. The Appellant attended with his parent as witness and support person.

Evidence Before the Ministry at Reconsideration:

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

- Medical Report and Assessor Report completed by Doctor #1, dated March 20, 2023;
- Appellant's Self Report, dated December 28, 2022
- Additional letter from the Appellant, undated
- Supplementary letter from Doctor #1, dated July 25, 2023
- Letter from Physiotherapist #1, dated June 25, 2023
- Assessment Report from Physiotherapist #2, dated June 27, 2023
- Letters from Physiotherapist #3, dated June 27 and July 14, 2023
- Consult report from a Psychiatrist to Doctor #1, dated January 12, 2023

Medical Report, March 20, 2023:

The Appellant has been a patient of Doctor #1 for 4 ½ years and has seen him 11 or more times in the past 12 months.

Diagnosis:

Doctor #1 provides diagnoses of pelvic fracture, T2 vertebral fracture, thinned right abdominal wall muscle. They query left hip flexor strain and right thigh pain, possibly atrophy from injury. All diagnoses have their onset in August 2020.

Health History:

The Appellant was struck by a vehicle in August 2020, and suffered the injuries noted, which have left him in considerable post-operative pain. The pain has improved since then but the Appellant has chronic pain in his back, lower abdomen, and pelvis. He is only able to work one day a week, for four hours, and cannot return to full-time work.

The Appellant takes medication that may cause drowsiness and limit his ability to operate heavy machinery and vehicles, or work from heights. The Appellant discontinued Dilaudid on January 23, 2023, and will continue on Tylenol 3 and Flexeril for an unknown time.

The Doctor indicates that the Appellant required prostheses or aids for his impairment and describes previous use of a back brace for one year and a wheelchair for 8 months after the accident.

Functional Skills:

The Doctor did not complete the Functional Skills section of the Medical Report, except to indicate that the Appellant has no difficulties with communication.

Additional Comments:

The Doctor states that it is unclear how much more improvement the Appellant may have, or whether his recovery has reached a plateau, as he continues to have pain in his pelvis and back that limit his ability to work.

Assessor Report, March 20, 2023:

Doctor #1 indicates that the Appellant lives with his older sibling.

Mental or Physical Impairment:

Doctor #1 states that the Appellant's pain in his back and pelvis limit his ability to work in a marijuana distribution centre.

Mobility and Physical Ability:

The Doctor indicates that the Appellant takes significantly longer than typical for:

- Walking indoors (1.5 times as long)
- Walking outdoors (twice as long)
- Climbing stairs (3 times as long)
- Carrying and holding (limited to 15 lbs.).

Daily Living Activities:

Doctor #1 indicates that the Appellant is independent in personal care, except that he takes significantly longer than typical for regulating diet, adding that the Appellant sometimes skips meals due to pain from walking to the kitchen.

They indicate that the Appellant takes significantly longer than typical for laundry and basic housekeeping, stating that the Appellant says he takes at least twice as long.

They indicate that the Appellant needs periodic assistance from his family to go to and from stores and carry purchases home, and he also takes significantly longer than typical for those activities due to pain.

The Doctor adds that the Appellant does not (then) have a driver's licence and relies on support from his family for shopping for essential goods like groceries. They report that the Appellant gets pain with walking and carrying heavy items.

The Doctor indicates that the Appellant needs periodic assistance from another person to prepare food and cook. They state that the Appellant's family cooks for him when he is in too much pain, he needs to plan ahead to cook, and cooking takes longer, due to pain.

They indicate that the Appellant is independent in paying rent and bills, dealing with medications, and using transportation.

Assistance Provided for Applicant:

Doctor #1 indicates that the Appellant receives help from his family for daily living activities. The Appellant's sibling helps with carrying groceries and also with paying bills due to the Appellant's limited finances. The Doctor also describes assistance the Appellant received from his parent and homecare in the year after the accident.

In answer to the question, "What equipment or devices does the Applicant routinely use to help compensate for his impairment?", Doctor #1 indicates cane and crutches (used for approximately 6 months after the Appellant stopped using a brace), manual wheelchair (used for approximately 8 months), braces (back brace used for approximately 1 year), commode (used for 8 months), bathing aids (shower seat approximately 8 months) and specially designed adaptive housing (a bar in the bedroom for getting in and out of bed used for approximately 2 years). In the space for comments about equipment that is required but is not currently being used, the Doctor states "see above."

Additional Information:

The Doctor states that the Appellant can walk for only 15 minutes at a time due to pain in the right pelvis, secondary to atrophy from the injury. Use of a stationary bike is limited to 5 to 6 minutes due to pain in the right thigh.

Supplementary Letter from Doctor #1, July 25, 2023:

Doctor #1 repeats some of the information provided in the Medical Report and the Assessor Report. He states:

- The Appellant has pain in his pelvis, upper back, inguinal area and left scapular area, which limit his ability to work.
- He has developed symptoms of urinary urgency which interfere with participation in the work force, according to an occupational therapist.
- The Appellant has been unable to work more than three half days (12 hours) per week due to pain, and he was working full time before the accident.

- The Appellant has disclosed that he has recurrent nightmares, flashbacks of his accident, intermittent low mood, sleep disturbance and hypervigilance, which raise concerns about Post-Traumatic Stress Disorder (PTSD).
- The Psychiatrist says the Appellant may have a moderate traumatic brain injury, based on some neurocognitive deficits noted after the accident.
- The Appellant needs formal neuropsychological testing and appointments with a counsellor, and the Doctor would provide a supplementary letter when those assessments were available.
- The Appellant needs assistance with transportation because he is not medically cleared to operate a vehicle, due to a history of epilepsy.

Self Report December 28, 2022, and Undated Letter:

The Appellant states:

- In the accident, the right side of his pelvis was “completely destroyed” and his T2 vertebra was broken.
- He is in constant pain and can no longer perform day to day tasks, work in a full time job, or enjoy recreational activities.
- He has recurring flashbacks and nightmares.
- Household tasks like vacuuming take more than double the normal amount of time because of pain in his pelvis, shoulders and back.
- Dishes and meal preparation take “extended periods of time” to complete because of chronic pain.
- Standing for half an hour without moving around irritates his pelvis
- Repetitive motions “flare up the muscles” around the fractured vertebrae so he needs to stop what he is doing and take a break.
- Laundry, personal hygiene, and grocery shopping are challenging due to limited motion in his back and pelvis because standing for long periods of time, walking, bending, and lifting are limited.
- Recreational activities like hiking, camping, biking, travelling, and swimming are limited.
- He wakes up each morning in more pain than when he went to bed and wakes up 4 or 5 times during the night due to pain, so he is not rested for the next day.
- His sleep is also disturbed by nightmares about the accident, or motor vehicle accidents that have not happened.
- He has frequent headaches, random ringing or buzzing in his ears that block out sound, dizziness, loss of balance, and angry outbursts.

Physiatrist, Consult Report, January 12, 2023:

The Physiatrist states:

- The Appellant was referred to the Physiatrist for pain following the motor vehicle accident.
- The main area of pain is from the right pelvis radiating into the knee and leg.
- The Appellant takes Tylenol 3, naproxen, regular Tylenol, and cyclobenzaprine for pain. He also takes hydromorphone for “emergency pain”, about 10 per month.
- He has a right inguinal hernia.
- He has a stabbing pain in his upper back, and a constant ache.
- The Appellant’s parent noted that the appellant has some difficulties with memory and the Appellant notices some word finding difficulty.
- He has anxiety and a history of flashbacks and nightmares about the accident, although this has improved somewhat.
- He has a hard time falling asleep because of pain.
- He is a Level 1 professional chef.
- He lives in a house with a sibling.
- He uses marijuana daily for pain.
- He is “independent with all bADLS/iADLs [Basic Activities of Daily Living and Independent Activities of Daily Living] including finances”.
- He is not driving but will be cleared in one month.
- He can tolerate stairs with moderate pelvic pain.
- He does not require an assistive device.

The Physiatrist states that “it sounds as though he also sustained a mild if not moderate traumatic brain injury.” They note “some mild neurocognitive deficits” and mood changes. Chronic pain is probably due to scar tissue formation and ongoing myofascial pain, possibly with some nerve root impingement. Further investigation is proposed, and they recommend continuing with all medication. No assistive devices are indicated.

Letters from Physiotherapists:Physiotherapist #1, June 25, 2023:

Physiotherapist #1 states that the Appellant:

- has an increase in urinary urgency with bladder and pelvic floor pain
- has severe spasms at the tailbone that limit his ability to sit
- can sit for a maximum of 30 minutes on a hard surface and 90 minutes on a specialty coccyx cushion
- has a “compromised abdominal wall with a large hernia” which limit his ability to perform physical activities such as lifting

- has pain and spasms in his left hip/groin which affect his standing and walking endurance
- is unable to perform regular duties on a consistent basis because of fluctuating pain.

Physiotherapist #2, June 27, 2023:

Physiotherapist #2 states that the Appellant:

- has ongoing symptoms in his hip, pelvis, lower abdomen, upper back, neck, and left shoulder
- works one 4-hour day per week
- cannot run, bike, or hike due to injuries, and has increased symptoms when he tries to do these activities
- moved "moderately well", with limited range of motion in his cervical spine, lumbo-thoracic spine, shoulders, and right hip.
- Failed to lift 15 lbs.

Physiotherapist #3:

Physiotherapist #3 states that, on June 27, 2023, the Appellant:

- Has ongoing pain in his left more than right trapezius, levator scapula region, thoracic and lumbar/pelvis region.
- Is able to lift 15 lbs. overhead and 24 lbs. to chest height
- Can pull 25 lbs. and squat 25 lbs.

On July 14, 2023, they state that the Appellant:

- Reports some improvement with the levator scapula and trapezius pain
- Can lift 20 lbs. to shoulder height and 40 lbs. from floor to waist
- Can carry 40 lbs
- Can push and pull 30 lbs.

Function was limited by pain in the left levator scapula and trapezius, pelvis and back.

Additional Evidence:

The Appellant submitted the following additional evidence on appeal:

- Initial assessment from a Psychiatrist, dated September 12, 2023
- MRI Report, dated May 5, 2023
- Letter from Doctor #2, dated November 17, 2023.

Psychiatrist Assessment, September 12, 2023:

The Psychiatrist states:

- The Appellant is dealing with chronic pain, which affects his mental state, and he feels angry and depressed most of the time.
- He has nightmares and flashbacks.
- His sleep is not good, and he wakes 6 or 7 times during the night due to nightmares.
- They provide diagnoses of adjustment disorder with depressed and anxious mood, and PTSD.

Doctor #2, November 17, 2023:

Doctor #2 states:

- The Appellant reports great difficulty with activities of daily living:
 - He can prepare only one meal a day because standing longer than 30 to 45 minutes causes severe back and pelvic pain.
 - He needs help from his sibling to perform yard work and house cleaning such as vacuuming because those tasks aggravate his back and pelvis to the point where he cannot complete the task.
 - He cannot do laundry and needs help from others due to the standing and bending required for those tasks.
 - He cannot bend over a sink to clean dishes due to pain.

Evidence at the Hearing:

Appellant's Parent:

The Appellant's Parent attended as a witness and a support person. They stated:

- They see the Appellant a few times a week.
- When they see him, he is in constant pain.
- The Appellant is depressed and does not want to do things.
- He is not the same person that he was before the accident.
- The Appellant's sibling tells them that the Appellant cannot go grocery shopping because he is in too much pain.
- The sibling is the main person who does things for the Appellant, including cleaning and yard work.

Appellant

At the hearing, the Appellant said:

- His sibling does everything for him: laundry, yard work, house cleaning, shopping.
- He is afraid to drive or walk down the road.

- The psychiatrist is increasing his medication in hope that it will improve his symptoms of depression and PTSD but nothing is changing.
- He cannot take care of himself, other than showering and dressing.
- He wakes up every 2 hours because he has constant nightmares about the accident.
- He has flashbacks and panic attacks.

In answer to questions from the Ministry, the Appellant stated:

- The panic attacks and flashbacks happen between once or twice a day and once or twice a week.
- His mental health problems affect his social functioning because even talking on the phone it is hard not to break down in tears.
- He cannot make new friends, and it is hard to have a conversation without talking about his problems.

In answer to questions from the Panel, the Appellant stated:

- He had a brief follow up appointment with the psychiatrist on November 14, about medication, which is going to be increased.
- He can lift 15 lbs. up to his waist, but it is painful, and he can walk 1 block, in pain.
- He starts doing dishes but has to stop after 2 minutes because it “kills” his back, and his sibling takes over.
- He can barely vacuum at all due to back and pelvic pain.
- He can put clothes in the laundry but his sibling has to take the clothes out and put them away.
- He cannot pick up items off the floor without pain.
- His sibling is away at work from morning until 3 p.m., so the Appellant does not eat breakfast or lunch, although as a professional chef he would like to be able to make meals.
- For shopping, he gives his sibling a list, and sometimes he goes with them and picks out items, although he is often in too much pain to walk. The sibling does the carrying and packing of groceries.
- He uses a cane once or twice a week when his right side is too sore.
- He is now cleared for driving and does drive to appointments but gets high anxiety and he cannot go far because he is limited in how long he can sit.
- His daily activities are mostly involved in going to health care appointments.
- The Psychiatrist told him he is not sure how long the PTSD, depression, anxiety, and other mental health problems will last.
- He takes a lot of painkillers, and they barely reduce the pain.
- When the doctors and physiotherapists said he could do daily living activities independently and lift more weights, he was on stronger pain medication, but the

Physiatrist is trying to reduce the pain medication, and as he has stopped taking opioids, his ability to perform daily living activities is greatly reduced.

Admissibility of Additional Evidence:

The Ministry did not object to the additional written or oral evidence.

The Panel finds that the additional evidence is reasonably required for the full and fair disclosure of all matters in the appeal. The additional written evidence provides further information about the Appellant's medical conditions and functional ability. The oral evidence of the Appellant and his parent provides further information about the Appellant's physical and mental condition and his ability to perform daily living activities. Therefore, the Panel finds that the additional evidence is admissible under the Act, s. 22(4).

Part F – Reasons for Panel Decision

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

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

Appellant's Position:

The Appellant's position is that he meets the criteria for PWD designation. He maintains that his mental and physical impairments are severe. He says that he has chronic pain that limits his ability to function, and now has been diagnosed with depression, anxiety, and PTSD. He is not able to work more than three half days a week, and he cannot participate in many of the leisure activities he enjoyed before the accident. He cannot stand long enough to cook a meal or do dishes. He says that he cannot perform any daily living activities other than bathing and dressing himself. He maintains that he needs significant help from his sibling for shopping, cleaning, laundry, washing dishes and cooking.

The Appellant also says that when he was taking stronger pain medication, he was able to lift more weight, as the physiotherapists reported, but his condition is worse now that the doctor treating the chronic pain has reduced his medication and weaned him off opioids.

Ministry Position:*Physical Impairment:*

The Ministry acknowledges that the Appellant has chronic pain but maintains that the Appellant's physical impairment is mild to moderate, rather than severe. They argue that the Physiotherapists' reports indicate that the Appellant can lift, push, pull and carry "significantly more weight than initially reported" and that he is "almost fully independent" with daily living activities. While the more recent report from Doctor #2 indicates greater restrictions in activities, the Ministry says that it is unclear if that report shows a change in functional skills from the levels previously reported.

Mental Impairment:

At reconsideration, the Ministry said that the information from the Psychiatrist, Doctor #1, and the Appellant indicated a possibility of mild cognitive deficits and emotional disturbance. However, they maintain those conditions are not a severe mental impairment, especially when the Appellant is independent with almost all daily living activities. At the hearing, the Ministry reviewed the additional evidence from the Psychiatrist. They maintained that the Psychiatrist's assessment provides diagnoses but does not explain the severity of the mental impairment or its impact on daily functioning. Therefore, the Ministry says a severe mental impairment has not been established.

Restrictions to Daily Living Activities:

The Ministry says that, as a severe mental or physical impairment has not been established, it cannot be established that daily living activities are directly and significantly restricted by such an impairment. At reconsideration, the Ministry also maintained that the information provided does not establish such restrictions. They said that, if the Appellant can lift, carry, push, and pull the weights indicated in the physiotherapist's reports, he should be able to complete most daily living activities independently. At the hearing, the Ministry reviewed the additional evidence from Doctor #2. They say that being limited to standing between 30 and 45 minutes does not confirm a severe physical impairment. They state that it is unclear why the Appellant would need more help now than when Doctor #1 completed the Medical and Assessor Reports. They note that Doctor #1 did not complete the Functional Skills section of the Medical Report, so they have relied on the physiotherapists' assessment.

The Ministry says that there is no detailed assessment about the effect of any mental impairment on daily living activities, so the Ministry concludes that any mental impairment has only a minimal impact on the Appellant's ability to perform daily living activities.

Help Required for Daily Living Activities:

As the information provided does not indicate direct and significant restrictions in daily living activities, the Ministry says it also cannot determine that the Appellant needs significant help with restricted activities. The Ministry also says that the medical practitioners do not indicate that the Appellant needs significant help of another person to perform daily living activities, and he is not using an assistive device currently.

Panel Decision:*PWD Designation – Generally*

The legislation provides the Ministry with the discretion to designate someone as a PWD if the requirements are met. In the Panel's view, PWD designation is for persons who have significant difficulty in performing regular self-care activities. While the inability to work, or participate in leisure activities, may be relevant to the Appellant's ongoing personal injury litigation arising from the accident, those limitations do not determine eligibility for PWD designation.

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

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

Severe Mental or Physical Impairment

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

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

- *Physical Impairment:*

The Panel finds that the Ministry was not reasonable in its determination that, based on the information in the Doctor's reports, the Appellant's physical impairment is mild to moderate. The Panel finds that, considering the medical evidence as a whole, including the additional evidence on appeal, the Appellant has a severe physical impairment.

The Appellant suffered severe injuries in the motor vehicle accident in August 2020. Doctor #1 provided information about the Appellant's extensive treatment and slow recovery over the 2 ½ years before Doctor #1 completed his report. However, as the Ministry noted, the determination of PWD designation is based on an applicant's current condition and level of functioning.

The Appellant has chronic pain, for which he is being treated by a physiatrist as well as his family doctor. In January 2023, when the Physiatrist completed his consult report, they noted the Appellant was independent in a range of daily living activities. In the summer, Physiotherapist #3 reported that the Appellant was able to lift 20 lbs. from floor to shoulder, 40 lbs. from floor to waist, and push and pull 30 lbs. However, in November 2023, Doctor #2 reports that the Appellant cannot do simple tasks such as standing at a sink to wash dishes.

The Ministry acknowledges the reduced functioning reported by Doctor #2 in November 2023, but questions the reason for the reduced function, in particular why the Appellant needs help for most daily living activities now. They point out that the Physiatrist reported in January 2023 that the Appellant was independent in daily living activities and maintain that Doctor #1 said in March 2023 that the Appellant was almost fully independent in daily living activities.

At the hearing, the Appellant explained that the Physiatrist treating him for chronic pain has taken him off an opioid medication, which was masking some of his pain, and as a result his level of functioning is reduced. (While the Appellant had discontinued Dilaudid in January 2023, he had continued on Tylenol 3.)The Panel finds that it would not be reasonable to expect the Appellant to continue opioid use to maintain a higher level of functioning. Further, the Panel finds it to be unreasonable for the Ministry to have determined that Doctor #1 reported in March 2023 that the Appellant was almost fully independent in daily living activities. Rather, the Panel finds that in the Assessor Report, Doctor #1 was reporting significant functional limitations due to the Appellant's pain levels – for example, they report that the Appellant would miss meals because he was in too much pain to walk to the kitchen.

The Appellant's evidence at the hearing provides further detail of his restricted functioning. He reports that his sibling "does everything" for him, and all he can manage is to shower and dress himself. When his sibling is away at work, he does not eat, even though, as a professional chef, he would like to make his own meals. He can only stand at the sink to do dishes for 2 minutes before he has to stop due to severe pain.

The Panel places significant weight on the evidence of Doctor #2, which is the most recent medical evidence of the Appellant's level of functioning and is consistent with the evidence of the Appellant and his parent at the hearing. In light of the additional evidence of Doctor #2 and the further explanation for the reduced functioning provided by the Appellant, the Panel finds that the Ministry's determination the Appellant's physical impairment was only mild to moderate is not reasonably supported by the evidence.

- *Mental Impairment:*

In light of the additional evidence from the Psychiatrist, the Panel finds that the Ministry's determination that the information provided does not indicate a severe mental impairment is not reasonable. The Psychiatrist provides diagnoses of PTSD and adjustment disorder with depressed and anxious mood. They say that that chronic pain has affected the Appellant's mental state, so that he is angry and depressed most of the time. He has nightmares and flashbacks of the accident that wake him up 6 or 7 times a night. He does not want to be around people. The Appellant's parent said that whenever they see the Appellant he is depressed and does not want to do anything.

The Appellant explained his symptoms of PTSD. He says he cannot drive or walk down the road for fear of another accident. He has panic attacks, sometimes once or twice a day. He finds it hard to talk on the phone without breaking down in tears. Treatment is ongoing, and the Appellant says that he has not had any improvement yet.

The Panel finds that the additional evidence of the Psychiatrist and the evidence of the Appellant and his parent at the hearing are sufficient to establish a severe mental impairment. However, the Psychiatrist has not indicated that the mental impairment is likely to last at least two years, and therefore the Panel finds that the criterion for duration of mental impairment has not been established.

Restrictions to Daily Living Activities (Activities):

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

- Prepare own meals
- Manage personal finances
- Shop for personal needs
- Use public or personal transportation facilities

- Perform housework to maintain the person's place of residence in acceptable sanitary condition
- Move about indoors and outdoors
- Perform personal hygiene and self care
- Manage personal medication.

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

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

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

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

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

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

The Panel finds that the information provided by Doctor #1 and Doctor #2, with additional details provided by the Appellant, confirm direct and significant restrictions to the Appellant's ability to perform the following Activities:

- Prepare own meals: the Appellant's ability to prepare his own meals is limited by severe chronic pain; he can only prepare one meal per day because standing long enough to make a meal causes severe back and pelvic pain; he skips meals

because he is in too much pain to walk to the kitchen, and he relies on his sibling and family members to cook for him.

- Shop for personal needs: the Appellant's sibling either shops for him or takes him shopping but does the carrying and packing of items for him; the Appellant may go to the store to pick out items but cannot carry them and often cannot stand or walk around the store due to pain.
- Perform housework to maintain the person's place of residence in acceptable sanitary condition: the Appellant could do laundry and housekeeping in March 2023 when Doctor #1 completed the Assessor Report, but took twice as long; however, by November 2023, Doctor #2 reports that the Appellant cannot do laundry, vacuum, or do dishes because standing and bending causes severe pain.

The Panel has considered the medical evidence as a whole, particularly the additional evidence from Doctor #2 and the evidence of the Appellant and his parent at the hearing. The Panel finds that the Ministry did not consider the Appellant's reduced capacities for Activities over time as the appellant's opioid medication ended. The Panel finds that the Ministry's determination that there was insufficient evidence to confirm that the Appellant is directly and significantly restricted in his ability to perform Activities is not reasonably supported by the evidence.

Help Required:

A prescribed professional must provide an opinion that the person needs help to perform the restricted Activities. Help means using an assistive device, the significant help or supervision of another person, or using an assistance animal to perform the restricted Activities. An assistive device is something designed to let the person perform restricted Activities.

Doctor #1 and Doctor #2 report that the Appellant needs help from his family to cook, shop, do laundry and clean house. The Appellant and his parent confirm that the sibling does most of those tasks because the Appellant is unable to do them himself. Therefore, the Panel finds that the Appellant needs significant help from others to perform Activities that are directly and significantly restricted.

In the Assessor Report, in answer to the question "What equipment or devices does the Applicant routinely use to help compensate for their impairment?" Doctor #1 puts check marks beside seven assistive devices. He indicates in his comments that the Appellant no longer uses those devices. The Appellant says that he uses a cane once or twice a week

when the pain in his pelvis is “killing him”. However, under the legislation a prescribed professional must provide the opinion that the Appellant needs to use a cane. As Doctor #1 states that the Appellant only used a cane or crutches for about six months, the Panel cannot find that the evidence establishes that, in the opinion of a prescribed professional, the Appellant needs an assistive device to perform restricted Activities.

Conclusion:

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

Schedule – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

Persons with disabilities

s. 2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

Employment and Assistance for Persons with Disabilities Regulation

Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

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

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

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

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

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

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

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

(i) medical practitioner,

ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner, or

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

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

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

if qualifications in psychology are a condition of such employment.

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

Employment and Assistance Act

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

Part G – Order

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

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

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

Legislative Authority for the Decision:

Employment and Assistance Act

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

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

Part H – Signatures

Print Name
Susan Ferguson

Signature of Chair

Date (Year/Month/Day)
2023/12/01

Print Name
Kent Ashby

Signature of Member

Date (Year/Month/Day)
2023/12/01

Print Name
Bill Farr

Signature of Member

Date (Year/Month/Day)
2023/12/01