

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated November 12, 2023, which determined the appellant was not eligible for the Persons with Disabilities designation because they did not meet the following criteria:

- Impairment is likely to continue for two years or more
- Severe impairment directly and significantly restricts daily living activities
- Assistance is required with daily living activities as a result of significant restriction

The ministry 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 (October 27, 2023) – summary

The appellant writes that they were a health care worker throughout the pandemic and saw many people pass away, which “kind of gave them post traumatic stress disorder”. Their doctor told them they had major depression disorder, extreme anxiety (including hallucinations), and extreme panic attacks. Their doctor also told them not to work while taking medication, which they have been taking for close to a year. The appellant also states they were hospitalized due to suicidal thoughts and attempted suicide prior to taking medication.

As well, the appellant states they have not left the house in eight months, except to take out the garbage. Even then, it is hard to be outside without having a panic attack. For groceries etc. their mother shops or they use online services that deliver to their door. Their doctor agrees they should be on disability assistance because of their medication and major depression.

Person with Disabilities Application (application)

The appellant chose not to complete the self-report.

Medical Report (September 5, 2023) – signed by the appellant’s doctor

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

B. Diagnosis	Date of onset – month/year
Panic disorder	no information provided
Social anxiety disorder	“
Major depressive disorder	“
Psychotic disorder unspecified	“

C. Health History

Please indicate the severity of the medical conditions related to this person's impairment.

The appellant suffers from a long-standing severe type of panic disorder, social anxiety disorder, major depressive disorder (in the context of psychotic disorder) and alcohol use disorder. This severe mental illness has significantly interfered with their ability to perform daily living activities.

- Has the appellant been prescribed any medications and/or treatments that interfere with their ability to perform daily living activities? – yes, could cause sedation
- If yes, what is the anticipated duration of the medications and/or treatments - indefinitely
- Does the appellant require prostheses or aids for their impairment? – no response

D. Degree and Course of Impairment

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

E. Functional Skills

- How far can this person walk unaided on a flat surface? - 2-4 blocks
- How many stairs can this person climb unaided? – 2-5 steps
- What are the person’s limitations in lifting? – 2-7 kgs
- How long can this person remain seated? – 1-2 hours
- Are there difficulties with communication? – no
- Are there any significant deficits with cognitive and emotional function? - yes
The doctor checked: psychotic symptoms (delusions, hallucinations, thought disorders), emotional disturbance (e.g. depression, anxiety), motivation (loss of initiative or interest) and attention or sustained concentration.

F. Daily Living Activities

Does the impairment directly restrict the person’s ability to perform Daily Living Activities?

- yes

Daily Living Activities	Is activity restricted?		If yes, the restriction is:		
	yes	no	unknown	continuous	periodic
Personal self care	x			x	
Meal preparation	x			x	

Management of medications	x			x	
Basic housework	x			x	
Daily shopping	x			x	
Mobility inside the home					
Mobility outside the home					
Use of transportation					
Management of finances	x			x	
Social functioning – daily decision making; interacting, relating and communication with others	x			x	

If social functioning is impacted, please explain:

The appellant’s severe anxiety disorder has significantly negatively impacted their daily decision-making process.

H. Frequency of Contact

- How long has the applicant been your patient? – 8 months
- How often have you seen this applicant in the past 12 months? – 2-10 times

Assessor Report (September 22, 2023) – signed by the appellant’s doctor

The doctor provided the following information and responses to the questions below.

B. Living Environment

The doctor indicated the appellant lives with family, friends or caregiver.

C. Mental or Physical Impairment

- What are the applicant’s mental or physical impairments that impact their ability to manage daily living activities? – no information provided

Ability to Communicate

Please indicate the level of ability in the following areas	Good	Satisfactory	Poor	Unable	Explain
speaking	x				
reading	x				
writing			x		
hearing	x				

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					
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 their 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				

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					
Basic Housekeeping						
Laundry	x					
Basic housekeeping	x					
Shopping						
Going to/from stores					x	
Reading prices and labels	x					
Making appropriate choices	x					
Paying for purchases	x					
Carrying purchase home	x					
Additional comments						
Meals						
Meal planning	x					
Food preparation	x					
Cooking	x					
Safe storage of food (ability, not environmental)	x					
Pay rent and bills						
Banking	x					
Budgeting	x					
Pay rent and bills	x					
Medications						
Filling/refilling prescriptions	x					
Taking as directed	x					
Safe handling and storage	x					
Transportation						
Getting in and out of a vehicle	x					
Using public transit					x	
Using transit schedules and arranging transportation					x	

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			

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

The doctor indicates help required is provided by family.

Assistance provided through the use of devices

What equipment or devices does the applicant routinely use to help compensate for their impairment? – no items were indicated.

Assistance provided by Assistance Animals

Does the appellant have an assistive animal?- no

H. Frequency of Contact

The doctor states they are providing ongoing psychiatric care for the applicant since January 2023.

Additional Information received after the Reconsideration Decision

Appellant

Notice of Appeal (November 14, 2023)

In the Notice of Appeal, the appellant reiterated the information he provided in the request for reconsideration.

At the hearing, the appellant stated they don't leave the house because of their mental health issues; their depression turned into isolation. They added that they can "do things" in the house; are independent inside the house (e.g., cook). they just can't deal with anything outside the house. For example, they received a blood work requisition from a doctor, months ago, but haven't gone for the blood work as they can't leave the house. They find it too hard to be around people and last worked in September 2022.

The appellant added that they were first hospitalized in 2020 because of a suicide attempt and a second time in 2021. They have monthly phone sessions with their doctor, and have now had approximately nine sessions. They added that the medication appears to be working.

When asked about the doctor's comment that their severe anxiety has significantly, negatively impacted their daily decision-making process, the appellant stated that this related to an earlier time when they had problems with alcohol, and made some poor decisions. However, they no longer use alcohol.

Regarding the question on the application asking whether or not the impairment would continue for at least two years, the appellant stated that their doctor advised them they responded to the ministry facsimile to clarify this information.

Ministry

The ministry relied on its record and stated that it had no record of a facsimile from the appellant's doctor to clarify the two-year requirement.

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:

- their impairment is not likely to continue for two years or more;
- they do not have a severe impairment that directly and significantly restricts daily living activities; and
- assistance is not required with daily living activities as a result of significant restrictions?

Appellant Position

The appellant argues their doctor told them they have a major depression disorder, extreme anxiety including hallucinations, and extreme panic attacks. They were hospitalized due to suicidal thoughts and attempted suicide before medication. They have not left the house in eight months except to take out the garbage and haven't worked since September 2022.

The appellant also argues their doctor agrees they should be on disability assistance because of their medication and major depression.

Ministry Position

Severe Mental Impairment

The ministry is satisfied that the appellant has a severe mental impairment.

Duration

The ministry argues a medical practitioner has not confirmed the appellant's impairment is likely to continue for two years.

Severe Physical Impairment

The ministry is not satisfied the appellant has a severe physical impairment as their doctor states the appellant can walk 2-4 blocks, climb 2-5 stairs, lift 5-15 pounds and remain seated for 1-2 hours. The doctor also indicates the appellant is independent with all mobility and physical ability tasks.

Daily Living Activities

The ministry argues there is not enough evidence to confirm the appellant has a severe impairment that in the opinion of a prescribed professional, significantly restricts their ability to perform daily living activities continuously or for extended periods.

In the medical report, although the doctor states the appellant's severe anxiety disorder has significantly negatively impacted their daily decision-making process, in the assessor's report, they state the appellant is independent, and does not require assistance for all daily living activities. As well, although the doctor reports the appellant maintains marginal functioning with social networks, this does not suggest a significant restriction. In addition, although the appellant reports he has been unable to leave their home for eight months, this degree of restriction was not confirmed by the doctor.

Help Required with Daily Living Activities

The ministry argues that although the doctor reports the appellant receives help from their friends, 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 that the person has a severe mental or physical impairment.

The ministry is satisfied the appellant has a severe mental impairment. This is not at issue.

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. The panel finds that an assessment of severity based on physical functioning including any restrictions is a reasonable application of the legislation.

The panel notes in the medical report, the doctor states the appellant can walk unaided for 2-4 blocks, can climb 2-5 steps, can lift 2-7 kgs and can remain seated for 1-2 hours. In the assessor's report, the doctor indicates the appellant is independent in all areas relating to mobility and physical ability. As well, there was no evidence or argument from the appellant suggesting they have a severe physical impairment.

Therefore, the panel finds the ministry's decision that it was not satisfied that the appellant has a severe physical impairment, reasonable.

However, the panel notes that even though severe physical impairment is not established, the severe impairment requirement under the legislation is met because of the appellant's severe mental impairment.

Impairment likely to continue for two years or more

Section 2(2) of the Regulation also states that the minister must be satisfied that in the opinion of a medical or nurse practitioner the impairment is likely to continue for at least two years,

The panel notes in the medical report, when asked if the impairment is likely to continue for two years or more, the doctor did not provide a response. At the hearing, the appellant stated that they were advised by their doctor that they had responded to the ministry's inquiry regarding the duration. However, the ministry stated it has not received this information.

Therefore, without additional information, the panel finds the ministry's decision that it was not satisfied the impairment would continue for two years or more, reasonable.

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. Daily living activities are defined in section 2(1) of the Regulation. At least two activities must be restricted in a way that meet the requirement.

To be significant, the restriction must be to a great extent, such as not being able to do the activities at all or 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.

Although the ministry was satisfied that the appellant has a severe mental impairment, the ministry argues there is not enough evidence to confirm the appellant has a severe impairment that in the opinion of a prescribed professional, significantly restricts their ability to perform daily living activities continuously or for extended periods.

The panel reviewed the restriction for each daily living activity, as shown below.

prepare own meals

In the assessor's report, the doctor states the appellant is independent with meal planning, food preparation and cooking. At the hearing, the appellant stated they are independent with indoor activities and cooks for themselves.

manage personal finances

In the medical report, the doctor states the appellant's management of finances is continuously restricted. However, in the assessor's report, the doctor states the appellant is independent with banking, budgeting and paying rent and bills. In addition, at the hearing the appellant stated they are independent with all indoor activities. Their challenge is with outdoor activities. The panel finds with this information, the level of restriction is unclear.

shop for personal needs

In the medical report the doctor states daily shopping is continuously restricted and in the assessor's report states the appellant takes significantly longer than typical to go to and from stores. However, the doctor does not provide an explanation (e.g., how much longer, is help required). As well, although in the request for reconsideration, the appellant states it is hard to be outside without having a panic attack or to go for groceries, this information was not confirmed by their doctor. In addition, the appellant stated that they use online services (for groceries and other items) that deliver to the door.

use public or personal transportation facilities

In the assessor's report the doctor states the appellant takes significantly longer than typical when using public transit and using transit schedules and arranging transportation. However, the doctor does not provide an explanation (e.g., how much longer and is help required).

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

In the medical report the doctor states basic housework is continuously restricted. However, in the assessor's report, the doctor states the appellant is independent with laundry and basic housekeeping and at the hearing the appellant stated they are independent inside the house. The panel finds with this information, the level of restriction is unclear.

move about indoors and outdoors

In the assessor's report the doctor states the appellant is independent walking indoors/outdoors. In the request for reconsideration, the appellant states that due to their extreme anxiety and panic attacks they have not left the house in eight months except to take out the garbage, as it's hard to be outside without having a panic attack. The panel finds that although the appellant states they have a lot of difficulty leaving their house, due to extreme anxiety, this information has not been confirmed by their doctor.

perform personal hygiene and self care

In the medical report, the doctor states the appellant is continuously restricted with personal self care, but doesn't provide any details regarding the level of restriction (e.g., how much longer, is help required) and in the assessor's report, states that the appellant is independent in this area. At the hearing, the appellant stated they can do things/are independent inside the house. The panel finds with this information, the level of restriction is unclear.

manage personal medication

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

make decisions about personal activities, care or finances;

In the medical report, the doctor states the appellant's severe anxiety disorder has significantly negatively impacted their daily decision-making process and the appellant is continuously restricted in social functioning including daily decision making. At the hearing, the appellant stated that they had problems making decisions due to a problem with alcohol; however, they no longer use alcohol. Therefore, the panel determined that a significant restriction is not established.

relate to, communicate or interact with others effectively.

In the medical report, the doctor states the appellant is continuously restricted in social functioning, including communication with others. However, in the assessor's report the doctor states the appellant is independent with appropriate social decisions, is able to develop and maintain relationships and interact appropriately with others. The panel finds with this information, the level of restriction is unclear.

Based on the evidence, 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, as required by section 2(2) of the Act.

Help to Perform Daily Living Activities

The panel notes section 2(2) of the Act also requires that as a result of the restrictions, the person requires help to perform these activities and in order to perform them, the person requires an assistive device or the significant help or supervision of another person.

In the assessor's report the doctor states help that is required is provided by family. As the panel found there was insufficient information to conclude that at least two daily living activities were significantly restricted, it cannot be established that help is required.

Conclusion

In conclusion, the panel finds the ministry's decision that states the appellant was not eligible for Persons with Disabilities designation was reasonably supported by the evidence. The panel confirms the ministry's decision. 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 2023-0353

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)

2023/12/08

Print Name

Corrie Campbell

Signature of Member

Date (Year/Month/Day)

2023/12/08

Print Name

Joe Rodgers

Signature of Member

Date (Year/Month/Day)

2023/12/08