

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated, November 2, 2023, which determined the appellant was not eligible for the Persons with Disabilities designation because he did not meet the following criteria:

- Severe mental or physical impairment
- Severe impairment directly and significantly restricts daily living activities
- Assistance 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

Person with Disabilities Application (application)

Self-Report (June 26, 2023) - summary

The appellant writes that anxiety and stress cause him to panic and not be able to deal with most situations. Even getting food and the most basic things gives him an extremely high level of anxiety. This also contributes to irritable bowel syndrome making him feel nauseous and sending him to the toilet several times a day.

The appellant adds that he struggles with making decisions, leaving him in bad situations. His mind plays tricks on him making him extremely paranoid. He states he has delusions, which cause him to think that things are happening, when they are not.

Medical Report (no date) – signed by the appellant’s nurse practitioner

The nurse practitioner provided the following information and responses to the questions below.

B. Diagnosis	Date of onset – month/year
Anxiety	no information
Depression	“
Attention Deficit Hyperactivity Disorder (ADHD)	“
Psychosis	“

C. Health History

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

Severe anxiety, depression and ADHD impair the applicant’s ability to function daily at work and negatively impact his ability to emotionally regulate. His sleep is impacted negatively.

- Has the appellant been prescribed any medications and/or treatments that interfere with his ability to perform daily living activities? – no
taking Escitalopram and Concerta - does not interfere with abilities
- Does the appellant require prostheses or aids for his impairment? – no

D. Degree and Course of Impairment

- Is the impairment likely to continue for two years or more from today? – yes
Likely lifelong, medication to help manage symptoms

E. Functional Skills

- How far can this person walk unaided on a flat surface? – 4+ blocks
- How many stairs can this person climb unaided? – 5+ steps
- What are the person’s limitations in lifting? – no limitations
- How long can this person remain seated? – no limitation
- Are there difficulties with communication? - no
- Are there any significant deficits with cognitive and emotional function?

The nurse practitioner checked: memory (ability to learn and recall information), psychotic symptoms (delusions, hallucinations, thought disorders), emotional disturbance (e.g., depression, anxiety), and attention or sustained concentration.

The nurse practitioner did not check motivation (loss of initiative or interest) or impulse control.

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
Social functioning – daily decision making; interacting, relating and communication with others	x			x	

If social functioning is impacted, please explain:
Difficulty performing in a school or work environment

Please provide additional comments regarding the degree of restriction:
moderate

H. Frequency of Contact

- How long has the applicant been your patient? – May 25, 2023
- How often have you seen this applicant in the past 12 months? – 2-10 times

Assessor Report (June 27, 2023) – signed by the appellant’s nurse practitioner

The nurse practitioner provided the following information and responses to the questions below.

B. Living Environment

The nurse practitioner 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 his ability to manage daily living activities? – ADHD, anxiety, depression

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	Continuous assistance from another person or	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 his functioning.

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

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

D. Daily Living Activities

Indicate the assistance required related to impairment(s) that directly restrict the applicant's ability to manage in the following areas.	Independent	Periodic Assistance from another person	Continuous assistance from another person or unable	Uses assistive device	Takes significantly longer than typical	Explain/ Describe
Personal Care						
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					
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

If the applicant requires help, as indicated above, please describe the support/supervision required which would help to maintain him in the community.

- no information was provided

E. Assistance Provided for Applicant

The nurse practitioner indicates the help required for daily living activities is provided by family and social work.

Assistance provided through the use of devices

What equipment or devices does the applicant routinely use to help compensate for his impairment? – no items are checked

Assistance provided by Assistance Animals

Does the appellant have an assistive animal?- no

H. Frequency of Contact

The nurse practitioner states they have known this applicant since May 25, 2023 and have seen him once (changed from 2-10 times and initialed by the nurse practitioner).

Briefly describe the type and duration of the program or services you or your organization are providing or have provided to the applicant

- social work/counseling medication

Letter to the Appellant from the Ministry (September 18, 2023)

-denying Persons with Disabilities designation

Request for Reconsideration (October 15, 2023) – summary

The appellant states he doesn't think his doctor spent much time going over the form because he wasn't really asked about any daily functions. However, sometimes it takes him a long time to understand, especially if he's under pressure. Lack of emotional control has caused him to lose opportunities and people in his life. He adds that he has never been able to function well in any school environment because of his inability to focus. His depression causes low energy and he is very forgetful.

The appellant states he has forgotten to pay bills and do assignments, and he often forgets to take his medication, which makes him very moody, irritable and unstable. As well, his chronic stomach pain can cause up to ten bowel movements per day. He also states he walks with a limp as he has a torn cartilage in his leg, and chronic back, hip and joint problems. On a bad day he is unable to lay down due to chronic pain.

The appellant states he can't afford his rent, medication, gas or food.

Additional Information received after the Reconsideration Decision

Appellant

Notice of Appeal (November 6, 2023)

The appellant states he has a severe mental impairment that directly restricts his ability to perform daily living activities and without help he would be dead. He also has physical disabilities that prohibit him from excessive physical labor.

Submission (November 27, 2023) – summary

The appellant writes that it has been a long struggle with mental illness his whole life and it is now starting to affect his physical health. He struggles with severe depression and anxiety, and a torn cartilage in his leg.

The appellant adds that he is unable to communicate well. His anxiety causes him to “fight or flight” frequently and shake and panic to the point where he cannot think or function properly. He is constantly worried and stressed to the point where he can't take care of anything, leading to more stress and anxiety and causing him to pick his face and scar it. Also, he is not able to shower or clean his clothes or take care of his own hygiene.

As well, the appellant states he is unable to take care of his living space without the help of his family. He is unable to find a job in a comfortable environment and ends up losing jobs due to mental breakdowns.

Ministry Submission (November 30, 2023)

The ministry states its submission in this matter will be the reconsideration summary provided in the Record of Ministry Decision.

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 the following criteria were not met?

- Severe mental or physical impairment
- Severe impairment directly and significantly restricts daily living activities
- Assistance required with daily living activities as a result of significant restriction

Appellant Position

The appellant argues that it has been a long struggle with mental illness his whole life and it is now starting to affect his physical health. He struggles with severe depression and anxiety, and a torn cartilage in his leg.

He states he has delusions, which cause him to think that things are happening, when they are not. Lack of emotional control has caused him to lose opportunities and people in his life. He has forgotten to pay bills and do assignments, and he often forgets to take his medication, which makes him very moody, irritable and unstable.

His anxiety causes him to shake and panic to the point where he cannot think or function properly. He is not able to shower, clean his clothes, take care of his own hygiene or take care of his living space, without the help of his family.

The appellant also argues he can't afford his rent, medication, gas or food.

Ministry Position

Mental Functioning

The ministry argues it is unclear why there are major impacts in the areas of impulse control and motivation (in the assessor's report) as the nurse practitioner did not provide any details and previously (in the medical report) did not indicate the appellant has deficits in these areas.

The ministry also argues the appellant's cognitive and emotional functioning does not appear to severely impair his overall mental functioning as the nurse practitioner has described him as independent with the daily living activities related to making decisions about personal activities and finances.

The ministry also argues that there is no indication of safety issues with regards to social functioning and the nurse practitioner has not described the support and supervision the appellant needs to manage activities related to social functioning or to be maintained in the community. As well, no information has been provided to describe how often the appellant is affected. (e.g., during an episode his impairment may be severe). However, information is not provided to confirm how often these episodes occur or how long they last.

Physical Functioning

The ministry argues that although in the appellant's request for reconsideration he describes walking with a limp because of a torn cartilage and chronic hip and leg joint pain, the nurse practitioner does not provide a diagnosis of a physical health condition.

As well, the appellant has no reported limitations to his physical functioning and can independently complete activities requiring mobility and physical ability.

Daily Living Activities

In the medical report, the nurse practitioner indicates the appellant has not been prescribed any medications or treatments that interfere with his ability to perform daily living activities.

In the assessor's report they indicate the appellant is independent with personal care, basic housekeeping, shopping, meals, paying rent and bills, medication and transportation. Although in the appellant's self report he explains he has difficulty remembering to clean up, pay bills and take medication, this has not been confirmed by his nurse practitioner.

As well, the information provided has not described the support and supervision needed and so the ministry cannot confirm a significant restriction. While the appellant may be significantly restricted sometimes or during an episode, no information is provided to confirm how often these episodes occur or how long they last. As no narrative has been provided and the appellant's nurse practitioner has described his restriction as only moderate, the ministry cannot confirm a significant restriction periodically for extended periods.

Help Required with Daily Living Activities

Although the nurse practitioner indicates the appellant receives help from family and social work, as it has not been established that daily living activities are significantly restricted, it cannot be determined that significant help is required from other persons or a device.

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.

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

Mental Impairment

In the medical report, the nurse practitioner provides diagnoses of anxiety, depression, ADHD and psychosis and describes anxiety, depression and ADHD as severe. When asked if there are any significant deficits with cognitive and emotional function, the nurse practitioner checked: memory, psychotic symptoms, emotional disturbance and attention or sustained concentration.

In the assessor’s report, when asked to indicate to what degree the appellant’s mental impairment restricts his functioning, the nurse practitioner indicated major impact for emotion, impulse control, attention/concentration and motivation, and moderate impact for executive and psychotic symptoms.

In the self-report, the appellant writes that anxiety and stress cause him to panic and the most basic things give him an extremely high level of anxiety. His mind plays tricks on him making him extremely paranoid. He states he has delusions, which cause him to think that things are happening, when they are not.

The ministry argues that while the assessment of the appellant’s cognitive and emotional functioning is notable, it is unclear why there would be major impacts in the areas of impulse control and motivation as the nurse practitioner did not provide any narrative and did not indicate in the medical report that the appellant has deficits in these areas. The panel considers it appropriate to take a holistic approach when determining whether the appellant has a severe mental impairment. The information contained in the medical

report, the assessor's report as well as the appellant's self report would all be taken into consideration. The nurse practitioner indicated in the medical report that there are significant deficits in the areas of memory, psychotic symptoms, emotional disturbance, and attention/sustained concentration. In the assessor's report the nurse practitioner identified major impact in the areas of emotion, impulse control, attention/concentration, and motivation. The panel also notes that the nurse practitioner has provided a narrative in the medical report indicating that the appellant has "severe" anxiety, depression and ADHD.

With the above information, the panel finds the ministry's determination that it is not satisfied the appellant has a severe mental impairment, unreasonable.

Physical Impairment

In the assessor's report the nurse practitioner states the appellant is independent walking indoors and outdoors, climbing stairs, standing, lifting and carrying and holding. Although in the request for reconsideration, the appellant states he has chronic back, hip and joint problems, as the nurse practitioner states the appellant is independent with these physical activities and there is no diagnosed physical medical condition, the panel finds there is insufficient evidence to conclude a severe physical impairment.

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 of the Regulation. At least two activities must be restricted in a way that meet the requirements. To be significant, the restriction must be to a great extent, such as not being able to do the activities without a lot of support. Continuous means the activity is generally restricted all the time and periodic for extended periods means frequently or for longer periods of time.

In the assessor's report the nurse practitioner (a prescribed professional) states the appellant is independent in the following daily living activities: preparing own meals, managing personal finances (paying rent and bills and banking), shopping, using public or personal transportation, basic housekeeping, moving about indoors and outdoors and in all areas of personal care (hygiene).

make decisions about personal activities, care or finances;

In the assessor's report, the nurse practitioner states the appellant needs periodic support/supervision making appropriate social decisions. However, the nurse practitioner does not provide details about the support, including how often the support is needed.

The panel also notes in the assessor's report, the nurse practitioner indicates the appellant is independent with all shopping tasks, paying rent and bills (banking, budgeting) and filing/refilling prescriptions.

The panel finds there is insufficient evidence from a prescribed professional to establish that assistance is required for a significant restriction or for extended periods of time, and finds the ministry reasonably determined this daily living activity was not met.

relate to, communicate or interact with others effectively

In the medical report although the nurse practitioner states social functioning is continually restricted, they also indicate the restriction is "moderate".

In the assessor's report, the nurse practitioner states the appellant needs periodic support with making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, securing assistance from others, and he has marginal functioning with his immediate and extended social networks. However, the nurse practitioner does not provide details about what kind and how often support is needed.

With the above evidence, the panel finds it cannot be established that this daily living activity is severely restricted and therefore the legislative criteria is not met.

Therefore, the panel finds the ministry's determination that it was not satisfied the requirement for this daily living activity was met, reasonable.

The panel finds the ministry reasonably determined that it was not satisfied that in the opinion of a prescribed professional, a severe physical or mental 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 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 these 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.

The panel notes in the assessor's report, the nurse practitioner indicates the help required for daily living activities is provided by family and "social work."

However, as the panel found that daily living activities were not restricted periodically for extended periods or continuously, the panel finds the ministry's determination that assistance was not required, reasonable.

The appellant stated that he is unable to find a job and always ends up losing his jobs due to anxiety, panic attacks and mental breakdown during work. The nurse practitioner also indicates that the appellant's severe anxiety, depression and ADHD impair his ability to function daily at work. The panel encourages the appellant to speak to the ministry about other potential programs such as Persons with Persistent Multiple Barriers."

Conclusion

In conclusion, the panel finds the ministry's decision that determined 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 2023-0342

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)

2023/12/12

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2023/12/12

Print Name

Bill Farr

Signature of Member

Date (Year/Month/Day)

2023/12/12