

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated November 6, 2023, which determined the appellant was not eligible for the Persons with Disabilities designation because she 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 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 (May 16, 2023) - summary***

The appellant writes that in July 2020 she fainted as a result of a sexual assault that happened previously. She was taken to hospital by ambulance with the back of her head split open. She received stitches and was released the next morning. Since this assault, she has constant pain in her left lower spine, disc bulge, chronic constipation, and anxiety and depression – post traumatic stress disorder (PTSD). She also states she has serious teeth issues, which she cannot afford to fix. The appellant adds that the consistent stress has also taken its toll on her mental health. She is currently in Cognitive Behaviour Therapy, with a registered psychiatric nurse. As well, she is receiving tests (CT scans, ultrasound, MRI), cortisol injections and is in treatment with a chiropractor.

The appellant states she is currently being treated by Dr. C in a pain clinic, Dr. F (surgeon) Dr. M (general practitioner) and a registered psychiatric nurse.

She is an artist, but her condition has caused her to reduce her work down to about 16 hours per week or less, which has affected her income drastically.

Medical Report (June 6, 2023) – signed by the appellant’s doctor (Dr. M)

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

B. Diagnosis	Date of onset – month/year
PTSD	August 2020
Degenerative lumbar disc disease	August 2020

C. Health History

Please indicate the severity of the medical conditions and how the medical conditions impair this person.

The patient was subjected to sexual assault in 2020. This has caused significant emotional and physical trauma affecting her social and work functioning. She also has degenerative lumbar disc disease, which has been causing severe lower back pain affecting her daily functioning significantly.

- Has the appellant been prescribed any medications and/or treatments that interfere with her ability to perform daily living activities? – no
- Does the appellant require prostheses or aids for her impairment? – no

Degree and Course of Impairment

- Is the impairment likely to continue for two years or more from today? – yes
The patient is going through mental help counseling as well as psychotherapy.

Functional Skills

- How far can this person walk unaided on a flat surface? 2-4 blocks
- How many stairs can this person climb unaided? – 5+ steps
- What are the person’s limitations in lifting? - under 2 kgs
- How long can this person remain seated? - 2-3 hrs.
- Are there difficulties with communication? - no
- Are there any significant deficits with cognitive and emotional function? – yes
The doctor checked: memory (ability to learn and recall information), emotional disturbance (e.g., depression, anxiety), and motivation (loss of initiative or interest).

D. Daily Living Activities

Does the impairment directly restrict the person’s ability to perform daily living activities?

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	

Please provide additional comments regarding the degree of restriction:

- Severe restriction

E. Frequency of Contact

- How long has the applicant been your patient? – more than 3 years
- How often have you seen this applicant in the past 12 months? – 11 or more times

Assessor Report (May 15, 2023) – signed by the psychiatric nurse

The appellant’s psychiatric nurse provided the following information and responses to the questions below.

B. Living Environment

The nurse indicates the appellant lives with family, friends or caregiver.

Comments: “homeless”

C. Mental or Physical Impairment

- What are the applicant’s mental or physical impairments that impact her ability to manage daily living activities? – headaches, dizzy spells, bowel, bulging disk, PTSD, depression, anxiety

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	X				
Climbing stairs						
Standing		X				can’t stand over 15 mins
Lifting		X				
Carrying and holding		X				

Cognitive and Emotional Functioning

For each item indicate to what degree the applicant’s mental impairment restricts her 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	X			X

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		

Sexually inappropriate, unable to maintain relationships

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	x					
Laundry	x					
Basic housekeeping	x					
Shopping						
Going to/from stores	x					must drive, needs help lifting
Reading prices and labels	x					
Making appropriate choices	x					
Paying for purchases	x					
Carrying purchase home					x	must drive

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		will need support with social based decisions
Able to develop and maintain relationships			x	unable to develop lasting friendships

Interacts appropriately with others (e.g. understands and responds to social cues, problem solves in social context)		x		at times needs help
Able to deal appropriately with unexpected demands		x		
Able to secure assistance from others	x			
<p>Describe how the mental impairment impacts the applicant's relationship with</p> <ul style="list-style-type: none"> - immediate social network - very disruptive functioning - aggression or abuse, major withdrawn, often rejected by others - extended social networks - very disruptive functioning - overly disruptive behavior, major social isolation 				

If the applicant requires help, please describe the support/supervision required, which would help to maintain her in the community.

- consistent, long lasting social supports

E. Assistance Provided for Applicant

The nurse adds that help is provided by health authority professionals.
 Comments: provides social support

Assistance provided through the use of devices

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

Assistance provided by Assistance Animals

Does the appellant have an assistive animal- no response

Additional information:

Client is compromised physically, emotionally and mentally and is unable to work as she cannot stand or sit and is unable to develop social contacts needed for business.

H. Frequency of Contact

The nurse states she has known the appellant for 4 months and seen her 11 or more times.

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

- PTSD, trauma, depression, anxiety, counselling

Request for Reconsideration (October 19, 2023) – summary

The appellant provided the attached documents with the request for reconsideration.

Letter with Questionnaire, to the Psychiatric Nurse from a Legal Advocacy Centre - October 16, 2023

The writer states the appellant provided the statements below and is asking the nurse to indicate her agreement or disagreement.

The nurse states she agrees with the following statements, and also provides additional comments (in brackets).

- Only able to walk up to 2-3 blocks at a time before having to stop and take a break (has observed the appellant taking rest breaks when walking).
- Only able to lift up to 10 lbs at a time (can only carry 1 bag of groceries at a time due to intense pain).
- Only able to sit or stand for up to 1 hour at a time (prevents her from working without pain).
- When speaking to others, has difficulty expressing herself and remembering the words she needs (loses train of thought when speaking, needs prompts for words).
- When reading, appellant has to read things over and over to comprehend what she is reading. She also needs to use reading glasses and has difficulty reading due to excessive watering of eyes (comprehension is delayed).
- Hearing loss on her right side, due to previous surgeries on her ears when she was younger (medical condition).

The nurse also agrees with the statements below.

The following cognitive and emotional functioning has impacted the appellant's daily functioning due to her PTSD.

- Minimal impact: consciousness, executive (difficulty with planning/organizing)
- Moderate impact: impulse control, motor activity, motivation (agitation)
- Major impact: bodily functions (toileting problems - chronic constipation that is severe and causes her to have to go to the hospital, sleep disturbance: insomnia, gets an average of 6 hours of disrupted sleep a night), emotion, memory, language (expression, written comprehension)

comments: trauma reaction, PTSD, pain.

The nurse agrees that the appellant needs continuous assistance or is unable to do the following daily living activities due to a combination of her physical and mental health:

- reading prices and labels (unable due to excessive watering of eyes)
- carrying purchases home (unable over 10 lbs)
- meal planning
- food preparation
- cooking (relies on easy foods due to lack of motivation)
- appropriate social decisions (isolates self, avoids social interactions with others)
- develop and maintain relationships
- deal appropriately with unexpected demands (anxious/overwhelmed when met with unexpected demands) - rigid with social contacts, trust a major issue, inability to display appropriate emotions

The nurse agrees that the appellant takes 2 times longer than typical to complete the following, due to her physical and mental health:

- walking indoors/outdoors
 - climbing stairs
 - transfers (in/out of bed and on/off chairs)
 - laundry
 - basic housekeeping
 - going to and from stores
- comments: pain, injury

Letter with Questionnaire to Dr. M from a Legal Advocacy Centre - October 16, 2023

The writer states the appellant provided the statements below and is asking the doctor to indicate their agreement or disagreement.

The doctor states they agree with the following statements and also provided additional comments (in brackets).

- excessive watering eye issue
- bulging discs
- social anxiety (the patient has lower back pain affecting her functions, also has social anxiety making it difficult to socialize).
- only able to walk 2-3 blocks at a time before she has to stop and take a break (lower back pain affects mobility)
- only able to lift up to 10 lbs. at a time (lower back pain affects ability to lift weights)
- only able to sit/stand up to 1 hr. at a time (lower back pain affects sitting or standing)
- when speaking to others has difficulty expressing herself and remembering the words (history of mental health trauma/ anxiety)
- when reading has to read things over and over to comprehend what she is reading, also needs to use reading glasses and has difficulty reading due to excessive watering eyes

- has hearing loss in her right side due to previous surgeries on her ears (reported previous ear surgery and hearing loss in the right ear)

The doctor agrees with most of the nurse's assessment, in this questionnaire, regarding the impact on cognitive and emotional functioning due to the appellant's PTSD, but disagrees on the following.

- consciousness: minimal impact
- impulse control: moderate impact
- language: major impact

The doctor agrees that the appellant needs continuous assistance and is unable to read prices and labels, carry purchases home over 10 lbs, make appropriate social decisions, develop and maintain relationships and deal appropriately with unexpected demands. However, the doctor disagrees that the appellant needs continuous assistance and is unable to plan meals, prepare food and cook.

The doctor agrees with the nurse's assessment that most daily living activities take the appellant at least 2 times longer, but disagrees that it takes her 2 times longer to walk indoors/outdoors, climb stairs and go to and from stores.

Letter To Whom it May Concern from a Transition Society (October 13, 2023)

The writer states they are advocating for their client who is seeking financial assistance. So far the appellant has attended two counseling information sessions and consented to 10.
- signed by an intern counsellor

Letter of Referral to an Ophthalmologist (October 12, 2023)

Reason for referral: recurring excessive watering of eyes

Laboratory results from a Health Authority (date of service, March 26, 2023)

Findings: broad based disc bulge with loss of normal disc height, mild neural foraminal narrowing is seen on the left, high signal intensity is noted in the disc in keeping with small annular tear.

Additional Information received after the Reconsideration Decision

Appellant

Notice of Appeal (November 8, 2023)

The appellant states her work is minimal due to lower back pain and mental health.

Submission (December 7, 2023)

The following documents were received from the appellant’s psychiatric nurse.

- Letter to Whom It May Concern, from Dr. M (December 4, 2023) – Dr. M recommends the appellant does not exceed 8 hrs/week of work so she can preserve her daily functionality and avoid flare-ups of severe lower back pain.
- Progress Assessment (November 21, 2023), from Dr. K (medical doctor) Mental status examination: accessible, reliable and cooperative, no changes on mental state exam. Treatment Plan: no imminent safety concern. The doctor encourages the patient to be more active and healthier and advised her to continue with her current medication and do counseling.
- Letter to Dr. Sc from Dr Su (eye physician and surgeon) (October 24, 2023) Impression: dry eyes with allergic conjunctivitis. Management includes artificial tears, irrigation of both lower eyelids look for duct obstruction.
- Anesthesia Clinic Consult (June 22, 2023), Dr. C – follow-up after joint injection 7 weeks ago.
- MRI (March 26, 2023) – degenerative changes in the lumbar spine, findings are similar to prior studies from 2021.
- Medical Report (March 6, 2023), signed by Dr. M The appellant has been having right-ear aches and complaining about intermittent abdominal pain associated with constipation. A colonoscopy about 2 years ago showed no acute findings.
- Preanesthetic consultation (March 5, 2023), report signed by DC No change, perianal numbness and sacral pain left lower back pain.
- Preanesthetic consultation (June 9, 2022) - letter to Dr. M. from a medical doctor The doctor encouraged the appellant to continue exercise and massage therapy.
- Health report (August 16, 2021).

Submission (December 11, 2023)

The submission contains a letter from an accountant regarding the appellant’s 2021 and 2022 income, as well as a 2022 Statement of Business of Professional Activities from the Canada Revenue Agency.

At the hearing, the appellant’s advocate (who is also her psychiatric nurse) reiterated that the appellant cannot work more than eight hours/week, which is insufficient to support herself.

The advocate stated the appellant can do things at home, but very slowly (e.g., she can only carry one bag of groceries at a time). The advocate agreed that the appellant’s memory is compromised, likely as a result of her PTSD. This creates a lot of confusion.

Due to physical issues with her back, the appellant needs assistance with heavy tasks (e.g. laundry, heavy cleaning). The appellant stated her son and a couple of people in her building help her with heavier work when she needs it.

The advocate added that if she were completing the assessor's report today, she would state that the appellant needs periodic assistance with basic housekeeping, reading prices and labels and making appropriate choices. When asked why her assessment, in some areas changed between the assessor's report and the questionnaire, she responded that the responses pertain to a certain timeframe and the appellant changes from the time one form is completed to the next. As well, when the assessor's report was completed, the appellant didn't want to admit how much help she needed.

In addition, the advocate stated that the doctor doesn't always agree with her assessment.

Admissibility

The ministry had no objection to admitting the submissions from the appellant dated December 7 and December 11, 2023.

The panel determined the additional information above received on December 7, 2023 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*.

The panel determined the additional information regarding the appellant's income received on December 11, 2023 is not relevant to the issue of Persons with Disabilities designation. Therefore, the panel determined that it is not reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is not 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 she 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

Appellant Position

The appellant argues that because of an assault in 2020 she has constant pain in her left lower spine, disc bulge, chronic constipation, and anxiety and depression (PTSD).

She is currently in Cognitive Behaviour Therapy, receiving various medical tests and is being treated by a chiropractor, a pain clinic doctor, a surgeon, a general practitioner and a registered psychiatric nurse.

The appellant also states she is an artist, but her condition has caused her to reduce her work down to about 8 hours per week or less, which has affected her income drastically.

Ministry Position

Severe Mental or Physical Impairment

mental functioning

The ministry argues while the appellant has some deficits and impacts to her cognitive and emotional functioning, she does not appear to be overall restricted in most daily living activities related to a severe mental impairment. The appellant can complete personal care, housekeeping, paying for purchases, medications, finances, and transportation independently. While the appellant's nurse reports limitations with meals, Dr. M has not agreed, and although at reconsideration, there was some difficulty with communication reported, it was also noted the appellant has no difficulty with communication and good ability in speaking, reading, writing, and hearing.

The ministry also argues that while the appellant's hearing is impacted by previous surgery, her current ability to hear is not clear, as a diagnosis of a hearing impairment was not provided, nor was this reported to impact the appellant's functioning. The ministry

adds that while the appellant has some difficulty reading due to excessive watery eyes, it appears that she can complete these tasks, although it may take additional time.

physical functioning

The ministry argues the functional skills and mobility reported suggest a moderate degree of impairment as the appellant is independent in walking indoors and climbing stairs, can walk 2-3 blocks, lift up to 10 pounds, and sit/stand for up to one hour. At this range, the ministry argues the appellant can continue to complete her basic daily functional requirements. In addition, although it is not clear if the appellant's mobility and physical ability tasks take twice as long, the ministry finds that taking 2 times longer to complete a task does not confirm a severe impairment.

Daily Living Activities

The ministry argues it is not satisfied that the appellant has a severe impairment that significantly restricts her ability to perform the daily living activities.

Dr. M indicates the appellant has not been prescribed any medications or treatments that interfere with her ability to perform daily living activities and indicates the appellant's impairment does not directly restrict her ability to perform daily living activities apart from a severe restriction in social functioning.

The nurse writes that the appellant's daily living activities are restricted by headaches, dizzy spells, bowel issues, bulging disc, PTSD, depression, and anxiety and therefore the appellant requires continuous assistance or is unable to complete some daily living activities (reading prices and labels, carrying purchases home, meal planning, food preparation and cooking).

However, information has not been provided to account for why the nurse revised their answers for the appellant's daily living activities between the initial application and reconsideration.

Further, it is not clear why watering eyes prevent the appellant from reading prices and labels in a way that significantly restricts her from shopping. In addition, the ability to carry one bag of groceries, up to 10 pounds, does not suggest a significant restriction in shopping, and reliance on easy to prepare foods due to a lack of motivation does not suggest a significant restriction in the appellant's ability to make meals. As well, taking twice as long to do laundry, basic housekeeping, and going to and from stores does not confirm a significant restriction in the appellant's ability to complete daily living activities.

The ministry finds that the appellant has a significant restriction in social functioning. However, information has not been provided to establish she has a significant restriction in any other daily living activity. In order to meet this requirement the appellant must be restricted in more than one daily living activity.

Assistance

Dr. M does not indicate that the appellant receives help. The nurse indicates the appellant requires help from health authority professionals. However, as it has not been established that daily living activities are significantly restricted, it cannot be determined that significant help is required from other people 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 Mental or Physical Impairment

“Severe” and “impairment” are not defined in the legislation. The ministry considers the extent of any impact on daily functioning as shown by restrictions on physical abilities and/or mental functions. The panel finds 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 Dr. M states the appellant has been diagnosed with PTSD and also indicates that her social functioning is continuously severely restricted. No issues with communication are indicated.

However, the panel notes that there are inconsistencies between the medical report, the assessor’s report and the questionnaires completed by both the nurse and Dr. M.

For example, in the assessor’s report and questionnaire the nurse indicates there is major impact on language. However, in the questionnaire Dr. M disagrees that there is a major impact on language. In the assessor’s report the nurse indicates there is a moderate impact for consciousness, but states in the questionnaire there is minimal impact. Dr. M disagrees with a minimal impact assessment.

In the assessor's report the nurse indicates there is major impact for impulse control, but indicates in the questionnaire that there is moderate impact. Dr. M disagrees with a moderate impact assessment.

At the hearing, the advocate explained that the appellant's mental impairment changed over the time the forms were filled out, and the doctor doesn't always agree with her.

The panel finds with these inconsistencies, it is unable to conclude that a severe mental impairment has been established.

Therefore, the panel finds the ministry's determination that it is not satisfied the appellant has a severe mental impairment, reasonable.

Physical Impairment

In the medical report Dr. M states the appellant has been diagnosed with degenerative lumbar disc disease. In the self-report, the appellant states she has constant pain in her left lower spine, disc bulge and chronic constipation.

However, the doctor also states the appellant can walk 2-4 blocks, climb 5+ steps, her limitation in lifting is under 2 kgs and she can remain seated 2-3 hrs. In the questionnaire, the nurse changed the time the appellant can stand from 15 minutes to an hour and confirmed her ability to walk is at least 2-3 blocks.

The nurse also indicated that the appellant takes 2 times longer than typical to complete some of the daily living activities, including walking indoors/outdoors and climbing stairs.

The panel finds the level of physical mobility indicated by the doctor does not demonstrate a severe physical impairment. As well, the panel finds that taking twice as long to perform a task does not indicate a "severe" physical impairment.

In the questionnaire the nurse agreed that the appellant has hearing loss on her right side and she has difficulty reading due to excessive watering of eyes. However, the panel finds there is insufficient evidence to conclude that these conditions impact the appellant's functionality and can be considered severe physical impairments.

The panel finds the above information is insufficient to conclude that the appellant has a severe physical impairment and finds the ministry's determination that it is not satisfied the appellant has a severe physical impairment, 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)(a) of the Regulation. At least two activities must be restricted in a way that meets 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.

The panel's review of the restriction on the daily living activities can be found below.

In the assessor's report, the nurse (a prescribed professional) states the appellant is independent in all the following daily living activities: prepare own meals, manage personal finances, shop for personal needs, use public or personal transportation, basic housekeeping, walking indoors/outdoors, all areas of personal care and managing medication.

In the questionnaire the nurse indicates that the appellant needs continuous assistance or is unable to shop (reading prices and labels, carrying purchases, and with meals (planning, preparation and cooking). Dr. M (a prescribed professional) disagrees that the appellant needs continuous assistance or is unable to do meal planning, food preparation and cooking. At the hearing, the advocate/nurse stated the appellant needs periodic assistance with basic housekeeping and reading prices and labels.

The panel notes that although there are inconsistencies between the application and both questionnaires, the degree of daily living independence reported in the assessor's report is mostly consistent with the physical functional abilities identified in all three documents. Therefore, the panel gives more weight to the information in the assessor's report than in the questionnaires.

Considering the above, the panel finds significant restrictions due to physical impairment are not established.

make decisions about personal activities, care or finances

In the medical report, under social functioning – daily decision making; interacting, relating and communication with others, the doctor states the appellant is continuously restricted. In the assessor's report the nurse states the appellant needs periodic support

to make appropriate social decisions and interact appropriately with others. The panel finds it is unclear whether the appellant needs continuous assistance or periodic assistance with this daily living activity and if periodic, more details are required to determine a severe restriction (e.g., what type of assistance, how frequent).

The panel finds the information is unclear to the point that significant restrictions due to mental impairment, for this daily living activity, cannot be established.

Due to either inconsistencies in the information or insufficient information, the panel finds it is unable to conclude that in the opinion of a prescribed professional a mental or physical impairment directly and significantly restricts the appellant's ability to perform the above daily living activities continuously, or periodically for extended periods.

Although the ministry found that the appellant has a significant restriction in social functioning, in order to meet the legislative requirement for daily living activities, the appellant must be restricted in more than one daily living activity.

Therefore, the panel finds the ministry was reasonable in concluding it is not satisfied that a severe physical impairment directly and significantly restricts the appellant's ability to perform daily living activities continuously, or periodically for extended periods, as per 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 those restrictions, the person requires help to perform those activities and in order to perform them, the person requires an assistive device or the significant help or supervision of another person.

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.

Although the panel acknowledges that the appellant has health issues and therefore is limited to the amount of work she can do, this legislation pertains to the ability to perform daily living activities, not employability. The panel is bound by this legislation, as is the ministry.

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).

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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)

2023/12/19

Print Name

Susanne Dahlin

Signature of Member

Date (Year/Month/Day)

2023/12/19

Print Name

Katherine Wellburn

Signature of Member

Date (Year/Month/Day)

2023/12/19