

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) reconsideration decision dated August 31, 2023. The ministry denied the appellant designation as a person with disabilities (PWD). They determined that the appellant met the age requirement (18 years or older) and the duration requirement (impairment is likely to continue for at least 2 years). However, the ministry was not satisfied that the evidence establishes that

- the appellant has a severe physical or mental impairment;
- the appellant's impairment significantly restricts the ability to perform daily living activities; and
- the appellant requires the significant help or supervision to perform daily living activities.

The ministry also found the appellant was not one of the prescribed classes of persons eligible for PWD on the 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 (the Act), section 2

Employment and Assistance for Persons with Disabilities Regulation (the Regulation), section 2

The full text of these sections of legislation is included at the end of the decision.

Part E – Summary of Facts**Evidence Before the Ministry at Reconsideration**

1) The appellant's PWD application:

- The Medical Report and Assessor Report sections (May 15, 2023) completed by the appellant's general practitioner (the doctor) who has been the appellant's family doctor for less than 1 year and who has seen the appellant 2-10 times in the past 12 months.
- To complete this form, the doctor used an office interview.
- The appellant completed the Applicant Information (Self-Report) section (May 19, 2023).

2) The appellant's Request for Reconsideration (August 15, 2023)

New Evidence Provided on Appeal and Admissibility

The appellant submitted a Notice of Appeal.

At the hearing, the appellant provided additional information about her medical conditions and their impact on her functioning. The ministry provided some general information related to the appellant's PWD application.

The appellant and the ministry did not object to the admission of the additional information. The panel finds that the information provided on appeal and at the hearing by both parties is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, as it contributes to the panel's understanding of the circumstances surrounding her PWD application. The panel therefore admits this information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

Summary of Relevant EvidenceMedical Report

Diagnoses:

- Calcific tendinosis bilateral shoulders (onset April 2021)
- Lumbar spine. Has associated leg pain (onset approx. 2010)
- Hip pain. Most likely due to arthritis (onset April 2021)

Health History:

- The appellant has been prescribed medication that interferes with her ability to perform daily living activities. "Patient finds sedating." The anticipated duration of the medication is "Long term. Unlikely to discontinue."
- The appellant does not require any prosthesis or aids for her impairment.

Degree and Course of Impairment:

- "Patient's pain symptoms are chronic. Unlikely to resolve. May benefit from physiotherapy."

Functional Skills:

- Can walk 1-2 blocks unaided on a flat surface.
- Climb more than 5 steps unaided.
- Can lift 2 to 7 kg.
- Can remain seated with no limitations.
- Has no difficulty with communication.
- Has no deficits with cognitive and emotional function.
- "Patient's symptoms vary. The above is a bad day."

Daily Living Activities:

- Restricted - continuously: Daily shopping, mobility outside the home
- Restricted – periodically: Personal self care, meal preparation
- Restricted (no indication whether periodically or continuously): Basic housework
- Not restricted: management of medications, mobility inside the home, use of transportation, management of finances, social functioning
- Regarding periodically restricted activities: "More days than not takes 2-3 times longer than baseline to perform."
- "Primarily limited by ability to walk and carry items. Dressing often difficult."
- "Pt modifies activities, I.E. making several trips to grocery store as can't carry heavy bags."

There is no indication from the doctor that the appellant's condition is worsening.

Assessor Report

The appellant lives alone.

Impairments that impact ability to manage Daily Living Activities:

- Substantial back, shoulder, arm pain

Ability to Communicate:

- Speaking, reading, writing, and hearing abilities are good.

Mobility and Physical Ability:

- Walking outdoors, climbing stairs, standing, lifting and carrying take significantly longer than typical
- Walking indoors is independent.

Cognitive and Emotional Functioning (impact on daily functioning):

- No impacts for all listed areas.

Daily Living Activities:

- Personal Care: dressing, transfers in/out of bed and on/off chairs take significantly longer than typical ("limited mobility"); all other activities (grooming, bathing, toileting, feeding self and regulating diet) are independently managed.
- Basic Housekeeping: both tasks (laundry and basic housekeeping) take significantly longer than typical. ("Limited mobility")
- Shopping: Going to and from stores ("Limited by walking distance") and carrying purchases home ("Can lift 5-10lbs") take significantly longer than typical. All other activities (reading prices and labels, making appropriate choices, and paying for purchases) are independently managed.
- Meals: Food preparation and cooking take significantly longer than typical ("Limited by pain"). The remaining 2 activities (meal planning and safe storage of food) are independently managed.
- Pay Rent and Bills: All activities (Banking, budgeting and paying rent and bills) are independently managed.
- Medications: All activities (Taking as directed, filling/refilling prescriptions, and safe handling and storage) are independently managed.
- Transportation: Getting in and out of a vehicle takes significantly longer than typical ("Limited by pain"). The other 2 tasks (using public transit and using transit schedules and arranging transportation are independently managed.
- Social Functioning: independent in all areas (appropriate social decisions, develop and maintain relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others). Good functioning with immediate and extended social networks.
- The doctor did not identify any daily living activity as "continuous assistance from another person [needed] or otherwise be unable".

Assistance Provided:

- Help required for daily living activities is provided by family and friends.
- "Accesses when available. Help with lifting/household chores."

- No assistive devices are used or required.
- The appellant does not have an assistance animal.

Additional Information:

- "Due to multiple sites of limited mobility/pain pt has difficulty ambulating, carrying loads, activities involving flexibility (dressing, preparing meals, cleaning.)"

There is no indication from the doctor that the appellant's condition is worsening.

Self-Report

The appellant wrote:

- She has disabling back and shoulder pain.
- She is unable to perform everyday tasks like housework, shopping, lifting, pulling and pushing.
- Some days she cannot leave her home because of the all-consuming pain and she spends most of the day in bed.
- She cannot walk or stand for long periods of time.
- She has a very difficult time showering, drying off and getting dressed. What took only minutes in the past and now take more than an hour.
- She is feeling depressed, frustrated, isolated and hopeless and only goes out to do things that are necessary such as for appointments or shopping because the pain is so bad. Sometimes she has to cancel her appointments. Most days she does not do anything or go anywhere.
- She does not have a social life anymore and is not able to go to social or family functions due to pain or feeling depressed.
- She finds it hard to focus and concentrate, cannot stay on track or finish things she has started, or forgets what she is doing.
- Her long-term and short-term memory has become bad.
- She has problems remembering how to spell and forgets what she is writing in mid-sentence.
- She has a hard time sleeping through the night and does not sleep well due to pain and anxiety about her financial situation because her pain is so disabling that she cannot work. She cannot get comfortable and has to get up regularly.
- She also has disabling nerve pain.
- She is not able to fill out forms and paperwork properly.
- She can't shower on some days because of too much pain.
- When she is finished with showering she is in so much pain that it is hard to dress and it takes twice as long to get ready for the day.

- She cannot do most of her housework like vacuuming, sweeping, cleaning, laundry, and changing her bed.
- She takes hours to prepare meals because she cannot stand for long.
- She cannot lift anything over 5 lbs on good days and does not try most of the time because it will cause more pain.
- She cannot exercise regularly.

Request for Reconsideration

The appellant repeated information from her self-report and added:

- She has arthritis pain, I.B.S. [Irritable Bowel Syndrome], anxiety, musculoskeletal system and connective tissue pain.
- She cannot stand for more than 10 minutes at a time.
- She is not able to dust or wash the floors.
- She can do housework only for short periods and then she has to sit for at least 15 minutes.
- Having a shower and drying off and taking care of her feet is very painful and she neglects her personal hygiene.
- Most days she is in so much pain that she can't do anything.
- She has extreme difficulty driving because of her arms and shoulders and she only drives when necessary.
- She does not cook meals very often because she can't stand for long and her shoulders and back become extremely painful.
- Her son and neighbor do all the things for her that she can't do.
- She does not eat properly and is not able to exercise due to pain.
- She is feeling depressed and anxious because she can't work and is living below the poverty level.
- She can't fully pay her rent and has been relying on a community group to help her, but they will no longer help.
- She is extremely stressed.
- She will soon have no phone – which she needs – because she cannot pay her phone bill.
- She has contacted all resources available to her, but no one can help.
- She feels her doctor did not fairly diagnose her pain and medical conditions because he has only been her doctor since November 2022 and doesn't have her medical history because her previous doctor of 40 years passed away.
- Her current doctor did not think it necessary to request these files.
- He only has recent x-rays and her records from the time she was a patient at an urgent care clinic because of her pain and medical issues.

Notice of Appeal

The appellant repeated information from her self-report and request for reconsideration and added:

- She is unable to work because of chronic pain in her back, arms, shoulders, hands, hips, knees and legs from injuries, arthritis and nerve pain.
- She is unable to prepare meals.
- She is in so much pain that she cannot stand or walk for more than a few minutes before she has to sit and heat or ice her back.
- She regularly has to cancel appointments or has to ask family and friends to take her or shop for her.
- When her pain became so extreme that she started missing work she went to urgent care at the hospital after her doctor of 41 years passed away.
- The doctors there diagnosed her with nerve pain and chronic back pain.
- Her new doctor "has only those medical records of what's causing [her] chronic pain."
- She has had mild depression and anxiety all her life but it is getting worse now due to her pain, restrictions and financial situation.
- Her IBS is getting worse and she has no choice but to stay at home.
- She had a good job and would like to go back to it but her pain prevents this. She does not like living like this and has been trying to find another job but does not have the qualifications and is in constant pain.

Information at the Hearing

The appellant repeated previous information and reported the following:

- Her pain is both chronic and acute.
- She has been in pain for years and it is getting worse.
- Her back, shoulder and hip pain is caused by arthritis.
- Her arm and lower back pain is caused by a work-related injury.
- Most days she cannot function and is not able to do anything. She can only sit still or stay in bed.
- She is no longer able to do any housework or lifting.
- Her son, neighbor, and sometimes her sister help her. The neighbor who helps her is a care aid and works in seniors' homes.
- Her pain medication helps but does not entirely extinguish her pain.
- She has no choice but to apply for PWD designation to get some income.
- The records from her previous doctor need to be digitalized and it is unfair that she should have to pay for this.

- She told her doctor about her mild depression which started in 2000 when she saw a psychiatrist.
- She cannot cope with confrontations or with being in front of other people.
- Her mental impairment restricts her as much as her physical impairment.
- To questions from the ministry the appellant answered that she was with the doctor only some of the time during which he filled out the PWD application.
- The frequency of her current “bad” days varies – she has them either 3-4 times per week or 2-3 times a week. During a bad day she can only get up to go to the bathroom or for a snack.
- She could not find any advocate but has not contacted the Disability Alliance of BC.
- To questions from the panel the appellant replied that she has seen her doctor several times since he filled in the PWD application. They told her she could increase the amount of her prescription pain medication but the appellant said she did not want to do this because she gets dizzy.
- She does not want to ask him to provide more information for this appeal because he would charge her for this and she still owes him money for filling out the PWD application.
- She has not applied for CPP disability benefits because their website was down.
- She has been receiving regular CPP retirement benefit payments for 2 years.
- She has tried physiotherapy for 6 months as suggested by her doctor, but it did not help her much because of her pain. She couldn’t lift the weights.

The ministry largely restated the reconsideration decision and explained the following:

- Unless a doctor charges an additional fee, the ministry covers the total costs of their filling out the form. The ministry pays \$130 for a medical report and \$75 for an assessor report.
- To a question from the appellant the ministry recommended that she should apply again in case her appeal was not successful. It does not have to be a doctor or nurse practitioner who fills out the assessor’s report of the application. For example, a physiotherapist could fill out this section. The 3 parts of the application can be filled out in any order. A community advocate could be helpful in her specific case. A good contact is the Disability Alliance of BC – they can provide additional information during or after the application process. Recent x-rays would be good evidence.
- The ministry explained further that if the appellant were in receipt of CPP disability benefits she would automatically find herself in a prescribed class and would only have to fill out a 2-page application. A PWD decision has to be made by the ministry fairly quickly - within 45 business days. It is not retroactive. A CPP disability decision can take up to 9 months and can be retroactive.

- To a question from the panel the ministry explained that “mobility indoors” does not just mean walking indoors but the ability to navigate the home, including, for example, meal preparation.
- To another question from the panel the ministry responded that they may contact a doctor or prescribed professional if this may change the outcome of an application.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision that the appellant was ineligible for PWD designation was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. That is, was the ministry reasonable when it determined that

- the appellant does not have a severe physical or mental impairment;
- the appellant's impairment does not significantly restrict her ability to perform daily living activities; and
- the appellant does not require the significant help or supervision to perform daily living activities.

PANEL DECISION**Severity of Impairment – Physical or Mental****Physical Impairment**

The appellant's position is that she is severely physically impaired due to her disabling pain, and because her IBS is getting worse. Her doctor's assessment should have included her previous medical history.

The ministry's position is that the appellant has no severe physical impairment because according to her doctor, on a "bad day" she can walk 1 to 2 blocks unaided, climb 5+ steps unaided, is limited to lifting 5 to 15 lbs., and has no limitation with remaining seated. Regardless, the ability to walk 1 to 2 blocks unaided and lift 5 to 15 lbs. is considered indicative of a moderate as opposed to a severe impairment of physical functioning. The ability to lift up to 15 lbs. is considered sufficient ability to lift a variety of household and shopping objects. The ability to climb 5+ steps unaided and remain seated without limitation is not considered indicative of an impairment of physical functioning. Additionally, the doctor does not describe the frequency of "bad days." The doctor also assessed the appellant as independent with walking indoors. While the doctor indicates the appellant takes significantly longer than typical with walking outdoors, climbing stairs, standing, lifting, and carrying/holding, he does not describe how much longer than typical it takes to perform the above noted areas of mobility and physical ability.

Majority Panel

The majority of the panel finds that the ministry did not reasonably determine that the appellant does not have a severe impairment.

The majority panel notes that the doctor has described the appellant's physical functioning in the medical and assessor reports as involving "multiple sites of limited mobility/pain", resulting in the appellant having "difficulty ambulating, carrying loads, activities involving flexibility". The doctor has also indicated that several physical activities take two to three times longer than typical as a result of her physical impairments. The ministry says this isn't indicative of severe physical impairment, but does not give reasons including to say what it would consider severe.

In addition, the majority panel notes that the Ministry does not indicate how many physical functions must take "significantly" longer to complete for an impairment to be considered severe. Though none of this is clarified in the legislation, neither is it addressed by the ministry in its decision.

The majority panel also notes that the appellant said at the hearing that the "bad days" are 2 to 4 days a week, are getting worse, and that she often can't get out of bed on bad days. The appellant also said at the hearing that she has seen her doctor since the application was submitted and the doctor suggested she could up her prescription medication dosage to address the pain. The majority accepts the evidence presented by the appellant at the hearing as credible. The appellant's new evidence builds on past information provided by the appellant and the doctor in the appellant's original application for the PWD designation and was consistent throughout. While new evidence from the appellant does not carry the same weight as it would from a medical professional, the legislation does not require that severity be in the opinion of a medical professional, so it still should be given weight. The ministry's decision did not address the new evidence of worsening symptoms with respect to severity. The ministry's decision is not reasonable on that point in part because of the new evidence.

Dissent

The dissenting panel member finds that the ministry reasonably determined that the appellant does not have a severe physical impairment. Section 2 of the Act requires the Minister to be satisfied that the appellant has a severe impairment. "Severe" and "impairment" are not defined. In the reconsideration decision the ministry considers the extent of any impact on daily functioning as shown by limitations with or restrictions on physical abilities. The dissenting panel member finds that an assessment of severity based on daily physical and mental functioning including any restrictions is a reasonable interpretation of the legislation. They note, however, that frequency and/or duration of impairment is not required in the assessment of severity by the legislation at this stage of the legislative test.

While the appellant's doctor confirms that many aspects of the appellant's physical functioning have limitations, the dissenting panel member finds that these limitations do not add up to a severe impairment of the appellant's physical functioning. While the appellant writes in her application (May 19, 2023) that she is unable to perform everyday tasks like housework, shopping, and lifting, this information is not consistent with the doctor's information (May 15, 2023). While the appellant stated at the hearing that she cannot function on most days and is not able to do anything but sit still or stay in bed, this information is also not confirmed by her doctor. While the doctor's information is now 5 months old, no additional medical evidence has been provided, and there is no indication in the doctor's evidence that the appellant's condition is worsening.

Mental Impairment

The appellant's position is that she is impaired because she has problems with memory and concentration, her depression and anxiety are getting worse, and she has no social life. She wants to lead a comfortable life without stress and anxiety.

The ministry's position is that the appellant does not have a severe mental impairment because her doctor does not indicate or describe impacts, limitations, or restrictions to communication, cognitive and emotional functioning, or social functioning.

The panel finds that the ministry reasonably determined that the appellant does not have a severe mental impairment. The doctor reports no difficulties with communication and no deficits with cognitive and emotional functioning or restrictions with social functioning. While the appellant argues that her mental functioning is impaired by loss of memory, concentration, depression and anxiety, the panel finds that there is no medical evidence to support the appellant's statements. Consequently, the panel finds there is not enough evidence that the appellant has a severe mental impairment.

Restrictions in the ability to perform daily living activities

The appellant's position is that she is significantly restricted in her ability to perform daily living activities due to her chronic and acute pain, depression, and anxiety.

The ministry's position is that based on the assessments provided by the appellant's doctor and the appellant's self-reports, there is not enough evidence that she has a severe impairment that significantly restricts her ability to perform daily living activities continuously or periodically for extended periods. Although the doctor indicates that the appellant is continuously restricted with mobility outside of the home, they at the same time indicate that she can walk 1 to 2 blocks unaided on "bad days". The doctor does not describe the frequency of bad days or how far the appellant can walk unaided on good days. While they do indicate the appellant takes two to three times longer than typical in performing activities, the ministry does not consider this

indicative of significant restrictions to daily living activities. Although the doctor describes difficulty with ambulating, carrying, and flexibility, they indicate the appellant can walk 1 to 2 blocks unaided and lift 5 to 15 lbs. on "bad days". The ability to lift up to 15 lbs. is considered sufficient ability to lift a variety of household and shopping objects. For the purpose of determining eligibility for PWD designation an applicant's employability or ability to work is not taken into consideration.

Panel Analysis

Section 2(2)(b) of the Act requires that the ministry be 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 either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether it is satisfied, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and restriction. The direct restriction must also be significant.

The panel notes that the only information from a prescribed professional is the doctor's May 15, 2023 medical and assessor report.

Legislation identifies 8 daily living activities in conjunction with physical impairment: These are meal preparation; management of finances; shopping for personal needs; use of transportation; basic housework; mobility indoors and outdoors; personal self care; and management of medications. Out of these 8 activities, the doctor describes management of finances, use of transportation, and management of medications as not restricted. (There is a slight inconsistency when the doctor describes the appellant not restricted in the use of transportation but indicates later that the appellant takes significantly longer than typical in getting in and out of a vehicle.) The doctor describes the appellant as independent in most areas of the remaining 5 daily living activities, with the other areas identified as taking significantly longer than typical, except for basic housework where the appellant takes significantly longer than typical in all areas. For the areas that are marked by the doctor as taking significantly longer, they explain that the appellant takes 2-3 times longer than typical on more than 50% of the days. The panel finds that in the appellant's circumstances the ministry was reasonable when it determined that taking 2-3 times longer than typical most of the time was not enough to establish that her daily living activities were significantly restricted, especially as, according to the doctor, she is mostly independent and manages with the help family and friends when they are available. In addition, the doctor does not identify any of the 8 legislated daily living activities as "continuous assistance from another person [needed] or otherwise unable".

Based on this analysis the panel finds that the ministry reasonably determined that there is not enough evidence to establish significant restrictions to the appellant's daily living activities.

Help to perform daily living activities

The appellant's position is that she needs the help of her family and friends with shopping and housework because she is not able to do it on her own.

The ministry's position as it has not been established that daily living activities are significantly restricted it cannot be determined that significant help is required.

The panel notes that direct and significant restrictions with daily living activities must first be shown to decide that help is needed because of significant restrictions. As the panel already found that significant restrictions with daily living activities were not shown, the panel finds that the ministry was reasonable to decide that the help requirement is not met.

Conclusion

The panel acknowledges that the appellant has difficulties managing many areas of day-to-day-life. However, based on the available information, the panel finds that the ministry's reconsideration decision was reasonably supported by the evidence. The panel confirms the ministry decision and the appellant is not successful on appeal.

Appendix – Relevant 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.

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

Employment and Assistance for Persons with Disabilities Regulation

Definitions for Act

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

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

activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

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

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

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

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

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

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

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

(i) medical practitioner,

(ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner ...

APPEAL NUMBER 2023-0286

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

Inge Morrissey

Signature of Chair

Date (Year/Month/Day)

2023/10/10

Print Name

Simon Clews

Signature of Member

Date (Year/Month/Day)

2023/10/14

Print Name

Margarita Papenbrock

Signature of Member

Date (Year/Month/Day)

2023/10/17