

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) decision dated June 5, 2023, denying persons with disabilities (PWD) designation.

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

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

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

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (Act), s. 2
Employment and Assistance for Persons with Disabilities Regulation (Regulation), s. 2
Employment and Assistance Act (EAA), s. 22(4)

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

Part E – Summary of Facts

The hearing took place by teleconference. During the hearing, the Ministry representative told the Panel that their Appeal Record had the Appellant's name on the letter, but the attached Appeal Record was from a different file. The Ministry representative found the correct Appeal Record on their system and, in response to a question from the Panel Chair, said they did not need an adjournment to review the documents from this appeal.

Evidence Before the Ministry at Reconsideration:

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

- Medical Report and Assessor Report completed by a Doctor;
- PWD Questionnaire completed by the Appellant.

Medical Report:

The Doctor states that the Appellant has been their patient since May 5, 2022, and they have seen the Appellant between two and ten times in the past twelve months.

Diagnosis:

The Doctor lists the following diagnoses:

- diabetes
- gastro-esophageal reflux disease (GERD)
- moderate to severe conductive hearing loss in the right ear
- moderate sensorineural hearing loss in the left ear
- depression (lifelong)
- anxiety (lifelong).

Health History:

The Doctor states that the Appellant has:

- chronic weakness and fatigue – moderate to severe, all the time
- depression – severe, all the time
- anxiety, poor concentration – all the time
- poor memory, confusion, disorientation
- agitation
- poor sleep, poor appetite
- poor motivation
- difficulty climbing stairs
- difficulty lifting
- difficulty functioning in society
- difficulty walking.

The Doctor goes on to state:

As a result needs help with lifting – all the time; housekeeping – most of the time; shopping – most of the time; social functioning – some of the time; carrying most of the time.

They indicate that the Appellant does not need any prostheses or aids for their impairment.

Functional Skills:

The Doctor indicates that the Appellant can:

- walk 4+ blocks unaided on a flat surface
- climb 2 to 5 steps unaided
- remain seated less than 1 hour.

In answer to the question “What are the person’s limitations in lifting?” the Doctor indicates “unknown.”

The Doctor indicates significant deficits with cognitive and emotional function due to depression and anxiety, in the areas of:

- consciousness
- executive function
- memory
- emotional disturbance
- motivation
- impulse control
- motor activity
- attention or sustained concentration.

Assessor Report:

Mental or Physical Impairment:

The Doctor states that the Appellant’s mental or physical impairments that impact the Appellant’s ability to manage daily living activities are:

- chronic weakness and fatigue
- depression
- anxiety
- poor concentration
- poor memory
- confusion
- disorientation
- agitation
- poor sleep
- poor appetite
- poor motivation
- difficulty climbing stairs
- difficulty lifting
- poor social functioning.

They indicate that the Appellant has satisfactory ability to communicate when speaking, reading, and writing, but poor hearing, due to hearing loss.

Mobility and Physical Ability:

The Doctor indicates that the Appellant is independent walking indoors and standing. They indicate that the Appellant is independent, but takes significantly longer than typical, to walk outdoors and climb stairs, due to weakness and fatigue. The Doctor indicates that the Appellant needs continuous assistance from another person, or is unable, to lift, carry and hold items, due to weakness and fatigue.

Cognitive and Emotional Functioning:

The Doctor indicates that the Appellant's mental impairment has a major impact on:

- bodily function
- emotion
- impulse control
- attention/concentration
- memory
- motor activity.

They indicate a moderate impact on:

- consciousness
- motivation.

They indicate minimal impact on:

- insight and judgement
- executive function.

The Doctor adds the comment, "due to anxiety & depression."

Daily Living Activities:

The Doctor indicates that the Appellant is independent in all aspects of personal care listed on the form, but also indicates that the Appellant takes significantly longer than typical for all aspects of personal care except regulating diet and transfers on and off a chair. They state the additional time as follows:

- Dressing and grooming: twice as long
- Bathing: 50 minutes longer
- Toileting: 7 – 8 minutes longer
- Feeding self: 10 minutes longer
- Transfers (in/out of bed): 6 minutes longer.

The Doctor indicates that the Appellant needs continuous assistance from another person or is unable to do laundry, due to weakness and fatigue. They indicate that the Appellant needs periodic assistance from another person and takes significantly longer than typical to do basic housekeeping.

The Doctor indicates that the Appellant:

- needs periodic assistance from another person and takes significantly longer than typical to go to and from stores, due to "confusion, anxiety, weakness."
- needs continuous assistance from another person or is unable to read prices and labels, stating "small printing"
- needs continuous assistance from another person or is unable to make appropriate choices due to "poor judgement"

- needs periodic assistance from another person and takes significantly longer than typical to carry purchases home due to weakness and fatigue.

They state that the Appellant needs help with housekeeping and shopping most of the time.

They indicate that the Appellant is independent in all aspects of meals, paying rent and bills, medications, and transportation.

Under Social Functioning, the Doctor indicates that the Appellant needs periodic support or supervision for interacting appropriately with others and dealing appropriately with unexpected demands. They state that the Appellant has poor functioning in those areas.

The Doctor indicates that the Appellant is independent in making appropriate social decisions and securing assistance from others.

The Doctor indicates that the Appellant has marginal functioning with immediate and extended social networks. They state that the Appellant “needs counselling and support in some areas of social functioning listed about [sic] some of the time” to help maintain them in the community.

Assistance Provided for Applicant:

The Doctor states that the Appellant receives help from “occasional store clerks.” Where the Report asks, “If help is required but there is none available, please describe what assistance would be necessary,” the Doctor states that the Appellant needs help with lifting all the time; with carrying most of the time; with housekeeping and shopping most of the time.

PWD Questionnaire:

The Appellant did not complete the Self Report section of the application but did provide a separate document titled “PWD Questionnaire.” The Appellant lists the following “Medical or Psychiatric Conditions”:

- fatty liver (6 years)
- deaf in right ear (8 years)
- “covid long time hauler damage to lung and throat” (April 2022)
- unknown growth under both feet, left side more severe (10 years)
- broken coccyx turned into arthritis (8 years)
- hit by car – long term muscle pain & head pain (2 years)
- tinnitus – both sides (2 years).

The Appellant indicates that they experience the following symptoms “all the time”:

- weakness and fatigue – moderate to severe
- depression - severe
- anxiety - severe
- poor concentration – moderate to severe
- poor memory – severe
- confusion – severe
- disorientation – severe
- irritability – severe

- agitation – severe
- poor sleep – severe
- poor appetite – severe
- poor motivation – moderate to severe
- difficulty walking – severe
- difficulty climbing stairs – severe
- difficulty lifting – severe
- difficulty functioning in society and interacting with others – severe.

They also indicate moderate to severe hallucinations and delusions.

Under the heading “Functional Skills” the Appellant indicates that they can:

- Walk 4+ blocks without any help
- Climb 2 to 5 steps without any help
- Remain seated less than one hour on their worst days.

They indicate that they can do no lifting.

The Appellant rates their ability to speak, read, write, and hear as “poor”, adding that, when speaking, their voice is too low, when reading they are always squinting, when writing they have “tiny or large printing” and they can only hear on their left side.

The Appellant indicates that they need help in the following areas:

- lifting – all the time (“store clerks help me”)
- carrying and holding – most of the time
- laundry – most of the time (“laundry staff helps me”)
- basic housekeeping – sometimes (“my friend helps me”)
- going to and from stores – sometimes (“store clerks help me”)
- reading prices and labels – most of the time
- making appropriate choices when shopping – most of the time.

They indicate that they are independent for meals, rent and bills, medications, and transportation.

Under the heading “Social Functioning”, in answer to the question “Do you require counselling or assistance in any of the following?” the Appellant indicates that they are independent in making appropriate social decisions, developing and maintaining relationships and securing assistance from others. They indicate that they sometimes need assistance in interacting appropriately with others and dealing appropriately with unexpected demands.

The Appellant indicates that they have marginal functioning with “partner, family, friends” and “neighbourhood contacts, acquaintances, storekeepers, public officials”, commenting that “some people get impatient paying for stuff and walking too slow.”

The Appellant states that they get help from “random people bus stop grocery stores store clerks [sic]”.

Additional Evidence:Appellant:

At the hearing, the Appellant said:

- At the bank and in stores they have to ask the clerks to repeat themselves again and again because they cannot hear from their right ear.
- They have severe depression and anxiety and is uncomfortable around other people, even their family.
- They were sexually abused between the ages of four and eight.
- They have to sleep with the lights on because they are afraid of the dark.
- They have to take strong antibiotics because they had H. pylori; the medication damages their immune system and leaves them weak, sick, and vomiting.
- They have extreme anxiety going into stores and malls; they go early in the morning when there is hardly anyone there, but even then, they are scared to be in public.
- They are having further investigations of the growths on the bottom of their feet, which started about fifteen years ago.
 - The Doctor is sending them for ultrasound and x-rays, and then the Appellant will see a specialist.
 - The growth is worse on their left foot, and it is hard for them to walk.
- They have had acid reflux since their gallstones were removed, and the condition is painful and scary.
- They have bad pain due to arthritis in both arms and shoulders, their back and lower body.
- They get unbalanced when walking because they cannot hear from their right ear.
- They have refused ear surgery because it is too close to their brain.
- They are going to ask the Doctor for an electric wheelchair because of their balance problems, and a hospital bed because of sleep apnea.

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

- They walk with a cane, and without it they would trip and fall, because of their liver, gallstones, acid reflux, foot growths, deafness in their right ear and arthritis.
- They did not tell the Doctor that they use a cane, but the Doctor would see them using the cane when they go to the office.
- They get really nervous going to the store, even if they go very early in the morning.
- They are very uncomfortable on transit because it is so full.
- When shopping, the Appellant tells people to go ahead of them because they are very slow; it takes the Appellant a long time to go through the checkout because they have to ask the clerk to repeat themselves, and the Appellant is so nervous and tense.
- They are trying to find counselling services.
- It takes the Appellant a whole day to walk to the laundromat and do two loads of laundry, with the help of the attendant.

Admissibility of Additional Evidence:

The Ministry did not object to the additional oral evidence of the Appellant.

The Panel finds that the additional evidence is reasonably required for the full and fair disclosure of all matters in the appeal. Therefore, the Panel finds that the additional evidence is admissible under EAA s. 22(4).

Part F – Reasons for Panel Decision

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

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

Appellant's Position:

The Appellant maintains that they meet all the criteria for PWD designation.

Severe Mental or Physical Impairment:

The Appellant says that they have severe physical and mental impairments. In addition to the Doctor's diagnoses of diabetes, GERD, hearing loss especially in the right ear, severe depression and anxiety, the Appellant says they have growths on the bottom of their feet, H. Pylori, fatty liver disease, arthritis in both arms, shoulders, back and lower body, long Covid, muscle pain and headaches. They say that these conditions result in severe impairment. The Appellant says they have marginal social functioning and are afraid to interact with other people.

Daily Living Activities:

The Appellant says that they are significantly restricted in their ability to perform daily living activities. They say that they cannot lift anything, and they rely on clerks and random strangers to help them. The Appellant says that they have severe difficulty walking and carrying and takes an entire day to do two loads of laundry. The Appellant struggles to interact with other people because of anxiety, and they have trouble communicating because they cannot hear.

Help Required:

The Appellant says they need to have help with housework, lifting and carrying, as well as counselling support for social functioning.

Ministry Position:***Severe Mental or Physical Impairment:***

The Ministry maintains that the Appellant does not have a severe mental or physical impairment. They argue that the Doctor's diagnoses of diabetes, GERD, hearing loss, depression and anxiety do not account for the physical limitations reported. While the Appellant reports additional medical conditions, the Ministry says those are not identified by the Doctor. The Ministry says that the Appellant is reported to be independent in all mobility tasks. While the Appellant may be slower to perform some activities, the Ministry maintains that only requiring additional time is not a severe impairment.

While the Ministry acknowledges that the Appellant has limitations in cognitive and emotional functioning, they argue that those limitations do not severely impair the Appellant's mental functioning. The Ministry says that, while the Appellant has marginal functioning in their interactions with other people, they are independent in social functioning and there are no safety issues identified. Therefore, the Ministry argues that the Appellant does not have a severe mental impairment.

Daily Living Activities:

The Ministry also says that the information provided does not indicate direct and significant restrictions in daily living activities. While the Ministry acknowledges that the Appellant has some limitations in some aspects of daily living activities, they argue that the Appellant is independent in the majority of those activities.

Help Required:

The Ministry says that, as it has not been established that daily living activities are significantly restricted, it also cannot determine that the Appellant needs significant help with restricted activities.

Panel Decision:

PWD Designation – Generally

The legislation provides the Ministry with the discretion to designate someone as a PWD if the requirements are met. In the Panel's view, PWD designation is for persons who have significant difficulty in performing regular self-care activities.

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

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

Severe Mental or Physical Impairment

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

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

The Appellant has described a number of medical conditions that are not confirmed by the Doctor. As the legislation requires the opinion of a medical practitioner or nurse practitioner that a severe mental or physical impairment is likely to continue for at least two years, the Panel

finds that the Ministry is reasonable in considering only those impairments due to medical conditions that the Doctor has reported.

Physical Impairment:

The Panel finds that the Ministry was not reasonable in its determination that, based on the information in the Doctor's reports, the Appellant does not have a severe physical impairment.

In the Medical and Assessor Reports, the Doctor states that the Appellant has difficulty climbing stairs, lifting, and walking. They report that the Appellant takes significantly longer than typical to walk outdoors and climb stairs due to weakness and fatigue. They also report that the Appellant needs help with lifting all the time, and with shopping and housekeeping most of the time. In the Reconsideration Decision, the Ministry states: "The diagnoses provided by [the Doctor] do not account for difficulty with your physical functioning (diabetes, GERD, hearing loss, depression, anxiety)." At the hearing, the Ministry acknowledged that it also accepts chronic weakness and fatigue as diagnoses. The Panel finds that chronic weakness and fatigue would account for the reported difficulty with physical functioning. Further, the Panel finds that the Ministry has not provided a basis for its conclusion that the Doctor's diagnoses they listed could not account for the physical limitations reported.

The Panel notes the apparent discrepancy between the Doctor's indication in the Assessor Report that the Appellant is independent walking indoors and outdoors, and the Doctor's written comments in the Medical and Assessor Reports that the Appellant has difficulty walking and climbing stairs. However, the Panel finds that the Doctor's written comments are more descriptive of the Appellant's physical condition and are more consistent with the Appellant's evidence of the very slow pace at which the Appellant is able to move. The Panel also notes that a person may be able to walk independently but have impaired ability to walk because they walk significantly slower than is typical, and with difficulty. Therefore, the Panel gives greater weight to the Doctor's written comments and the Appellant's oral evidence about their mobility.

The Appellant's evidence at the hearing was limited because the Appellant appeared to have difficulty answering questions responsively. However, the Appellant was able to give the example of doing their laundry, explaining that it takes them an entire day to walk to the laundromat and do two loads of laundry, with the help of the laundry attendant. They also described frequently telling people to go ahead of them, and people getting impatient with them, as the Appellant moves around a store or sidewalk.

The Ministry has noted the Doctor's indication that the Appellant is independent in walking indoors and outdoors, climbing stairs and standing, and appears to have placed significant weight on the Doctor's indication, by ticking "independent" on the form, that the Appellant is "independent in all mobility tasks." They also note that the Doctor indicates that the Appellant can walk 4+ blocks unaided. However, the Panel finds that those indications must be considered in conjunction with the Doctor's comments and the Appellant's evidence about the difficulty the Appellant faces in walking, sitting, and moving about indoors and outdoors. The Panel also finds that the Ministry has placed insufficient weight on the Doctor's indication that the Appellant takes significantly longer than typical to walk and move about outdoors, due to weakness and fatigue.

The Panel also notes that, while the Ministry comments in the Reconsideration Decision that “the inability to remain seated is not considered a severe degree of impairment,” the ability to remain seated is one of the questions the Ministry asks on its Medical Report form, to be considered along with the whole of the evidence of the Appellant’s functional ability. The Appellant’s ability to remain seated is “less than 1 hour”, which is the lowest option on the form. However, the Panel agrees with the Ministry that it is unclear how this limitation relates to the Appellant’s medical conditions.

The Panel finds that, considering the medical information about the Appellant’s functional restrictions and the additional oral evidence of the Appellant about the extremely slow pace of their movements, the Ministry was not reasonable in its determination that the Appellant does not have a severe physical impairment.

Mental Impairment:

The Panel finds that the Ministry was not reasonable in its determination that there was insufficient evidence to show that the Appellant has a severe mental impairment.

The Doctor has identified significant deficits in cognitive and emotional function due to severe depression and anxiety. They report that the Appellant’s mental impairment has a major impact in five areas of cognitive and emotional functioning: bodily functions, emotion, impulse control, attention/concentration, and memory. They report moderate impact on consciousness and motivation, and minimal impact on insight and judgement and executive function. The Doctor states that, overall, the Appellant has difficulty functioning in society, and only marginal functioning with immediate and extended social networks.

In the Reconsideration Decision, the Ministry determined that the deficits identified did not “appear to severely impair [the Appellant’s] mental function.” They go on to note that the Appellant is “not impacted in meals, paying rent and bills, medication or transportation” and that their hearing loss “has not resulted in difficulties with communication.” Therefore, the Ministry concludes, there is insufficient evidence to show that the Appellant has a severe mental impairment.

The Panel notes the apparent discrepancy between the Doctor’s indication in the Medical Report that the Appellant has no difficulties with communication, and the information about the ability to communicate that the Doctor provides in the Assessor Report. In the Assessor Report, the Doctor indicates that the Appellant’s ability to hear is poor and their ability to interact appropriately with others requires periodic support or supervision. They also indicate marginal functioning with social networks, defined on the form as “little significant participation/communication.” Further, the Doctor describes constant symptoms of severe depression and anxiety that relate to the ability to communicate, including confusion, poor judgement, poor memory, disorientation, and agitation.

The Panel finds that the Ministry gave insufficient weight to the Doctor’s description of the symptoms of the Appellant’s severe depression and anxiety. The Panel has also been able to consider the Appellant’s additional evidence. The Appellant says that they go to stores and

malls early in the morning to avoid people; they cannot look at people, even their family, in the eye; they are scared to be out in public. The Appellant described losing \$200 at a drop-in centre because of their poor memory and concentration. The Panel also noted the Appellant's difficulty in answering questions responsively at the hearing – questioning was limited because the Appellant's answers were rambling and often not related to the question being asked.

The Panel finds that the Ministry did not provide an adequate explanation for its conclusion that the significant deficits in cognitive and emotional functioning, with major impact identified in five areas of functioning, do not severely impair the Appellant's mental functioning. The Ministry lists all the deficits reported by the Doctor and the Appellant, but then appears to base its conclusion on the Doctor's indication in the Assessor Report that the Appellant's ability to communicate is "satisfactory" and that the Appellant is "independent" in most daily living activities, even though the deficits listed by the Ministry, and the Doctor's comments and explanations elsewhere in the reports indicate otherwise. The Panel notes the Doctor's statements that, in addition to the significant deficits due to severe depression and anxiety in almost all areas of cognitive and emotional functioning listed on the Medical Report form, the Appellant has poor concentration and memory, confusion, disorientation, agitation and "difficulty functioning in society". The Panel finds that the nature and extent of these cognitive and emotional deficits indicate severe impairment of mental functioning.

The Panel gives greater weight to the more detailed and descriptive comments and explanations the Doctor provides in the reports about the Appellant's ability to communicate and their ability to function in society, as well as the nature and extent of the significant deficits in cognitive and emotional functioning. The Panel finds that, considering the whole of the evidence, the Appellant has a severe mental impairment.

Restrictions to Daily Living Activities:

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

- Prepare own meals
- Manage personal finances
- Shop for personal needs
- Use public or personal transportation facilities
- Perform housework to maintain the person's place of residence in acceptable sanitary condition
- Move about indoors and outdoors
- Perform personal hygiene and self care
- Manage personal medication.

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

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

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

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

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

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

The Panel finds that the information provided by the Doctor confirms direct and significant restrictions to the Appellant's ability to perform two or more Activities.

The Doctor has indicated that the Appellant takes significantly longer than typical to perform all aspects of personal care listed in the Assessor Report, except regulating diet and transfers on and off a chair. They also provide specific statements of how much longer each activity takes. In its Reconsideration Decision, the Ministry notes those statements, but says that "it is not clear what the baseline time is to confirm if these indicate a significant restriction" The Panel finds that the "baseline" is the time that a reasonable person would consider to be typical, and the form asks the Doctor to describe how much longer, which the Doctor has done. The Panel finds that, for example, taking 50 minutes longer than typical to bathe, or taking 6 minutes longer to get out of bed (which an able-bodied person would do in less than one minute) indicate significant restrictions in the ability to perform those activities.

In considering the Doctor's statements about the additional time required to perform Activities, the Ministry goes on to say, "...nor was this linked directly to your medical condition." The Panel finds that it is unreasonable for the Ministry to say that the restrictions are not directly linked to the Appellant's medical condition. The Ministry's form has asked the Doctor to "indicate the assistance required related to impairments that directly restrict the Applicant's ability to manage in the following areas." The Doctor has described the Appellant's impairments in Section C of the Assessor Report, as the form directs. Those impairments include "chronic weakness and fatigue". At reconsideration, the Ministry did not appear to consider the Doctor's statements that the Appellant has "chronic weakness and fatigue – moderate to severe – all the time", as an explanation for the Appellant's impaired physical function. However, as noted above, the Panel has found that chronic weakness and fatigue can account for the Appellant's reported physical

impairment. Therefore, the Panel finds that the restrictions described in the Activities section of the Assessor Report are directly linked to the Appellant's medical conditions,

The Panel notes that classification of mental health issues does not always fit into neat boxes. While the Appellant may have a satisfactory physical ability to speak, for example, the effect of severe depression and anxiety means that the Appellant is not able to do so effectively when dealing with others. They describe extreme avoidance of others, from going to do necessary shopping early in the morning when other people are not around, to being unable to make eye contact even with their family. The Appellant's difficulties are compounded by hearing loss. The Panel finds that the Appellant's ability to perform aspects of Activities that involve effective interactions with others is significantly restricted.

In the Doctor's assessment of the Appellant's ability to perform Activities, restrictions due to physical and mental impairment often appear together. The Doctor identifies these restrictions in the Appellant's ability to perform the following Activities, with additional detail from the Appellant at the hearing:

- Shop for personal needs: confusion, anxiety and weakness going to and from stores; poor judgment making appropriate choices; weakness and fatigue carrying purchases home; need for help with shopping most of the time; Appellant avoids going to stores when there are other people present;
- Perform housework to maintain the person's place of residence in acceptable sanitary condition: needs help with housekeeping most of the time; Appellant described taking an entire day to walk to the laundromat and wash two loads of laundry, with the help of staff;
- Perform personal hygiene and self care: takes significantly longer than typical to dress, groom, bathe, toilet, feed themselves and transfer in and out of bed;
- Relate to, communicate, or interact with others effectively: poor functioning, and needs significant periodic support or supervision to interact with others appropriately and deal with unexpected demands; marginal functioning with immediate and extended social networks; Appellant describes being afraid to be in public and having to ask store clerks to repeat themselves many times.

The Panel finds that Appellant's ability to perform the Activities noted above is directly, significantly, and continuously restricted by their severe mental and physical impairments. The Panel finds that the Ministry was not reasonable in its determination that the limitations described in the Medical and Assessor Reports did not indicate a significant overall restriction in the Appellant's ability to perform Activities.

Help Required:

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

As the Panel has found that the Ministry was not reasonable in determining that the Appellant was not directly and significantly restricted in their ability to perform Activities, the Panel finds

that the Ministry was also not reasonable in determining that it could not find that the Appellant needs help to perform those Activities.

The Doctor indicates that the Appellant receives help from store clerks occasionally. In the section of the Assessor report that asks for a description of help that is required but not available, the Doctor states that the Appellant needs help with lifting all the time, with carrying, housekeeping, and shopping most of the time, and with social functioning, some of the time. Specifically, for areas of social functioning where the Doctor indicates the Appellant needs support, they state that the Appellant needs counselling. At the hearing, the Appellant said that they are trying to find a counsellor near them.

The Panel finds that, based on the information in the Assessor Report, the Appellant needs the significant help of another person to perform Activities.

Conclusion:

The Panel has considered the information in its entirety, including the oral evidence of the Appellant at the hearing, and finds that the Ministry's decision to deny the Appellant PWD designation is not reasonably supported by the evidence. The Panel rescinds the reconsideration decision. The Appellant is successful in the appeal.

Schedule – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

Persons with disabilities

s. 2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

Employment and Assistance for Persons with Disabilities Regulation

Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

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

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

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

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

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

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

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

(i) medical practitioner,

ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner, or

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

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

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

if qualifications in psychology are a condition of such employment.

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

Employment and Assistance Act

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

Part G – Order

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

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

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

Legislative Authority for the Decision:

Employment and Assistance Act

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

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

Part H – Signatures

Print Name

Susan Ferguson

Signature of Chair

Date (Year/Month/Day)

2023/07/19

Print Name

Maryam Majedi

Signature of Member

Date (Year/Month/Day)

2023/07/19

Print Name

Kenneth Smith

Signature of Member

Date (Year/Month/Day)