

**Part C – Decision Under Appeal**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the "**Ministry**") dated September 26, 2023 (the "**Reconsideration Decision**"), in which the Ministry denied the Appellant a 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; and
- needing significant help to perform daily living activities.

The Ministry also 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* (the "**Act**") – section 2
- *Employment and Assistance for Persons with Disabilities Regulation* (the "**Regulation**") – section 2

**Note:** The full text is available after the Decision.

## Part E – Summary of Facts

### (a) The Reconsideration Decision

The evidence before the Ministry at the Reconsideration Decision consisted of:

- a signed, but undated, Applicant Information Form;
- a Medical Report completed by the Appellant’s doctor (the “**Doctor**”) on December 11, 2022;
- an Assessor Report completed by the Doctor on December 11, 2022;
- a February 2022 Government of Canada letter confirming the Appellant’s eligibility for a Disability Tax Credit;
- various medical documents and records between 2017 and 2023;
- the Ministry’s July 23, 2023 decision wherein it first denied the Appellant’s PWD application; and
- a written personal statement from the Appellant submitted with her request for reconsideration dated on July 20, 2023.

#### (i) **Applicant Information Form (“Self-Report”)**

On review of the Appellant’s Self-Report, she checked the box marked “*I choose not to complete this self-report*”. As a result, the body of the Self-Report was left blank.

The Self-Report was signed by the Appellant and witnessed by the Doctor.

#### (ii) **Medical Report**

The Medical Report was completed by the Doctor on December 11, 2022. In describing their frequency of contact with the Appellant, the Doctor wrote that, at the time of completing the Medical Report, they had seen the Appellant only once. Further, the Doctor noted that the Appellant is not their patient.

#### **Diagnosis:**

The Doctor lists the following diagnoses: chronic pain condition/fibromyalgia (2018 onset), migraine headaches, thyroid disease (2015 onset), and hypertension (2019 onset). In the comments section, the Doctor wrote that the Appellant was involved in a horse accident which gave way to a concussion and chronic pain.

#### **Health History:**

The Doctor wrote that the Appellant experiences “... *chronic fatigue... chronic body ache... chronic headache... chronic neck pain... she has bodily pain + fatigue... she has difficulty with ADL’s daily... she is taking some medications...*” However, the Doctor described the Appellant’s symptoms as “*moderate symptoms*”. In addition, the Doctor noted that they had no test result or records pertaining to the Appellant.

The Doctor also lists a series of medications that have been prescribed to the Appellant which interfere with her ability to perform daily living activities ("**DLAs**"). In describing the effects of the medication, the Doctor wrote "... *they cause fatigue...*" The Doctor further notes that the Appellant was anticipated to require the medication indefinitely. Conversely, the Doctor advised that the Appellant did not require any prostheses or aids for her impairments.

### **Degree and Course of Impairment:**

While the Doctor checked "*yes*" to the question of whether the Appellant's impairment is likely to continue for 2 or more years, the Doctor qualified their statement by writing, "... *not sure, she needs to be reassessed in 2 years. I don't know her well enough...*"

### **Functional Skills:**

The Doctor indicated that the Appellant can walk 4+ blocks unaided, climb 5+ stairs unaided, lift between 2 kg to 7 kg, and can remain seated without limitation. The Doctor also wrote, "... *she gets tired and she is slow...*"

While the Doctor checked "*no*" to the question of whether the Appellant experienced difficulties with communications, they went on to check the box marked "*cognitive*" as the cause of the Appellant's difficulties with communications.

The Doctor also stated that the Appellant suffers the following significant deficits with cognitive and emotional functioning: executive, memory, emotional disturbance, motivation and motor activity. In describing the Appellant's deficits with cognitive and emotional functioning, the Doctor's commented, "*She is suffering [from] fatigue and chronic pain and she is slow in all physical activities. She has psychomotor slowing.*"

### **Daily Living Activities:**

The Doctor did not complete this section of the Medical Report as they also completed the Assessor Report.

### **Additional Comments:**

The Doctor noted that the Appellant:

- has received 12 trigger point injections which has resulted in partial results;
- is taking multiple medications;
- has daily symptoms of fatigue, pain, and headaches.

### **(iii) Assessor Report**

The Doctor also completed the Assessor Report on December 11, 2022. Again, the Doctor noted that, at the time of completing the Assessor Report, they had seen the Appellant only once and met for the purpose of the Appellant's "*PWD assessment*".

**Mental or Physical Impairment:**

The Doctor wrote that the Appellant's mental or physical impairments are as follows: fatigue, headaches, chronic pain, and mental slow down.

**Ability to Communicate:**

The Doctor indicated that the Appellant's ability to communicate is generally "*good*"; however, the Appellant is slow when doing so.

**Mobility and Physical Ability:**

The Doctor indicated that the Appellant can independently walk indoors/outdoors, and stand. Conversely, the Appellant required the periodic assistance of another person as it related to climbing stairs, lifting, and with respect to carrying and holding. For all the noted activities, the Doctor explained that the Appellant takes significantly longer than typical when engaged in such activities as "*she can do but she is slow*".

**Cognitive and Emotional Functioning:**

The Doctor indicated that the Appellant's cognitive and emotional functioning are impacted by her impairments as follows:

- bodily functions (moderate impact);
- consciousness (no impact);
- emotion (major impact)
- impulse control (no impact);
- insight and judgment (no impact);
- attention/concentration (moderate impact);
- executive (major impact);
- memory (no impact);
- motivation (major impact)
- motor activity (no impact);
- language (no impact);
- psychotic symptoms (no impact);
- other neuropsychological problems (no impact); and
- other emotional or mental problems (minimal impact).

The Doctor provided no comments in the additional comments section.

**Daily Living Activities:**

The Doctor indicated that, due to her impairments, the Appellant needs periodic assistance from another person for:

- basic housekeeping;
- laundry; and
- carrying purchases home.

Otherwise, the Doctor noted that the Appellant can complete the following independently:

- personal care (dressing, grooming, bathing, toileting, feeding self, regulating diet, transferring in/out of bed, and transferring on/off chair); and
- shopping (going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases).

For all the above tasks, the Doctor explained that it takes significantly longer than typical for the Appellant. With respect to personal care, the Doctor explained, "...she can do but she is slow... no motivation... no energy..." With respect to basic housekeeping, the Doctor explained, "...she has no energy..." With respect to shopping, the Doctor explained, "...she avoids people..." In the comments section, the Doctor wrote, "... she has poor energy, poor motivation, she avoids people, won't go out, won't do housekeeping often ..."

The Doctor further advised that the Appellant is generally independent in her performance of the following DLAs:

- meals (planning, preparation, cooking, storage of food);
- paying rent and bills (banking, budgeting, and paying rent and bills);
- medications (filling/refilling, taking as directed, and handling/storage); and
- transportation (getting in/out vehicle, using public transit, using transit schedules).

For all the above tasks, the Doctor explained that it takes significantly longer than typical for the Appellant. With respect to meals, the Doctor explained, "...she has poor appetite..." With respect to paying rent and bills, the Doctor explained, "...she procrastinates..." With respect to medications, the Doctor explained, "...taking longer to go to pharmacy..." With respect to transportation, the Doctor explained, "...she avoids people..." In the comments section, the Doctor wrote, "... she avoids people. She procrastinates doing bills and housekeeping. She will pay bills last minute... it takes her 2 x longer..."

In terms of social functioning due to mental impairment, the Doctor indicated that the Appellant is both independent and requires periodic support of another person in the following areas because she avoids people and does not keep in contact with family and friends:

- appropriate social decisions;

- able to develop and maintain relationships;
- interacts appropriately with others;
- able to deal appropriately with unexpected demands; and
- able to secure assistance from others.

In describing how the Appellant's mental impairment impacts her relationships with her immediate social network, the Doctor indicated marginal functioning and commented, "... *she avoids people...*"

No assistances devices or an assistance animal are indicated.

**Assistance Provided for Applicant:**

The Doctor does not identify any type of help that is required by the Appellant to complete her DLAs; however, they wrote, "... *she has little help... she would benefit help for following: housekeeping, transportation... physiotherapy...*"

**Additional Information:**

The Doctor noted that the Appellant:

- is fatigued and depressed daily;
- is in pain daily;
- is mentally and physically slowed;
- cannot do her DLAs effectively; and
- has daily pain in her neck, back and head.

**(iv) Government of Canada Disability Tax Credit**

Pursuant to a letter from the Federal Government dated February 2022, the Appellant was approved to receive a Disability Tax Credit.

**(vii) Medical Records**

The Appellant also submitted various medical records and correspondence for the period between 2017 and 2023. The documents contain information pertaining to:

- invoices related to the Appellant's medical treatments;
- the Appellant's medication history;
- correspondence between the Appellant and her (then) doctor in May 2017; and
- a medical imaging requisition dated March 1, 2021.

**(viii) Personal Statement**

The Appellant provided a written statement, dated August 23, 2023, wherein she advises of the difficulties she faced in finding an advocate. Further, she explained the issues she confronted in finding the Doctor. In addition, she explained her mental and physical impairments which are partially reproduced as follows:

*"... I used to be a very hard working individual... and now most days I can't leave my bed. I have deteriorated slowly since approx 2012 with mixed diagnoses of fibro, chronic fatigue, hypothyroidism, chronic migraines and then I was trampled by a horse who stepped on my head and dragged me while I was standing there. I have since had my migraines become unbearable lasting for days, I have memory loss and get confused. I am beyond forgetful. This has affected my job as a bookkeeper to the point where I can barely work. I now mess things up and cannot trust my work. I decided to apply for PWD to try and help for my bad days...*

*... Am I slow? Yes on my [bad] days. Those are the ones I try to do things then regret it the next few days. I seek help now as much as it hurts my pride..."*

**(b) The Appeal**

Pursuant to the Reconsideration Decision, 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; and
- needing significant help to perform daily living activities.

On October 4, 2023, the Appellant filed a Notice of Appeal (the "**Appeal Notice**"). In the Appeal Notice, the Appellant wrote the following as the reasons for it, "*...I feel I'm being discriminated against due to the fact I do not have a doctor to support me. If found a doctor who was currently doing cosmetic procedures and forms only do my paperwork as I was desperate and she did not fill things out as per our meeting now this is all that is being listened too. The ministry is saying I am not disabled when I am.*"

The Appellant's Appeal hearing was held on October 25, 2023.

**(i) New Evidence and Written Submissions**

In advance of the Hearing, the Appellant submitted new evidence which consisted of:

- her Disability Tax Credit Application dated May 3, 2021 (the "**Tax Credit Application**") that was completed by the Appellant's (then) "*medical doctor*" who wrote:
  - the Appellant was **not** markedly restricted in her ability to walk, feed, dress or



perform mental functions necessary for everyday life

- despite not being markedly restricted in her ability to walk, feed, dress or perform mental functions necessary for everyday life, the Appellant had significant restrictions in her ability to walk, feed, dress and perform mental functions necessary for everyday life (**note:** the Application states that "*An occupational therapist can only certify limitations for walking, feeding and dressing.*";
  - that the Appellant's significant restrictions existed together at least 90% of the time;
  - that the cumulative effect of the Appellant's significant restrictions equivocated to her being markedly restricted in one (1) DLA;
  - with respect to walking, the Appellant was significantly limited in her walking due to pain and fatigue;
  - with respect to mental cognition, the Appellant's concentration and memory were significantly impaired;
  - with respect to dressing, the Appellant's chronic pain and fatigue caused her to take 3 to 5 times longer than the average person to dress; and
  - with respect to feeding, her pain and fatigue prevented her from preparing meals.
- communications exchanged between her and a potential advocate between July 27 and August 8, 2023 where, amongst other things, the potential advocate noted, "*... I've reviewed your documents and it seems like your doctor has indicated that you are independent in the majority of your daily living activities... At this stage we would recommend speaking to your doctor and making sure you're on the same page about your disabilities. We would not recommend going ahead with the appeal and instead recommend that you request a new application...*"; and
  - the following written statement which is partially reproduced:

*"... Since my GP retired and I was not informed my medical records are locked up and inaccessible...*

*I have been on the wait list with Division of Family Practices since September 29, 2022 and am constantly on findadoctorbc.ca I have filled out many forms for practices that are taking new patients... some of the doctors but they feel my case is too complicated for what they are looking for at the moment and they are looking to take families and no single residents as well...*

*... When I found [the Doctor]... We conducted an interview where she typed things online and said she would get back to me after the weekend to pick up. She did stress that by not knowing me she could not verify. I was just so happy somebody finally agreed to do my forms...*



*... I did try to do an appeal, but I feel that I was not listened too. Everything is referenced to what she wrote. It states that I do not have a metal (sic) or physical disability which is very much far from the truth. I have a Traumatic Brain Injury and she barely addresses that. My head was stepped on by a 1200 lb animal multiple times as I was dragged and rolled for 50 feet under its body. My migraines are extreme, and my cognitive function is very impaired. I slur my words now, get confused and its beyond frustrating. The medication I am on makes me nauseous and dizzy on a good day and they physical pain makes me barely able to get out of bed most days..."*

### **(ii) The Witness**

During the Hearing, the Appellant called one (1) witness (the "**Witness**"). The Witness is the Appellant's friend and they have known each other for two (2) years. The Witness described the Appellant as a private person who does not like to complain. The Witness provided her observations of the Appellant's condition; generally, she described the Appellant as weak and unable to work or care for herself. The Witness relayed the difficulties the Appellant faced in finding any physician, let alone the Doctor.

Upon questions from the Panel, the Witness clarified that she is not a health care professional, but a friend who helps the Appellant with tasks at least once a week. When asked about her observations of the Appellant's ability to function, the Witness stated that she has observed the Appellant:

- displaying an ability to walk for up to 15 minutes;
- taking three (3) steps to enter her dwelling;
- can lift between 10 lbs. and 15 lbs.; and
- can sit long enough to drive herself to her place of employment (about 22 minutes).

The Witness clarified that the Appellant experiences more "*bad days*" in the winter when it is hard to navigate the ground. When the Appellant experiences a bad day, it can last up to 3 days.

### **(iii) The Appellant's Submissions**

The Appellant largely referred to the new evidence and her written submissions. The Appellant described her symptoms which included numbness down her left leg, on/off numbness in her arms, and memory loss. With respect to her leg numbness, the Appellant explained that when she wakes up her leg is numb for about 3 to 4 hours. When experiencing bad days, the Appellant stated that she is rendered symptomatic for three 3 to 5 days.

As it relates to the Appellant's search for a doctor, she explained the barriers she faced in finding a doctor given that many potential doctors she came across were reluctant to take her on as a patient given that they found her condition to be "*too complex*".

The Appellant currently works as a bookkeeper; however, she explained that she cannot cognitively function on some days.

As it relates to the Medical and Assessor Reports, the Appellant explained that she met with the Doctor for 45 minutes for the purposes of their completion. The Appellant stated that the Doctor asked her the questions found on the Medical and Assessor Reports. Despite providing her responses to the Doctor, the Appellant is unable to explain why the Medical and Assessor Reports reflects a different version of the information she provided. For example, the Appellant cannot explain why the Doctor wrote that she could climb 5+ stairs when she cannot. Further, she stated that she can only lift 5 lbs. to 10 lbs. for a few minutes. In sum, the Appellant submits that the Medical and Assessor Reports do not accurately reflect her condition.

#### **(iv) The Ministry's Submissions**

The Ministry referred to and relied upon the Appeal Record which largely consisted of the Reconsideration Decision. With respect to the Appellant's provision of her Disability Tax Credit Application, the Ministry explained that this evidence has no bearing on a PWD Application given that the threshold test to obtain a Disability Tax Credit differs from the test to obtain a PWD designation.

#### **(v) Decision on New Evidence**

The Ministry had no objection to the Appellant's oral submissions or additional evidence. The Panel determined that the Appellant's submissions and evidence were admissible as additional evidence pursuant to section 22(4) of the *Employment and Assistance Act* as they were reasonably required for a full and fair disclosure of all matters related to the decision under Appeal. More specifically, the additional evidence contributed to the Panel's understanding of the circumstances surrounding the Appeal.

**Part F – Reasons for Panel Decision**

The issue on appeal is whether the Ministry's decision denying the Appellant a 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; or
- needing significant help to perform daily living activities.

**Appellant's Position**

The Appellant says that, despite what the Doctor wrote on the Medical and Assessor Reports, she has severe physical and mental impairments; as a result, she argues that she suffers from significant restrictions on her ability to perform DLAs thereby needing significant help to perform them. Therefore, the Appellant believes she qualifies for a PWD designation.

**Ministry's Position**

The Ministry maintains that the Appellant does not qualify for a PWD designation for the reasons stated in its Reconsideration Decision. Given the information found in the Medical and Assessor Reports, the Ministry submits that there is not enough evidence to confirm if the Appellant:

- has a severe mental or physical impairment;
- suffers from significant restriction on her ability to perform DLAs; or
- needs significant help to perform DLAs.

**Panel Decision**

The legislation provides the Ministry with the discretion to designate someone as a PWD if the requirements are met. In the Panel's view, a PWD designation is for persons who have significant difficulty in performing regular self-care activities, commonly referred to as DLAs. If the inability to work is the major reason for applying for PWD designation, the Panel encourages the Appellant to speak to the Ministry about other potential programs such as Persons with Persistent Multiple Barriers to Employment ("**PPMB**") or explore federal government programs.

A person applying for a PWD designation must provide an opinion from a prescribed professional, and it is reasonable to place significant weight on that opinion. 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. In this Appeal, the Appellant chose not to complete the Self-Report, but she provided a written statement, which the Panel accepts as a Self-Report.

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

### **(a) Severe Mental or Physical Impairment**

"Severe" and "impairment" are not defined in the legislation. The Ministry considers the extent of any impact on daily functioning as shown by 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.

#### **(i) Physical Impairment**

The Panel has reviewed the Medical and Assessor Reports which were both completed by the Doctor. In the Medical Report, the Doctor lists the following diagnoses: chronic pain condition/fibromyalgia, migraine headaches, thyroid disease, and hypertension. In the Assessor Report, the Doctor lists the Appellant's physical impairments as follows: fatigue, headaches, and chronic pain. It is unclear as to how the Doctor arrived at these conclusions given that, in the Health History section of the Medical Report, they wrote that they had no test or records pertaining to the Appellant. Further, the Appellant explained that she only met with the Doctor once for 45 minutes and provided answers to the questions found in the Medical and Assessor Reports. In other words, the Doctor conducted no independent investigations to confirm the existence or extent of the Appellant's physical or mental impairments; rather, they relied on the Appellant for the stated diagnoses.

In any event, the Doctor describes the Appellant's symptoms as moderate. Despite writing that that the Appellant, "*... gets tired and she is slow...*", they indicated that the Appellant can walk 4+ blocks unaided, climb 5+ stairs unaided, lift 2 kg to 7 kg, and can remain seated without limitation. In contrast, the Appellant described her physical condition as being vastly more dire; in essence, it was inaccurately recorded by the Doctor. For example, the Appellant explained that she cannot climb 5 or more stairs, and can only lift between 5 lbs. to 10 lbs. for a few minutes. However, the Witness' account of the Appellant's condition also differs given that she has observed the Appellant display an ability to walk for up to 15 minutes, take 3 steps to enter her dwelling, and lift between 10 lbs. and 15 lbs. On review of these 3 sources, there appears to be more consistency between the Doctor and the Witness than between the Appellant and the Witness.

Of note, the Doctor explained that the Appellant takes significantly longer than typical when engaged in DLAs; however, the Panel finds that taking longer to complete a DLA is not the same as a severe physical impairment. Without more, the Panel finds that taking longer than normal to complete a task, alone, does not give rise to a severe impairment.

In addition to the Medical and Assessor Reports, the Panel also reviewed the Tax Credit Application. In the Tax Credit Application, the Appellant's (then) doctor wrote that the Appellant

was not markedly restricted in her ability to walk, feed, dress or perform mental functions necessary for everyday life. Conversely, the (then) doctor also advised that the Appellant had significant restrictions in her ability to walk, feed, dress and perform mental functions necessary for everyday life. While Panel appreciates the information contained within the Tax Credit Application, the Tax Credit Application was completed in May 2021 which is over 18 months before the Medical and Assessor Reports were completed by the Doctor. Given that the Medical and Assessor Reports were completed more recently, the Panel finds that it is reasonable to place greater weight on them as they likely better reflect the Appellant's current circumstances. In addition, the Panel notes that the Federal Government's threshold test for granting a Disability Tax Credit differs from the test the Ministry uses to grant a PWD designation; as a result, the Panel finds that it is reasonable to place greater weight on the Medical and Assessor Reports which are the very forms that the Ministry relies upon for the purposes of assessing a PWD request. Further, it is unclear if the term "significant restriction" holds the same meaning in the provincial sense as it does in the federal sense.

The Panel does not dispute that the Appellant suffers from pain and fatigue arising from her physical conditions. However, on review of the totality of the evidence, the Panel finds that it cannot be said that the evidence establishes that the Appellant suffers from a severe physical impairment. The Panel finds that the evidence from the Medical and Assessor Reports, which suggests a moderate impairment, contradicts that of the Appellant and there is no evidence that can help reconcile these differences in a way that can give rise to a finding of severe physical impairment; indeed, the Witness' observations of the Appellant's functionality also suggests moderate impairment.

As a result, the Panel finds that, on review of all of the evidence, the Ministry's decision finding that the Appellant did not establish a severe physical impairment to be reasonably supported by the evidence.

## **(ii) Mental Impairment**

The Medical and Assessor Reports generally classify "*mental slow down*" as the Appellant's mental impairment.

In the Medical Report, the Doctor describes the Appellant's deficits with cognitive and emotional functioning as follows, "*She is suffering [from] fatigue and chronic pain and she is slow in all physical activities. She has psychomotor slowing.*" In the Assessor Report, the Doctor indicates major impacts to three (3) areas of cognitive and emotional functioning, moderate impact to two (2) areas, minimal impact to one (1) area, and no impact to eight (8) areas. In addition, in terms of social functioning due to mental impairment, the Doctor indicated that the Appellant is both independent and requires periodic support of another person in the following areas because she avoids people and does not keep in contact with family and friends:

- appropriate social decisions;



- able to develop and maintain relationships;
- interacts appropriately with others;
- able to deal appropriately with unexpected demands; and
- able to secure assistance from others.

In contrast, and like her physical impairments, the Appellant described her mental conditions as being vastly more dire; again, she argued that her mental impairments were inaccurately recorded by the Doctor. In addition, the Appellant submitted that she suffered a traumatic brain injury from the horse accident she was involved in. While the Panel finds that the Appellant could have suffered a traumatic brain injury when a horse stepped on her head, there is nothing before the Panel which confirms such a diagnosis.

In addition to the Medical and Assessor Reports, the Panel also reviewed the Tax Credit Application. While significant impairment was reported for concentration and memory, there is no further description and the more recent information in the Assessor Report is that her concentration is moderately impacted and there is no impact on memory. While the Panel appreciates the information contained within the Tax Credit Application, the Tax Credit Application was completed in May 2021 which is over 18 months before the Medical and Assessor Reports were completed by the Doctor. Given that the Medical and Assessor Reports were completed more recently, the Panel finds that it is reasonable to place greater weight on them as they likely better reflect the Appellant's current circumstances.

Again, the Panel does not dispute that the Appellant's conditions caused her to suffer from mental impairments which effect her cognitive and emotional functioning. However, on review of the totality of the evidence, the Panel finds that it cannot be said that the evidence establishes that the Appellant suffers from a severe mental impairment. Again, the Panel finds that the evidence from the Medical and Assessor Reports, which suggests a moderate impairment, contradicts that of the Appellant and there is no evidence that can help reconcile these differences in a way that can give rise to a finding of severe mental impairment.

Absent any diagnosis from a medical practitioner or a nurse practitioner, or an assessment, document or record otherwise confirming the Appellant's traumatic brain injury, the Panel finds that the Ministry's decision finding that the Appellant did not establish a severe mental impairment to be a reasonably supported by the evidence before it.

As a result, the Panel finds that the Ministry's decision finding that the Appellant did not establish a severe mental impairment to be reasonably supported by the evidence.

### **(c) Restrictions to Daily Living Activities**

A prescribed professional must provide an opinion that the applicant's impairment restricts their ability to perform the DLAs listed in the legislation. Those daily living 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; and
- manage personal medication.

For a person who has a severe mental impairment, daily living activities also include:

- make decisions about personal activities, care, or finances; and
- relate to, communicate, or interact with others effectively.

At least two (2) DLAs must be restricted in a way that meets the requirements. Not all DLAs, or even the majority, need to be restricted.

The restrictions to DLAs must be significant and directly caused by the impairment. This means that the restriction must be to a great extent and that not being able to do the DLAs 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 DLAs that are considered are listed in the *Regulation*. The Medical and Assessor Reports 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 and Assessor Reports provide the professional with an opportunity to provide additional details on an applicant's restrictions. The inability to work and financial need are not listed as daily living activities and are only relevant to the extent that they impact listed daily living activities.

The information about DLAs provided by the Doctor in the Medical and Assessor Reports generally suggest that the Appellant is able to complete her DLAs, however, it may take her longer in doing so because of her physical and mental impairments. In contrast, the Appellant submits that she is unable to complete her DLAs.

On review of the totality of the evidence, the Panel finds that, while the Appellant's physical and mental impairments directly restrict her ability to perform DLAs, it cannot be said that the Appellant is significantly restricted from performing her DLAs. Again, the Panel finds that the



evidence from the Medical and Assessor Reports, which suggest moderate restrictions, contradicts the Appellant's account and there is no evidence that can help reconcile these differences. As a result, more information is required to assess if the Appellant's physical and mental impairments directly and significantly restrict her ability to perform DLAs.

As a result, the Panel finds that the Ministry's decision finding that the Appellant did not establish that her physical and mental impairments directly and significantly restricted her ability to perform DLAs was reasonably supported by the evidence.

#### **(d) Help Required**

A prescribed professional must provide an opinion that the person needs help to perform the restricted DLAs. Put differently, the issue is whether help is needed not whether help is provided.

Help means using an assistive device, the significant help or supervision of another person, or using an assistance animal to perform the restricted DLAs. An assistive device is something designed to let the person perform restricted DLAs.

In the Assessor Report, the Doctor does not identify any type of help that is required by the Appellant to complete her DLAs; however, they wrote, "... *she has little help... she would **benefit** help for following: housekeeping, transportation... physiotherapy...*"

On review of the totality of the evidence, the Panel finds that, while the Appellant may benefit from having assistance with the completion of her DLAs, it cannot be said that the Appellant requires or needs such assistance or help. Again, the Panel finds that the evidence from the Medical and Assessor Reports contradicts that of the Appellant and there is no evidence that can help reconcile these differences. As a result, more information is required to assess if the Appellant needs or requires assistance to perform her DLAs. Additionally, the need for help must be due to significant restrictions with DLAs, which were not established.

As a result, the Panel finds that the Ministry's decision finding that the Appellant did not establish that she needs help to perform her DLAs was reasonably supported by the evidence before it.

#### **Conclusion**

The Panel finds that the Ministry was reasonable in finding that the Appellant does not:

- have a severe physical impairment;
- have significant restrictions on the ability to perform daily living activities; or
- need help to perform daily living activities.

The Panel finds that the Ministry's decision to deny the Appellant a PWD designation was reasonably supported by the evidence. The Appellant is unsuccessful in this Appeal.

**Legislation*****Employment and Assistance for Persons with Disabilities Act, SBC 2002, c 41*****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, BC Reg 265/2002*****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, 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.

2023-0301

**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

Anil Aggarwal

Signature of Chair

Date (Year/Month/Day)

2023/10/25

Print Name

Katherine Wellburn

Signature of Member

Date (Year/Month/Day)

2023/10/25

Print Name

Edward Wong

Signature of Member

Date (Year/Month/Day)

2023/10/25