

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated October 27, 2023, in which the ministry found the appellant was not eligible for designation as a Person with Disabilities (“PWD”) under section 2 of the *Employment and Assistance for Persons with Disabilities Act* (“Act”). The ministry found that the appellant met the age requirement and the requirement for the impairment to continue for at least 2 years. The ministry was not satisfied that:

- the appellant has a severe physical or mental impairment,
- the severe impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform daily living activities either continuously or periodically for extended periods; and
- as a result of restrictions caused by the severe impairment, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform daily living activities.

The ministry found that the appellant is not one of the prescribed classes of persons eligible for PWD designation on the alternative grounds set out in section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation* (“Regulation”). As there was no information or argument on this point, the panel considers it not to be at issue in this appeal.

Part D – Relevant Legislation

The ministry based the reconsideration decision on the following legislation:

Employment and Assistance for Persons with Disabilities Act - section 2

Employment and Assistance for Persons with Disabilities Regulation - sections 2 and 2.1

The full text is available in the Schedule after the decision.

Part E – Summary of Facts

The information the ministry had at the reconsideration included:

1. A *Record of decision* indicating that the PWD application was submitted on September 22, 2023, and denied on September 26, 2023, with the *Decision denial summary* explaining the criteria that were not met.

On October 10, 2023, the appellant submitted a *Request for Reconsideration* with additional information. On October 27, 2023, the ministry completed its review and found that the criteria for severe impairment, daily living activities and help were still not met.

2. The PWD application with 3 parts:

The *Applicant Information* ("self-report") signed by the appellant on September 12, 2023.

A *Medical Report* dated September 14, 2023, signed by a general practitioner ("Dr. A") who has known the appellant for 5 months, and has seen him 2-10 times in the past 12 months, and

an *Assessor Report* dated September 14, 2023, also completed by Dr. A who based the assessment on an office interview with the appellant; a letter from the appellant's previous family doctor (now retired), and cardiology/internal medicine notes.

Summary of relevant evidence from the application

Diagnoses

Medical Report

In Section B, the appellant was diagnosed with atrial fibrillation and congestive heart failure (onset November 2021). In Section D – *Degree and Course of Impairment*, Dr. A described atrial fibrillation as a chronic issue. Ablation therapy may help resolve symptoms but cardio myopathy will likely be ongoing.

Additional information from the appellant

In the self-report, the appellant confirmed atrial fibrillation and noted a prostrate problem ("elevated PSA"). The appellant said that he takes 6-7 medications for his heart problem.

Functional skills*Physical impairment*Self-report

The appellant said that his symptoms include dyspnea, heart palpitations, chest pain, and generalized weakness which reduce his ability to pull, push, and carry objects greater than 10 pounds. The appellant said he gets lightheaded and weak if he stands for more than one hour.

Medical Report

In Section C - *Health History*, Dr. A indicated the appellant can only lift 10 pounds ("otherwise presyncope occurs"). The appellant's "ambulatory function is limited to 1-2 city blocks, enough for day-to-day function but cannot ambulate continuously in line of work."

In Section E - *Functional Skills*, the appellant was able to walk 1-2 blocks unaided on a flat surface; and climb 5+ steps unaided. The appellant could lift "not more than 10 pounds" and had no limitations with sitting. Under *Comments*, the doctor wrote that the appellant "becomes easily dyspneic with light activity and becomes dizzy."

In Section G - *Additional Comments*, Dr A indicated that work activities make symptoms worse. The appellant is easily fatigued and experiences presyncope with "prolonged standing, greater than 2 hours."

Assessor Report

In Section C-3 - *Mobility and Physical Ability*, Dr. A assessed 4 of 6 areas as "independent:"

- *Walking indoors*
- *Walking outdoors*
- *Climbing stairs*
- *Standing*

The appellant required "periodic assistance from another person" with:

- *Lifting*
- *Carrying and holding.*

The spaces for an explanation were left blank.

In Section F - *Additional information*, Dr. A described symptoms on exertion due to atrial fibrillation (presyncope and dyspnea). Work-related activities involving prolonged standing and lifting heavy objects increase symptoms. The appellant must cease activity to recover.

Mental impairment

Self-report

The appellant said that his heart problem has “complicated my financial, emotional and mental state” by restricting activities and employment. The appellant reported financial stress due to his inability to work.

Medical Report

Dr. A checked “no” when asked if the appellant has any difficulties with communication. When asked if there are any significant deficits with cognitive and emotional function, the doctor checked “no.”

There was no check mark to indicate deficits for the following areas:

- *Consciousness*
- *Executive*
- *Language*
- *Memory*
- *Perceptual psycho-motor*
- *Psychotic symptoms*
- *Emotional disturbance*
- *Motivation*
- *Impulse control*
- *Motor activity*
- *Attention or sustained concentration*
- *Other*

Assessor Report

In Section C-2, Dr. A indicated “good” for all areas of communication: *speaking, reading, writing, and hearing.*

In section C-4, *Cognitive and Emotional Functioning*, the assessor was asked to indicate the impact of a mental impairment on various functions. For the 14 areas listed, Dr. A indicated the following impacts:

minimal impact for *attention/concentration*, and *memory* (comment, “infrequent short term memory issues/focus difficulty”).

No **moderate** or **major** impacts were indicated, and the doctor checked **no impact** for the remaining functions:

- *Bodily functions*
- *Consciousness*
- *Emotion*
- *Impulse control*
- *Insight and judgment*
- *Executive*
- *Motivation*
- *Motor activity*
- *Language*
- *Psychotic symptoms*
- *Other neuro-psychological problems*
- *Other emotional or mental problems*

Daily living activities

Dr. A provided the following information:

Medical Report

In Section C - *Health History*, the doctor said that despite symptoms with exertion, the appellant "can handle Activities of daily living ["ADLs"] and Instrumental activities of daily living ["IADLs"] if not strenuous."

In Section C-4, the doctor checked "no" the appellant has not been prescribed medications or treatments that interfere with the ability to perform daily living activities.

In Section F - *Daily Living Activities* the doctor checked "no" when asked if the impairment directly restricts the person's ability to perform activities. In *Comments* Dr. A wrote, "dyspnea on exertion and presyncope prevent any strenuous activity."

In Section G - *Additional Comments*, the doctor said that the appellant is unable to work.

Assessor Report - Restricted daily living activities

In Section D, Dr. A indicated that the appellant uses an assistive device for one area of 1 of the 8 daily living activities listed in the form: **personal Care – transfers (in/out of bed)**

The doctor checked “independent” for the remaining areas: *dressing, grooming, bathing, toileting, feeding self, and transfers (on/off chair).*

Dr. A checked “independent” for all areas of 7 daily living activities listed in the Assessor Report:

Basic housekeeping - laundry and basic housekeeping (comment, “dyspnea when doing and needs to rest often”).

Shopping - *going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home.*

Meals - *meal planning, food preparation, cooking, and safe storage of food.*

Pay Rent and Bills - *banking, budgeting, and pay rent and bills.*

Medications - *filling/refilling prescriptions, taking as directed, and safe handling and storage.*

Transportation – *getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation.*

Social Functioning – *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.* The doctor checked that the appellant has “good functioning” with his immediate and extended social networks.

In Section F – *Additional Information*, Dr. A said that “most daily activities can be done independently if patient takes his time or can be accomplished as not strenuous.”

Need for helpMedical Report

Dr. A checked “yes” when asked if the applicant requires any prostheses or aids for the impairment. The doctor explained that the appellant uses a cane to steady himself when getting up from a chair. The appellant experiences presyncope when getting up.

Assessor Report

In Section E - *Assistance provided by other people* Dr. A checked “family.” The doctor left the form blank when asked what assistance is required when none is available. The doctor check marked “cane” when asked about assistive devices (comment, “presyncopal when transferring out of chair and uses cane to steady self”). The doctor checked “no” the appellant does not have an assistance animal.

3. A *Request for Reconsideration* signed by the appellant on October 9, 2023, with handwritten submissions. In addition to argument for the reconsideration, the appellant provided the same information as the earlier self-report with the following additional evidence:

- The appellant wrote that he has difficulty “going up 10 flights of stairs” but at the hearing he clarified that he meant to say 10 steps.
- In the *Request for Reconsideration*, the appellant wrote that he experiences dizziness and shortness of breath with both stairs and “normal household chores.”

Additional submissions

The appellant filed a *Notice of Appeal* with a handwritten submission in which the appellant indicated consultations with medical specialists (cardiology, and internal medicine). The hearing format was changed from in-person to teleconference. In response to questions from the panel, the appellant said that he sometimes gets dizzy from his medications and uses a cane (“4-5 times a week”) to get up from a chair. He keeps the cane beside him and feels dizzy when he sits down. He also uses the cane every morning when he gets up.

The appellant explained that after doing chores “for about an hour and a half” he needs to rest “for 15-30 minutes” so he can continue what he was doing. The appellant said that he needs to rest for “15-30 minutes, 6-7 days per week” when he does “long chores or walking” because he gets short of breath. The appellant said that can do chores by himself sometimes, and sometimes he asks for help from his roommates.

The appellant confirmed that he sees a cardiologist once a month to manage his medications. He also sees an internist once a month for blood pressure medication and other medications that aren’t prescribed by the cardiologist. Last week he also saw a respirologist for his lungs and breathing problems. He did not ask any of the specialists for information or a report for the PWD application because he “didn’t know it was needed.”

Admissibility - additional information

The panel finds that the appellant's statements help to clarify the information in the PWD application by adding specific details about the frequency and duration of the appellant's functional limitations as well as the involvement of specialists in his care and treatment. The ministry had no objections to the additional evidence. The panel finds that the testimony is admissible under section 22(4) of the *Employment and Assistance Act* as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The ministry presented argument at the hearing and had no new evidence. The panel will consider both parties' arguments in Part F – *Reasons*.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision that found the appellant ineligible for PWD designation was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. The panel's role is to determine whether the ministry was reasonable in finding that the following eligibility criteria in section 2 of the Act were not met:

- The appellant has a severe physical or mental impairment.
- The impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform daily living activities either continuously or periodically for extended periods; and
- as a result of restrictions caused by the severe impairment, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform daily living activities.

Analysis*PWD designation - generally*

The legislation provides the Minister with the discretion to designate someone as a *Person with Disabilities* if all the requirements are met. In the ministry's view, PWD designation is for persons who have significant difficulty in performing regular self-care activities including social interaction and making decisions about personal activities, where a severe physical or mental impairment is shown.

Some requirements must have an opinion from a professional, so it is reasonable to place significant weight on those opinions. The ministry found that only 2 of the 5 requirements were met: the appellant is at least 18 years of age, and a doctor has given the opinion that the impairment is likely to continue for at least 2 years.

The application form includes a self-report, so it is appropriate to place significant weight on evidence from the appellant unless there is a legitimate reason not to do so. The panel will review the reasonableness of the ministry's determinations and exercise of discretion.

Severe 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 interpretation of the legislation. A medical practitioner's description of a condition as

“severe” is not determinative on its own. The ministry must make the determination considering the relevant evidence and legal principles.

Restrictions to Daily living activities

A prescribed professional (such as Dr. A) must provide an opinion that the applicant’s impairment restricts the ability to perform daily living activities. The BC Supreme Court decision in *Hudson v. Employment and Assistance Appeal Tribunal* [2009 BCSC 1461] determined that at least two daily living activities must be restricted in a way that meets the requirements of the Act, and that **not all activities need to be restricted**.

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

The restrictions must also 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 determine if a periodic restriction is for extended periods, it is reasonable to look for information on the duration or frequency of the restriction.

The requirements for restrictions to daily living activities are set out in subsection 2(2)(b)(i) of the Act. Specific activities are listed in section 2(1) of the Regulation. The Medical Report and Assessor Report also list activities, and though they do not match the daily living activities in the Regulation exactly, they generally cover the same activities.

The Medical Report and Assessor Report give the professional the opportunity to provide additional details on the applicant’s restrictions. **The inability to work and financial need are not listed as daily living activities and are only relevant to the extent they impact the listed activities.**

Help Required

A prescribed professional must provide an opinion that the person needs help to perform the restricted daily living activities. This requirement is set out in subsection 2(2)(b)(ii) of the Act. Under subsection 3, “help” means needing an assistive device, the significant help or supervision of another person, or an assistance animal to perform daily living activities.

An assistance device, defined in section 2(1) of the Act, **is something designed to let the person perform the restricted daily living activities.**

Arguments

Severe impairment

Appellant's position

The appellant's position is that he meets the requirement for a severe physical impairment because his heart disease is considered a physical disability. Although he is not in a wheelchair and does not have a mental impairment, the heart problem has "complicated my financial, emotional, physical and mental state."

The appellant argued that the ministry "rushed their decision" because it did not consult another medical professional ("cardiologist, internist, etc."). In discussion with the ministry at the hearing, the appellant expressed that the ministry "should have their own professionals to consult with about heart disease" since it "would be normal to have a second opinion."

The ministry replied that it "goes on the information presented" and hopes that the doctor would give an accurate report. The ministry said that it doesn't know who the appellant's specialists are or what they would report.

The appellant explained that he has seen Dr. A for less than a year because his long-term family doctor retired. He could not get the forms filled out by the doctor who knows him well but the reports he gave to the ministry are "precise and accurate."

Ministry's position - physical impairment

The ministry's position is that the information from both Dr. A and the appellant did not establish a severe physical impairment. The ministry argued that the "functional skills, mobility, and physical abilities reported, do not confirm a severe degree of physical impairment." The ability to walk up to 2 blocks, lift up to 10 pounds, etc. allows the appellant to "independently complete your basic physical functioning."

The ministry acknowledged that the appellant has experienced a decrease in his physical capacity because of the diagnoses as well as his self-reported difficulties with pushing, carrying, etc. The ministry argued that that it could not determine a *severe* degree of impairment because Dr. A did not explain the frequency and duration of periodic

assistance for lifting and carrying. The ministry argued that it was unclear why the appellant needed periodic assistance with these functions when he can lift up to 10 pounds.

Ministry's position - Mental impairment

The ministry's position is that a mental impairment was not established on the evidence. The ministry argued that the appellant does not have a severe mental impairment because Dr. A did not diagnose a mental condition that directly results in severe mental health issues. The ministry noted that the doctor did not report any significant deficits or impacts for cognitive and emotional functioning. The ministry acknowledged that heart conditions have impacted the appellant's mental health but argued that "this does not appear to severely impair your mental function."

Panel's decision - severe impairment

Physical impairment

The panel finds that the ministry's decision was reasonably supported by the evidence. Regarding the *Medical Report*, the information from Dr. A does not support a *severe* impairment of physical functioning. Although the assessments were at the low end of the rating scale for *walking* and *lifting* (maximum 2 blocks and 10 pounds), the doctor concluded that the appellant's ability to walk, carry and lift "are enough for day-to-day function."

There was an apparent inconsistency in the *Medical Report* regarding the appellant's capacity for lighter activity. Under *Health history*, the appellant's physical ability was sufficient for day-to-day tasks but not for a work setting that requires "ambulating continuously." Under *Functional Skills*, Dr. A commented that the appellant becomes "easily dyspneic and dizzy" even with light activity.

Despite these symptoms, the appellant was able to manage light activity including walking a short distance unaided and climbing 5+ steps unaided. He does not require an assistive device for walking or climbing stairs. The evidence suggests that the appellant can manage lighter activity independently despite experiencing dizziness and other symptoms that could affect his balance when walking and standing. In the *Assessor Report*, the appellant was independent with standing.

Moreover, the appellant's evidence supports his ability for lighter activities, with restrictions for heavier tasks. The appellant reported serious heart symptoms such as light-headedness, weakness, and shortness of breath when he does prolonged activity such as walking a long distance or climbing more than 10 steps. The appellant indicated that he can manage lighter activity if he stops to rest for 15-30 minutes afterward.

The appellant's evidence largely supports Dr. A's assessments regarding the ability to walk a short distance and climb stairs unassisted as well as lift to 10 pounds. The appellant confirmed being able to stand independently ("up to one hour at a time" before becoming dizzy and weak). The ministry was therefore reasonable to conclude that the overall degree of ability reported by the doctor and appellant is sufficient for most physical functions.

The appellant is frustrated by the ministry's process in not obtaining a "second opinion" from a cardiologist or other specialist. The appellant has regular contact with specialists, so it is unfortunate that he didn't ask them for information about his function to support the application for PWD designation.

The panel acknowledges that the appellant's heart conditions and symptoms are serious and long term and require many medications. Nevertheless, the appellant is independent with walking, climbing stairs, lifting, carrying, and standing, if he does things slowly and rests afterward. Given the overall degree of ability, the panel finds that the requirement for a *severe* impairment under the Act is not met based on a physical impairment. The ministry was reasonable to conclude that the information provided does not demonstrate a *severe* physical impairment.

Parties' positions - mental impairment

The ministry's position is that a severe mental impairment was not diagnosed or indicated in the application. The appellant explained that although he does not have a mental impairment, his heart conditions (and prostate problem on top of that) have caused significant emotional and mental stress due to his physical limitations, and financial struggles from his inability to work.

Panel's decision - mental impairment

The panel finds that the ministry's decision (no severe mental impairment) was reasonably supported by the evidence. The evidence from Dr. A does not show a mental impairment as the doctor did not indicate a mental health diagnosis or brain injury; communication or social difficulties, or significant cognitive/emotional symptoms. In the *Assessor Report*, Dr. A checked "minimal impact" for *attention/concentration* and *memory* but described the appellant's short-term memory and focus difficulties as "infrequent."

The panel acknowledges that the heart conditions (with an additional prostate problem) cause the appellant some emotional distress. But given the lack of evidence regarding any significant cognitive, emotional, or social difficulties, the panel finds that the requirement for a *severe* impairment under the Act is not met based on a mental impairment. The ministry was reasonable to conclude that the information provided does not demonstrate a *severe* mental impairment.

Restrictions to daily living activities*Appellant's position*

The appellant argued that his capacity for "normal household chores" is reduced due to dizziness and shortness of breath from his heart conditions. His life is affected by "restricted activities", and he is unable to earn employment income.

Ministry's position

The ministry's position is that there was not enough evidence from a prescribed professional (Dr. A) to confirm that a severe impairment significantly restricts daily living activities continuously or periodically for extended periods as required by the Act. The ministry argued that daily living activities are not directly and significantly restricted despite dyspnea on exertion and presyncope which prevent strenuous activity.

Panel's decision - daily living activities

The panel finds that the reconsideration decision is reasonably supported by the evidence because the *Medical* and *Assessor Reports* indicate the appellant performs the majority of his daily living activities independently if he rests often and doesn't do anything strenuous. The evidence from Dr. A did not confirm that at least 2 daily living activities are restricted by a severe impairment. The panel relies on the following evidence to find that the ministry's decision was reasonable.

The evidence confirming that two or more daily living activities are not significantly restricted includes:

Medical Report

- In *Health history*, Dr. A stated that the appellant “can handle” non-strenuous daily living activities (“ADLs and IADLS”).
- The doctor indicated that the appellant has not been prescribed any medications or treatments that interfere with his ability to perform any daily living activities. The panel acknowledges that the appellant’s medications sometimes cause dizziness, but based on the information from Dr. A, the side effects is not self-limiting.
- The doctor said that “dyspnea on exertion and presyncope prevent strenuous activity” but checked “no”, the impairment does not directly restrict the ability to perform daily living activities.

Assessor Report

- The appellant is independent with the majority of *personal care* but uses an assistive device (cane) for one area, to steady himself in *transfers (in/out of bed)*. The panel finds that use of a cane for only one specific activity does not establish a significant restriction with *personal care*.
- The appellant is independent with *basic housekeeping* but due to dyspnea he needs to rest often when doing laundry and housework. At the hearing, the appellant explained that he experiences symptoms every time and needs to rest for 15-30 minutes afterward, and sometimes between activities to be able to do the next task. The appellant acknowledged that he does chores independently and only asks for help from his roommates “sometimes.”
- The appellant is independent with all areas of *shopping, meals, pay rent and bills, medications, transportation, and social functioning*.
- Regarding physical chores, the appellant is restricted with lifting and carrying (10 pounds maximum) but Dr. A indicated only *periodic assistance* with lifting. The appellant reported “daily symptoms”, which suggests a continuous restriction. However, the restriction also needs to be significant. The evidence indicates that the appellant’s restrictions are not significant because he does household chores independently most of the time. The appellant can lift/carry enough weight to shop for groceries, lift pots and pans and so forth before symptoms cause him to stop and rest.
- Under *Additional information*, Dr. A wrote said that “most daily activities can be done independently if patient takes his time or can be accomplished as not strenuous.” The doctor explained that the appellant must cease strenuous work activities as these bring on symptoms. The evidence indicates that the appellant performs

regular household tasks independently. He cannot do strenuous work activities, but as noted earlier the ability to work is not a *daily living activity* under the Regulation.

Summary - daily living activities

The panel finds that the information from Dr. A (with additional details from the appellant) is insufficient evidence of significant restrictions to daily living activities due to a severe physical or mental impairment. The evidence, viewed in its entirety, indicates that the appellant is independent with activities that include *shop for personal needs, use public or personal transportation facilities, and relate to, communicate, or interact with others effectively* as described in the Regulation. The panel finds that the reconsideration decision was reasonable because the requirements for restrictions to daily living activities under the Act have not been established on the evidence from the prescribed professional, Dr. A.

Help with daily living activities

Parties' positions

The appellant's position is that he is unable to independently manage his daily life due to serious heart conditions. The appellant argued that he needs to use a cane "4-5 times per week" when he feels dizzy after sitting down for too long, and every day when he gets up in the morning.

The ministry acknowledged that the appellant receives help from family and occasionally uses a cane. The ministry argued that it could not be determined that significant help is required as it had not been established that daily living activities are significantly restricted.

Panel's decision - help with daily living activities

The panel finds that the evidence from Dr. A, with additional information from the appellant, indicates that the appellant manages his daily living activities independently for the most part. There was some evidence regarding help from other people:

- In the *Assessor Report*, Dr. A checked that help is provided by family.
- At the hearing, the appellant said that he sometimes asks for help but usually does daily living activities on his own.

In the panel's view this evidence does not establish that the appellant needs *significant help* from other people to manage his daily life.

In the PWD medical reports, Dr. A confirmed that the appellant uses an assistive device (cane) for transferring out of a chair. Under the Act, the use of an assistive device does not have to be significant. However, the Act requires confirmation of direct and significant restrictions to daily living activities, directly related to a *severe* mental or physical impairment, as a precondition for needing help to perform those activities.

The panel finds that the ministry was reasonable to conclude that daily living activities are not significantly restricted in the opinion of Dr. A, despite the appellant's heart conditions and various symptoms. The requirement for help under the Act is therefore not met.

Conclusion

The panel finds that the reconsideration decision is reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant. The appellant does not meet all 5 requirements for PWD designation under the Act. The PWD medical reports and self-reports, when considered together, establish that:

- The appellant is at least 18 years old
- The impairment is expected to continue for at least 2 more years.

However, there was not enough evidence to show that:

- The appellant has a severe physical or mental impairment.
- The severe impairment directly significantly restricts daily living activities as confirmed by a prescribed professional, and
- The appellant requires extensive help and support from other people or help from an assistive device to manage his daily living activities.

The panel acknowledges that the appellant uses a cane for transfers in and out of bed, and getting up from a seated position, but notes that he was assessed as "independent" with all other areas of *personal care* and all other daily living activities. The evidence indicates the appellant has enough mobility and physical ability to manage his physical functions independently.

The panel confirms the reconsideration decision. The appellant is not successful with his appeal.

Schedule – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

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

APPEAL NUMBER 2023-0337

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

Margaret Koren

Date (Year/Month/Day)

2023/12/12

Print Name

Susan Ferguson

Signature of Member

Date (Year/Month/Day)

2023/12/12

Print Name

Julie Iuvancich

Signature of Member

Date (Year/Month/Day)

2023/12/12