

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated December 29, 2023, which determined the appellant was not eligible for the Persons with Disabilities designation because he did not meet the following criteria:

- Severe mental or physical impairment
- Severe impairment directly and significantly restricts daily living activities
- Assistance required with daily living activities as a result of significant restriction.

Part D – Relevant Legislation

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

Employment and Assistance for Persons with Disabilities Regulation (Regulation), sections 2 and 2.1

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

Part E – Summary of FactsRelevant Evidence Before the Minister at Reconsideration**Person with Disabilities Application (application)*****Self-Report (October 3, 2023) – summary***

The appellant states his right ankle and leg hurt (standing and walking) due to a compound fracture sustained more than 20 years ago. He states he can hardly walk, climb ladders, or work. The appellant also states he suffers from anxiety. Everything has become overwhelming and it makes him not want to do anything. He doesn't know where to start.

Medical Report (September 26, 2023) – signed by the appellant's doctor – summary

The doctor (specialist in family medicine) provided the following information and responses to the questions below.

C. Health History

- Please indicate the severity of the medical conditions related to this person's impairment and how the medical conditions impair this person.
 - remote ankle fracture
 - recent ankle injury
 - alcohol addiction
 - anxiety
 - chronic pain
- Has the applicant been prescribed any medications and/or treatments that interfere with his ability to perform daily living activities? – yes, cane
- If yes, what is the anticipated duration of the medications and/or treatments:
 - needs cane to ambulate

D. Degree and Course of Impairment

Is the impairment likely to continue for two years or more from today? – yes

E. Functional Skills

- How far can this person walk unaided on a flat surface? – less than 1 block
- How many stairs can this person climb unaided? – 2-5 steps
- What are the person's limitations in lifting? – no limitations
- How long can this person remain seated? – no limitation

- Are there difficulties with communication? – no
- Are there any significant deficits with cognitive and emotional function? – yes
The doctor checked emotional disturbance (e.g. depression, anxiety) and motivation (loss of initiative or interest).

F. Daily Living Activities

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

- no

Daily Living Activities	Is activity restricted?		If yes, the restriction is:		
	yes	no	unknown	continuous	periodic
Personal self care		x			
Meal preparation		x			
Management of medications		x			
Basic housework		x			
Daily shopping	x				
Mobility inside the home		x			
Mobility outside the home	x				
Use of transportation	x				
Management of finances		x			
Social functioning – daily decision making; interacting, relating and communication with others		x			

What assistance does your patient need with daily living activities?

- partner, cane

H. Frequency of Contact

The doctor states he has seen the applicant once in the past 12 months.

Assessor Report (October 17, 2023) – signed by the appellant’s doctor – summary

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

B. Living Environment

The doctor states the applicant lives alone.

C. Mental or Physical Impairment

- What are the applicant’s mental or physical impairments that impact his ability to manage daily living activities? – right ankle pain, anxiety, depression

Mobility and Physical Ability

Indicate the assistance required related to impairment (that directly restricts the applicant’s ability to manage in the following areas).	Independent	Periodic assistance from another person	Continuous assistance from another person or unable	Uses assistive device	Takes significantly longer than typical	Explain and specify assistive device
Walking indoors					X	
Walking outdoors					X	
Climbing stairs					X	
Standing					X	
Lifting					X	
Carrying and holding					X	

Cognitive and Emotional Functioning

For each item indicate to what degree the applicant’s mental impairment restricts his functioning.

If impact is episodic or varies over time, please explain.	Impact on Daily Functioning			
	No impact	Minimal impact	Moderate impact	Major impact
Bodily functions (e.g. eating problems, toileting problems, poor hygiene, sleep disturbance)	X			
Consciousness (e.g. orientation, alert/drowsy, confusion)	X			
Emotion (e.g. excessive or inappropriate anxiety, depression etc.)				X

Impulse control (e.g. inability to stop doing something or failing to resist doing something)		x		
Insight and judgement (e.g. poor awareness of self and health condition (e.g. grandiosity, unsafe behavior)	x			
Attention/concentration (e.g. distractible, unable to maintain concentration, poor short-term memory)		x		
Executive (e.g. planning, organizing, sequencing, abstract thinking, problem-solving, calculations)		x		
Memory (e.g. can learn new information, names etc., and then recall that information, forgets over-learned facts)		x		
Motivation (e.g. lack of initiative, loss of interest)			x	
Motor activity (e.g. increased or decreased goal-oriented activity, coordination, lack of movement, agitation, ritualistic or repetitive actions, bizarre behaviours, extreme tension)	x			
Language (e.g. expression or comprehension problems (e.g. inability to understand, extreme stuttering, mute, racing speech disorganization of speech)	x			
Psychotic symptoms (e.g. delusions, hallucinations, disorganized thinking)	x			
Other neuropsychological problems (e.g. visual/spatial problems, psychomotor problems, learning disabilities etc.)	x			
Other emotional or mental problems				

D. Daily Living Activities

Indicate the assistance required related to impairment(s) that directly restrict the applicant's ability to manage in the following areas.	Independent	Periodic Assistance from another person	Continuous assistance from another person or unable	Uses assistive device	Takes significantly longer than typical	Explain/ Describe
Personal Care						
Dressing					X	
Grooming					X	
Bathing						
Toileting						
Feeding self						
Regulating diet						
Transfers (in/out of bed)						
Transfers (on/off chair)						
Basic Housekeeping						
Laundry	X					
Basic housekeeping	X					
Shopping						
Going to/from stores					X	
Reading prices and labels	X					
Making appropriate choices	X					
Paying for purchases	X					
Carrying purchase home					X	
Meals						
Meal planning	X					
Food preparation					X	
Cooking					X	
Safe storage of food (ability, not environmental)					X	
Pay rent and bills						
Banking	X					
Budgeting	X					
Pay rent and bills	X					
Medications						
Filling/refilling prescriptions	X					

Taking as directed	x				
Safe handling and storage	x				
Transportation					
Getting in and out of a vehicle				x	
Using public transit				x	
Using transit schedules and arranging transportation	x				

Social Functioning – only complete if applicant has an identified mental impairment

Indicate the assistance required related to impairment(s) that directly restrict the applicant’s ability to manage in the following areas.

	Independent	Periodic support/supervision	Continuous support/supervision	Explain/Describe
Appropriate social decisions (including avoiding situations dangerous to self or others, good social judgement)	x			
Able to develop and maintain relationships	x			
Interacts appropriately with others (e.g. understands and responds to social cues, problem solves in social context)	x			
Able to deal appropriately with unexpected demands	x			
Able to secure assistance from others	x			

Describe how the mental impairment impacts the applicant’s relationship with
 - **immediate social network** – marginal functioning – little significant participation/communication: relationships often minimal and fluctuate in quality
 - **extended social networks** – marginal functioning – little more than minimal acts to fulfill basic needs

E. Assistance Provided for Applicant

Assistance provided by other people – help is provided by family.

If help is required but there is none available, please describe what assistance would be necessary - dressing and cooking

Assistance provided through the use of assistive devices

Equipment or devices used by the applicant

- cane

Assistance provided by Assistance Animals

The doctor indicated the appellant doesn't have an assistance animal.

Additional Information

H. Frequency of Contact

The doctor states they have known the applicant three months and seen him 2-10 times.

Letter to the Appellant from the Ministry (November 23, 2023)

-denying Persons with Disabilities designation

Request for Reconsideration (December 11, 2023) – summary

The appellant refers to a letter provided by his doctor

The doctor states they are supportive of the appellant's appeal and will try and clarify some factors in his denial.

The doctor writes that while the appellant is able to stand, lift and climb two to five steps the pain he suffers in his lower leg and ankle from a remote injury and nerve damage means that he is not able to walk one block due to pain. The impairment is present for extended periods. As well, the doctor states the appellant had a more recent ankle injury, which exacerbated his pain. The doctor adds that the appellant takes significantly longer than typical in terms of mobility and physical ability and while they appreciate that this may not be reason to establish severe physical impairment on its own, the appellant also suffers with chronic pain and mental health issues.

The doctor adds that the appellant's chronic pain, anxiety and emotional disequilibrium does have a major impact on his daily functioning. This is in part due to his remote range injury but also due to his life circumstances, which include remote addiction and several bereavements. It is fortunate that his friend is able to help him with his daily living activities.

Additional Information received after the Reconsideration Decision

Appellant

Notice of Appeal (January 4, 2023) - summary

The appellant states he can't work. His leg is in too much pain. Walking one block takes him half an hour and he cannot do regular work around the house by himself (dressing, preparing food, shopping).

Submission – Letter from the Appellant's Doctor (January 22, 2024) - summary

In the submission, the doctor restated their previous information and added that it would be very difficult for the appellant to work physically outdoors or indoors. The doctor also stated that because of his anxiety, the appellant finds attention and concentration difficult as well as executive functioning and memory.

Oral Evidence at the Hearing

At the hearing, the appellant stated that he worked his whole life; however, he can no longer work. He can't walk and has shooting pain from the ball of his foot. He has been through physiotherapy but it didn't help. In addition, he has dealt with six deaths in the last year, including his dog (his best friend). As well, the appellant stated that he previously had problems with drugs and alcohol but has been sober for 15 years.

The appellant also stated that when he needs to go shopping he drives his friend to the store and sits in his vehicle waiting for them to do the shopping; he is unable to physically manage the tasks associated with shopping. As well, he has not been able to cook as he has difficulty walking across the kitchen. His friend and others have been bringing him food. He also stated that he fell, after using the shower, and had to use the toilet to get off the floor. He estimated that it takes him twice as long as typical to shower. The appellant stated he has help with banking and sending emails because he has never used a computer.

The appellant also stated that although his doctor was trying to prescribe stronger medication for his pain, he doesn't want to take it because of previous addiction issues, and uses extra strength Advil instead. He doesn't take any medication for anxiety/depression. The appellant added that at one time he was very social but now avoids issues and hides away from others because of stress and anxiety.

At the hearing, the ministry relied on its record and added that no safety issues were identified to suggest that the appellant is unable to function within the community. The ministry also stated that in the submission, although the doctor stated it was difficult for the appellant to walk one block, they haven't confirmed how much longer it takes to walk one block. As well, the ministry stated that although the appellant's friend is able to help, the nature of help is unclear.

The ministry did not object to the additional written and oral evidence submitted by the appellant.

Admissibility

The panel determined the additional information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

Issue

The issue on appeal is whether the ministry's reconsideration decision was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Did the ministry reasonably determine the appellant was not eligible for the Persons with Disabilities designation because the following criteria were not met?

- Severe mental or physical impairment
- Severe impairment directly and significantly restricts daily living activities
- Assistance required with daily living activities as a result of significant restriction.

Appellant Position

The appellant argues he can hardly walk, climb ladders, or work due to leg pain from a compound fracture more than 20 years ago. He has shooting pain from the ball of his foot and walking one block takes him half an hour.

He cannot do regular work around the house by himself due to the pain (dressing, preparing food, shopping). When he needs to go shopping he drives his friend to the store and sits in his vehicle waiting for them to do the shopping; he is unable to physically manage the tasks associated with shopping.

As well, he has not been able to cook as he has difficulty walking across the kitchen. His friend and others have been bringing him food. He also stated that he fell, after using the shower, and had to use the toilet to get off the floor. He estimated that it takes him twice as long as typical to shower.

He also stated he suffers from anxiety.

Ministry Position

Mental or Physical Impairment

Mental functioning

The ministry argues, according to the appellant's doctor the appellant does not have any difficulties with communication, his social functioning is not restricted and he can independently manage all aspects of his social functioning.

As well, the doctor states the appellant is independent with daily living activities that would typically be difficult for someone who experiences significant restrictions to their mental functioning, such as making decisions about personal activities, care, or finances, as well as relating to, communicating, or interacting with others effectively.

Physical functioning

The ministry argues the assessments, provided by the appellant's doctor, speak to a moderate rather than a severe physical impairment. The information demonstrates that the appellant experiences limitations to his physical functioning due to chronic pain in his limb and ankle. However, the doctor does not describe how much longer than typical it takes the appellant to manage walking indoors, walking outdoors, climbing stairs, standing, and lifting, as requested on the application, to determine if it represents a significant restriction to the appellant's overall level of physical functioning.

Daily Living Activities

The ministry argues that in the medical report, the doctor does not indicate that the appellant has been prescribed medication/treatment that interferes with his ability to perform daily living activities. Also, the doctor does not describe how much longer than typical it takes the appellant to manage some daily living activities (e.g. dressing, grooming, going to and from stores) to determine if it represents a significant restriction to the appellant's overall level of functioning. Although the doctor stated that overall, they feel that the combination of the appellant's mental health issues, chronic pain and remote fracture, do actually directly and significantly restrict his ability to perform daily living activities on a continuous basis, this does not establish that a severe impairment significantly restricts daily living activities continuously or periodically for extended periods.

Help Required with Daily Living Activities

The ministry argues that as it has not been established that daily living activities are significantly restricted either continuously or periodically for extended periods, it cannot be determined that significant help is required from other persons, an assistive device or assistance animal. The use of a simple assistive device such as a cane does not establish the existence of a severe impairment.

Panel Analysis

Section 2(2) of the Act sets out the requirements that must be met for the minister to designate a person as a Person with Disabilities. One requirement is that the minister is satisfied that the person has a severe mental or physical impairment. The panel notes,

“severe” and “impairment” are not defined in the legislation. The ministry considers the extent of any impact on daily functioning as shown by restrictions on mental or physical abilities. The panel finds that an assessment of severity based on physical and mental functioning, including any restrictions, is a reasonable application of the legislation.

Mental Impairment

In the medical report the doctor states the appellant has significant deficits with emotional disturbance and motivation and in the assessor report indicates there is major impact for emotion and moderate impact for motivation.

Under social functioning, in the assessor report, the doctor indicates the appellant is independent making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others, but also stated the appellant has marginal functioning with immediate and extended social networks.

In the self-report the appellant states he suffers from anxiety and is overwhelmed. At the hearing, the appellant indicated that the six deaths in the last year, he has dealt with, contribute to his anxiety.

Although the panel acknowledges that the appellant has been dealing with anxiety due to his personal circumstances, the panel finds this alone does not support a finding of severe mental impairment. As well, the panel finds the information provided by the appellant’s doctor does not clearly conclude that the appellant has a severe mental impairment.

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

Physical Impairment

The doctor states due to severe chronic ankle pain, the appellant can only walk less than one block and climb only two to five steps unaided and that the impairment is present for extended periods. As well, the doctor states the appellant had a more recent ankle injury, which exacerbated his pain. They also indicate the appellant takes significantly longer than typical walking indoors/outdoors, climbing stairs, standing and lifting.

In the self-report, the appellant states he can hardly walk or climb ladders. At reconsideration, the ministry stated that it could not determine if the restrictions described by the doctor were a significant impairment because the doctor did not indicate

how much longer than typical the appellant takes to perform the restricted activities. At the hearing, the appellant provided a further description regarding his physical limitation in regard to shopping (i.e., unable to shop at all because of physical impairment). He cannot walk one block without pain, and it takes him half an hour to walk that distance. The panel finds the physical limitations described by the appellant's doctor and the appellant, establish a severe physical impairment.

Therefore, with the additional information, the panel finds the ministry's determination that it was not satisfied that the appellant has a severe physical impairment, now unreasonable.

Restrictions in Ability to Perform Daily Living Activities

Section 2(2) of the Act also states the minister must be satisfied that in the opinion of a prescribed professional, a severe physical or mental impairment directly and significantly restricts the person's ability to perform daily living activities continuously, or periodically for extended periods. At least two activities must be restricted in a way that meet the requirements. To be significant, the restriction must be to a great extent, such as not being able to do the activities without a lot of support. "Continuous" means the activity is generally restricted all the time and "periodic for extended periods" means frequently or for longer periods of time.

Daily living activities are defined in section 2 of the Regulation as follows:

- prepare own meals

In the medical report, the doctor (a prescribed professional) indicates that meal preparation is not restricted. In the assessor report, the doctor states the appellant takes significantly longer than typical preparing food and cooking. However, no information as to how much longer was provided.

- manage personal finances

In the medical report, the doctor indicates management of finances is not restricted and in the assessor report states the appellant is independent with paying for purchases, rent and bills.

- use public or personal transportation facilities;

In the assessor report, the doctor states the appellant is independent with public transit. At the hearing, the appellant stated he uses a private vehicle for transportation.

- perform housework to maintain the person's place of residence in acceptable sanitary condition.

In the application, the doctor indicates basic housework is not restricted and that the appellant is independent with basic housekeeping.

- perform personal hygiene and self care

In the assessor report, the doctor states the appellant takes significantly longer than typical dressing and grooming. And, although at the hearing the appellant advised that he slipped in the shower, the panel finds this alone does establish that there is a severe restriction with self-care.

- manage personal medication

In the assessor report, the doctor states the appellant is independent with managing medications.

The panel finds there is insufficient evidence to confirm that in the opinion of a prescribed professional, a severe physical impairment directly and significantly restricts the person's ability to prepare meals, manage personal finances, use public or personal transportation, housework, personal hygiene and manage personal medications, continuously, or periodically for extended periods.

- shop for personal needs;

In the medical report, the doctor indicates daily shopping is restricted. In the assessor report, the doctor states the appellant takes significantly longer than typical going to and from stores. At the hearing, the appellant provided further details regarding shopping and stated that when he needs to go shopping he drives his friend to the store and sits in his vehicle waiting for them to do the shopping because he is unable to physically manage the tasks associated with shopping.

- move about indoors and outdoors

In the assessor report the doctor states the appellant takes significantly longer than typical walking indoors/outdoors. In the request for reconsideration, the doctor writes that while the appellant is able to stand, lift and climb two to five steps, the pain he suffers in his lower leg and ankle from a remote injury and nerve damage means that he is not able to walk one block due to pain. The impairment is present for extended periods.

The panel finds the evidence above, confirms that in the opinion of a prescribed professional, a severe physical impairment directly and significantly restricts the appellant's ability to shop for personal needs and move about indoors and outdoors continuously, or periodically for extended periods.

Therefore, the panel finds the ministry's determination that it is not satisfied that in the opinion of a prescribed professional, a severe physical or mental impairment directly and significantly restricts the person's ability to perform daily living activities continuously, or periodically for extended periods now unreasonable.

Help to Perform Daily Living Activities

The panel notes section 2(2) of the Act also requires that as a result of these restrictions, the person requires help to perform these activities and in order to perform them, the person requires an assistive device or the significant help or supervision of another person.

In the medical report, the doctor states the appellant needs a cane to ambulate and that the appellant needs assistance from his partner with daily living activities. In the assessor report, the doctor states help is provided by family. At the hearing, the appellant provided an example of the level of assistance required (i.e. significant help with shopping).

The panel finds the information above, confirms that the appellant requires an assistive device and the significant help of other people.

Therefore, the panel finds the ministry's determination that the appellant doesn't require an assistive device or the significant help or supervision of another person to perform daily living activities, now unreasonable.

Conclusion

In conclusion, the panel finds the ministry's decision that determined the appellant was not eligible for Persons with Disabilities designation, as per section 2(2) of the Act and section 2 of the Regulation, is no longer reasonably supported by the evidence. The panel rescinds the ministry's decision.

The appellant is successful on appeal.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Act

Persons with disabilities

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal....

Employment and Assistance for Persons with Disabilities Regulation

Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

- (iii)shop for personal needs;
 - (iv)use public or personal transportation facilities;
 - (v)perform housework to maintain the person's place of residence in acceptable sanitary condition;
 - (vi)move about indoors and outdoors;
 - (vii)perform personal hygiene and self care;
 - (viii)manage personal medication, and
- (b)in relation to a person who has a severe mental impairment, includes the following activities:
- (i)make decisions about personal activities, care or finances;
 - (ii)relate to, communicate or interact with others effectively.

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

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

- (i)medical practitioner,
- (ii)registered psychologist,
- (iii)registered nurse or registered psychiatric nurse,
- (iv)occupational therapist,
- (v)physical therapist,
- (vi)social worker,
- (vii)chiropractor, or
- (viii)nurse practitioner...

Part 1.1 — Persons with Disabilities

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2

(2) [*persons with disabilities*] of the Act:

- (a)a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b)a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c)a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act*;
- (d)a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act* to assist that family in caring for the person;
- (e)a person who is considered to be disabled under section 42 (2) of the *Canada Pension Plan* (Canada).

APPEAL NUMBER 2024-0003

Part G – Order

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

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

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

Legislative Authority for the Decision:

Employment and Assistance Act

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

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

Part H – Signatures

Print Name

Connie Simonsen

Signature of Chair

Date (Year/Month/Day)

2024/01/30

Print Name

Susan Ferguson

Signature of Member

Date (Year/Month/Day)

2024/01/30

Print Name

Charlie Schellinck

Signature of Member

Date (Year/Month/Day)

2024/01/30