

### **Part C – Decision Under Appeal**

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

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

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

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

### **Part D – Relevant Legislation**

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

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

(The relevant Legislation is in the Schedule of Legislation at the end of the Panel Reasons)

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

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

- Medical Report completed by the Appellant’s Nurse Practitioner (“nurse”). The nurse did not indicate how long the Appellant has been a patient and notes they have seen the Appellant 0 times in the past 12 months.
- Assessor Report completed by the Appellant’s social worker. The Assessor Report was completed by a social worker with the Health Authority. They indicate that this was their first contact with the Appellant.
- Appellant’s Self Report.
- A Request for Reconsideration where the Appellant writes as his reasons for requesting a reconsideration:
  - I’m having issues with dressing myself, especially with putting my shoes on.
  - I’m in constant pain with a stiff lower back and nerve pain shooting down my right leg.
  - I’m taking up to 8, 3mg T3’s every day.
  - I now have a family doctor. It took 4 years to find one in my community.
  - I cannot hold down a job because I need to lay down most of the day.
- Submitted with the Reconsideration:
  - 14 pages of doctor’s reports and letters dated for the years 2013, 2014, 2015, 2017, 2018. The letters all confirm that the Appellant suffers from chronic back pain and explain that he is unable to work.
  - Ministry Medical Report – Employability form dated May 27, 2018, which indicates the Appellant has severe back pain.
  - Ministry Medical Report – Persons with Persistent Multiple Barriers form dated October 25, 2018, which indicates severe back condition with spinal stenosis and discogenic backache.
  - Letter from the Appellant’s nurse dated August 1, 2023, writing that it was provided in consideration of the appeal of disability. The nurse wrote (in summary):
    - The Appellant has struggled with chronic back pain since the age of 18 and has had a number of surgeries and seen many specialists since then.
    - The Appellant’s back pain affects his daily life as he cannot even bend over to clip his toenails, taking a shower takes him quite a bit of time due to pain and walking up stairs is very slow, causing severe pain and electric shock sensations.

- The Appellant's disability would help him be able to seek more care that would benefit him, more than continued use of medication.

The information in the PWD application included the following:

### ***Self Report***

The Appellant states:

- He suffered a torn disc in his lower back in 1977 and was operated on in 1978. Half a disc was removed between lumbar 4 and 5. He was 18 years old at the time and was told by the surgeon that rather than fusing the vertebrae together, the disc was left to repair itself. He spent one year in a body cast while the disc repaired itself.
- Over the subsequent years he has had episodes of major lower back pain and sciatica nerve pain which runs down his right leg all the way to his toes. As he got older, the level of pain has gotten worse, between 8-10 on the pain chart.
- He finds it very hard to get a proper night's sleep without waking up several times, in pain.
- He also experiences pain when he walks. Every time his right or left foot step down he feels a jolt of pain in his lower back and legs.
- He cannot sit without being in pain.
- He has trouble putting on socks and shoes.
- He cannot work a regular job without having to rest and lay down in the prone position.
- He has trouble bathing himself and putting clothes on, especially pants and shoes.
- His right leg feels like a migraine headache. The pain is 24/7 every day of his life. He is taking up to six T 3's a day and he also takes another pill which affects his ability to function with a clear head and body.

### ***Diagnoses***

The nurse provides diagnoses of chronic back pain/degenerative disc disease and sciatica with onset of both being since 1977. The nurse writes that L4-L5 diskectomy was performed in 1978.

### ***Health History***

The nursetates the Appellant has severe stiffness to his lower back due to his previous surgery in 1978, which impacts his overall mobility and causes him immense pain,

constantly. The nurse writes that the Appellant tells them that his pain has worsened over the years, and he has pain, no matter what he is doing. The nurse indicates that the Appellant has not been prescribed any medications or treatments that interfere with his ability to perform daily living activities. The Appellant does not require any prostheses or aids for their impairment.

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

In the Medical Report, the nurse indicates the impairment is likely to continue for two years or more. The nurse writes that the duration is unknown, but likely lifelong, and that the Appellant has been referred to the chronic pain clinic to help him manage better.

The nurse answered “No” to the question “Does the impairment directly restrict the person’s ability to perform daily living activities?” The nurse indicated no restrictions in all the areas listed, except for personal self care where they indicate “continuous”. The nurse writes as a comment regarding the degree of restriction “As patient stated, his pain prevents him from getting dressed quickly.”

### ***Physical Impairment***

In the Medical Report, The nurse indicates the Appellant:

- Can walk 4+ blocks unaided on a flat surface.
- Can climb 5+ steps unaided.
- Can lift 2 to 7kg (5 to 15lbs).
- Can remain seated for 1 to 2 hours.

The nurse explains that the Appellant can go up stairs, but it takes him quite a bit of time; that he can walk but goes slowly; and can sit sometimes for minutes, or hours, depending on pain.

In the Assessor Report, the social worker indicates that the Appellant has a good level of ability to speak, read, write and hear. They indicate the appellant is:

- independent with climbing stairs and standing.
- requires periodic assistance from another person with walking indoors and outdoors.
- requires continuous assistance with lifting and carrying/holding.

The SW writes as explanation for the restrictions:

- There are days when the Appellant is unable to walk due to pain, which is approx. 2 to 3 times per week.
- The Appellant can walk short distances, requires frequent breaks, and requires a support person to help.
- The Appellant can stand for 5 minutes.
- The Appellant requires assistance for any lifting and for carrying or holding.

### ***Cognitive and Emotional Functioning***

In the Medical Report, the nurse indicates that the Appellant has no significant deficits with cognitive and emotional function.

In the Assessor Report, the social worker indicates that the Appellant's mental impairment impacts his functioning as follows:

- Major impact with bodily functions (sleep quality severely impacted by pain and difficulty maintaining concentration).
- Moderate impact with impulse control and attention/concentration.
- Minimal impact with consciousness, emotion, insight and judgement, executive, memory, motivation, motor activity, and language.
- No impact with psychotic symptoms, or other neuropsychological, emotional or mental problems.

### ***Daily Living Activities***

In the Medical Report, the nurse states that the Appellant's mental or physical impairments that restrict his ability to manage daily living activities are: "The Appellant had a spinal disc removed in 1978; diagnosed with osteoarthritis; experiences chronic pain and discomfort; impacts to mobility and quality of sleep; and difficulties completing ADL's."

In the Assessor Report, the social worker indicates that the Appellant:

- is independent in all areas of personal care, food preparation, paying rent and bills, taking medications. The social worker writes that the Appellant has difficulty dressing due to pain and uses a shower grab bar. The social worker writes that he does all payments online or by telephone.

- requires continuous assistance with doing laundry and carrying purchases from store home. The social worker writes that it takes twice as long, and he requires assistance or a laundry cart to carry the laundry and that he requires a support person to carry purchases home.
- requires periodic assistance with basic housekeeping, going to and from stores, and getting in and out of a vehicle. The social worker writes that the Appellant requires a support person on days of increased pain and when going to and from stores.

The social worker provided additional comments, writing that the Appellant takes twice as long to do his daily living activities, and that he does not get dressed or do grooming when his pain is high, which is on average 1-2 times per week. During times of increased pain, the Appellant will stay in bed longer. The Appellant does not use public transit due to his lower income.

Under Social Functioning the social worker indicates that the Appellant is independent in the areas of appropriate social decisions, able to develop and maintain relationships, interacts appropriately with others, able to deal appropriately with unexpected demands and that he requires periodic support when securing assistance from others. The SW indicates that the Appellant has good functioning in both his immediate and extended social networks.

### ***Assistance Provided for the Applicant***

In the Medical Report, the nurse indicates that no assistance is required with daily living activities.

In the Assessor Report, the social worker indicates that the Appellant's friends and community service agencies help. The social worker writes that the Appellant has support workers at a local Society, that he lives in supportive housing, and needs people to help with moving, lifting, carrying, holding, etc. The social worker indicates that the Appellant uses a cane and a shower grab bar as assistive devices. The social worker provided an additional comment, writing that they "observed the Appellant shifting weight when seated often – pain behaviours."

### **Evidence Submitted After Reconsideration**

On the Notice of Appeal Form, the Appellant wrote that he has more information to present and that his disabilities are getting more disabling. The Appellant provided additional submissions prior to the hearing. Submitted are:

- A letter from the social worker dated January 15, 2024. The social worker writes that they are providing further clarification around the areas where restrictions exist for the Appellant and the support/assistance he requires. They write (in summary):
  - Regarding the severity of the Impairment: In terms of physical functioning, the Appellant describes an impairment that is variable in nature. He describes some days he can cope with the pain and walk 4+ blocks unaided, while other days he is unable to get out of bed. He estimates that his pain is severe 2-3 days per week. The variability of his onset of pain may have accounted for the discrepancies reported in sections 2 and 3 as the information was collected on different days. The Appellant reports that his ability to complete his daily living activities is subject to the level of pain he experiences on any given day.
  - Regarding Mental functioning: At the time of the assessment, the Appellant denied any mental impairment that impact his daily functioning. However, now that the social worker has had other engagements with the Appellant, it is their impression that the Appellant's social functioning requires more support than what was initially identified. The Appellant has since been evicted from his supportive housing due to inappropriate comments and he has become hostile with his nurse resulting in a relationship breakdown. While the Appellant does report being independent in many social functions, it does not appear that he is able to maintain positive or meaningful relationships. It has been recommended that the Appellant consult with a psychiatrist.
  - Further, since being evicted from his residence, the Appellant admits to overdosing on drugs and that he uses drugs 2-3 times per month and marijuana 3 times a week.
- The same nurse letter dated August 1, 2023, that was submitted at Reconsideration.
- A Radiology Result Report dated January 12, 2024. The report indicates moderate degenerative changes at L4-L5 and an MRI is recommended.
- Seven Emergency Room records, from January, March, October, November and December 2023. The records indicate the Appellant was seen due to chronic back pain and medications were prescribed.
- A Final Report from a doctor dated November 21, 2023, which indicates the Appellant was examined because of acute pain in his right foot.
- An Authorization for Disclosure of Clinical Record Information form dated December 18, 2023, from a health authority confirming authorization of release of the Appellant's health records.

At the hearing, the Appellant explained he has suffered with his back pain since he was 18 years old and now that he is older, he experiences even more pain and numbness. He stated that he has been prescribed pain killers but still has a hard time walking, showering, dressing and even tying his shoes. Because he has suffered with the pain for so many years, it is causing him a mental impairment, which he has been using drugs for the past two to three years to help him manage. He was recently evicted from his housing and is currently living in a shelter. The Appellant states he spends about 60-70% of his time up on his bed, the upper bunk looking at his phone. The Appellant has difficulty climbing stairs, and he must walk everywhere because he has no transportation and cannot afford to take a taxi anywhere. Everything he needs is within a ten to twelve block radius of the shelter.

When asked about what difficulty he has with walking, the Appellant stated he tries to not do it too often and when he is having foot pain he doesn't go out. He finds it difficult to go up hills. When he does walk, he experiences numbness and pain, so he only goes out when he has to. The Appellant states he always has a walking stick with him and when he was having his foot pain, he had the use of a stroller while he was in the building. When asked if he needed help with getting out of his bed, he states he is up on the top bunk.

The Appellant explained over the past few years he has been very stressed and feeling anxious, so he has been self-medicating with drugs. He explained he is very bored, has nothing to do. The Appellant stated that he had an overdose on January 6, 2024 and received medical care.

When asked about how the nurse filled out the PWD application, the Appellant stated she filled it out while he was there with her, but that he really didn't know how to answer the questions. He does not know the nurse very well, and she had only seen him once when the form was filled out. He felt very awkward with the nurse because she wanted him to receive his pain prescriptions on a weekly basis, when a urine sample was also required, rather than monthly as he requested. Because of this, he just goes to the emergency room to have his pain medication prescription refilled.

At the hearing, the Ministry reviewed the five criteria required for PWD designation. She explained that the Appellant met the age and duration, but not the severe impairment, daily living activities significantly restricted or the help required criteria.

Regarding whether the Appellant has a severe physical impairment, the Ministry pointed out that, in the Medical Report, the nurse indicated that the Appellant's functional skills were not indicative of a severe impairment. In the Assessor Report, the social worker

indicated that it takes the Appellant longer than normal to do activities but that taking twice as long is not indicative of a severe impairment.

Regarding whether the Appellant has a severe mental impairment, the Ministry noted that, in the Medical Report, the nurse noted that he has no impact or minimal impact in twelve of the areas listed in Cognitive and Emotional Functioning and has only one major impact with sleep disturbance. In the Assessor Report, the social worker indicated that the Appellant has good communication skills and marked off that he is independent in the areas of social functioning. The Ministry finds this is not indicative of a severe mental impairment.

Regarding whether the Appellant has significant restrictions in managing his daily living activities, the Ministry pointed out, in the Assessor Report, that the social worker indicated the Appellant is independent in all areas of personal care, meals, budgeting, and taking medications. The Ministry also pointed out that, in the Medical Report, the nurse indicated the Appellant has no restrictions in all the areas listed, except for personal self care. The nurse noted that the Appellant informed them that his pain prevents him from getting dressed quickly. The Ministry finds that, for these reasons, that the Appellant does not have significant restrictions in managing his daily living activities.

Regarding whether the Appellant requires help because of his impairment, the Ministry indicated that the nurse answered that he does not require any prostheses or aids for his impairment. The social worker indicated that the Appellant uses a cane and a shower grab bar. The Ministry stated that because it has been determined that daily living activities are not significantly restricted, as is required by legislation, that it cannot be determined that significant help is required.

Regarding the additional submission of January 22, 2024, the Ministry stated that the documents were reviewed, however, there was still no specifics about the frequency of times the Appellant requires assistance. The social worker indicated that now having known the Appellant a bit longer, that she recommends he see a psychiatrist regarding his mental health. The Ministry added that the doctor or nurse did not confirm that a physical or mental impairment exists. The Radiology Report states that the Appellant has a moderate degenerative condition, not a severe condition. The Hospital Reports did not provide much information because they note his foot looked normal, no swelling or redness and he was discharged. The other Hospital Reports indicate that he received prescriptions for his back pain. The Ministry stated that there was no compelling new evidence to overturn their original decision.

The Appellant made a final statement. He stated that things have changed with himself since the PWD form was filled out. His mental functioning has worsened. He is severely addicted to drugs and cannot function. He stated that, yes, he has some abilities, he is not an invalid. He doesn't appear to have a visible disability, until people see his scar, then they understand his limitations. He reiterated that he uses his walking stick if he goes much beyond his building. Some days his pain is unbearable. When asked how frequently this occurs, he said he just avoids going out when it hurts.

#### Admissibility of Additional Information

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

The panel found that the Appellant's oral testimony, and the documents submitted by the Appellant on January 22, 2024, provide additional detail relevant to the matter at issue in the proceeding. The Ministry did not object to the oral or additional submissions. The panel has admitted this additional information as being in accordance with s. 22(4) of the Employment and Assistance Act.

**Part F – Reasons for Panel Decision**

The issue on appeal is whether the Ministry's decision denying the Appellant PWD designation is reasonably supported by the evidence or is a reasonable application of the legislation.

Appellant's Position

The Appellant's position is that he has suffered with his back since he was a young man, and his condition has worsened over time. He has not been able to work for the past three to four years. He finds he cannot walk for very long, without pain. Because of living this way for so long his mental health has deteriorated and he has been self-medicating with drugs.

Ministry's Position*Physical Impairment*

The Ministry's position is that there is insufficient evidence provided by a doctor, nurse practitioner or other practitioner to determine that the Appellant has a severe physical impairment because the frequency and duration of the back pain that the Appellant experiencing has not been made clear.

*Mental Impairment*

The Ministry's position is that the nurse has not diagnosed nor described a mental impairment/brain injury on the Medical Report portion of the PWD application and did not identify any significant deficits with the Appellant's cognitive and emotional function. The social worker identified that the Appellant's sleep quality is severely impacted, he has difficulty maintaining concentration, and his social functioning requires more support than what was initially identified. The Ministry's position is that the evidence provided does not indicate a severe mental impairment.

*Significant Restrictions on the Ability to Perform Daily Living Activities*

The Ministry's position is that taking twice as long to perform daily living activities is not considered indicative of a significant restriction. The legislation requires that the restrictions be both significant and either continuous or periodic for extended periods to be eligible for PWD designation. The nurse indicates that the Appellant has not been prescribed any medications or treatments that interfere with his ability to perform daily

living activities. Further, the nurse noted that the impairment does not directly restrict his ability to perform daily living activities, except that he is continuously restricted with personal self care, and that his pain prevents him from getting dressed quickly. The social worker, in the Assessor Report, indicates that it takes the Appellant twice as long to perform many of his daily living activities when he is experiencing pain.

### *Needing Significant Help to Perform Daily Living Activities*

The Ministry's position is that as it has not been established the daily living activities are significantly restricted, it cannot be determined that significant help is required. The nurse indicates that the Appellant does not require any aids for the impairment. The social worker indicates that the Appellant uses shower grab bars and a cane. The nurse indicates that the Appellant is not restricted in any areas where assistance may be required, and the social worker does. However, the social worker did not describe the frequency of when periodic assistance from another person is needed with the Appellant's daily living activities. The social worker indicates that continuous assistance is required with carrying laundry, however, the nurse indicates that the Appellant can lift up to 15 lbs.

In summary, the Ministry's position is that there is not enough evidence to confirm that the Appellant has a severe impairment that significantly restricts his ability to perform his daily living activities continuously or periodically for extended periods, therefore, the legislative criteria have not been met.

### Panel's Decision

#### *PWD Designation – Generally*

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

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

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

### *Severe Mental or Physical Impairment*

"Severe" and "impairment" are not defined in the legislation. In the reconsideration decision, the Ministry was not satisfied that the information showed that the Appellant has a severe physical or mental impairment. The Ministry is of the opinion that to show that an impairment is severe, the information has to be weighed against the nature of the impairment and how it impacts functioning either physically or mentally. Having a diagnosis of a medical condition does not mean that the impairment is severe or that the person is qualified for PWD. The information has to show that the impairment, which is caused by a medical condition, restricts a person's ability to function on their own or effectively. The Ministry has to look at the impairment and see if it impacts daily functioning. The Ministry depends on the information in the PWD application and any other information that is given. The panel finds that the Ministry's approach to determining severity is reasonable.

The panel also notes that the ability to work is not a consideration for PWD eligibility because the ability to work is not a requirement of section 2(2) of the Act and is not listed as a daily living activity.

### *Physical Impairment*

The panel finds that the Ministry was reasonable in its determination that there was not enough information provided to determine the Appellant's physical impairment is severe; that it directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods; or that, as a result of those restrictions, he requires help to perform those activities.

The nurse indicated in the Medical Report that the Appellant has chronic back pain/degenerative disc disease and sciatica. They note that he has severe stiffness in his lower back due to a previous surgery, which impairs his overall ability and causes him

immense pain. However, the nurse then indicates that the Appellant can walk 4+ blocks, climb 5+ steps, can lift 5-15 lbs and can remain seated for 1-2 hours. The nurse also indicated that the Appellant has no restrictions in managing their daily living activities, except for personal self care, noting that the pain prevents him from getting dressed quickly.

The social worker, in the Assessor Report, indicates that the Appellant is independent with climbing stairs and standing, but requires periodic assistance from another person when walking indoors or outdoors. The social worker notes that it takes him twice as long when walking or climbing stairs and that 2-3 times a week he is unable to walk due to pain. The social worker indicated that the Appellant requires continuous assistance with lifting and carrying/holding items.

The Panel finds there are conflicting statements between the nurse and the social worker Reports. The Appellant states that he had only met the NP for the first time when having the PWD application completed, and he wasn't sure how he was supposed to answer the questions being asked. He admits that he was upset with the nurse because she would not give him his pain prescriptions monthly, instead was asking him to come in weekly to submit to having a urine sample taken before the prescription would be given.

When considering the Assessor Report, and the social worker's follow up letter in the January 22, 2024 submission, the Panel notes that the social worker indicates the Appellant takes twice as long when walking or climbing stairs and some days he doesn't even go walking when he is in pain which happens 2-3 times per week. At the hearing, the Appellant indicated that where he is living, everything he needs is within a 10-12 block range and that he will then use a walking stick as an aid when he goes out. He added that he goes up and down the stairs to go outside for a smoke and he climbs up onto the top bunk, where he sleeps. Although the Appellant may have days when the pain does not allow him to go out walking, or it may take him longer than normal to get dressed, he is still able to manage climbing up and down stairs and into the top bunk of a bed. The Panel finds taking a bit longer than typical when walking or having the ability to climb up and down stairs or up onto the top bunk is not indicative of a person with a significant restriction.

The legislation requires that "a person must have a severe mental or physical impairment that, in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least two years." Although the nurse found that the Appellant's chronic back pain will last more than two years, the panel found no evidence to indicate that the NP considers the impairment severe. The nurse indicates that the Appellant has no restrictions with

mobility, stairs, lifting, walking, or sitting. Although the SW does indicate that the Appellant takes longer than typical to manage, the Panel has found those restrictions to not be severe. Therefore, the Panel finds that the Ministry was reasonable to determine there was insufficient evidence to determine the Appellant has a severe physical impairment.

### *Mental Impairment*

The Panel considered the information provided in the Medical and Assessor Reports as well as additional information provided by the Appellant prior to, and at the hearing. The panel finds that the Ministry was reasonable in its determination that there was not enough information provided to determine the Appellant's mental impairment is severe; that it directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods; or that, as a result of those restrictions, he requires help to perform those activities.

The nurse reported that the Appellant had no significant deficits with cognitive and emotional function and did not indicate any areas where deficits are evident.

The social worker reported that the Appellant has either no impact or minimal impact in most areas of cognitive and emotional functioning. The social worker indicates that the Appellant has moderate impact with impulse control (difficulty maintaining concentration) and a major impact with bodily functions (sleep quality severely impacted by pain). The social worker also indicated that the Appellant is independent in all areas of social functioning. The Panel finds that having only one major impact on daily functioning and independent in all areas of social functioning to not be indicative of a severe mental impairment.

In a follow up letter, the social worker mentioned that at the time of the PWD assessment the Appellant denied any mental impairments that impact his daily functioning. Since then, he has been evicted, has had a drug overdose, and has become hostile to his nurse resulting in a relationship breakdown. The social worker adds that it is their impression that the Appellant requires more support than what was initially identified. They note that "it is difficult to determine the extent at which the Appellant's mental functioning impacts their daily functioning and it has been suggested that the client consider a consult with a psychiatrist." The Ministry reviewed the January 22, 2024 social worker letter and stated that there was insufficient evidence to support that the Appellant has a severe mental impairment.

The panel finds, that although the Appellant may now be more forthcoming about how his pain is affecting his mental health, there is no evidence before the panel, at this time, to determine that he has a severe mental impairment. Neither the nurses, nor the social worker, confirm a severe mental impairment.

### *Significant Restrictions on the Ability to Perform Daily Living Activities*

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

- 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 an 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, activities also include:

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

It is settled law by the BC Supreme Court (see *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2009 BCSC 1461) that at least two daily living activities must be restricted in a way that meets the requirements. Not all activities, or even the majority, need to be restricted. The inability to work and financial need are not listed as daily living activities and are only relevant to the extent that they impact listed activities.

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

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

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

In the Medical Report, the nurse answered "No" to the question whether the impairment directly restricts the Appellant's ability to perform daily living activities. They indicate the Appellant is independent in all areas of daily living activities, except personal self care. In their written note, the nurse indicated that the Appellant's pain prevents him from getting dressed quickly. The Panel considers that the physical back pain is what the nurse is referring to because the nurse did not indicate that the Appellant had any deficits with significant cognitive and emotional function.

In the Assessor Report, the social worker indicated that the Appellant is independent in all areas of personal care, reading prices and labels, making appropriate choices, paying for purchases, meals, paying rent and bills, and medications. They note that it takes him twice as long to manage personal care and that he has difficulty dressing due to pain. The social worker indicates the Appellant requires periodic assistance with basic housekeeping, going to and from stores and getting in and out of a vehicle and that it takes twice as long to complete those tasks. He requires continuous assistance from another person with doing laundry and carrying purchases home. The written notes from the social worker indicate that when the Appellant is experiencing pain he does not get dressed or groom and that this happens once or twice a week. If the pain is increased, the Appellant will stay in bed longer.

The Ministry argues that they do not consider taking twice as long as typical in performing daily living activities is indicative of significant restrictions to daily living activities. The panel has already made a finding, when determining whether a physical impairment exists, that we agree that someone taking twice as long to do daily living activities is not indicative of it taking significantly longer because they are still managing to do the activities, albeit a bit more slowly than another person.

The Ministry argues that although the social worker indicates that some assistance with laundry, basic housekeeping, shopping and transportation is required, the nurse indicates there are no restrictions in those areas. The social worker indicated that the Appellant uses a laundry cart to carry laundry and needs someone to carry his purchases home from the store. The panel finds that using a laundry cart is something that many people use. The SW indicates someone carries his purchases home; however, the nurse suggests that the Appellant can carry up to 15 pounds. At the hearing, the Appellant indicated that when he goes shopping, he takes a taxi, and did not indicate that he required any additional assistance in carrying the purchases. Therefore, the Panel places more emphasis on the NP report that the Appellant can carry purchases home.

The Panel finds that the Appellant is independent in all areas listed in legislation regarding daily living activities. He can:

- prepare his own meals;
- manage his personal finances;
- shop for his personal needs;
- use public transportation (uses taxi);
- perform housework to maintain a place of residence (although it takes longer than normal, it is not significantly longer);
- move about indoors and outdoors (although he uses a walking stick, he can still walk the 10-12 blocks around his current residence and can climb the stairs to go for a smoke and climbs up to a top bunk to sleep);
- perform personal hygiene and self care (independent in all areas except it takes longer than typical, but not significantly longer); and
- manage personal medication.

The Appellant can make his own decisions about personal activities, care, or finances. Although it has been recently identified that he may be having some difficulties communicating or interacting with others effectively, there was insufficient evidence provided to confirm that.

The panel finds the Ministry was reasonable in its determination that the limitations provided in the Medical and Assessor Reports did not indicate a direct and significant restriction in the Appellant's ability to perform daily living activities either continuously or periodically for extended periods.

*Needing Significant Help to Perform Daily Living Activities*

Section 2(2)(b)(ii) of the Act requires that, because of direct and significant restrictions in the ability to perform daily living activities, a person needs help to perform those activities. Help is defined as the need for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform daily living activities.

Direct and significant restrictions with daily living activities are a prerequisite of the need for help. The panel previously found that the Ministry was reasonable in its decision that direct and significant restrictions in the Appellant's ability to perform daily living activities have not been established. Therefore, the panel also finds that the Ministry reasonably concluded that it cannot be determined that the Appellant requires help to perform daily living activities as required by section 2(2)(b)(ii) of the Act.

### Conclusion

The panel finds that the Ministry's reconsideration decision, which determined that the Appellant was not eligible for PWD designation, was reasonably supported by the evidence. Therefore, the panel confirms the Ministry's reconsideration decision. The Appellant is not successful in the appeal.

**Schedule of Legislation*****The 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).

**The 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 authorized under an enactment to practise the profession of

- (a) medical practitioner,
- (b) registered psychologist,
- (c) registered nurse or registered psychiatric nurse,
- (d) occupational therapist,
- (e) physical therapist,
- (f) social worker,
- (g) chiropractor, or

nurse practitioner.

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**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

Janet Ward

Signature of Chair

Date (Year/Month/Day)

2024/02/09

Print Name

Rick Bizarro

Signature of Member

Date (Year/Month/Day)

2024/02/09

Print Name

John Pickford

Signature of Member

Date (Year/Month/Day)

2024/02/09