

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“Ministry”). The Ministry decided that the Appellant did not meet all of the requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* for person with disabilities designation (PWD). The Ministry found that the Appellant met the age and duration requirements, but did not meet the following:

- the Appellant has a severe physical and/or mental impairment;
- the Appellant’s daily living activities are directly and significantly restricted either continuously or periodically for extended periods; and
- because of those restrictions, the Appellant needs an assistive device, significant help or supervision from another person, or needs an assistance animal.

The Ministry also found that the Appellant is not qualified for PWD designation on alternative grounds, which includes: a person who is in palliative care; a person who received At Home Program payments through the Ministry of Children and Family Development; a person who gets or ever got Community Living BC for community living support; and a person who is considered disabled under section 42(2) of the *Canadian Pension Plan Act*.

Part D - Relevant Legislation

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

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

The complete legislation is found at the end of this decision in Appendix A.

Part E – Summary of Facts**Evidence at the time of Reconsideration**

The Appellant's PWD application that includes:

- A Medical Report dated September 11, 2023 which was completed by the Appellant's doctor and who has seen the Appellant 1 time in the last 12 months.
- An Assessor's Report dated August 24, 2023, which was completed by the Appellant's social worker. The social worker had known the Appellant for 2 weeks at the time the Assessor's Report was completed and seen him 2-10 times. This report was complete by an office interview with the Appellant.
- The PWD application also included the Appellant's self-report dated September 11, 2023.

Request for Reconsideration, dated December 11, 2023, which indicated, in part, the following about the Appellant:

- Unable to lift anything over 10 pounds with the right hand because he can not grip with it since the tendon in right wrist was injured.
- It is unknown if all the plywood was removed from the wrist.
- He must wear a brace on the right hand 12 hours a day and that is meant to straighten the joint in the finger.
- He does not have assistance nearby and is unable to complete some daily activities.
- He has not discussed mental health issues with the doctor because his is constantly getting support from online friends.
- This sudden shift into mobility impairments and inability to do daily living activities impacts his well-being. He is not able to all the tasks or chores he needs to do to remain healthy.

The following medical reports were submitted by the Appellant:

- August 30, 2023, Clinical Outpatient Report;
- July 26, 2023, Orthopedic Surgery Clinic Note;
- July 10, 2023, Anesthesiology Consult, index finger;
- December 14, 2022, Orthopedic Surgery Clinic Note, right wrist;
- December 14, 2022, X-ray Report for your right wrist;
- November 22, 2022, Orthopedic Operative Report, right wrist; and
- July 29, 2022, Ultrasound Report, right wrist.

*The panel notes that the medical reports submitted by the Appellant do not speak to the severity of the Appellant's physical or mental impairment, functional ability, ability to perform daily living activities and need for help with daily living activities.

The information in the PWD application including the following:

Self-Report

The Appellant stated the following about his impairment in the self-report:

- Unable to bend two of the joints on the index finger on the right (dominant) hand.
- A cut tendon in the index finger, and this has left him with less than 50% range of motion in that finger.
- He had a rubber tube inserted from the tip of the finger to the center of the hand.
- This surgery resulted in scarred tissue that causes constant pain.
- Unable to sleep properly due to constant physical pain; this affects his thoughts.
- He is lucky to sleep more than a few hours even though he tried and spend day and night trying to sleep.
- He was told by several doctors that he nearly died because of the wrist injury.
- The wrist injury occurred at work and Worksafe BC has rejected any claim related to the tendon damage and ignoring the possibility that there may still be wood splinters in the wrist.
- This experience has left him shaken; he has lost a sense of trust and security.
- Unable to do many basic tasks like wash dishes, open bottles and jars or open doors with out setting down anything being carried.
- It is difficult to wash himself.
- Unable to do most sports and leisure activities and he has gained weight.
- He can not sleep due to the pain and this effecting his thoughts.
- He feels depressed and with the lack of sleep, he spends all day laying in bed in pain trying to sleep.
- The ability to think and remember is impaired due to the combination of pain, lack of sleep and pain medication.
- Rolling over in bed causes pain.
- He has to use the left hand to move the blankets and pillows so that the right hand doesn't touch anything except the elevated pillow it rests on.

Diagnoses

In the Medical Report, the doctor diagnosed the Appellant with trauma on the right index finger with tendon involvement and traumatic injury on the right wrist. The onset of the trauma was not indicated.

Health History

The doctor said the following about the Appellant's condition:

- Severe injury right index finger with very limited movement.

- Had several surgeries – not able to use 2nd and 3rd fingers on right hand.
- Also limited movement with right wrist due to injury.
- Cannot use right hand – no grip.
- Medications and/or treatments that interfere with the ability to perform daily living activities have not been prescribed.
- No prostheses or aids are not required for the impairment.

Degree and Course of Impairment

The Appellant's impairment is likely to last 2 or more years from the date of the PWD application and commented: the Appellant "will still require further surgery that will improve right hand function – outcome still has to be determined".

Physical Impairment

In the Medical Report, the doctor said the following about the Appellant:

- Can walk 4+ blocks unaided on a flat surface, climb 5+ steps unaided, cannot lift and can remain seated with no limitation.
- The Appellant is "not able to use right hand and right wrist due to pain and very limited function".

In the Assessor's Report the social worker stated the following about the Appellant:

- "Right had and wrist injury, depression and anxiety".
- Walking indoors/outdoors, climbing stairs and standing are performed independently.
- Periodic assistance is required with lifting and carrying/holding: "only with left hand".

Mental Impairment

In the Medical Report the doctor said the following about the Appellant:

- There are not difficulties with communication.
- There are no significant deficits with cognitive and emotional function.

In the Assessor Report, the social worker said the following about the Appellant:

- "Right had and wrist injury, depression and anxiety".
- Hearing is good. Writing is poor ("must write only [with] left hand – even though [he] was right-handed"). Speaking and reading are satisfactory ("loses concentration on communication – too tired because [of] medication and lack of sleep")
- There are major impacts on daily functioning with cognitive and emotional functioning in the area of bodily function.

- There are moderate impacts on daily functioning with cognitive and emotional functioning in the areas of emotion (“worries”), attention/concentration, motivation, motor activity (“stomach”), and psychotic symptoms.
- There are either minimal or no impacts on daily functioning with cognitive and emotional functioning with all other listed areas.
- “Poor eating habits, poor hygiene due to lacking motivation, sleep disturbance every night. Confused at times, thoughts are fuzzy. Inappropriate anxiety, worries often and depressed. Often mind wanders, loses focus, poor short-term memory, solving problems is difficult. Often no longer has motivation and has lost interest. Tension in his stomach often. Delusional due to current situations”.

Daily Living Activities

In the Medical Report, the doctor said the following about the Appellant:

- Personal self-care, meal preparation and basic housework are continuously restricted.
- It is unknown if daily shopping is performed independently or is restricted either continuously or periodically.
- All other listed daily living activities are performed independently.

In the Assessor Report, the social worker said the following about the Appellant:

- He independently performs pay rent/bills, medications and transportation.
- With personal care, he requires continuous assistance with the tasks of dressing, grooming and bathing (“100% of days low motivation, too depressed, only use [of] left hand”), and regular diet (“100% of days unable to, too depressed and anxious”). All other tasks of personal care are performed independently.
- With basic housekeeping, he requires periodic assistance with the task of laundry (“only use of left hand”) and continuous assistance with the task of basic housekeeping (“90% of days not motivated, too depressed, anxiety”).
- With shopping the task for carrying purchases home requires periodic assistance (“only with left hand”) and periodic assistance with the task of going to/from stores (“90% of time not motivated too depressed, high anxiety”). All other listed tasks of shopping are performed independently.
- “Because his right hand and wrist are in constant pain and stuck in certain position it is impossible to use it for any gripping, writing or lifting when doing personal care, housekeeping or shopping. Another barrier is depression and anxiety causing significantly lower motivation, and fatigue due to lack of sleep.
- With meals, he requires periodic assistance with food preparation and cooking (“only use [of] left hand”). All other tasks of meals are performed independently.

- With social functioning the tasks of able to develop and maintain relationships, able to deal appropriately with unexpected demands and able to secure assistance from others require continuous assistance. All other task of social functioning are performed independently. He has marginal functioning with immediate social networks (“fluctuates in quality, distant”) and good functioning with extended social networks.
- The Appellant’s daily living activities “are significantly restricted due to two injuries to this right hand and wrist. The one to his hand happened at age of 12 and wrist injury happened at work in 2022. His hand and wrist are now stuck in a claw position. Any movement will send shooting pain up his arm. He is now experiencing depression, anxiety and constantly worrying. He has stomach problems due to stress and sleepless nights due to constant pain”.

Help

In the Medical Report the doctor said that the Appellant does not require any prostheses or aids for her impairment.

In the Assessor Report, the social worker said the Appellant:

- Family and community service agencies provided help with daily living activities (“mother (distance), WorkBC”).
- Assistance is not provided through the uses of assistive devices or an assistance animal.

Evidence At Appeal

A Notice of Appeal was submitted on January 8, 2024 and stated that “There has been a misunderstanding I have been told by doctors that I can’t work, I am confused because I can’t use my hand to work”.

The panel found that the Notice of Appeal is the Appellant’s argument and accepted it accordingly.

Evidence Prior to the Hearing

Prior to the hearing, the Appellant submitted the following information:

- A letter dated February 14, 2024. (*this document is described in detail below).
- A copy of a prescription dated February 12, 2024.
- A second Medical Report dated February 12, 2024 which was completed by a different doctor than the one who completed the original Medical Report. The

second doctor had seen the Appellant 0 times before completing the Medical Report. (*this document is described in detail below)

- A letter of support from the Appellant's Social Worker dated February 8, 2024. *this document is described in detail below.
- A second copy of the Clinical Outpatient Report dated August 30, 2023.

February 14, 2024 letter stated, in part, the following:

- "The wrist injury occurred at work and I am currently going through a WCAT appeal process because of it. I conflated these 2 processes and focused work-related information when filling out my PWD application".
- "I have a cut tendon with a hunter(rubber) rod in the Index finger of my right hand I am unable to bend the last joint in my finger and can get about 10% of the range of motion in the second joint with about 80% in the 3rd joint that connects it to my hand".
- "My wrist has chunks of plywood inside of it against my tendon and on top of the artery and it has about 70% of its previous range of motion".
- "I am in nearly constant pain that gets much worse when I use my right hand. I have been told by several [doctors] I have plywood still inside of my wrist against my tendon and on top of the artery and because of that if I don't stop moving the wrist when it hurts, I will permanently lose more mobility in the wrist than I already have".
- "The pain causes difficulty sleeping and that results in impaired mental functioning and causes irritability. I often feel as if I am in a fog and upon reflection many of my actions are reflecting this haziness. I am often unable to follow through on plans and or have to delay them due to being too tired despite having spent all night in bed trying to sleep"
- "I am unable to perform basic hygiene and self care in several ways".
- He is unable to shave properly or fold his laundry.
- "I am often not smelling the greatest as even doing the washing is a long drawn out and painful process to the point, I put it off as long as possible".
- "am unable to do dishes without pain and extreme effort to the point where I cook and eat from a single pot that goes uncleaned...".
- "I am forced to use my left hand for things like taps and faucets. At the grocery store I am often forced to set the basket down to pick up items from the shelves the cart is very [hard] to steer with one hand so I am left having to take many small trips to carry things with one hand".
- He cannot shovel the snow.
- "Trying to lift/carry anything with my right hand beyond the weight of a bag of chips is to much and rapidly causes increasing pain".

- “Intensive movement causes increased pain even without added weight”.

Second Medical Report stated the following:

Diagnoses

In the second Medical Report, the doctor diagnosed the Appellant with right wrist/forearm injury (onset 2022) and right finer tip/tendon laceration (onset 2004).

Health History

The doctor said the following about the Appellant’s condition:

- A description of the Appellant’s right hand’s medical history, including an injury on the finger at age 10 and the subsequent surgery left scar tissue and stiffness. Another surgery in 2022 to remove a foreign object from the wrist.
- Medications and/or treatments that interfere with the ability to perform daily living activities have not been prescribed.
- The appellant needs a brace for the right hand/wrist and compression bandage for his impairment.

Physical Impairment

In the second Medical Report, the doctor said the following about the Appellant:

- Can walk 4+ blocks unaided on a flat surface, climb 5+ steps unaided, cannot lift (due to right hand/wrist) and can remain seated with no limitation: “pain with lifting movements with right hand and wrist”.

Mental Impairment

In the second Medical Report the doctor said the following about the Appellant:

- There are not difficulties with communication.
- There are no significant deficits with cognitive and emotional function.

Daily Living Activities

In the second Medical Report, the doctor said the following about the Appellant:

- Continuous restrictions with personal self-care, meal preparation, basic housekeeping and daily shopping.
- Periodic restrictions with use of transportation and social functioning. Under social functioning, the doctor stated “due to lack of sleep – more irritable and won’t wait to socialize or drive”.
- All other areas of daily living activities are performed independently.

February 8, 2024 letter of support, stated, in part, the following about the Appellant:

- He is unable to perform tasks of personal care without grave difficulty. For example, showering due to inability to turn on taps, cannot turn hand to scrub or wash.
- Inability to regulate diet or choose healthy foods.
- Inability to sleep due to pain and therefore without energy for tasks and chores.
- Unable to perform housekeeping and laundry due to wrist pain. He cannot hold items or move them to clean. This causes a mess to build-up and an unhealthy and unsafe environment.
- Inability to complete tasks of shopping. Due to pain and low energy and it is overwhelming to carry groceries or items. Due to the lack of sleep, his is unable to focus on shopping.
- Inability to cook or prepare meals.
- Due to pain, unable to get the necessary amount of sleep to remain healthy. This causes an impact on the energy levels for social functioning. He is irritable and anxious.

Evidence at the Hearing

At the hearing the Appellant stated, in part, the following:

- The Ministry's decision is not reasonable because it did not have all the information it needed as he confused his WorkSafe claim with this application process.
- His personal experience does not match the decision.
- With Preparing Meals: he cannot afford health food and must go to the food bank at times or gets ready made meals; he has difficulty stirring the contents of a pot when cooking because he has to grip the pot with one hand and stir with the other; and the quality of his food in impacting the quality of his life.
- With Managing Finances: he can do the math but relies on others to make ends meet; he can manage his budget when he is rested.
- With Shopping: he is unable to use the shopping cart at the store with one hand; he must use multiple shopping baskets; and he is constantly placing the basket on the floor to collect items and place them in the basket with one hand. The process is long and frustrating.
- With Transportation: he cannot ride a bike; he can drive when the car is in gear; and he wants to modify his care for left hand driving.
- With Housekeeping: it is difficult to manage tasks that require 2 hands; he struggles with sweeping and shovelling; washing pots is difficult so he cleans them by boiling water and rinsing; and he has not found an assistive device that can help him with housework.

- With Movement: he struggles with get on/off his bed or chair because he often uses his right hand; doors, snow and ice are a struggle; and his knee cap pops out of position which causes pain that last for 1-2 days.
- With Personal Care: it is difficult to clean his body and he often smells; clothing and bedding is dirty; dishes are dirty; he is bothered by the lack of good hygiene; shaving is not possible; he cannot pay people to help; and he often looks unkept.
- With Medication: he is hesitant to take medications but is physically able to do so.
- With Decisions: decisions are made in an impaired state; he is not functioning well cognitively; when functioning he cannot sustain it for 8 hours; he needs to sleep for 14 hours to get 8 hours of sleep; and his interactions with others are impacted.
- He does not have a family doctor and relies on walk-in clinics.
- He previously had a wrist fracture before the current injury.
- The December 14, 2022 report indicates limited movement of the right hand and that he is frustrated with the lack of movement.
- The August 30, 2023 report indicates that the finger is permanently swollen. It must be kept in a tensor bandage otherwise it will swell up more and is painful. Scar tissue further impedes range of motion.
- The Ministry concluded that he does not need aids, but the hand is wrapped in a tensor bandage and is also in a brace to re-shape it. It is unknown how long the brace will need to be worn. He wants a prosthesis that will allow him to return to some form of work.
- The November 30, 2022 report indicates that a foreign object was removed from his wrist. This was a chunk of plywood and there is still some remaining in the wrist.
- He is in constant pain.
- The Social Worker does not provide help or support at home.
- He used to be driven and now is in a negative mood. He used to be physically active but is limited which has impacted the ability to socialize. He can only do cardio exercises at the gym.
- He needs help with cooking and cleaning. At times he will provide neighbours with tech support in exchange for help with his daily living activities. However, generally, if he does not do the tasks, it does not get done.
- Laundry is frustrating to complete. He does not have laundry facilities at home and must go to the laundromat. He must gather his clothes and take them there. He cannot fold clothes or iron so he rolls them. When doing laundry, he gets frustrated and he ends up using his right hand which is painful. The process of doing laundry is so long and frustrating that he often puts it off.
- The doctors did not assess for any non-physical. Getting a mental health assessment has been difficult.

At the hearing the Ministry relied on its reconsideration decision.

- The Ministry added that a mental impairment cannot only be established by a social worker and there must be some agreement from the medical professional.
- The need to use the left hand to complete tasks is not considered a severe impairment.
- The second Medical Report does not differ vastly from the original Medical Report, which has been assessed in the reconsideration decision.
- All aspects of physical functioning (such as walking and climbing stairs) must be reviewed to determine overall physical functioning. Though issues arise from the Appellant's right hand (such as gripping and holding), he can ambulate and function with left hand. Overall, the Appellant has good physical functioning.

Admissibility of Additional Information

The Ministry did not object to the admission of any additional information the Appellant submitted prior to the hearing or at the hearing.

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 information submitted prior to the hearing and the Appellant's reference to his knee provided additional detail or disclosed information that provides a full and fair disclosure of all matters related to the decision under appeal. The panel has admitted this new 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 reconsideration decision, which found that the Appellant is not eligible for designation as a PWD, was reasonably supported by the evidence or was a reasonable application of the legislation.

Panel Decision**Severe Impairment**

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 determine 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 Appellant said that due to his right hand and wrist injuries he suffers from pain.

The Ministry said that based on the information provided in the PWD application, the Appellant does not meet the legislative requirements of severe physical impairment.

In the reconsideration decision, the Ministry pointed out the Appellant's physical functioning and the narrative provided by the doctor in the original Medical Report. The Ministry also pointed out the Appellant's physical functioning and the narrative provided by the Social Worker in the Assessor's Report. The Ministry stated that it acknowledged the Appellant's chronic pain and loss of effective use of the right hand. However, while the Ministry notes the limitations of the right index finger and wrist limit the ability to lift, carry and hold things with the right hand, the Appellant reported that he can lift 10 pounds is not indicative of a severe physical impairment. The Appellant appears to use the left hand to complete tasks which does not suggest an overall severe impairment. Further,

the Appellant has no reported restrictions in all other functional skills. For example, he can walk four or more blocks unaided, climb five or more stairs unaided, and has no limitation in the duration he can remain seated.

The Ministry concluded that, based on the information provided in the original Application and Request for Reconsideration, the Appellant does not have a severe physical impairment.

The panel's task is to determine if the Ministry's decision is reasonable. In the case of the Appellant, he can function in his physical and mobility tasks. That is, according to the doctor, he can walk 4+ blocks unaided and climb 5+ steps and remain seated without limitation. In the Assessor's Report the social worker said that the Appellant needs periodic assistance with lifting and carrying/holding but can independently walk indoors/outdoors, climbing stairs and standing. The social worker did not provide an explanation as to how often assistance is needed or how much longer it takes the Appellant to lift or carry/hold.

The panel considered the second Medical Report and found that the physical functioning is listed exactly the same. That is, the second doctor also indicated that the Appellant can walk 4+ blocks unaided and climb 5+ steps and remain seated without limitation. Both doctors indicated that the appellant cannot lift. However, the Ministry concluded that the ability to complete tasks with the left hand is not indicative of a severe impairment. The panel finds that the inability to lift, carry/hold with one hand is not indicative of a severe physical impairment. The panel acknowledges that the Appellant can lift with his left hand. However, the panel is of the opinion that the Ministry did not consider the condition of the Appellant's right hand, and the pain resulting from it, in its determination. Instead, the Ministry paid considerable attention to the ability to ambulate. The Ministry appears to have neglected the narrative provided in the Medical and Assessor's Reports.

In the original Medical Report, the doctor stated that the Appellant's index finger has limited movement and that he cannot use the 2nd and 3rd fingers. The doctor indicated that the Appellant cannot grip with his right hand due to injuries to the wrist. The doctor stated that further surgeries are required which will improve function but the outcome still has to be determined. That is, future surgeries should help but it is unknown if they will or to what degree they will help. In section E, the doctor stated that the Appellant is "not able to use right hand and wrist due to pain and very limited function". Similarly, the social worker indicated repeatedly that the Appellant can only use the left hand. The Appellant has stated, and it is confirmed by the additional reports and second Medical

Report, that the right hand is in a claw shape, has little to no movement, it cannot be used and a brace and tensor bandage must be worn. The hand is also swollen.

By the Ministry's own definition, an impairment is *a loss or abnormality* of psychological, anatomical or physiological structure or function causing a restriction in the ability to function independently, effectively, appropriately *or* for a reasonable duration. In the case of the Appellant, the evidence demonstrates that there is an abnormality of anatomical structure (his right hand) that has caused the inability to function effectively. When considering the entirety of the information, the panel finds that the Appellant does have a severe impairment.

As a result, the panel finds that the information provided does establish that the Appellant has a severe physical impairment. As a result, the panel finds that the Ministry was not reasonable when it found that the Appellant does not have a severe physical impairment as is required by Section 2(2)(a) of the Act.

Mental Impairment

The Appellant argued that he is depressed, anxious and lacks energy.

The Ministry argued that based on the information provided in the PWD application, the Appellant does not meet the legislative requirements of severe mental impairment.

In the reconsideration decision, the Ministry pointed out that in the Medical Report the doctor did not diagnosis the Appellant with a mental condition or brain injury and indicated that there were no significant deficits with cognitive and emotional functioning or difficulties with communication. The Ministry pointed out the narrative provided in the Assessor's Report and noted that the social worker stated that there are: major impacts to bodily functions; moderate impacts in emotions, attention/concentration, motivation, motor activity and psychotic symptoms; minimal impacts in consciousness and executive functioning; no impacts in impulse control, insight and judgement, memory, language, other neuropsychological problems and other emotional or mental problems. The Ministry also noted that the social worker stated that the Appellant has good ability in hearing, satisfactory ability in speaking and writing and poor ability in writing.

The ministry acknowledged that the Appellant reported experiencing anxiety and depression. However, this has not been diagnosed by the doctor or in the attached medical records. While Assessor identified a major impact to bodily functions, specifically eating and diarrhea due to anxiety and sleep disturbance, this is related to physical functioning. The doctor did not report any significant deficits in cognitive and emotional

functions, and no difficulty with communication. The Ministry concluded that based on the information provided in the original Application and Request for Reconsideration, the Appellant does not have a severe mental impairment.

The panel agrees that the information in the PWD application does not show that the appellant has a severe mental impairment. The severity of the impairment must be linked to the ability to function. The panel points out that though the social worker said that there are major and moderate impacts to some areas of cognitive and emotional function, the doctor stated that there were no significant deficits to cognitive and emotional functioning. The social worker indicated that the Appellant's writing is poor, hearing is good and speaking and reading are satisfactory. However, the doctor indicated that there are no difficulties with communication. Although the social worker observed depression and anxiety, this was not noted by the doctor who spent about the same amount of time with the appellant.

The panel considered the second Medical Report and notes that the doctor did not diagnosis the Appellant with a mental impairment, and indicated that there are no difficulties with communication. The panel also notes the doctor's narrative did not mention anything about depression or anxiety. In fact, the doctor's narrative only mentions pain, limitations with the right hand and wrist, and lack of sleep which impacts social functioning. There is no satisfactory explanation as to why the two doctors and the social worker have differing opinions regarding mental impairment.

As a result, the panel finds that the information provided does not establish that the Appellant has a severe physical impairment. As a result, the panel finds that the Ministry was reasonable when it found that the Appellant does not have a severe mental impairment as is required by Section 2(2)(a) of the Act.

Restrictions in the ability to perform Daily Living Activities

Section 2(2)(b)(i) of the Act requires that the Minister must be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the Appellant's ability to perform daily living activities either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the Ministry's decision is based on the evidence from prescribed professionals. The term "directly" means that there must be a connecting link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a part related to time or duration – the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended

periods. So, in the cases where the evidence shows that a restriction happens periodically, it is appropriate for the Ministry to ask for evidence about the duration and frequency of the restriction to be “satisfied” that it is for extended periods.

The Appellant argued that that due to complications from his medical conditions he is unable to function and complete his daily living activities.

The Ministry argued that it is not satisfied that the information in the PWD application shows that the impairment directly and significantly restricts daily living activities continuously or periodically for extended periods.

In its reconsideration decision, the Ministry noted the following:

- The Appellant has not been prescribed any medications or treatments that interfere with the ability to perform daily living activities.
- In the Medical Report, the doctor indicated that the Appellant is continuously restricted in personal self care, meal preparation and basic housework. The Appellant is not restricted in management of medication, mobility inside or outside the home, use of transportation, management of finances.
- In the Assessor’s Report, the social worker indicated that the Appellant need continuous assistance from another person to do: Personal Care (dressing, grooming, bathing and regulating diet); ‘low motivation, too depressed, only uses left hand’ and “unable to [regulate diet] too depressed and anxious’; Basic Housekeeping ‘90% of days not motivated, too depressed, anxious’; Shopping; going to and from stores ‘90% of time not motivated, too depressed, high anxiety’.

The Ministry stated that while the Assessor states the need for continuous assistance, the nature, frequency, and type of the assistance was not described making it difficult to confirm the significance of these restrictions. The narrative provided indicates that the primary restriction is due to a mental impairment, which has not been diagnosed by the medical practitioner. Therefore, it is difficult for the Ministry to confirm that the Appellant is significantly restricted for extended periods as required by legislation. Further, the Assessor noted that the Appellant is performing these activities with the left hand. However, it is not reported that needing to use the left hand only results in a significant restriction, nor that the periodic assistance is for extended periods or significant. Further, the narrative provided relates this to income rather than physical abilities. Therefore, the ministry cannot confirm a significant restriction periodically for continued periods, in these two aspects of daily living activities.

The Ministry pointed out that, in the Medical Report, the doctor did not indicate any restrictions to social functioning. The Ministry noted that following from the Assessor's Report in regard to the Appellant:

- Requires continuous support / supervision with developing / maintaining relationships, dealing appropriately with unexpected demands, and securing assistance from others.
- Is independent with making appropriate social decisions and interacting appropriately with others.
- Has marginal functioning with immediate social network and good functioning with extended social networks.
- There is no indication of safety issues with regards to social functioning.

The Ministry stated that Assessor has not provided any information regarding what type of continuous support needed to explain the nature of the restriction in these areas while maintaining marginal and good functioning in social networks. Additionally, the doctor did not confirm a restriction in social functioning nor a medical condition to account for such a restriction. Therefore, the Ministry found that there was not enough evidence to confirm that in the opinion of a prescribed professional, the Appellant is directly and significantly restricted in the ability to perform daily living activities continuously or periodically for extended periods.

The panel finds that the Ministry analysis of the evidence and findings based on the evidence to be reasonable. Though the Medical Report and Assessor's Report provide information about the Appellant's inability to perform some daily living activities independently, neither provided enough information. For example, the social worker failed to indicate the frequency and duration of the help needed with tasks or daily living activities that are periodically restricted. Without this information it is difficult to determine if the appellant is restricted in these daily living activities or tasks periodically for *extended periods*. The doctor indicated that medication does not interfere with the ability to perform daily living activities and that no assistance is required for daily living activities from another person, device or animal. The social worker failed to describe the nature of the assistance required for tasks that require continuous assistance. For example, what assistance is necessary with regulating diet and how is the restriction related to the inability use the right hand. The limitations that are described focus on the mental health issues of depression and anxiety and not on the right hand. Depression and anxiety are not diagnosed conditions so it is unclear how they can impact daily living activities to the degree described by the social worker.

The social worker did not state that the Appellant is unable to complete tasks of daily living. Rather, she indicated that he struggles to complete them and can only use his left hand to complete them. The panel notes that the social worker did not provide any information regarding the continuous support the Appellant requires with social functioning.

When considering the second Medical Report, the doctor indicated that medication does not interfere with the ability to perform daily living activities. The doctor indicated that periodic restriction exists with use of transportation and social functioning. However, the doctor did not explain the type, frequency and duration of the restriction. The doctor indicated that others need to help but did not indicate the type, frequency and duration of the help that is required with transportation or social functioning. The doctor indicated that social functioning is periodically restricted due to a lack of sleep. The lack of sleep is due to right-hand pain. The doctor did not indicate how often the Appellant lacks sleep. The Appellant seemed to indicate that he lacks sleep daily. So, then it is confusing why socialization, which is dependent on his sleep, is only restricted periodically.

At the hearing the Appellant provided more detail about his restriction to daily living activities. While this is good and important information, the legislation requires that any direct and significant restrictions to daily living activities must be reported by a prescribed professional. In this case, neither the doctors nor social worker provided sufficient information in this area.

As a result, the panel finds that the ministry was reasonable when it found that the appellant does not have a severe physical or mental impairment that directly and significantly restricts daily living activities as is required by Section 2(2)(b) of the Act.

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.

The Appellant stated that due to his medical condition he needs help with daily living activities. He also must wear a brace which is an assistive device.

The Ministry argued that since the legislative requirements regarding direct and significant restriction to daily living activities was not met, the need for help cannot be met.

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 found that the Appellant was not eligible for PWD designation, was reasonably supported by the evidence and is a reasonable application of the legislation, and therefore confirms the decision. The Appellant is not successful on appeal.

Part G – Order

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

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

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

Legislative Authority for the Decision:

Employment and Assistance Act

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

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

Part H – Signatures

Print Name

Neena Keram

Signature of Chair

Date: 2024/02/21

Print Name

Jan Broocke

Signature of Member

Date: 2024/02/22

Print Name

Kenneth Smith

Signature of Member

Date: 2024/02/21