

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) Reconsideration Decision dated February 1, 2024, in which the ministry found the appellant was not eligible for designation as a Person with Disabilities (“PWD”) under section 2 of the *Employment and Assistance for Persons with Disabilities Act* (“Act”). The ministry found that the appellant met the age requirement; the requirement for the impairment to continue for at least 2 years (“duration”), and the requirement for a severe impairment (physical impairment). The ministry was not satisfied that:

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

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

Part D – Relevant Legislation

The ministry based the reconsideration decision on the following legislation:

Employment and Assistance for Persons with Disabilities Act - section 2

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

The panel also relied on:

Employment and Assistance Act - section 22(4)

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

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

The information the ministry had at the reconsideration included:

1. A Decision Record indicating that the PWD application was submitted on December 22, 2023, and denied on January 7, 2024, with the Decision Denial Summary explaining the criteria that were not met. In the original decision, the ministry found that only the age and duration requirements were met.

On January 25, 2024, the appellant submitted a Request for Reconsideration with additional information. On February 1, 2024, the ministry completed its review and found that the requirement for a severe impairment was now established, but daily living activities and the need for help were still not met.

2. The PWD application with 3 parts:

The Applicant Information (“self-report”) dated November 8, 2023, with a hand-written submission from the appellant.

A Medical Report dated November 20, 2023, signed by a general practitioner (“doctor”) who has known the appellant for 9 years, and saw her 11 or more times in the past 12 months, and

An Assessor Report dated November 20, 2023, also completed by the doctor who based the assessment on an office interview with the appellant, file chart information (specialist consult report) and information from community services (social worker statement).

Summary of relevant evidence from the application

Diagnoses

In Section B of the Medical Report, the doctor listed and checked several diagnostic codes to indicate that the appellant has the following conditions:

- immune disorders (other)
- metabolic disorders (other)
- thyroid disorders
- diabetes

- fibromyalgia, and
- sleep apnea.

In Section C – Health History, regarding the degree and course of the impairment the doctor wrote, “patient has been started on new medication and no response so far.” The medications “are being adjusted and have not reached the therapeutic dose.”

Functional skills

Self-report

The appellant reported “pain since 2019” that normally starts in her cerebellum, “inside brain” and extends down her left side from her shoulder towards her left groin, thigh, and leg. The appellant described the pain as so “agonizing” that it makes her angry and sore and causes her to lose self-control of her body. Strong medications also make her very sleepy, and managing medications for high blood pressure and diabetes frustrates her a lot.

The appellant listed her numerous medical conditions which make her “restless and fidgety.” Her right eye hurts and loss of vision in her eyes can be harmful for her. The appellant said that she has especially lost control of the left side of her body. She feels that she is being “pulled to the left side through her insides.” She cannot stand on her legs for one hour. The numerous medications and dizzy feeling have “destroyed my self-confidence and put on me so many troubles.”

Medical Report

In Section E - Functional Skills, the appellant is able to walk less than 1 block unaided on a flat surface; and climb 2-5 steps unaided. The appellant has limitations with lifting (under 5 pounds) and remaining seated (less than 1 hour). The doctor checked “no” when asked if the appellant has difficulties with communication.

Under Comments, the doctor said that “the patient has upper and lower extremity (left side) pain that keeps her from waking more than a block. She has to stop to let the pain subside and then walk again.”

When asked if there are any significant deficits with cognitive and emotional function, the doctor indicated deficits for 4 of the 12 areas listed:

- Memory
- Emotional disturbance
- Motivation; and
- Attention or sustained concentration.

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

- Consciousness
- Executive
- Language
- Perceptual psycho-motor
- Psychotic symptoms
- Impulse control
- Motor activity; and
- Other.

In Section G - Additional Comments, the doctor wrote, "patient has been suffering from fibromyalgia and depression. The pain and medications prescribed have impacted her daily functioning." The appellant also has diabetes, hypertension, and obstructive sleep apnea. Sleep apnea "makes her sleepy during the day."

Assessor Report

In Section C-2, the doctor indicated "good" for all areas of communication: speaking, reading, writing, and hearing.

In Section C-3 - Mobility and Physical Ability, the doctor indicated restrictions for 4 areas in that the appellant requires periodic assistance from another person for:

- Lifting; and
- Carrying and holding.

The appellant also takes significantly longer than typical with:

- Walking outdoors; and
- Climbing stairs.

The doctor commented, "has to stop frequently."

The doctor assessed the remaining areas of Mobility and Physical Ability as independent:

- Walking indoors; and
- Standing.

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

- moderate impact for emotion, attention/concentration, and motivation.

The doctor checked "no impact" for the remaining functions:

- bodily functions
- consciousness
- impulse control
- insight and judgment
- executive
- memory
- motor activity
- language
- psychotic symptoms
- other neuro-psychological problems; and
- other emotional or mental problems.

The space for comments was left blank.

Daily living activities

The doctor provided the following information:

Medical Report

In Section C-3, the doctor checked “yes” the appellant has been prescribed medications or treatments that interfere with the ability to perform daily living activities (comment, “the medications prescribed for fibromyalgia and depression cause somnolence.”

In Section F - Daily Living Activities, the doctor checked that the following activities are restricted:

- Basic housework
- Daily shopping
- Mobility outside the home; and
- Use of transportation.

The doctor indicated that the other activities listed on the form are not restricted:

- Personal self care
- Meal preparation
- Management of medications
- Mobility inside the home
- Management of finances; and
- Social functioning.

The space for additional comments was not completed.

Assessor Report

In Section C-1, the doctor said that depression and fibromyalgia impact the appellant's ability to manage daily living activities. The doctor wrote, "pain causes problems in walking, and depression has affected her mood, low energy and concentration."

In Section D, the doctor indicated the following restrictions for 2 of the 8 daily living activities listed in the form:

Shopping

The appellant takes significantly longer than typical with going to and from stores and carrying purchases home.

The space for Additional Comments, including the assistance required and any safety issues, was not completed.

The doctor checked "independent" for the remaining areas: reading prices and labels, making appropriate choices, and paying for purchases.

Transportation

The appellant takes significantly longer than typical with all areas: getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation (comment, "pain in limbs). The doctor checked "independent" for using transit schedules and arranging transportation.

Once again, the space for Additional Comments, including the assistance required and any safety issues, was not completed.

The doctor checked "independent" for all areas of six daily living activities listed in the Assessor Report:

- Personal Care: the appellant is "independent" with dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers (in/out of bed), and transfers (on/off chair).
- Basic housekeeping: the appellant is "independent" with laundry and basic housekeeping.
- Meals: the appellant is "independent" with meal planning, food preparation, cooking, and safe storage of food.
- Pay Rent and Bills: the appellant is "independent" with banking, budgeting, and pay

rent and bills.

- Medications: the appellant is “independent” with filling/refilling prescriptions, taking as directed, and safe handling and storage.
- Social Functioning: the appellant is “independent with appropriate social decisions; able to develop and maintain relationships; interacts appropriately with others; able to deal appropriately with unexpected demands, and able to secure assistance from others.

The doctor checked that the appellant has “marginal functioning” with her immediate and extended social networks. In the section for comments, the doctor wrote, “patient is getting help from social worker.”

Need for Help

Medical Report

In Section C-4, the doctor checked “no” when asked if the applicant requires any prostheses or aids for the impairment (comment, “just CPAP machine”).

Assessor Report

In Section B-1, the doctor checked that the appellant lives alone in a community shelter.

In Section E - Assistance provided by other people, the doctor checked “community service agencies.”

The doctor did not provide any check marks or information in the next part of Section E - Assistance provided through the use of assistive devices. The doctor wrote “n/a.”

The doctor checked “no” the appellant does not have an assistance animal.

Additional evidence submitted with the application

The following reports were submitted with the PWD application:

3. A Magnetic Resonance Imaging (“MRI”) report, dictated by a resident doctor on February 22, 2021. An MRI of the appellant’s head was obtained. The reason for the exam was a history of lesions in the previous MRI.

Findings in the MRI report included “mild brain parenchymal and corpus callosal volume loss, more than expected for age.” There was also mild thinning of the body of the corpus callosum, and approximately 14 scattered white matter super-intense foci (non-specific).

Other areas were reported to not have lesions or diffusion and were described as normal or unremarkable. The optic nerves were not optimally assessed but the right one appeared less well defined than the left (query, "are there visual symptoms?").

The resident doctor's impression affirmed mild brain volume loss (more than expected for age), and multiple white matter lesions that were overall non-specific in isolation and distribution. The differential diagnosis included small-vessel ischemia and demyelinating disorder and requires a comparison with the previous MRI.

4. An MRI report, dictated by a doctor on February 6, 2023. The reason for the exam was a 2-year follow-up on "abnormal white matter changes in brain." The February 2021 MRI was used for comparison.

Findings in the 2023 MRI report indicated that the majority of lesions were similar in size and distribution. There may be partial resolution with a few of the previously noted lesions. It was unclear whether another lesion is new. The optic nerves are within normal limits on this MRI.

The overall impression in the 2023 MRI is, "stability over time" with the lesions. There was not enough (specific) distribution to suggest Multiple sclerosis, which does remain within the differential diagnosis.

5. A letter from the doctor who had completed the PWD forms. The letter dated September 11, 2023, states that the appellant is not fit to work.

6. A prescription for a CPAP machine dated November 27, 2023.

7. A Diagnostic Report from a sleep clinic signed by a specialist (internal medicine and respiratory) on November 15, 2023. The interpretation indicated "very severe" obstructive sleep apnea. The patient requires urgent treatment with CPAP equipment. Lifestyle changes such as exercise and improved diet/weight loss were also recommended. Treatment for co-morbidities (such as hypertension and diabetes) is required, as well as follow up by the referring physician.

8. A 4-page letter from a neurologist, dated October 16, 2023. The letter, addressed to the doctor who filled out the PWD medical reports, describes the appellant's symptoms and provides information about her medical history:

- The patient was not reporting good symptom management at her appointment in June 2023. She was advised to continue her prescription medication for neuropathic pain management with follow up in 6 months.

- The patient “is not doing well.” She is experiencing more right-sided headaches associated with paraesthesia on the right side of her head. Her left-sided pain/ paraesthesia has also gotten worse. She experiences radiating pain from her hip to her lower extremity.
- The patient “continues to feel sleepy all the time.” She is so sleepy that she is unable to exercise. She also complains of night sweats and excessive sweating when she goes to the gym. These symptoms are intensified by her medication, which helped her neuropathic pain but has lost its efficacy.
- The patient disclosed severe sleep apnea for which nasal surgery was not effective. She tried CPAP several times but could not tolerate it. The sleep specialist stopped seeing the appellant because CPAP was not tolerated and was also expensive.
- The patient has been experiencing rashes for the past few weeks and has been to the Emergency Room for high blood pressure for which she takes medication.
- The patient has been seen by a specialist for diabetes and hypothyroidism. Her thyroid function was normal.
- The past medical history includes hypothyroidism, preeclampsia, previous traumatic exposure (to a violent event) as a child, hyperlipidemia, and fluctuating blood pressure.
- On examination, the patient’s mood was depressed. She had some left hip and foot weakness. Her strength was “5/5” and her gait was normal. Her MRI results (2021 and 2023) were essentially unchanged. There was no indication of Multiple sclerosis but some atrophy in her brain “was more than what can be seen from age.” The patient’s lipid profile showed improvement.
- The patient’s depression was more symptomatic, and she reported more symptoms in her lower, back. Her medication was switched since the previous one was no longer helping her pain or mood.
- The patient was advised to use CPAP to treat her sleep apnea as the condition directly affects her overall mood, night-time sleep quality, daytime sleepiness, and blood pressure management. The patient was advised to get another referral to a sleep clinic and to work with the supplier to find a CPAP machine that she can tolerate.

9. A Confirmation of Assistance dated November 9, 2023, with associated forms, indicating that the appellant is currently receiving income assistance from the ministry.

Request for Reconsideration

A Request for Reconsideration signed by the appellant on January 25, 2024, contains the following attachments and evidence:

- A hand-written submission from the appellant, describing her “multiple serious

health issues” over many years and especially since 2019. The appellant described “horrible pains” in all her organs, which have escalated, extending to the left side of her head, left heart, left legs, and chest.

The appellant described “major issues” with sleep apnea. The latest sleep report showed that she stops breathing multiple times. She needs “immediate and serious treatment,” as sleep apnea causes pain in her chest, and she faces a high risk of heart attack every night.

The appellant said that she cannot attend to any employment due to “not having focus and concentration.” During the day she is sleepy and can’t breathe well. She is confused and in so much pain due to fibromyalgia. She lost her business; is not capable of working and was unable to complete her studies due to her medical conditions.

The appellant said that she had to move to a community shelter due to “family pressure.” She lacks any source of income which further increases her overall stress. The appellant reported a high level of depression and is frequently sick due to her low immune system. She has seen her family doctor and many specialists over the years.

- A letter from a neurologist dated January 5, 2024. The letter confirmed that the appellant suffers from severe sleep apnea (with oxygen desaturation), fibromyalgia, depression, hyperlipidemia, and hypertension.

The letter said that the appellant has been unable to receive CPAP therapy because the treatment is not covered by MSP and her application for private insurance was rejected due to pre-existing medical conditions. Sleep apnea, if untreated, “can increase her chance of having heart attacks, strokes, etc. and will continue to disrupt her cognitive function.”

- A letter from the doctor who filled out the PWD forms, dated January 23, 2024. The doctor indicated that depression, severe obstructive sleep apnea, fibromyalgia, and hypertension “interfere with the patient’s activities of daily life.” Depression and pain from fibromyalgia have disabled the patient. She cannot work and is living in a community shelter due to family problems.
- Home Sleep Apnea Test Results dated December 11, 2023, with a copy of the Diagnostic Report, prescription for a CPAP machine, and the Interpretation signed by the internal medicine/respirology specialist on November 15, 2023. The

Interpretation of the sleep test indicated “very severe obstructive sleep apnea” and an urgent need for CPAP treatment.

Additional evidence provided after the Reconsideration

The appellant filed a Notice of Appeal, received by the Tribunal on February 8, 2024. The appellant included a hand-written submission and typed letter which the panel accepts as argument for the appeal.

Testimony at the hearing

Appellant and advocate (friend) testimony

The appellant attended the hearing with a friend for support (referred to in this decision as the “advocate”). In addition to argument, the appellant and advocate provided the following additional evidence:

- The appellant reviewed her medical history which includes “debris” in her head following a violent incident when she was a child. She later experienced vision problems; an enlarged head; “serious nervous headaches” and “spots on her head” (detected in an MRI).
- In 2019, “something strange” happened to her head. She had problems with her balance, and everything was dark in front of her eyes. She was diagnosed with fibromyalgia and several other conditions. The pain in her hip, especially, “got worse and worse” despite medication.
- The appellant’s family complained that she could not do anything for them as she was too sleepy all the time. The appellant kept trying to make food as she did not want to accept being disabled.
- The left side of her body kept getting worse, “with serious pain” and the inability to walk straight. She began to struggle with sleep apnea but could not afford the \$3,000 CPAP treatment.
- She is exhausted while cooking and needs to rest every 5-15 minutes.

In response to questions from the panel, the appellant explained that:

- She feels sleepy when she first gets up. She tries to make coffee but within an hour she must sit and rest because her heart starts beating fast.
- She has “excruciating left side pain all the time” and tries to avoid going out. She rarely leaves the home because she does not feel safe. She must use a cane if she goes out “but that is not something [she] can live with.”
- She can’t even go shopping. Her family did the shopping for her and now the

advocate helps her.

- She cannot make meals at all or do laundry, but she can “take care of in suite laundry.”
- She cannot cook, as most of the time she is sleeping.
- If she needs to go out the advocate drives her around. She occasionally drives by herself to visit a close family member.

When asked why she can't leave home, the appellant explained that she has no motivation and is frustrated because her illness is not diagnosed completely. Her knee keeps bending and she is afraid of falling. The spots on the left side of her brain impact the right side of her body.

When asked why she “can't cook at all”, the appellant said she is always sleepy and drowsy. If she walks for even a minute, she is exhausted. The advocate added that the appellant is specifically restricted with cooking because “her left hand could not grab the pot.” The advocate was worried that the appellant would drop the pot and hurt herself. The advocate added that the appellant sometimes falls and needs to grab things to maintain her balance. The advocate said the appellant “cannot use her left hand with peace of mind.”

The appellant was asked if she contacted the doctor after the doctor checked “independent” for cooking and other chores. The appellant said no, she “did not have updated forms to get updated information.” The appellant said that she “was not allowed to have anything revised by the doctor. The ministry just said to write down the reasons for her appeal.”

Ministry testimony

In response to questions from the appellant and advocate, the ministry clarified the information they require for daily living activities. The ministry said that the information does not have to be from the doctor. Another professional listed in the legislation can provide information about daily living activities, including a:

- registered psychologist,
- registered nurse or registered psychiatric nurse,
- occupational therapist,
- physical therapist,
- social worker,
- chiropractor, or
- nurse practitioner.

The ministry confirmed that they will look at a report from one of these professionals even if there was only one appointment. The appellant can re-apply for PWD designation if not successful with this appeal.

Admissibility - oral submissions

The panel finds that the appellant's and advocate's testimony added detail regarding the appellant's medical history, experience with pain, daily living activities, and the process the appellant went through with the doctor. The ministry provided general information about reports from other professionals.

There were no objections to the panel admitting the additional information as evidence. The panel finds the testimony admissible under section 22(4) of the *Employment and Assistance Act* as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

In addition to evidence, both parties provided argument for the appeal at the hearing. The panel will consider the arguments in Part F - Reasons.

Part F – Reasons for Panel Decision

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

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

Analysis*PWD designation - generally*

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

Some requirements must have an opinion from a professional, so it is reasonable to place significant weight on those opinions. The ministry found that 3 of the 5 requirements were met because the appellant is at least 18 years of age; a doctor has given the opinion that the impairment is likely to continue for at least 2 years, and the appellant has a severe impairment (physical impairment).

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

Severe impairment

"Severe" and "impairment" are not defined in the legislation. The ministry considers the extent of any impact on daily functioning as shown by limitations with or restrictions on physical abilities and/or mental functions. The panel finds that an assessment of severity based on physical and mental functioning including any restrictions, is a reasonable

interpretation of the legislation. A medical practitioner's description of a condition as "severe" is not determinative on its own. The ministry must make this determination considering the relevant evidence and legal principles.

Restrictions to Daily living activities

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

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

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

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

Help Required

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

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

Restrictions to daily living activities

Appellant's position

The appellant's position is that her daily living activities are significantly and continuously restricted because of daily severe pain, lack of strength, sleepiness, and low energy and motivation. The appellant finds it hard to understand why she was denied PWD when the ministry said that her impairment is severe.

The appellant explained that she is well-educated, had a professional career, and achieved certificates of appreciation for volunteer and community service. She is "not the type of person to take advantage" of government benefit programs.

The appellant argued that her physical condition is complicated due to multiple diagnoses and incidents with weakness and pain. Sleep apnea impacts all aspects of her life, aggravates her other conditions and puts her at risk for a heart attack. She "honestly can't do anything...not even simple exercises."

The appellant submits that she explained everything in the PWD application, but she could describe her entire life as there is not enough space on the forms to elaborate on every detail. The doctor confirmed that she has issues with shopping and going out, but the ministry still said she can take care of herself, cook, comb her hair, and walk inside the home.

The appellant feels that the ministry did not fully consider her issues. There was not enough space on the forms for the doctor to answer, "there were mostly little tick boxes" and the ministry did not give her a new form and explain what information is needed.

The appellant submits that the ministry should consider making an exception when the rest of the documents show a severe impairment. The neurologist and doctor said that "they would talk about [the appellant's] issues because it seems that the ministry makes the decision independently without trusting the physicians."

Ministry's position

The ministry's position is that there was not enough evidence from the appellant's doctors about restrictions to daily living activities. The ministry acknowledged that the appellant's

medications make her sleepy but argued that the doctor did not say whether the restrictions reported for housework, shopping, mobility outside the home, and use of transportation are continuous or periodic as required by the Act.

The ministry acknowledged that the doctor said the appellant takes longer to go shopping and arrange/use transportation. But without information on how much extra time is needed, the ministry said it could not determine if the restrictions are significant as required by the Act.

At the hearing, the ministry explained that it needs very specific information from the doctor (or other prescribed professional) about the appellant's ability to manage activities such as personal care, cooking, cleaning, shopping, filling her prescriptions, using transportation, etc. The ministry agrees that the appellant's impairment is severe but needed more information about daily living activities.

Panel's Decision - daily living activities

The panel finds that the ministry reasonably determined that daily living activities are not significantly restricted continuously, or periodically for extended periods as required by the Act.

The appellant said that her daily life is impacted by "excruciating pain", sleepiness, depression, and other symptoms. She doesn't feel safe going out; can't shop or cook or drive most places; and rarely leaves the house because she is tired all the time.

The appellant has detailed her circumstances very well and the panel is sympathetic. However, the ministry's decision is reasonable because the Act requires the assessment of daily living activities to be in the opinion of a prescribed professional. Accordingly, the panel must give more weight to the information in the Medical Report and Assessor Report, completed by the doctor, to determine if the decision is reasonably supported by the evidence.

In the Medical Report, the doctor indicated that Basic housework, Daily shopping, Mobility outside the home, and Use of transportation are restricted. The doctor did not check whether the restriction is continuous or periodic as required by the Act.

The doctor confirmed that the appellant's medications cause somnolence, and that the appellant has to stop and rest when she walks, but there were no comments about how often these symptoms restrict mobility, housework, etc. including how long the appellant needs to rest. The ministry reasonably requires that information because the Act says that

the restriction to daily living activities must be significant and either continuous or periodic for extended periods.

In the Assessor Report, the doctor indicated that the appellant takes significantly longer to shop and carry purchases. She is also slow with using transportation due to the “pain in her limbs.” However, there were no further details or comments from the doctor. Therefore, the ministry could not determine whether the restrictions are significant as required by the Act.

Furthermore, there was some inconsistent evidence in the submissions. In the Medical Report, the doctor said the appellant is restricted with housework, but in the Assessor Report, the doctor checked “independent” for Basic Housekeeping. Although the appellant said she can’t cook and faces safety issues if she tries to grab a pot handle or walk somewhere, the doctor indicated no restrictions with meal preparation or cooking in the Medical and Assessor reports. No safety issues were reported either.

The appellant said that the ministry did not give her a new form to take to the doctor, but she obtained letters for reconsideration from both the doctor and neurologist. Unfortunately, these letters do not establish that daily living activities are significantly restricted because they contain general statements only.

The letter from the neurologist dated January 5, 2024, states that untreated sleep apnea “will continue to disrupt [the appellant’s] cognitive function.” However, there was no information about the impact on daily living activities. The original letter from the neurologist (October 16, 2023) talks about increased pain and depression but there was no information about the impact on daily activities.

Similarly, the letter from the doctor, dated January 23, 2024, confirms that multiple medical conditions “interfere with her activities of daily life.” Aside from this general statement there was no information about which activities are impacted.

The Reconsideration Decision is reasonable because there was not enough evidence from the prescribed professionals (doctor and neurologist), to confirm that daily living activities are significantly restricted by the appellant’s severe physical impairment, either continuously or periodically for extended periods. The doctor who provided the sleep study reports also did not describe the impact of sleep apnea on daily living activities.

Help with daily living activities*Appellant's position*

The appellant's position is that she is not independent with her daily living activities. At the hearing the appellant reported needing a cane to walk outside. The appellant indicated needing help from family or the advocate with cooking, shopping, and transportation.

Ministry's position

The ministry's position is that it could not be determined that significant help is required as it had not been established that daily living activities were significantly restricted.

Panel's decision - help with daily living activities

The panel finds that the ministry reasonably determined that the requirement for help was not met. Under the Act, the establishment of significant restrictions to daily living activities is a precondition for needing help.

The doctor that the appellant receives help from social workers and community service agencies. The doctor and neurologist did not prescribe a walking stick or cane but emphasized the appellant's need for a CPAP machine. However, as the panel found that the ministry reasonably determined that restrictions to daily living activities had not been established, the panel also finds that the ministry reasonably concluded that requirement for help was met under section 2(2)(b) of the Act.

Conclusion

The panel finds that the Reconsideration Decision is reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant. The appellant does not meet all 5 requirements for PWD designation under the Act because the Medical and Assessor Reports and additional submissions do not establish that:

- The appellant's severe physical impairment significantly restricts daily living activities as confirmed by prescribed professionals, and
- The appellant requires help from other people or an assistive device to manage her daily living activities.

The appellant meets 3 requirements for PWD designation (age and duration and “severe impairment”) but the Act says that the criteria for daily living activities and help must also be met. The panel is sympathetic to the appellant’s situation, but the ministry is bound by the legislation and did not have any discretion to make an exception for daily living activities.

The panel confirms the Reconsideration Decision.

The appellant is not successful in her appeal.

Schedule – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

person requires

- (i) an assistive device,
- (ii) the significant help or supervision of another person, or
- (iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

Employment and Assistance for Persons with Disabilities Regulation

Definitions for Act

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

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

- (i) prepare own meals;
- (ii) manage personal finances;
- (iii) shop for personal needs;
- (iv) use public or personal transportation facilities;
- (v) perform housework to maintain the person's place of residence in acceptable

sanitary condition;

- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self-care;
- (viii) manage personal medication, and

(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 G – Order

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

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

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

Legislative Authority for the Decision:

Employment and Assistance Act

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

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

Part H – Signatures

Print Name

Margaret Koren

Signature of Chair

Date (Year/Month/Day)

2024/03/06

Print Name

Robert McDowell

Signature of Member

Date (Year/Month/Day)

2024/03/06

Print Name

Daniel Chow

Signature of Member

Date (Year/Month/Day)

2024/03/06