

**Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated January 17, 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 and the requirement for the impairment to continue for at least 2 years (“duration”). The ministry was not satisfied that:

- the appellant has a severe mental or physical impairment;
- the severe impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform daily living activities either continuously or periodically for extended periods; and
- as a result of restrictions caused by the 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* - sections 22(4) and 24(5)

*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 indicating that the PWD application was submitted on November 15, 2023, and denied on December 19, 2023, 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 December 22, 2023, the appellant submitted a *Request for Reconsideration*. On January 2, 2024, the appellant provided additional information. On January 17, 2024, the ministry completed its review and found that the criteria for severe impairment, daily living activities and help were still not met.

2. The PWD application with 3 parts:

The Applicant Information (“self-report”) dated October 3, 2023, with a hand-written submission from the appellant.

A Medical Report dated October 29, 2023, signed by a general practitioner (“doctor”) who has known the appellant since October 2023, and saw her once in the past 12 months, and

An Assessor Report dated October 29, 2023, also completed by the doctor who based the assessment on an office interview with the appellant and the appellant’s medical chart.

*Summary of relevant evidence from the application*

**Diagnoses**

In Section B of the Medical Report, the appellant is diagnosed with the following conditions (onset 2022):

- soft tissue injury to paraspinal areas
- nerve injury to right brachial plexus (right upper limb)
- cervical spine injury, and
- alcohol use disorder.

***Functional skills***Self-report

The appellant reported "constant pain" in her neck, right shoulder, right rotator cuff, upper and lower right arm, and in her right hand, wrist, and thumb joint. The pain resulted from a workplace injury.

The appellant said that the pain has continued with only "temporary easing" despite months of rehabilitation including chiropractic treatment, physiotherapy, and massage. The appellant reported that the only relief she gets is from heat applied to the affected areas; resting those areas, and taking narcotic medication as needed.

The appellant said that she is "unable to perform" any lifting, back and forth movements, pushing and pulling, or holding tools. The appellant reported that her ability to write is impacted as she is unable to hold a pen "without constant pain." The appellant reported "intense pain" while writing the self-report. The Appellant did not provide information in section 1.B.2 of the self-report which asks: "How does your disability affect your life and your ability to take care of yourself".

Medical Report

In Section C - Health History, the doctor said that the appellant suffers pain in her neck, right shoulder and right upper limb. The appellant is unable to use her right hand and right arm "for any forceful activity." The appellant is "unable to reach overhead with right arm."

The appellant also suffers from low mood, anxiety, disrupted sleep, poor focus/ concentration, and low motivation. All symptoms were reported as "moderate-severe in intensity" and "constant." The doctor added that the appellant's conditions are chronic and "short-term recovery is usually not achievable."

In Section E - Functional Skills, the appellant is able to walk 4+ blocks unaided on a flat surface; and climb 5+ steps unaided. The appellant has limitations with lifting (maximum 5-15 pounds) and remaining seated (maximum 1-2 hours). The doctor checked "no" when asked if the appellant has difficulties with communication.

When asked if there are any significant deficits with cognitive and emotional function, the doctor checked "yes" with additional check marks for 5 of the 12 areas listed:

- Executive
- Memory

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

The section for *Comments* was not completed.

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

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

Section G - Additional Comments - was not completed.

#### 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 two areas in that the appellant requires periodic assistance from another person for:

- Lifting; and
- Carrying and holding.

The doctor wrote, “cannot use right hand for lifting or carrying.”

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

- Walking indoors
- Walking outdoors
- Climbing stairs; 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:

- minimal impact for impulse control, memory, and other neuro-psychological problems.
- moderate impact for bodily functions (the doctor highlighted “sleep disturbance”); emotion, executive, and attention/concentration.

- major impact on motivation.

The doctor checked “no impact” for the remaining functions:

- consciousness
- insight and judgment
- motor activity
- language; and
- psychotic symptoms.

The space for comments was left blank and no check mark was provided to indicate the degree of impact for other emotional or mental problems.

### ***Daily living activities***

The doctor provided the following information:

#### Medical Report

In Section C-3, the doctor checked “no” the appellant has not been prescribed medications or treatments that interfere with the ability to perform daily living activities. Section F - Daily Living Activities was not completed as the doctor provided information in the Assessor Report.

#### Assessor Report

In Section C-1, the doctor wrote that “injury to neck, spine, paraspinal tissues, and right upper limb,” as well as alcohol use disorder, affect the appellant’s ability to manage daily living activities.

### ***Restricted daily living activities***

In Section D, the doctor indicated the following restrictions for 5 of the 8 daily living activities listed in the form:

### **Personal Care**

The appellant requires periodic assistance from another person with **regulating diet** (comment, “low motivation and focus”).

The doctor checked “independent” for the remaining areas of personal care: dressing, grooming, bathing, toileting, feeding self, transfers (in/out of bed), and transfers (on/off chair).

### **Basic housekeeping**

The appellant requires periodic assistance from another person with basic housekeeping. The doctor checked "independent" for *laundry*.

### **Shopping**

The appellant requires periodic assistance from another person with carrying purchases home.

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

Under Additional Comments for these daily living activities including the type and amount of assistance required, the doctor wrote, "usually requires help for heavy items. She has poor motivation and may need prompts for appropriate decisions."

### **Meals**

The appellant needs periodic assistance with meal planning, and safe storage of food. The space to further "explain/describe" the restriction was left blank.

The doctor checked "independent" for food preparation and cooking.

### **Social Functioning**

In Section D, the doctor indicated restrictions with all areas of Social Functioning. The appellant requires periodic support/supervision from another person with:

- Appropriate social decisions (comment, "chronic mental health disorder and its stigma results in social isolation and anxiety");
- able to develop and maintain relationships (comment, "needs support from peers");
- interacts appropriately with others (comment, "needs support from friends to maintain and acceptable level of social life");
- 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. The sections for comments were left blank (including what support/supervision is required to help maintain the appellant in the community). Section F - Additional Information was also not completed.

The doctor checked “independent” for all areas of three daily living activities listed in the Assessor Report:

- 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.
- Transportation: the appellant is “independent” with getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation.

*Additional information from the appellant – daily living activities*

In the self-report, the appellant said that she is unable to sweep, mop, or vacuum as she is unable to manage the “back and forth movements” that these activities require. The appellant said that the injury in its entirety also impacts her livelihood as she is unable to perform the fine motor tasks required in her profession. The appellant noted that she had a full range of physical ability prior to the injury.

***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.

Assessor Report

In Section B-1, the doctor checked that the appellant lives with “family, friends or caregiver.” In Section E - Assistance provided by other people the doctor checked “friends, health authority professionals, volunteers, and 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 checked “no” the appellant does not have an assistance animal.

**3.** A Request for Reconsideration signed by the appellant on January 2, 2024, with the following attachments:

- a typed submission from the appellant,
- a letter from an advocate (Program Manager for an alcohol addiction treatment facility), and

- a copy of the ministry's *Denial Decision Summary* with highlighting and hand-written notations by the appellant.

In addition to argument for the reconsideration, the submissions provide the following details:

#### *Appellant's information*

The appellant explained that:

- she is new to British Columbia. She moved here to undergo treatment for her addiction. She is under the care of a new medical doctor (the doctor) because the ministry told her that the PWD medical reports had to be completed by a doctor in British Columbia. The doctor does not know her history. She was only able to see them once within the time allotted for the application.
- She experiences "terrible pain on a daily basis", which hinders her participation in the treatment program. The staff had to make "amendments to the program" so that the appellant can continue to participate and work towards successful completion.
- She requires aids such as a heating pad and hand brace, for basic day-to-day functions. She also needs "hands on assistance for things as simple as opening a door or jar, making the bed, or lifting objects of minimal weight."
- The injury occurred in October 2022, and as of January 2024, the physical impairment is expected to continue indefinitely.

The appellant highlighted In the Decision Denial Summary, the medical conditions that the doctor diagnosed as well as the ministry's findings regarding ineligibility for PWD designation. The panel considers this to be argument, to be addressed in Part F – Reasons for Panel Decision.

#### *Letter from advocate*

The letter is undated, but the advocate confirmed at the hearing that it was written on January 2, 2024. The letter provides the following information:

- In October 2022, the appellant sustained an injury to her neck and shoulder and most parts of her right arm/hand. The appellant suffered trauma from the injury and endured months of extensive treatment, but the symptoms have gotten worse "leading to a decline in mental health which led to alcohol addiction that brought her here to our facility."
- The appellant's ability to manage day to day tasks has declined during her time at the facility (a one-year program).



- Upon entry to the facility, the appellant was referred to the program's naturopath who assessed the injury and gave the appellant steroid injections which did not relieve the pain and discomfort.
- The appellant required ongoing modifications for daily tasks due to the extent of her injury. The appellant struggles with lifting a tray out of the dishwasher; carrying up to 5 pounds, turning a door handle, and making her bed.
- The appellant "constantly needs to wear a hot pack" as it helps relieve "a small amount of the discomfort." The facility also got the appellant a hand brace because simple things like writing for the program's course work "has become increasingly hard for her." The appellant's ability to sleep through the night has decreased because of the pain.
- Despite modifications made in the program, it will be difficult for the appellant to return to work based on the extent of her pain and the damage from the injury.

## **Additional evidence**

### **1. Report from naturopath**

The appellant filed a Notice of Appeal with attached report from a registered naturopath. The report is undated, but the appellant confirmed at the hearing that it was written on February 5, 2024. The naturopath provided the following information:

- The appellant's chief complaint is chronic pain in her right shoulder and wrist resulting from a severe fall at work. Despite medical intervention and physical therapy, the appellant continues to experience persistent pain as well as functional limitations on her right upper side, especially in her wrist.
- The aftermath of the fall "triggered a cascade of psycho-social challenges." Coping with chronic pain has been "overwhelming, leading to feelings of frustration, helplessness, and hopelessness."
- The appellant requires assistance with daily living activities such as cooking, cleaning, and getting dressed, as these activities have become increasingly difficult, "contributing to her feelings of dependency and challenges in maintaining her usual level of independence."
- The appellant's chronic pain and substance abuse have "significantly impacted her social and occupational functioning." The appellant is unable to work due to her physical limitations. Financial strain "has deepened her sense of despair" and limited her access to care.
- The appellant expresses "frustration and distress over the impact of her pain and substance abuse on her quality of life and relationships."

- The appellant presented with “severe, debilitating pain” in her right shoulder and wrist. The appellant described the pain as “sharp, stabbing, and radiating, limiting her ability to perform activities of daily living independently.”
- On examination, the appellant’s right wrist joint showed tenderness, swelling, and restricted range of motion, as well as muscle atrophy and weakness due to disuse and chronic pain.
- Ultrasound images dated September 8, 2023, (attached to the report) revealed a calcium stone in the right shoulder joint, contributing to the persistent pain and limited range of motion. The images compared the appellant’s affected and non-affected wrist joints and depicted the severity of arthritis on the right side, “which significantly limits physical function.”
- The naturopath recommended a multi-disciplinary approach to address the appellant’s physical, psychological, and social needs. Injections with *Kenalog* and steroids provide relief from shoulder and wrist pain. Prolotherapy offered temporary pain relief; the appellant requires further treatment.
- The appellant is currently enrolled in a substance abuse rehabilitation program, “with close monitoring and support to facilitate detoxification, relapse prevention, and long-term recovery.”
- The naturopath recommended an orthopedic consultation for further evaluation of the appellant’s shoulder and wrist arthritis, including “advanced pain management techniques.”

#### *Admissibility – report from naturopath*

The ministry did not raise any objections to the naturopath’s report. The panel finds that the report provides additional details about the appellant’s physical and emotional/social functioning. The information is in support of the evidence on functional restrictions and limitations (from the doctor, the appellant, and the advocate). The panel finds that the naturopath’s report is admissible under section 22(4) of the *Employment and Assistance Act* as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

## **2. Testimony at the hearing**

#### *Appellant and advocate testimony*

The appellant attended the hearing with the advocate. The appellant and advocate provided the following additional evidence:

- The appellant entered the treatment facility in August 2023, to participate in a one-year program for people struggling with substance abuse. The program includes

training on how to manage daily tasks. The appellant has difficulty with the program structure “due to pain that impedes her greatly,” and despite accommodations.

- The appellant “had to resort to a walk-in doctor” to fill out the PWD medical reports due to the difficulty in securing a family doctor in British Columbia. The appellant had a 9-year history with a doctor in her former province of residence but did not obtain a report from them because she was told “it has to be from a BC doctor.”
- The advocate confirmed that she is not a “prescribed professional” under the Regulation.

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

- Her physical impairment involves her entire right arm, from the shoulder to the fingertips. Injections in her shoulder “took away the angry part of the pain” but she is “still very limited with movement and any weight-bearing.” She relies on heat “at all times” to get any relief and wears a heated bag “24-7” for her shoulder. The heated bag has a groove for her hand.
- She has difficulty grabbing a bag to take it to a different room due to a lack of coordination with her non-dominant (left) hand. She can hold lighter weight objects with her non-dominant hand but “not efficiently.” Turning a door handle with her left hand is very difficult due to a lack of dexterity on her non-dominant side.
- The pain calmed down right after the injections but can flare up at any time based on how much movement she attempts to do, and at what point “the pain starts talking again.”
- She has learned to be in pain “all the time” when pouring water into the coffee maker, but that is also difficult because she has “no strength or mobility” in her right fingers and wrist. She cannot open a jar or use a can opener (she does not have an electric one) because “torquing movements cause pain.” Tasks that involve both movement and force are very challenging, so she needs help with cooking as she is unable to lift a pot of water off the stove or lift heavy pots and pans.
- She cannot sweep, mop, or vacuum at all “due to the weight of the vacuum and the need to use force.”
- She needs to take a lot of breaks when holding a pen or pencil, “to settle the pain down before resuming writing.” She used to do a lot of writing but now it takes a long time to write anything. The wrist brace gives her support but she still “doesn’t have grip in [her] fingers.” These difficulties with penmanship impact her ability to do course work at the treatment program.

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

- She “did not get compensation for pain due to the workplace injury.” She “received financial compensation and physiotherapy, but then the focus was on psychological

assessments for the emotional/mental impact of the injury.” The pain got worse as time went on and “the need for treatment for alcohol abuse increased.”

- She does not live with family or a caregiver (as check marked by the doctor in the *Assessor Report*). She lives in a home with other women at the treatment centre. “Care facility” would be the correct answer on the Assessor form.
- The doctor did not ask her about communication. The appointment was 15 minutes at most. The doctor examined her shoulder and range of movement and asked her follow-up questions about her arm and hand pain (with motion and when stationary). The appellant left the PWD medical forms with the doctor and picked them up afterward (once informed that they were complete).
- The doctor did not discuss daily living activities with her, but they did ask about lifting. She told the doctor that she could lift “up to approximately 5 pounds using both hands” but it was painful.
- She did not have any follow-up with the doctor regarding the information on the forms because she trusted that the reports were completed by a professional who would provide accurate information. The advocate added that the appellant was also seeing the naturopath who did a more thorough and complete assessment.

### *Ministry testimony*

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

- In most circumstances, the *Medical Report* needs to be completed by a doctor registered with the *College of Physicians and Surgeons of B.C.* A “prescribed professional” practising in British Columbia must complete the *Assessor Report*, but the ministry will accept supporting reports or submissions from others including out-of-province professionals. The ministry explained that it is up to the adjudicator to determine how much weight to give to additional medical evidence.
- A naturopath is not on the list of “prescribed professionals” in the Regulation. The ministry said that the legislation will be amended soon to include registered naturopaths.
- The appellant could apply for another ministry program, *Persons with Persistent Multiple Barriers to employment* (“PPMB”) that does not hinge on PWD eligibility, and which may provide benefits such as coverage for dental work and increased monthly remuneration. The appellant can also 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 provides additional information and clarification regarding the medical history, treatment for the appellant’s

injury and addiction, and the process the appellant went through with the doctor. The ministry provided general information about “prescribed professionals”, as well as other disability-related applications.

Neither party objected to the additional information. 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 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 ministry's decision that found the appellant ineligible for PWD designation was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. The panel's role is to determine whether the ministry was reasonable in finding that the following eligibility criteria in section 2 of the Act were not met:

- the appellant has a severe mental or physical impairment;
- the severe impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform daily living activities either continuously or periodically for extended periods; and
- as a result of restrictions caused by the 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 2 of the 5 requirements were met because the appellant is at least 18 years of age, and a doctor has given the opinion that the impairment is likely to continue for at least 2 years.

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

*Severe impairment*

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

interpretation of the legislation. A medical practitioner's description of a condition as "severe" is not determinative on its own. The ministry must make 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.

### **Severe mental or physical impairment**

#### *Appellant's position*

The appellant's position is that her impairment is severe because she suffers from "terrible pain" every day, as well as physical limitations on her entire upper right side. The appellant argues that her injury prevents her from lifting objects over 5 pounds, as well as pushing, pulling, carrying, or making any forceful movement with her right shoulder, arm, and hand.

The appellant argues that even with injections that take away the worst pain, she is unable to grasp or grip objects and needs assistance in lifting household items. The appellant argues that using her left side to compensate for the impairment is inefficient and unrealistic due to the lack of coordination and dexterity on her non-dominant side.

The appellant argues that the addiction recovery program is part of the discussion of a mental impairment because she was abusing alcohol to deal with the pain and stress that resulted from her injury. The appellant argues that her pain has gotten worse over time, and that the ministry's decision was made with "inadequate information and understating of where I am at."

The appellant argues that the doctor completed the PWD reports with "very little knowledge or investigation," but was the only medical doctor she had access to after her recent move to British Columbia. The appellant argues that the information from the doctor contained inaccuracies and contradictions but despite that, the ministry relied heavily on the doctor's reports to deny the application.

#### *Ministry's position*

In the reconsideration decision, the ministry's position was that the information provided did not establish a *severe* impairment. The ministry acknowledged the self-report and the letter from the advocate which described "constant pain" and difficulties with arm/hand movements. However, the ministry said that it "must put greater weight" on the information from the doctor as they are one of the prescribed professionals listed in the Regulation.



The ministry argued that the doctor did not confirm a “severe physical impairment in function overall” because the “only limits are with the right arm”; there were no limitations with walking, stairs, or communication. The ministry argued that the impairment is not severe because the appellant was assessed as independent with most daily living activities.

The ministry argued that the appellant does not have a *severe* mental impairment because the doctor indicated only a few moderate/major impacts despite the significant deficits they also reported. The ministry argued that even a moderate impairment of mental functioning could not be established on the evidence because the appellant was assessed as “almost fully independent” with daily living activities, and she needed only periodic support with social functioning.

The ministry acknowledged the year long program for alcohol addiction but argued that the letter from the advocate “focuses on the chronic pain and physical limitations and provides no information...related to any mental impairments while in the program.” The ministry noted that employability is not a factor when assessing PWD designation.

### **Decision of panel majority – Severe impairment**

#### **1. MAJORITY DECISION: MENTAL IMPAIRMENT**

Two of the three panel members (the “Majority Panel”) find that the ministry’s decision (no severe mental impairment) is reasonably supported by the evidence.

The Majority Panel finds that the evidence in the appeal record and subsequent submissions, testimony at the hearing, and in writing, does not support a finding of a severe mental impairment.: The Majority Panel finds that a review of the Medical Report and Assessor Report do not indicate that the Appellant has a mental impairment.

The Assessor Report section, C.4, on cognitive functioning, was blank in the “details/comments” section – there is no indication of the periods of impact on daily functioning of the mental impairments. Similarly, in the Medical Report, sec.2.E.6, deficits were noted in five of eleven categories of cognitive and emotional function, but the “comments” section was left blank, with no indication of the periods of impairments.

The Appellant’s self-report makes no mention of a mental impairment.

The submitted Naturopath’s letter describes psychosocial challenges, frustration, and social functioning impairments. However, the Majority Panel finds that a naturopath is not

a prescribed professional listed in the legislation as eligible to perform assessments of applicants for PWD designation. Accordingly, while there is no requirement in the legislation that assessment of severe impairment be in the opinion of a prescribed professional, the Majority Panel finds it reasonable for the Ministry to assign less weight to this letter than the Assessor Report and Medical Report completed by a doctor, who is a prescribed professional.

The letter from the Appellant's advocate contained in the appeal record mentions a "decline in mental health". The advocate admitted during the hearing that they are not a prescribed professional as listed in the legislation. As with the naturopath, the Majority Panel finds that the advocate is also not a medical practitioner as required by the legislation and for the reasons mentioned above does not give much weight to that reference to a mental impairment.

For these reasons, the Majority Panel finds that the Ministry was reasonable in determining that the Appellant does not have a severe mental impairment.

## **2. MAJORITY DECISION: PHYSICAL IMPAIRMENT**

The Majority Panel finds that the ministry's decision (no severe physical impairment) is reasonably supported by the evidence.

The doctor notes Appellant's independence in the following daily living activities:

Paying rent and bills, banking; medication; transportation; food preparation and cooking. The doctor indicates periodic assistance is required in meal planning and safe storage of food.

Included in the Appeal Record is an undated letter from the Appellant's advocate whereby the advocate describes the worksite injury suffered by the Appellant in October 2022. The advocate describes an injury to the Appellant's right shoulder, arm, wrist, hand and thumb; also describing difficulty in lifting and carrying. The letter mentions that the Appellant joined the advocate's facility in August 2023 for treatment of alcohol dependency resulting from a decline in mental health resulting from trauma of the injury and extensive treatments.

On February 5, 2024, the Appellant submitted a document to the Tribunal – a letter from a naturopath which contained ultrasound imaging of the Appellant's wrist joints and upper right shoulder. The images were dated 2023.09.08.

The naturopath notes chronic pain in right shoulder and wrist; assistance is required in day-to-day activities; chronic pain and substance abuse.

As mentioned above in the reasoning regarding severe mental impairment, the Majority Panel notes that neither the naturopath nor the advocate are prescribed professionals as defined in section 2(2) of the Regulation. Accordingly, the Majority Panel gives more weight to the Medical Report and Assessor Report completed by a medical practitioner, who is a prescribed professional.

The Majority Panel finds that the evidence in the appeal record and subsequent submissions from the Appellant do not support a finding of a severe physical impairment. The reported descriptions of daily living activities completed by a doctor indicate a substantial level of independence of the Appellant. In the Assessor Report attached to the application, the doctor states the appellant's ability to communicate is good. Mobility and physical ability are independent, except for lifting, and carrying and holding, which requires periodic assistance from another person. The doctor notes "*cannot use right hand for lifting and carrying*". Further, the doctor notes that the appellant has largely unrestricted functional skills. The Medical Report indicates that the Appellant can walk more than four blocks on a flat surface; climb unaided more than five steps; lift up to fifteen pounds (2-7 kg); sit one to two hours; and the Appellant has no difficulties with communication.

In the Majority Panel's view, the Appellant's self-report – and subsequent written submission from the Appellant and their testimony at the hearing, do not adequately counter the level of independence indicated in the Medical Report and Assessor Report nor otherwise successfully argue that the Ministry was unreasonable in determining that the Appellant does not have a severe physical impairment.

For these reasons, the Majority Panel finds that the Ministry was reasonable in determining that the Appellant does not have a severe physical impairment.

### **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 as well as limited mobility in her right upper extremities. The appellant submits that she is unable to perform simple tasks such as using a can opener, opening a door, taking things out of the dishwasher, or making her bed. The appellant submits that she cannot sweep, mop, or use a vacuum at all. Even

when she can do things (such as pouring water into the coffee maker), she experiences intense pain.

The advocate submits that even with modifications and treatment with constant heat as well as injections, the program staff have witnessed a decline in the appellant's ability to manage daily living activities. The advocate argues that the appellant's social functioning is impacted by pain, distress over her situation, and substance abuse (as explained in the report from the naturopath).

### *Ministry's position*

The ministry's position is that daily living activities are not directly and significantly restricted because the appellant is independent "with the majority of her daily living activities" and requires only periodic assistance with a few activities according to the doctor's assessments. The ministry argued that the doctor did not report on "how often the periodic assistance is needed or provided."

The ministry acknowledged that due to "significant limits with the right arm" and impacts due to mental functioning, the appellant likely experiences greater restrictions to daily activities than those reported by the doctor. However, the ministry said that it must put more weight on the doctor's information because the legislation requires the opinion of a "prescribed professional."

### **Decision of Panel Majority - daily living activities**

The Majority 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 Majority Panel finds that the evidence provided by the doctor does not show that the Appellant's ability to perform daily living activities is restricted either continuously or periodically for extended periods as required by the Act:

- The Medical Report states that the Appellant has not been prescribed any medications, and/or treatments that interfere with their ability to perform daily living activities.
- The doctor notes the Appellant is independent in personal care except for regulating diet, which requires periodic assistance due to low motivation and focus.

- The Appellant is assessed independent regarding shopping, except for periodic assistance required for carrying purchases home.
- The Appellant is assessed independent regarding laundry but requires periodic assistance in basic housekeeping. The doctor notes the Appellant's independence in following DLAs:
  - Paying rent and bills,
  - banking;
  - medication;
  - transportation;
  - food preparation and cooking.
- The doctor indicates periodic assistance is required in meal planning and safe storage of food.

The self-report mentions difficulty in lifting and housework. The advocate's letter mentions difficulty in making a bed and turning a door handle. The naturopath's letter notes difficulty in cooking, cleaning and dressing.

The Act specifically requires the assessment of daily living activities to be in the opinion of a prescribed professional. Accordingly, the Majority Panel assigns more weight to the description of the Appellant's independence regarding daily living activities portrayed in the Medical Report and Assessor Report, completed by a doctor, a prescribed professional.

The Majority Panel finds that due to the level of independence indicated in the Medical Report and Assessor Report, completed by a prescribed professional, the Ministry was reasonable in determining that the Appellant was not directly and significantly restricted in her ability to perform daily living activities either continuously or periodically for extended periods.

### **Help with daily living activities**

#### *Appellant's position*

The appellant's position is that she requires extensive help and support for her mental and physical impairments, including residential treatment for her alcohol addiction and daily help from program staff to perform simple tasks. The appellant argues that she requires help with cooking and housework because she cannot lift pots or pans or do tasks that involve torquing or use of force.

The appellant submits that help is required because she lacks coordination on her non-dominant side and experiences increased pain if she uses her right shoulder, arm, and especially her wrist. The advocate argues that the program staff have witnessed a greater reliance on help over the time as the appellant struggles with the program structure and the life skills training required for daily tasks.

#### *Ministry's position*

The ministry's position that it could not be determined that significant help is required as it had not been established that daily living activities were significantly restricted. The ministry argued that the requirement for help was also not met because the doctor did not prescribe an assistive device, and only indicated periodic assistance from another person for a few areas of daily living activities.

#### **Decision of Panel majority - help with daily living activities**

The Majority Panel finds that the ministry reasonably determined that the requirement for help was not met. The Majority Panel finds that the establishment of direct and significant restrictions with daily living activities is a precondition of the need for help criterion. As the Majority Panel found that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform daily living activities have not been established, the Majority 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 – Panel majority decision**

The Majority 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 Majority Panel finds that the appellant does not meet all 5 requirements for PWD designation under the Act because the Medical and Assessor Reports and additional submissions on appeal do not establish that:

- The appellant has a severe mental or physical impairment.
- The severe impairment significantly restricts daily living activities as confirmed by prescribed professionals, and
- The appellant requires extensive help and support from other people to manage her daily living activities.

The appellant meets only the age and duration requirements for PWD designation.

Under section 24(5) of the *Employment and Assistance Act*, the decision of a majority of the members of a panel is the decision of the Tribunal. The Majority Panel confirms the ministry's reconsideration decision. The appellant is not successful in her appeal.

### **Dissenting Member's Reasons**

One panel member finds that the reconsideration decision is not reasonably supported by the evidence or a reasonable application of the legislation for the following reasons:

#### ***Severe mental impairment - dissent***

The dissenting panel member finds that the ministry's decision is not reasonable because the Medical and Assessor Reports, with additional details from the appellant (including the advocate and naturopath), establish a severe impairment of mental functioning. The doctor diagnosed alcohol use disorder, a condition with both a physical and psychological component. In the Assessor Report (under Social Functioning) the doctor described the addiction as a "chronic mental health disorder." Given the severity of her addiction the appellant is currently undergoing treatment in a residential program.

The doctor described significant symptoms which make the impairment "severe." In the Medical Report, the doctor wrote that the appellant's physical conditions (right upper limb and spine injuries) are characterized by pain that is "constant", indicating that the appellant suffers a severe degree of pain. It is well established that the experience of pain has a subjective ("mental") component as well as a physical cause.

In the Medical Report, the doctor described the impact of both pain and addiction on the appellant's mental functioning. The doctor wrote that the appellant suffers from "low mood, anxiety, disrupted sleep, poor focus, concentration and motivation." The doctor indicated "significant deficits" with these and other mental functions. The doctor said that all symptoms are "moderate-severe in intensity" as well as constant. The doctor described the appellant's conditions as chronic, with short-term recovery unlikely.

While acknowledging that the doctor check marked only one "major impact" in the *Assessor Report* and did not provide additional comments, it is noted that some degree of impact was indicated for most mental functions. The evidence is that pain and substance abuse affect most areas of cognitive and emotional functioning. The appellant's impairment is "severe" because the effect on her mental functioning is widespread.

While it was reasonable for the ministry to rely on the doctor's information as a starting point in determining severity, the information from the advocate and naturopath should be given significant weight because it supports and is not inconsistent with the doctor's evidence. The advocate and the naturopath have greater familiarity with the appellant, having observed or assessed her daily functioning in the treatment program. The doctor had only met with the appellant one time to complete the PWD application.

The information from the advocate and the naturopath gives a fuller picture of the "significant" cognitive and emotional deficits indicated by the doctor. Their letter and report detail the appellant's experience with pain as well as the stress and trauma that resulted from the accident.

The appellant reported that treatment provides only temporary relief from "constant pain" which has gotten worse over time. The appellant explained that her mental health, rather than specific treatments for pain, became the focus of her rehabilitation after the accident.

The cumulative impact of pain and substance abuse on the appellant's daily function is described in detail in the advocate's letter and naturopath's report. The greatest contributor to the appellant's substance abuse was not only the physical injury, but the stress (emotional as well as financial) of having to live with significant pain. The advocate and the naturopath describe the appellant's "trauma" and "sense of despair" over not being able to do things that were easy for her prior to the accident.

While the appellant can write a self-report, she experiences intense pain in doing so. The pain also affects her ability to manage the course work for her program. Therefore, written communication is impaired. The ministry said that most daily living activities are independent, but in the Assessor Report, the doctor provided detailed comments about restrictions to social functioning. The appellant has a "chronic mental health disorder" with "stigma [that] results in social isolation and anxiety."

The appellant's subjective experience with "constant pain," combined with alcohol addiction and a poor prognosis for short-term recovery, establishes a *severe* impairment of mental functioning. A global assessment of the evidence indicates that the appellant experiences daily cognitive and social deficits, especially low mood, anxiety, and problems with written communication and social isolation. The dissenting view is that the ministry's determination is unreasonable because a fulsome assessment of the evidence (including the consistency between the doctor's and appellant's information regarding the severity of symptoms) demonstrates a *severe* mental impairment.



***Severe physical impairment - dissent***

The ministry's decision was not reasonable because the Medical and Assessor Reports, with additional details from the appellant, establish a severe impairment of physical functioning. The dissenting panel member finds that the ministry's assessment of severity was too narrow.

The ministry acknowledged the painful right arm injury but highlighted the doctor's check marks which indicate that walking, climbing stairs, and standing are independent. The ministry concluded that the "only limits are with the right arm" and there was "no impairment in function overall."

The ministry's analysis is unreasonable because it focuses on physical functions that were not impacted by the appellant's injuries and minimized the impact of the right upper body injuries. In the dissenting member's view, the determination of severity does not require all physical functions to be impacted, given that the injuries to the appellant's dominant right side (especially her shoulder, arm, wrist, and hand) are extensive. The appellant has a *severe* physical impairment because the injuries limit many everyday movements such as lifting heavier objects, pushing/pulling, grabbing, gripping, etc.

The ministry said that it put greater weight on the information from the doctor, but the dissenting member finds that the appellant's and advocate's evidence should be given significant weight as well because the information they provided is consistent with the doctor's assessments. The appellant's reports of "constant" physical pain and difficulties with specific arm/hand movements support the doctor's information in the *Medical Report*:

- "pain" [that is moderate/severe as well as constant]
- "inability to use right hand/arm for any forceful activity"
- "unable to reach overhead with right arm."

The appellant's evidence regarding her difficulties with lifting and carrying is consistent with the Assessor Report:

- "cannot use right hand for lifting or carrying."

In the Medical Report, the doctor checked that the appellant can lift 5-15 pounds, but the appellant clarified that she can lift 5 pounds at most. The appellant testified that any lifting is very difficult due to increased pain when she attempts to lift something with both hands.

The ministry said that the impairment is not severe because the appellant was assessed as independent with most daily living activities. However, the doctor indicated restrictions for several activities (to be addressed in the next section of this Dissent).

The evidence establishes that the appellant cannot lift, carry, hold, or use her right upper side for any forceful movements without experiencing significant and increased pain. The appellant must wear a heat pad "24-7" to obtain any relief from "constant pain."

The dissenting view is that the ministry's determination is unreasonable because the evidence respecting the appellant's upper arm injury, demonstrates a *severe* impairment of physical functioning. There is a high degree of consistency between the doctor's and appellant's evidence, confirming significant right upper body limitations, especially with lifting given the degree of pain.

### ***Restrictions to daily living activities - dissent***

The ministry's decision is not reasonable because there **is** enough evidence from the prescribed professional, the appellant's doctor (with additional details from the appellant) to confirm that several daily living activities are directly and significantly restricted by a severe impairment.

In the Assessor Report, the doctor said that "injury to neck, spine, paraspinal tissues, and right upper limb" as well as alcohol use disorder impact the appellant's ability to manage daily living activities. It is therefore established on the doctor's evidence that the appellant's physical and mental impairments are the cause of any restrictions and the requirement for "direct" restrictions under the Act is met.

In addition, the doctor's comments in the *Medical and Assessor Reports*, which are more detailed and therefore carry more weight than the check marks, indicate that restrictions are periodic for extended periods because symptoms are "constant" and the conditions are chronic.

### ***Social functioning***

The doctor confirmed that social functioning is significantly restricted because the appellant requires periodic support/supervision from another person with all areas listed in the Assessor Report. The appellant has marginal functioning with her social networks due to her "chronic mental health disorder."

The ministry said that the doctor did not report on the nature of the supervision or “how often the periodic assistance is needed or provided.” However, the doctor commented that the appellant “needs support from peers and friends” to function socially but is isolated and anxious due to the stigma associated with her addiction. The doctor said that the addiction is a “chronic mental health disorder” with low mood, anxiety, and other symptoms that are constant.

While the doctor did not outright state that the restriction itself is for extended periods, the appellant’s ongoing experience with stigma and isolation and her participation in a year long program indicate that she needs the peer and community agency support indicated by the doctor, for extended periods of time.

The naturopath provided further detail in support of the doctor’s information. While not a prescribed professional under the Act, the naturopath explained that the appellant “expressed frustration and distress” over the impact of pain and substance abuse “on her relationships.” The appellant resides in a treatment facility where she is receiving daily support for addiction recovery. The periodic assistance indicated by the doctor is clearly for an extended period, given that the appellant is participating in the program and trying very hard to heal despite debilitating pain that has not, to date, been successfully treated.

There is enough evidence from the doctor, with supporting information from the naturopath, regarding the impact of the appellant’s addiction and mental health symptoms on her relationships due to her need for ongoing support. The restriction to social functioning is for an extended period, as required by the Act.

#### *Personal Care, Basic Housekeeping, Shopping, and Meals*

The doctor’s evidence establishes significant restrictions for extended periods to several activities under these headings. Regarding restrictions to activities involving mental functioning, the appellant needs periodic help with *regulating diet* due to low motivation and focus. The appellant needs periodic help with *meal planning*, and *safe storage of food*. The doctor wrote that the appellant has poor motivation “and may need prompts for appropriate decisions.”

The information in the Medical Report establishes that periodic help is for extended periods because the appellant’s anxiety, poor focus, and low motivation are “constant.” The appellant is residing in a treatment facility for a year. The program staff support her daily. The evidence from the doctor, with additional details from the appellant, confirms that the appellant requires periodic assistance with daily living activities on an ongoing basis.

Regarding restrictions due to the upper arm injuries, the doctor indicated that the appellant requires periodic assistance with basic housekeeping and carrying purchases *home*. The doctor said that the appellant “usually” needs help with heavy items due to her physical impairment. “Usually” indicates that a periodic restriction with carrying purchases is for extended periods as required by the Act.

The advocate indicated that the treatment facility provides life skills training that includes requiring the appellant “to do day to day basic tasks within the program.” The advocate and the appellant detailed the appellant’s struggles with lifting pots of water and doing household chores such as sweeping and mopping despite modifications and assistance from staff.

Specific examples of the appellant’s challenges, support the doctor’s information that the appellant is “unable” to do forceful activities, reach overhead, or use her right arm for lifting and carrying. *Basic housekeeping and shopping (carrying purchases)* are clearly restricted for extended periods. Even when the appellant manages to do things independently, she experiences stiffness, a lack of coordination on her non-dominant side, and increased pain that feels “sharp, stabbing, and radiating” [naturopath’s report].

*BC Supreme Court decision, Hudson v. Employment and Assistance Appeal Tribunal*

The ministry’s application of the legislation is also not reasonable. The ministry concluded that daily living activities are not directly and significantly restricted because the appellant is independent “with the majority of her daily living activities” and requires only periodic assistance “with a few activities” according to the doctor’s assessments.

However, the legal test, set out in the *Hudson* decision, is not whether most activities are independent or whether only a few activities are periodically restricted. The Court said that there must be evidence from a prescribed professional indicating a direct and significant restriction “on at least two daily living activities.” The “majority of activities” do not need to be restricted.

The doctor’s checkmarks in the *Assessor Report*, combined with the narrative comments in the Medical and Assessor Reports, confirm significant restrictions to at least two daily living activities (as listed in the Regulation). The doctor confirmed that the restricted activities are:

- shop for personal needs,
- perform housework to maintain the person's place of residence in acceptable sanitary condition,

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

The appellant's examples of her daily challenges lend detail to the doctor's checkmarks and comments. The appellant faces significant barriers in carrying shopping items, sweeping and mopping, making decisions, and interacting socially due to significant pain, decreased upper body mobility, and alcohol misuse which affects her mood and motivation. The help the appellant requires is for extended periods; therefore, these activities are restricted "periodically for extended periods" as required by the Act.

The evidence especially shows that the appellant made decisions about personal activities by abusing alcohol to cope with the pain and stress of her injuries. That decision resulted in the need for treatment for her addiction. The appellant's ability to relate to and interact with others is impacted by stigma, and anxiety over her situation. The dissenting panel member finds that the ministry did not give enough weight to the doctor's narrative or the appellant's supporting evidence and did not apply the legislation in a reasonable way.

#### ***Help with daily living activities - dissent***

The ministry's decision is unreasonable because there **is** enough evidence from the prescribed professional to meet the precondition under the Act, that daily living activities are directly and significantly restricted by a severe impairment. With that requirement established, the evidence for "help" can be fully assessed.

The advocate explained that the appellant lives in a "care facility" and not with "family, friends, or caregiver" as indicated in the *Assessor Report*. The doctor said that the appellant "usually requires help for heavy items" indicating that the degree of help from other people is significant. The appellant needs help with shopping (*carrying purchases*) more often than not because she is "unable to use her right and for lifting and carrying" as stated in the *Assessor Report*.

The doctor also wrote in the *Assessor Report* that the appellant "may need prompts for appropriate decisions." The appellant is receiving significant help from other people for "appropriate decisions" because she is in a year long residential program for her alcohol addiction.

The doctor commented that the appellant "needs support from peers and friends to maintain an acceptable level of social life" but is socially isolated due to stigma from the alcohol use disorder. The appellant therefore requires significant help from other people to break her isolation and improve her social functioning.

In the Assessor Report, the doctor indicated that help with daily living activities is provided by a wide range of people including friends, Health Authority professionals, volunteers, and community service agencies. While the doctor did not add further comments, the advocate corroborated the doctor's information, explaining that the treatment facility staff provide help with daily tasks including housework and lifting heavier items which the appellant struggles with due to her "constant pain" and other symptoms.

The ministry's decision is unreasonable because the appellant is clearly receiving a lot of help (including program modifications) from staff at the residential treatment facility. The need for help from a wide range of people (in other words "significant help") was confirmed by the doctor. In the dissenting member's view, the requirement for help with daily living activities was met.

In the dissent's view, the reconsideration decision should be rescinded because all five criteria for PWD designation are established on the evidence.

### **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 (**Dissenting**)

Signature of Chair

Date (Year/Month/Day)

2024/02/28

Print Name

Robert Kelly

Signature of Member

Date (Year/Month/Day)

2024/02/28

Print Name

John Pickford

Signature of Member

Date (Year/Month/Day)

2024/02/28