

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (the “Ministry”) Reconsideration Decision dated 6 December 2023, which found that the Appellant did not meet three of the five statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* (“Act”) for designation as a person with disabilities (“PWD”).

The Ministry was not satisfied that the evidence establishes that:

- The Appellant has a severe physical or mental impairment;
- The Appellant's daily living activities are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- As a result of these restrictions, the Appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform daily living activities.

The Ministry also found that the Appellant is not one of the prescribed classes of persons who may be eligible for PWD designation on the alternative grounds set out in Section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation* (the “Regulation”).

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act, section 2.

Employment and Assistance for Persons with Disabilities Regulation, sections 2, and 72.

Employment and Assistance Act, section 22(4).

The relevant legislation is provided in the Appendix.

Part E – Summary of Facts

The hearing took place in person, with the Ministry attending by phone. There were no other attendees other than the appellant, the ministry representative, and the panel members.

Evidence before the Ministry at Reconsideration

The evidence before the Ministry at the time of the Reconsideration Decision included the PWD Application comprised of an applicant information, completed by the Appellant on 24 May 2023. Although not containing a self-report, it did contain a Medical Report dated 18 July 2023 completed by the Appellant's Rheumatologist specialist, who is a medical practitioner ("the Specialist"). The Specialist has known the Appellant for 5 years and has seen the Appellant 2-10 times in the past year. An Assessor Report was completed by the same Specialist, dated 22 August 2023, and submitted as part of the application.

The evidence available to the Ministry at the time of the Reconsideration Decision also includes:

- A Request for Reconsideration ("RFR") form that was undated and unsigned by the Appellant. It contained a handwritten page of self-report of reasons for the request. That information is summarized as;
 - Experiencing pain due to the Appellant's rheumatoid arthritis and other health problems.
 - Some days cannot even get out of bed, dress, cook, shop.
 - The pain is unpredictable and changes hourly, which makes it difficult to plan and is frustrating.
 - Most of the Appellant's joints are deformed or will be. Her toes are deformed and cause painful foot corns. She has swollen wrists, fingers, and knees.
 - The Appellant's movement limitations make life a battle to overcome due to her pain, frustration, disappointment, and hopelessness.
 - The pain from the arthritis continues to keep her awake despite having had two knee surgeries. Feelings of exhaustion in the morning and only the help of family and friends keep her moving forward.
 - Her illness caused impairment that affects all her movement and ability to live a normal life. This is getting worse due to aging.

Diagnoses

In the Medical Report, the Specialist diagnosed the Appellant with;

- Rheumatoid arthritis (date of onset: 1998);
- Osteoporosis (date of onset: not provided);
- Acute myocardial infarction (date of onset: 2015); and
- Osteoarthritis (date of onset: not provided).

Severe Physical Impairment

In the Medical Report, under Health History, where asked to indicate the severity of the applicant's medical conditions and how they impair the applicant, the Specialist wrote that the Appellant;

- has rheumatoid arthritis [RA]. She is on therapy for this. She has bilateral hand/wrist deformities, and this affects her ability to use her hands effectively. She has OA [Osteoarthritis] in both knees. Recently had bilateral knee replacements, last was left knee in June 2023. Still recovering. She is on therapy/medications for her RA."
- uses right and left wrist supports for her chronic wrist pain, and
- has not been prescribed any medications or treatment that may interfere with her ability to complete daily living activities.

With respect to functional skills, the Specialist reports that the Appellant can walk four or more blocks unaided on a flat surface, climb five or more stairs unaided, and can lift up to five pounds.

Lastly in the medical report the Specialist wrote that the Appellant had "recent left knee arthroplasty June 6, 2023. She is currently recovering from this, but I anticipate full recovery. Right knee arthroplasty in Nov 2022 is well healed. She has chronic RA which is limiting her. She is on therapy for this, but some persistent limitations notably such as typing for long periods. She cannot sit for >1hour."

In the section of the Assessor Report completed later by the Specialist, where the assessor is asked to indicate the assistance required related to impairments that directly restrict the applicant's management of mobility and physical abilities, the Specialist reports the following mobility and physical abilities:

- the appellant is independent walking indoors, standing (up to 15 minutes), and lifting (up to 10 pounds).
- the appellant takes longer walking outdoors (slower, can do 30-40 minutes), climbing stairs (1 at a time), and carrying and holding (up to 10 pounds).

Also in the Assessor Report, the Specialist reports the Appellant's rheumatoid arthritis results in chronic joint pain and damage.

Severe Mental Impairment

In the Medical Report the Specialist states there are no significant deficits to her cognitive and emotional function, and in the assessor report, the Specialist identifies that the physical impairment has no impact on the Appellant's daily cognitive and emotional functioning.

Regarding communication abilities, in the Medical Report, the Specialist assesses the Appellant to have no difficulties with communication, and in the Assessor Report, to have good ability in communication, including speaking reading, writing, and hearing.

In the Assessor Report the panel notes the Specialist has completed section 3-C, part 4. This section is annotated with the instruction to only complete this if the Appellant has an identified mental impairment, including brain injury. In the chart, where an indication is made as to what degree the mental impairment restricts or impacts the Appellants functioning, the Specialist has ticked '*no impact*' to all fourteen (14) named items.

Restrictions in the Ability to Perform DLA

Although not required to be filled in if the same Specialist was completing the assessment report, section 2F of the Medical Report on daily living activities was in fact completed. The Specialist ticked the box '*No*' to the question "does the impairment directly restrict the person's ability to perform daily living activities" and went on to tick '*No*' as to whether each of nine (9) listed daily living activities are restricted. The Appellant is not restricted in personal self-care, meal preparation, medication management, basic housework, daily shopping, mobility inside/outside the home, transportation, finances, or social functioning.

In the section in the Medical Report on what assistance the Appellant needs with daily living activities, the Specialist writes that no additional supports are needed at present. The panel notes the Specialist went on to complete the Assessor Report at a later date.

In Section 3 of the Assessor Report, the Specialist writes the Appellant's ability to manage daily living activities is impacted by her rheumatoid arthritis and osteoarthritis.

The Specialist reports the Appellant takes longer to:

- Do laundry ("slower due to joint pain") and basic housekeeping (2X per month, limited by joint pain).
- Carrying purchases home ("limited to weight < 10 lbs")
- Getting in/out of vehicle ("can be harder in am due to joint pain").

The Specialist reports the Appellant is independent in all other activities, including:

- Personal Care,
- Shopping: going to/from stores, reading prices/labels, making appropriate choices, paying for purchases,
- Meals,
- Paying rent/bills,
- Medication,
- Transportation: using public transit, arranging transportation, and
- Social functioning, with good functioning in your immediate and extended social networks.

In the assessor's report the Specialist states the Appellant needs no assistance for daily living activities.

Need for Help

In the Medical Report the Specialist indicates that the Appellant lives at home alone, and no additional supports are needed at present. The Appellant receives no assistance with daily living activities.

In the Assessor Report the Specialist reports the Appellant requires no assistance with daily living activities, although she does wear left and right wrist braces.

Additional Information Submitted after Reconsideration

Section 22(4) of the Employment and Assistance Act says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required

for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based on the requirements set out in the legislation and on all admissible evidence.

In the section of the Notice of Appeal that asks why the Appellant disagrees with the Ministry's Reconsideration Decision, the Appellant has attached a letter, defining 20 years of being sick with rheumatoid arthritis and justifying why she believes she is eligible for disability assistance.

The letter recounts how having rheumatoid arthritis has affected the Appellant's physical and mental health. Her severe impairment in most of her joints significantly hinders her ability in daily activities such as walking, shopping, house chores and sleeping. The Appellant has a lot of pain, and the joint deformation is getting worse. The pain makes her feel exhausted, frustrated, and depressed. The Appellant advises that her family doctor has retired, and she believes her medical history, if it was available to the panel, contains documentation that outlines the severity and persistent nature of her condition.

The Appellant also submitted a follow up letter from her Specialist. The letter stated she is significantly impacted by her rheumatoid arthritis, having extensive joint damage in her wrists, feet and knees. The Appellant recently had knee replacement surgeries, has chronic joint pain due to her deformities in her wrists and feet and is on treatment for her rheumatoid arthritis. The letter states she is unable to have a full-time job due to pain and physical limitations and asks for reconsideration of her application for disability or to consider getting an independent reviewer for a formal assessment.

Evidence Presented at the Hearing

At the hearing, the Appellant reiterated the statements made in the Reconsideration Decision and the letter submitted with the Notice of Appeal. The Appellant explained that she had been reluctant to commit her story to paper as a self-report, not wanting to make a fuss, her doctor telling her the Ministry would interpret the report and understand she is unable to complete many day-to-day activities.

The Appellant provided greater detail with regard to her limitations. She requires several hours each day to be able to get out of bed, having to slowly exercise for 2-3 hours to free

her joints. She has had to stop painting, cannot go to a movie as she cannot sit for long, and has had to learn to cope and live with her disabilities.

Although she is able to live alone, she is only able to do so because she has taught herself to manage. She has had knee surgery however the swelling has returned as she has a disease of rheumatoid arthritis, as it is always there.

The Appellant confirmed that the Specialist did not initially complete the Assessor Report and she was not aware of the type of person who could complete the document, such as a nurse practitioner, social worker or therapists. As she has been unable to find a replacement general practitioner, she contacted the Specialist at the Ministry's urging to complete the assessor section of her application.

The Appellant does not want to have to depend on others, she has had to quit work in the past as she could not keep up with the demands. She agrees that she can walk and use public transport but explains she can only walk on flat surfaces and needs to stop often and sit for 15 minutes to recover. She is also afraid of hurting herself and cannot shake hands with people for example due to this fear.

The Appellant acknowledged her Specialist stated she was not taking drugs that would interfere with her ability to do daily living activities, but wanted to stress she is on many medications but wanted to stress that if she did not take them, she would not be able to function as much. There are also a number of side effects, such as anxiety, that she experiences from the number and type of medications, including experimental drugs, that she is taking.

At the hearing, the Ministry relied on the Reconsideration Decision and recounted the five criteria that need to be met to achieve PWD status. The Ministry confirmed it had considered the self-report filed by the Appellant with the reconsideration application but needed a medical practitioner to confirm her restrictions.

The Ministry commented on the new information from the Appellant's Specialist, and while it had no objection to the admissibility, the Ministry feels there is no new information regarding mobility, physical condition, daily effects, and ability to do daily living activities.

Admissibility of New Evidence

The Appellant's letter submitted with the appeal expands upon the personal self-reports in the request for reconsideration. The letter from the Specialist submitted by the Appellant reiterates statements made in the Medical Report and Assessor Report and provides new

evidence in the form of a recommendation for an independent reviewer for a formal assessment.

The Ministry did not object to the panel considering any of the new evidence as admissible.

The panel admits the new information 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.

Part F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's Reconsideration Decision, which found that the Appellant is not eligible for designation as a PWD, was reasonably supported by the evidence and/or was a reasonable application of the legislation in the circumstances of the Appellant. In other words, was it reasonable for the Ministry to determine that the evidence does not establish that the Appellant has a severe mental or physical impairment, and that the Appellant's daily living activities are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods? Was it reasonable for the Ministry to determine that because of any direct and significant restrictions it could not be determined that the Appellant requires the help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform daily living activities?

ANALYSIS

The Ministry found that the Appellant is not one of the prescribed classes of persons who may be eligible for PWD designation on the alternative grounds set out in section 2.1 of the Regulation and the Appellant did not appeal the decision on this basis. As there was no information or argument provided for PWD designation on alternative grounds, the Panel considers that matter not to be at issue in this appeal.

Severity of Impairment

Neither the terms "*impairment*" nor "*severe*" are defined in the Act. The Cambridge Dictionary defines "*impairment*" in the medical context to be "*a medical condition which results in restrictions to a person's ability to function independently or effectively*" and defines "*severe*" as "*causing very great pain, difficulty, worry, damage, etc.; very serious*". "*Impairment*" is defined in the Medical Report and the Assessor Report sections of the PWD application form to be "*a loss or abnormality of psychological, anatomical, or physiological structure or function causing a restriction in the ability to function independently, appropriately or for a reasonable duration*". While the term is not defined in the legislation, the Panel finds that the Ministry's definition of "*impairment*" as set out in the Medical Report and the Assessor Report is a reasonable definition of the term for the purpose of partially assessing an applicant's eligibility for the PWD designation.

In addition, a diagnosis of a severe impairment does not in itself determine PWD eligibility. Section 2(2) of the Act requires that in determining whether a person may be designated

as a PWD, the Ministry must be satisfied that the individual has a severe physical or mental impairment with two additional characteristics: in the opinion of a medical practitioner or a nurse practitioner it must both be likely to continue for at least two years , and in the opinion of a prescribed professional it must directly and significantly restrict a person's ability to perform daily living activities continuously or periodically for extended periods, resulting in the need for the person to require an assistive device, significant help or supervision or an assistance animal in performing those activities .

Therefore, in determining PWD eligibility, after assessing the severity of an impairment, the Ministry must consider how long the severe impairment is likely to last and the degree to which the ability to perform daily living activities is restricted and assistance in performing daily living activities is required. In making its determination the Ministry must consider all the relevant evidence, including that of the Appellant.

However, the legislation is clear that the fundamental basis for the analysis is the evidence of prescribed professionals – in this case the Specialist regarding the length of time that the severe impairment is likely to continue, and the Specialist alone regarding the impact on daily living activities and the need for help.

Both the duration of the impairment criterion and the Appellant's age criterion have been determined by the Ministry to have been met and are not at issue in this appeal.

Physical Functioning

Ministry's Position

The Ministry's position is that based on the information provided, the Ministry is not satisfied that the Appellant has a severe physical impairment.

The Ministry acknowledges that the Appellant has several medical conditions that impact her life. The self-report highlights how she experiences pain which interrupts sleep.

The Ministry argues the physical functioning, mobility and physical abilities do not confirm a severe physical impairment.

Appellant's Position

The Appellant's position is that all aspects of her physical functioning are restricted as evidenced by the restrictions in walking, sitting, holding and lifting and not being able to get out of bed in the morning without extensive stretching.

Most of the Appellant's joints are deformed or will be. Her toes are deformed and cause painful foot corns. She has swollen wrists, fingers, and knees. As such her movement limitations make life a battle to overcome due to her pain, frustration, disappointment, and hopelessness.

The pain from the arthritis continues to keep her awake despite having had two knee surgeries. Feelings of exhaustion in the morning and only the help of family and friends keep her moving forward. Her illness causes impairment that affects all her movement and ability to live a normal life. This is getting worse due to aging.

Panel Decision

The panel notes that in the Medical Report the Specialist has provided the following diagnoses;

- Rheumatoid arthritis (date of onset: 1998);
- Osteoporosis (date of onset: not provided);
- Acute myocardial infarction (date of onset: 2015); and
- Osteoarthritis (date of onset: not provided).

As detailed in the background information provided by the Specialist in the Medical and Assessor Reports, the Appellant is independent in walking indoors, standing and lifting with some requiring taking a little longer. She can walk for 30 to 40 minutes, and more than four blocks, without assistance. While she does this slowly, the additional time required was not reported. While the Appellant must take stairs one at a time, she can climb five or more stairs unaided.

The Specialist has reported on the recent left knee surgery from which the Appellant is currently recovering, and the Specialist anticipates full recovery. Right knee surgery from 2022 is well healed. The Appellant requires some bracing for her wrists.

The panel notes the testimony of the Appellant in which she details a greater level of restriction caused by her illnesses including side effects from the medicines, and the inability to get out of bed some mornings. The Appellant agreed that she can walk, but on flat ground only as long as she can take breaks, and notes that some conflict exists between the recent self-report and the information in the Medical and Assessor Reports.

On the evidence the panel finds the range of physical functioning provided by the Specialist compared with the definitions of the Ministry accepted earlier by the panel, does not support a finding of a *severe* degree of impairment to the Appellant's physical functioning. The Ministry was therefore reasonable in finding that the information provided does not establish a *severe* physical impairment.

Mental Functioning

Ministry's Position

The Ministry argues there the Specialist has not provided a diagnosis that explicitly results in a mental impairment, that no significant deficits or impacts to the appellant's cognitive and emotional function, and no difficulties with communication, have been reported.

Appellant's Position

The Appellant's position is that her movement limitations make life a battle to overcome due to her pain, frustration, disappointment, and hopelessness. The Appellant testified as to suffering from anxiety.

Panel Decision

While the Appellant has mentioned anxiety, which is listed as a mental disorder on the application form, the panel notes no diagnosis for a mental disorder provided by the Specialist.

The panel notes that in both the Medical and Assessor Reports the Specialist states there are no significant deficits and no impact to her cognitive and emotional functioning.

Regarding communication abilities, both the Medical and Assessor Reports provides that the Appellant has no difficulties with communication, and to have good ability in communication, including speaking reading, writing, and hearing.

Although the Specialist had completed the report section if the Appellant has an identified mental impairment, the panel notes the Specialist has ticked 'no impact' to all fourteen (14) named items that would restrict or impact the Appellant's functioning due to a mental impairment or brain injury.

The panel finds on the evidence that if the Appellant is indeed suffering from a mental impairment, which is not clearly established by the Medical or Assessor Reports, then the impairment is not severe as defined in the legislation. Therefore, the Ministry was reasonable in finding it cannot confirm the Appellant experiences a severe mental impairment.

Restrictions in the Ability to Perform Daily Living Activities

Ministry's Position

The Ministry's position is that while the Appellant is impacted by her medical condition, they do not appear to result in significant restrictions in the daily living activities set out in legislation and the application. The Appellant can complete almost all activities independently. The Ministry argues that while she takes longer for basic housekeeping and laundry, the additional time is not reported, preventing the Ministry from determining if she is significantly restricted in these areas.

The Ministry notes the Appellant takes longer for one aspect of shopping and transportation. However, the Ministry argues she is independent in all other aspects of these activities and is not reported to require assistance. Therefore, the Ministry cannot confirm a significant overall restriction in the Appellant's ability to complete these activities. Further, the additional time needed is not reported for these tasks either, nor is it reported that this results in a need for assistance.

Appellant's Position

The Appellant's position is that it should be obvious to the Ministry that she experiences constant pain due to the Appellant's rheumatoid arthritis and other health problems. She states that some days she cannot even get out of bed, dress, cook, shop. The pain is unpredictable and changes hourly, which makes it difficult to plan which is frustrating.

Panel Decision

Daily living Activities are defined in section 2(1) of the Regulation and are also listed, in an expanded form and using different language, in the Medical Report and in the Assessor

Report. For example, the daily living activities of “*prepare own meals*” in the section 2(1) of the Regulation appears in the Assessor Report as “*meal planning*”, “*food preparation*”, “*cooking*” and “*safe storage of food*”.

Section 2(2)(b) of the Act requires that the Ministry be satisfied that a prescribed professional has provided an opinion that an applicant’s severe impairment directly and significantly restricts their daily living activities, continuously or periodically for extended periods. The term daily living activities appears in the Act, under section 2(2)(b), in the plural (“daily living activities”), which means that at least two of the activities listed in section 2(1) of the Regulation must be significantly restricted for this legislative criterion to be met (*Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2009 BCSC 1461).

Section 2(2)(a) of the Regulation defines “*prescribed professional*” to include both a “*medical practitioner*” and a “*nurse practitioner*”. The Specialist is considered a prescribed professional for the purpose of providing opinions regarding the nature of the Appellant’s impairment and its impact on the performance of daily living activities. The term “*directly*” means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. There is also a component related to time or duration - the direct and significant restriction must be either continuous or periodic. If periodic, it must be for extended periods.

In both the Medical Report and the Assessor Report, prescribed professionals are instructed to check marked boxes and to provide additional explanations; for example, a description of the type and amount of assistance required and the frequency and duration of periodic restrictions.

In this case the panel notes the information before the Ministry included a Medical Report and an Assessor Report completed by the Appellant’s specialist who is a medical practitioner. Within the reports the Specialist ticked the box ‘No’ to the question “does the impairment directly restrict the person’s ability to perform daily living activities” and went on to tick ‘No’ as to whether each of nine (9) listed daily living activities are restricted. The Specialist stated the Appellant is not restricted in personal self-care, meal preparation, medication management, basic housework, daily shopping, mobility inside/outside the home, transportation, finances, or social functioning.

In the section in the Medical Report on what assistance the Appellant needs with daily living activities, the Specialist writes that no additional supports are needed at present.

In the assessor report, the Specialist writes the Appellant's ability to manage daily living activities is impacted by her rheumatoid arthritis and osteoarthritis.

The Specialist reports the Appellant takes longer to:

- Do laundry ("slower due to joint pain") and basic housekeeping (2X per month, limited by joint pain).
- Carrying purchases home ("limited to weight < 10 lbs")
- Getting in/out of vehicle ("can be harder in am due to joint pain").

The Specialist reports the Appellant is *independent* in all other activities, including:

- Personal Care,
- Shopping: going to/from stores, reading prices/labels, making appropriate choices, paying for purchases,
- Meals,
- Paying rent/bills,
- Medication,
- Transportation: using public transit, arranging transportation, and
- Social functioning, with good functioning in your immediate and extended social networks.

In the Assessor's Report the Specialist states the Appellant needs no assistance for daily living activities.

The panel finds that while some of the Appellant's daily living activities have been impacted, i.e. taking longer to complete laundry and chores, get in and out of a car and carry purchases home, they have not been shown to be directly and significantly restricted within the meaning of the legislation. That is, in the opinion of a prescribed professional *directly and significantly restricted either continuously or periodically for extended periods.*

Although the Appellant makes a strong personal case for having such significant restrictions, the panel has noted earlier that the legislation is clear that the fundamental

basis for the analysis is the evidence of prescribed professionals regarding the impact on daily living activities.

Based on the evidence from both the Medical and Assessor Reports the panel finds the requirements of the legislation have not been met, and the Ministry was therefore reasonable in its determination that there is not enough evidence to confirm the Appellant has a severe impairment that, in the opinion of a prescribed professional, significantly restricts her ability to perform her daily living activities continuously or periodically for extended periods.

Help with Daily Living Activities

Ministry's Position

The Ministry's position is that although the Appellant does wear left and right wrist braces, the Specialist states the Appellant receives no assistance with daily living activities.

Further, as it has not been established that daily living activities are significantly restricted (criterion 4), it cannot be determined that significant help is required from other persons or a device.

Appellant's Position

The Appellant's position is that she obtains assistance from family and friends on occasion in shopping and house chores as a direct result of the impact of her illnesses.

Panel Decision

Section 2(2)(b)(ii) of the Act requires that, *because of direct and significant restrictions in the ability to perform daily living activities*, a person requires help to perform those activities. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. Help is defined in subsection section (2)(3) of the Act as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform one or more daily living activities.

Here, it is clear the Appellant uses splints and receives the assistance of friends on an occasional basis. However as the precondition of an establishment of direct and significant restrictions under section 2(2)(b)(i) of the Act has not been met it cannot be determined that the help is required under the legislation. The panel finds the Ministry was therefore

reasonable in its findings that it cannot be determined that significant help is required from other persons or a device.

Persistent Multiple Barriers to Employment

The panel noted the demeanour of the Appellant and was impressed with her desire to be a productive member of society, and to earn income so as not to become a burden on others. The Appellant stated to having post-graduate education, who regularly applies for employment and is required to advise prospective employers that she will struggle to meet work schedules due to her debilitating conditions. This invariably leads to job refusal. The panel has noted the recent submittal letter from the Specialist also states that the Appellant is unable to have a full-time job due to pain and physical limitations.

The panel is aware that the Employment and Assistance regulation, it provides a definition for a Persons who have persistent multiple barriers to employment . In part this relates to a person who has a health condition that is a barrier that seriously impedes the person's ability to search for, accept or continue in employment. The panel finds it cannot comment on the applicability of the requirements of the legislation to the circumstances of the Appellant, both due to being unaware of her personal situation and to the legislative restrictions on panel scope within this PWD application appeal where PPMB is a matter not to be at issue. However, the Appellant may wish to contact the Ministry for more information and discussion.

Summary

The panel has found the evidence does not establish that:

- The Appellant has a severe physical or mental impairment; or that it,
- directly and significantly restricts the person's ability to perform daily living activities either continuously, or periodically for extended periods, or that,
- as a result of these restrictions, the Appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform daily living activities,

as required by the legislation.

The panel also noted the recommendation from the Specialist to get an independent reviewer for a formal assessment of the Appellant. The panel noted the Appellant was

unaware of the type and number of prescribed professionals who may assist in the completion of an Assessor report.

Conclusion

Having reviewed and considered all the admissible evidence and relevant legislation, the panel finds that the Ministry's Reconsideration Decision, which determined that the Appellant was not eligible for the PWD designation under section 2 of the Act, was reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the Appellant and confirms the decision. As a result, the Appellant's appeal is not successful.

Appendix – Relevant Legislation

The criteria for being designated as a PWD are set out in Section 2 of the *Act* as follows:

Persons with disabilities

2 (1) In this section:

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

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

The Act provides as follows:

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 ...

The Employment Assistance Act provides as follows:

Panels of the tribunal to conduct appeals

22(4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

APPEAL NUMBER 2023-0386

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

DM Stedeford

Signature of Chair

Date (Year/Month/Day)

2024/02/29

Print Name

Diane O'Connor

Signature of Member

Date (Year/Month/Day)

2024/02/29

Print Name

Susanne Dahlin

Signature of Member

Date (Year/Month/Day)

2024/03/01