

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“the Ministry”) decision dated June 20, 2023 denying persons with disabilities (PWD) designation.

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

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

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

Part D – Relevant Legislation

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

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

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

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

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

- Medical and Assessor Reports both completed by the Appellant’s doctor. The doctor indicates that the Appellant has been their patient for five years and has seen her 2-10 times in the past 12 months.
- Appellant’s Self Report.
- A Request for Reconsideration where the Appellant writes as the reasons for requesting a reconsideration (summarized):
 - I am unable to look for work.
 - I have chronic pain all through my body, head and eyes and chronic fatigue and lack of focus and concentration daily.
 - I have piercing pain and twitching in my legs, arms and eyes. Lights cause headaches and blurred vision daily.
 - I experience mental confusion and memory and fumble words.
 - Pain and stiffness in wrists, hands and fingers cause difficulty to cook.
 - I accomplish very little each day, just getting through each day.
 - I experience uncontrollable anxiety, which causes physical and mental symptoms to worsen.
 - PTSD symptoms cause me to avoid many situation, but I have not been assessed.
 - I have heart arrhythmia which acts up often, making functioning difficult.

The information in the PWD application included the following:

Self Report (dated February 21, 2023)

The Appellant states:

- Four and a half years ago I noticed that my arms and leg muscles were painful and weak. At first, I was confused as to why this was happening, and about six months later I was in a car accident leaving me with chronic whiplash. A few months later, the symptoms got worse with flare ups that last a week at a time.
- I am chronically fatigued and get very foggy which disables me. My head can’t focus, and I get disoriented at times, especially in public.
- I get words mixed up, fumbling when I walk, can’t focus in a conversation.
- The most I can do in a day is daily cooking, basic cleaning and buying food. I leave other daily tasks and end up in bed in the middle of the day.

- I find it very hard to sleep, and without it I can't function.
- I have very little support or help, if any. I have 5 children to take care of and it takes every ounce of energy I have to do anything beyond that.
- I am unable to lift my arm all the way and lifting even light things, like a grocery bag is painful.
- I experience anxiety if too many people are around. I get flustered and can't focus, sometimes even standing in one spot staring until I realize I need to leave.
- The accident has left me with PTSD which causes me to get panicky in public environments and driving.
- I am often overwhelmed with responsibility and have not been able to function normally.
- I have been waiting 2 ½ years to see a specialist to be diagnosed with what seems to be fibromyalgia.

Diagnoses

The doctor provides diagnoses of Central Sensitization Syndrome with onset of 2018 and Atrial Ectopy with onset of 2020.

Health History

The doctor writes: "the central sensitization syndrome symptoms are nearly daily"; "ongoing tiredness and 'brain fog' makes it challenging to complete daily tasks at home"; and "increasing anxiety in social/crowded places has led to avoidance."

The doctor indicates that the Appellant has not been prescribed any medications or treatments that interfere with her ability to perform daily living activities. The Appellant does not require any prostheses or aids for her impairment.

Degree and Course of Impairment

In the Medical Report, the doctor indicates that the Appellant's impairment is likely to continue for two years or more.

In the Assessor Report, the doctor indicates that the Appellant's level of ability with speaking, reading, writing and hearing are good.

Physical Impairment

In the Medical Report, the doctor indicates the Appellant:

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

The doctor explains that the Appellant “reports fatigue with lifting/stairs,” “pain if sitting for too long.”

In the Assessor Report, the doctor indicates that the Appellant is independent with:

- Walking indoors/outdoors.
- Climbing stairs.
- Standing.
- Lifting.
- Carrying and holding.

Cognitive and Emotional Functioning

In the Medical Report, the doctor did not answer the question, “Are there any significant deficits with cognitive and emotional function” but indicated that there are deficits evident with memory, emotional disturbance and attention or sustained concentration. No additional comments regarding cognitive and emotional functioning were made.

In the Assessor Report, the doctor indicates that the Appellant’s mental impairment impacts functioning as follows:

- Major impact with motivation.
- Moderate impact with emotion, attention/concentration, executive, and memory.
- Minimal impact with consciousness and other emotional or mental problems.
- No impact with bodily functions, impulse control, insight and judgement, motor activity, language, psychotic symptoms and other neuropsychological problems.

Daily Living Activities

In the Medical Report, the doctor indicates that the Appellant is periodically restricted in managing daily living activities in the areas of:

- Personal self care.

- Meal preparation.
- Basic housework.
- Daily shopping.
- Social functioning.

As explanation for “periodic” the doctor writes “times of stress worsen symptoms and make it hard to do ADLs (sic)” and “anxiety increased when out of the house, leading to avoidance.” The doctor answered “Yes” to the question “Does the impairment directly restrict the person’s ability to perform daily living activities?” The doctor indicated that the Appellant is restricted periodically with management of medications, mobility inside and outside the house and use of transportation. The doctor wrote an additional comment regarding the degree of restriction: “mild.”

The doctor indicates that the Appellant has marginal functioning with both immediate and extended social networks.

In the Assessor Report, the doctor indicates that the Appellant is independent in all areas: personal care, basic housekeeping, shopping, meals, paying rent and bills, medications, and transportation.

Under social functioning, the doctor indicates that the Appellant is independent in all areas: appropriate social decisions; able to develop and maintain relationships; interacts appropriately with others; able to deal appropriately with unexpected demands and able to secure assistance from others.

Assistance Provided for the Applicant

In the Medical Report, the doctor answered “none” to the question, “What assistance does your patient need with daily living activities?” Further, as a written comment the doctor wrote “N/A” in the areas regarding whether help was needed or whether assistance was provided by other people.

In the Assessor Report, the doctor wrote “N/A” in the area used to describe the type and amount of assistance required.

Information Submitted After Reconsideration

On the Notice of Appeal form, the Appellant wrote, "They did not consider the new document from my specialist. I waited months and didn't hear anything from the Ministry. When I called, they said I was denied. I did not receive anything from them."

On February 8, 2024, the Appellant submitted nine pages of additional information.

- A letter from the Appellant's advocate outlining the Appellant's argument for why disability designation should be approved. The letter was broken down into several areas.

1. Background:

- The Appellant applied for PWD in February 2023 and received a denial letter in April 2023. She requested a reconsideration, and asked for an extension so she could obtain an additional letter of support from another specialist. The extension was granted, and she provided the additional letter as soon as she received it.
- In November 2023, the Appellant called the Ministry to enquire about the reconsideration and was informed that she had been denied in a letter dated June 20, 2023. The letter of support from the specialist was never considered. The Appellant did not receive the June 20, 2023 letter from the Ministry, so she applied for an appeal in November 2023, which is when she was first notified of the decision.

2) New Evidence:

- The previously submitted, but not considered, letter of support from the specialist is attached to this written submission. The letter provides information about the Appellant's condition, the severity of the symptoms, and the effect that the disability has on her daily living activities.
- A current self-report letter describes the Appellant's symptoms in more detail and includes updates about her condition as it has declined considerably since the PWD application was initially submitted.

3) Discussion re PWD Legislation

- The Appellant's doctor has confirmed the condition is likely to continue for at least two years.

- The letter of support from the physician confirms that the Appellant is severely disabled, and the condition directly affects daily living activities.
- The letter of support clearly indicates that the Appellant requires assistance to perform daily living activities.
- A letter dated August 9, 2023, from the Appellant's specialist. The specialist writes:
 - The Appellant is severely disabled and has suffered from symptoms of central sensitization for several years.
 - The Appellant can barely manage the most basic daily chores of the household, can make only the simple meals, cannot clean her house with any regularity, and cannot consistently manage errands outside the house.
 - The specialist is not a psychiatrist, but they believe that the Appellant has post-traumatic stress disorder. There is severe trauma history and she is prone to overstimulation and extreme anxiety. The Appellant has symptoms of autonomic dysfunction.
 - The Appellant's communication skills are inconsistent. She often struggles with brain fog and word finding and cannot concentrate on any task for more than a few minutes.
 - The Appellant cannot sit for any significant length of time. Her walking stamina is very poor and she struggles with chronic generalized pain.
- A written statement from the Appellant highlights new symptoms in the past six months. The Appellant writes, in summary (her words):
 - Eye twitching every day which lasted over 3 months.
 - Arms and legs started getting twitches and jerks randomly throughout the day, and they occur daily, and it has been over six months.
 - Neck, shoulders, and hips are tighter, sore and stiff.
 - Can't sleep at all without some sleep prescription, usually gets 5-6 hours. Some nights are worse, and always leads to shaking and nausea the next day.
 - Most days, too tired to prepare meals for the children and self. Usually have to make something easier than initially planned.
 - The last six months seemed to have developed a lot of stomach issues, no appetite, nausea after meals.
 - Many, many symptoms make it exhausting to function.
 - Memory has declined and can't focus on even simple things for more than a few minutes. Constantly trying to remember what I am doing, looking for things even when they are in my hand.

- Can't drive far, get very flustered, can't focus and get anxiety just to get a few things at the store. If possible, one of the children comes to help.
 - Hardly leave the house for simple things like a walk.
 - Can't do strenuous things as am exhausted over even basic things like bathing.
 - Can't keep up with the youngest child as am totally depleted by the afternoon.
 - Just showering and getting ready for the day is not possible as most often already fatigued. Arms get too tired to wash hair.
 - When cooking, I forget the stove is on and I leave the room. Food gets burned regularly. My feet get sore just from standing to cook, and my wrists are pained when stirring, cutting food so I often prepare easier meals. Also, I lose focus when trying to prepare dinner.
 - Can't do any scrubbing or extensive cleaning as my arms and legs get too weak and sore within a few minutes.
 - Even doing light exercises is extremely difficult due to whiplash injury five years ago. I have intensive pain in shoulder joint and collar bone which has not improved at all despite stretching. I can't afford treatment, and even when I have done it in the past there was no improvement.
 - Eyesight is also declining as there are lots of flashes in my left eye. Blurry vision, especially later in the day, makes it hard to focus and drive.
- At the hearing, the Appellant stated she had explained how her medical condition affects her in all the written submissions in the appeal record. She emphasized that her doctor was not very helpful or supportive. For example, she never assessed her for PTSD. Her specialist knows the issues she has. The Appellant added that she is experiencing more issues since the original application was made, and these are written in her additional submission.
 - The Ministry asked the Appellant to clarify whether she considers her PTSD to affect her more than the two original diagnoses in the PWD application. The Appellant responded that the issues with her nervous system are the least of the symptoms affecting her. The past year she feels worse, she is forgetful and walks into doors almost every day.
 - The panel asked for clarification about what level of assistance she requires because the doctor, on the PWD application, indicates that no assistance is required. The Appellant replied that she could use a housecleaner because she tries to do some but within minutes her hands and legs are sore, and she can't continue. The Appellant added that she could use some help with shopping because when she gets to a store she is

confused, gets flustered and doesn't function well. She added that she is used to having no help at all and does not currently receive any help from anyone.

- At the hearing, the Ministry reviewed the reconsideration decision and highlighted that:
 - The doctor, on the PWD application, did not indicate that the Appellant was on any medication that affects her daily living activities.
 - Regarding the severity of a physical condition, although the Appellant explained in the self report how her condition affects her, the doctor's response in the MR and AR does not support her statements. The doctor indicates the Appellant is independent in all areas related to mobility and physical ability, which makes it difficult for the Ministry to determine the severity of the condition.
 - Regarding the severity of a mental condition, the doctor did not provide any diagnosis of a mental impairment. In the AR, the doctor noted one major impact to motivation and moderate impact to a few areas. However, this indicates that the Appellant may have limitations but is not indicative that they severely impair her mental function as she is independent in all activities requiring making decisions about personal activities, care of, or finances and communicating and interacting with others.
 - Regarding daily living activities, the doctor indicated in the MR that the Appellant is restricted in some areas of personal care, housework and shopping, and that the restriction is periodic, but does not specify the frequency or duration of how often she is restricted. The doctor noted that it is hard for her to do daily living activities but is not specific about what that means. In the AR, the doctor the doctor indicated that the Appellant is independent in all areas of daily living.
 - Regarding the need for help, the Ministry notes that because it has not been established that daily living activities are significantly restricted, it cannot be determined that significant help is required. The doctor also indicated that the Appellant is independently able to complete all daily living activities.
 - Regarding the additional submission received after reconsideration, the Ministry pointed out that the letter written by an advocate does not identify that they are a "prescribed professional".
 - Regarding the additional letter from the specialist dated August 9, 2023, the Ministry notes that there is no indication of the extent of the relationship between the specialist and the Appellant, of how many times has the Appellant seen the specialist. Although the specialist writes that the Appellant is severely disabled and meets the criteria, this is a decision that is made by the Ministry, not a doctor. The Ministry notes that the letter written by the specialist is vague, using statements such as: "most days the Appellant can't manage"; she "believes" the Appellant has PTSD; "her

walking stamina is very poor". These statements do not provide enough specifics to explain the restrictions that the Appellant has. The Ministry questions the discrepancy between what the doctor in the PWD application indicates and the statements made by the specialist.

- The panel asked the Appellant how frequently she sees the specialist. The Appellant explained she has seen the specialist for about three years, and that her doctor who she has seen for six years, deals only with general issues. If anything requires further review, she is referred off to a specialist. For example, she complained of heart issues and the doctor could find nothing wrong for many years, then referred her to a specialist who diagnosed heart issues. She sees the specialist who wrote the letter about her nervous condition. She was prescribed medication for it.
- The Appellant added that she cannot explain why the doctor wrote about her anxiety, but does not diagnose her with an anxiety disorder, or, why they provide different opinions. All she knows is she is getting progressively worse.

Admissibility of Additional Information

The panel accepted the Appellant's written submissions and oral testimony provided at the hearing as evidence under section 22(4) of the *Employment and Assistance Act*, which allows for the admission of evidence reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The Ministry had no objection to the admissibility of this evidence.

Part F – Reasons for Panel Decision

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

Appellant's Position

The Appellant's position is that her condition has worsened over the past year since the PWD application was completed. The specifics are outlined above in her written statements provided with the PWD application, the request for reconsideration and the additional submission provided after reconsideration. In summary, she argues that her specialist, who is a prescribed professional, has provided a letter of support which indicates that her impairment directly and significantly affects her ability to perform daily living activities and that this demonstrates the severity of her condition.

Ministry's Position

The specifics of the Ministry's position are outlined above, as was presented at the hearing. In summary, there is not enough evidence to confirm that the Appellant has a severe impairment that significantly restricts her ability to perform her daily living activities continuously or periodically for extended periods, or that help is required to perform those activities. Therefore, the legislative criteria have not been met.

Panel's Decision*PWD Designation – Generally*

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

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

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

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

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

Severe Mental or Physical Impairment

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

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

Physical Impairment

The panel finds that the Ministry was reasonable in its determination that there was not enough information provided to determine the Appellant's physical impairment is severe.

In the Self Report, the Appellant reported that she started experiencing pain in her arms and leg muscles about 4 ½ years ago. She was then in a motor vehicle accident which left her with chronic whiplash. The symptoms of sensation of pain, tingling on her skin and head, pain in muscles, joints and nerves continued to worsen. Pain in her neck, shoulder and back makes sitting or standing for even short periods difficult. She finds it painful to lift her arm all the way up or lift light things.

In the Medical Report, the doctor notes that the Appellant can walk 4+ blocks unaided, can climb 5+ steps unaided, can lift 5 to 15 lbs, and can remain seated less than one hour. The doctor writes that the Appellant “reports fatigue with lifting/stairs” and “pain if sitting for too long.”

In the Assessor Report, the doctor indicates that the Appellant is independent in all areas of mobility and physical ability.

In the additional letter provided by the specialist, they write: “The Appellant is severely disabled, her symptoms fluctuate, but at the best of times she is severely disabled.”

The panel finds there are conflicting statements between what the Appellant writes, what the doctor writes in the PWD application and what the specialist writes in their letter of support.

In the specialist’s letter of support, although they write that the Appellant has a severe disability, they do not explain the specifics of how she is severely disabled. The panel does not know whether the specialist is referring to a physical or mental impairment. They indicate that she can barely manage most basic daily chores or clean her house with any regularity. However, no details or specifics are provided to explain what is causing her to not manage.

Although the Appellant has explained how her medical condition affects her, the doctor does not substantiate that in the PWD application. The specialist’s letter, although they indicate support for the Appellant, goes directly to the conclusion that the Appellant has a severe disability. They provide statements such as “barely manages,” “can make simple meals,” and “cannot clean her house with regularity”. However, these generalized statements do not provide any specifics, so it is difficult to determine the severity of her condition.

Because the Appellant’s doctor has indicated that she is able to walk unaided, climb stairs, lift 5 to 15 lbs, can stand, can lift and carry items, which the Appellant did not dispute, the panel finds this is not indicative of a person with a severe impairment. Therefore, the Panel finds that the Ministry was reasonable to determine there was insufficient evidence to determine the Appellant has a severe physical impairment.

Mental Impairment

The Panel considered the information provided in the Medical and Assessor Reports as well as additional information provided by the Appellant prior to, and at the hearing. The panel finds that the Ministry was reasonable in its determination that there was not enough information provided to determine the Appellant's mental impairment is severe.

In the Self Report, and statements provided before and after reconsideration, the Appellant mentions how she gets confused, flustered, forgets to do things, has trouble sleeping which leaves her feeling fatigued/depleted/exhausted. She also states that she has become isolated, struggles with PTSD which causes her to get panicked in public or when driving, feels overwhelmed and suffers from anxiety.

In the Medical Report, the doctor reported that the Appellant has no difficulties with communication and indicated that she experiences deficits in the areas of emotional disturbance, memory, and attention/concentration. The doctor wrote: "ongoing tiredness and 'brain fog' makes it challenging for her to complete daily tasks at home" and "increasing anxiety in social/crowded places has led to avoidance."

In the Assessor Report, the doctor indicated that the Appellant's ability to communicate in speaking, reading, writing and hearing is good. The doctor indicated that the Appellant's cognitive and emotional functioning as follows:

- major impact in the area of motivation;
- moderate impact in the areas of emotion, attention/concentration, executive and memory;
- minimal impact in the area of consciousness
- no impact in the area of bodily functions, impulse control, insight/judgement, motor activity, language, psychotic symptoms or other neuropsychological problems

Further, the doctor indicated that the Appellant is independent all areas of social functioning, such as making appropriate social decisions, able to develop and maintain relationships, impacts appropriately with others and unexpected demands, and is able to secure assistance from others. The doctor went on to indicate the Appellant's relationship with immediate and extended social networks as being marginal. No additional comments were provided. The doctor did not provide any details about the frequency or duration of how the Appellant's cognitive and emotional functioning impacts her.

In the specialist's letter of support, the specialist wrote that they "believe" the Appellant has post-traumatic stress disorder; she has a severe trauma history; she is prone to

overstimulation and extreme anxiety; she has symptoms of autonomic dysfunction; she struggles with brain fog and word finding; and she cannot concentrate on any task for more than a few minutes. They provide statements such as “barely manages,” “can make simple meals,” and “cannot clean her house with regularity.” As with the findings of the panel regarding physical impairment, the specialist does not provide any specifics as to how the condition directly restricts the Appellant’s ability to manage.

Although the doctor, in the PWD application, indicates that the Appellant has deficits with cognitive and emotional function in the areas of emotional disturbance, memory and attention, he does not provide any specific details to explain these deficits. The doctor reports moderate, not major impacts on daily functioning in these areas. The doctor indicates that the impairment restricts the appellant’s ability to perform daily living activities in some areas, periodically, but notes this occurs during times of stress which makes it hard to do daily living activities. No details were provided to explain the frequency of these occurrences or the duration of how long it lasts. A further comment from the doctor indicates that degree of the restriction is “mild.”

The panel acknowledges that the Appellant experiences some impacts with cognitive and emotional functioning. There was insufficient, specific information provided by the specialist to show severe mental impairment. Weight must be given to the doctor’s input in the PWD application. The panel finds because the doctor indicates the Appellant has only one area of cognitive and emotional functioning having a major impact on her daily functioning; the doctor’s comment that the degree of restriction is “mild”; combined with the doctor indicating that the Appellant is independent in all areas of social functioning, that this is not indicative of a severe mental impairment.

Significant Restrictions on the Ability to Perform Daily Living Activities

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

- prepare own meals;
- manage personal finances;
- shop for personal needs;
- use public or personal transportation facilities;
- perform housework to maintain the person’s place of residence in an acceptable sanitary condition;
- move about indoors and outdoors;

- perform personal hygiene and self care; and
- manage personal medication.

For a person who has a severe mental impairment, activities also include:

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

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

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

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

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

In the Self Report, the Appellant writes that the daily cooking, basic cleaning and buying food is the most she can do in a day. Because she doesn't sleep, she is hardly able to prepare meals for her children and taking care of them takes every ounce of her energy. She is unable to lift her arm all the way up and lifting even light things, like a grocery bag, is painful. Often tasks take a long time, so she often must quit and continue them another day. Things like running an errand or grocery shopping, usually end up not getting done and she must try again another day.

In the Medical Report, the doctor indicates that the Appellant's impairment restricts her ability to perform daily living activities periodically in the areas of personal self care, meal preparation, basic housework and daily shopping. However, the doctor indicates that the restrictions are periodic and mild. By way of explanation of periodic, the doctor writes: "times of stress worsen symptoms and make it hard for her to do ALD's"; and "anxiety increased when out of the house leading to avoidance." An additional comment was made by the doctor, "central sensitization comes and goes, worsening pain/aches and fatigue when having more life stressors." The doctor did not describe the frequency or duration of how often the Appellant is restricted with daily living activities.

In the Assessor Report the doctor indicates that the Appellant is independent in all areas of daily living activities: personal care; basic housekeeping; shopping; meals; paying rent and bills; medications; and transportation.

In the specialist's letter, they write that "she can barely manage the most basic daily chores; she cannot clean her house with any regularity; she cannot consistently manage errands outside the house." The specialist did not provide any specific details about the frequency or duration of how the Appellant is not able to manage daily living activities.

In the Medical and Assessor Reports the doctor indicated that the Appellant is independent in all areas listed in legislation regarding daily living activities. The specialist did not provide sufficient detail to confirm which of the listed activities the Appellant can, or cannot do. Further, the Appellant wrote in the Self Report that she can prepare meals, do basic housework, and go shopping. Therefore, the panel finds that she can:

- prepare her own meals (even if they are basic meals as the Appellant notes);
- manage her own personal finances;
- shop for her personal needs;
- use public transportation;
- perform housework to maintain a place of residence (although it may not get done during the same day at the Appellant indicates);
- move about indoors and outdoors;
- perform personal hygiene and self care;
- manage personal medication.

The Appellant can make her own decisions about personal activities, care, or finances. Although she may experience difficulty with concentration and memory, it does not interfere with her ability to communicate or interact with others effectively.

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

Needing Significant Help to Perform Daily Living Activities

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

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

Conclusion

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

Schedule of Legislation***The Act***

2(1) In this section:

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

“daily living activity” has the prescribed meaning;

“prescribed professional” has the prescribed meaning:

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

- (a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and
- (b) in the opinion of a prescribed professional
 - (i) directly and significantly restricts the person’s ability to perform daily living activities either
 - (A) continuously, or
 - (B) periodically for extended periods, and
 - (ii) as a result of those restrictions, the person requires help to perform those activities.

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

- (a) a person who has a severe mental impairment includes a person with a mental disorder, and
- (b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires
 - (i) an assistive device,
 - (ii) the significant help or supervision of another person, or
 - (iii) the services of an assistance animal.

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

The Regulation

Definitions for Act

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

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

- (i) prepare own meals;
- (ii) manage personal finances;
- (iii) shop for personal needs;
- (iv) use public or personal transportation facilities;
- (v) perform housework to maintain the person’s place of residence in acceptable sanitary condition;
- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self-care
- (viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

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

(2) For the purposes of the Act, “prescribed professional” means a person who is authorized under an enactment to practise the profession of

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

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Part G – Order

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

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

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

Legislative Authority for the Decision:

Employment and Assistance Act

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

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

Part H – Signatures

Print Name

Janet Ward

Signature of Chair

Date (Year/Month/Day)

2024/03/12

Print Name

Gordon Thompson

Signature of Member

Date (Year/Month/Day)

2024/03/12

Print Name

Melissa McLean

Signature of Member

Date (Year/Month/Day)

2024/03/12