

Part C – Decision Under Appeal

Under appeal is a decision of the Ministry of Social Development and Poverty Reduction (the “Ministry”) dated February 8, 2024 (the “Reconsideration Decision”) denying the Appellant Persons with Disabilities (PWD) designation.

While the Appellant met some of the criteria, the basis for the denial was that the ministry was not satisfied that, in the opinion of a prescribed professional, the Appellant’s severe impairment:

- directly and significantly restricts his ability to perform the daily living activities set out in the legislation; and
- requires help (an assistive device, of another person, or assistance animal) to perform those daily living activities.

Part D – Relevant Legislation

This decision cites:

Employment and Assistance for Persons with Disabilities Act (the “Act”):

Section 2

Employment and Assistance for Persons with Disabilities Regulation (the “Regulation”):

Section 2

Text of the above legislation is attached at the end of the decision.

Part E – Summary of Facts

Background and Relevant Evidence

2024-December-27:

The Appellant submitted a Persons with Disabilities designation application. It included:

2021-08-17: Cervical spine image report.

2023-10-07: Final Report of a Psychiatrist on a referral for suicidal ideation.

2023-10-23: Blood Test Results showing abnormal glucose and Hemoglobin A1c.

2023/11/23: Persons With Disabilities Designation Application Section 2 - Medical Report completed by the Appellant's family physician (the "Medical Report") containing diagnosis of:

- Diabetes that is "very poorly controlled".
- Arthritis with constant pain and low range of motion.
- Severe Depression with a history of hospitalization.

In it the Appellant is described as having modest physical function restrictions but significant deficits with cognitive and emotional function in the areas of:

- executive function,
- emotional disturbance,
- motivation,
- impulse control, and
- attention or sustained concentration.

2023-12-08: Persons With Disabilities Designation Application Section 3 - Assessor Report, completed by the Appellant's family physician (the "Assessor Report").

Under "A - Living Environment" the Appellant was listed as living "In a Care Facility" with independent walking indoors, outdoors and climbing stairs, and modest restriction with standing, lifting carrying and holding.

Under "B - Mental or Physical impairment" the Appellant is described as having major impacts upon bodily functions, emotions, motivation and motor control.

Under "C - Daily Living Activities" the Appellant is described as taking 2-3 times longer for Basic Housekeeping but independent in:

- Personal Care: dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed, transfers on/off chair.
- Shopping: going to/from store, reading prices and labels, making appropriate choices, paying for purchases, carrying purchases home
- Meals: meal planning, food preparation, and safe storage of food, but for cooking for which the Appellant requires help retrieving things from bottom shelves.
- Paying rent and bills: banking, budgeting, paying rent and bills.
- Medication: filling/refilling prescriptions, taking as directed, safe handling and storage.
- Transportation: using public transit and using transit schedules/arranging transportation, but for getting in and out of vehicles due to the Appellant taking twice as long due to stiffness.

In regarding to social functioning, the Appellant is described as:

- independent with making appropriate social decisions, developing / maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others.
- marginal functioning with immediate social networks, and
- very disrupted in functioning with extended social network with major social isolation and lack of support structures.

Under "D- Assistance Provided for Applicant" the Appellant was described as receiving no assistance from others.

Two medical invoices.

2024-January-26:

The Appellant was advised he was not eligible for the designation.

2024-January-30:

The Appellant submitted a Request for Reconsideration.

2024-February-8:

The ministry issued the Reconsideration Decision. In it, the Ministry reviewed the five criteria under Section 2 (2) and (3) of the Act to be designated as a Person with Disabilities. It confirmed that the Appellant met the age, and duration requirements, and updated its prior decision to then accept that the Appellant had a severe mental impairment (but not a severe physical impairment). It continued to deny that in the opinion of a prescribed professional, the Appellant's severe impairment:

- directly and significantly restricts his ability to perform the daily living activities set out in the legislation; and
- requires help (an assistive device, of another person, or assistance animal) to perform those daily living activities.

Additionally, the Ministry stated that it was not demonstrated that the Appellant is one of the prescribed classes of persons who may be eligible for the PWD designation on alternative grounds (as set out in the Regulation, Section 2.1), which include:

- a person who is enrolled in Plan P (Palliative Care);
- a person who has at any time been determined eligible for At Home Program payments through the Ministry of Children and Family Development;
- a person who has at any time been determined eligible by Community Living BC for community living support (provided to the Appellant or the Appellant's family for the Appellant's care);
- and a person who is considered disabled under Section 42(2) of the *Canadian Pension Plan Act*.

Appellant Submissions

The Appellant's Notice of Appeal stated in the Reasons for Appeal that he attached to his Appeal that he wanted:

... to convey the challenge, difficulty, and debilitation relative to my Mental Health with compounding physical health challenges. Reflecting on the entire document, I do recognize this was not conveyed accurately.

He described some of his life background and "downward spiral during COVID" in depression, suicidal ideation with an occasional progression to "active plan"; fortunately prevented by intervention, and now has residence in a supportive "recovery house" that provides some meals and assistance paying bills.

In oral submissions, the Appellant described that in the original submission to the Ministry, he focussed on his physical limitations, but that it was his mental health impairment that was causing the severe limitations. He gave an account of his recent mental health difficulty and of this current state and housing in supportive living.

Ministry Submissions

The Ministry relied upon the reasons in the Reconsideration Decision and reviewed the evidence of the Medical Report and Assessor Report completed by the prescribed professional the “two reports”). The Ministry highlighted that the Ministry had accepted that the Appellant had a severe mental impairment, supported by the two reports. Those reports do not show severe impairment of daily living activities or need of help.

The Ministry accepted that the Appellant stated that he was in supportive housing which provides some meals and assistance paying bills. The Ministry stated that it relied upon the opinion of the prescribing professional opinion expressed in the two reports which show the Appellant’s cognitive and emotional function had several major impacts, but that the Appellant was independent in personal care, shopping, paying rent and bills, medications, and social functioning. There were a few limitations that the Ministry did not consider as disclosing a severe impairment, specifically the Appellant:

- took longer than normal to do basic housekeeping and to get in or out of a vehicle;
- required periodic help to retrieve dishes from bottom shelves for cooking; and
- relationships were impaired but no requirement for help as indicated.

Admissibility of New Evidence

Under section 22(4) of the Act, the Panel may admit evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The Panel admits the “Reasons for Appeal” that were attached to the Appeal and treats them as written submissions. Specifically, within that and from the oral statements of the Appellant, the Panel admits the evidence that the supportive living “recovery house” that the Appellant is living in is providing at least one daily meal and assistance with paying bills. Where any other statement is relevant, and given weight that might affect findings, it will be specifically mentioned in the Panel’s reasons below.

Part F – Reasons for Panel Decision**Purpose and Standard of Review**

The purpose of the Panel, here, is not to redo the Reconsideration Decision under appeal. It is to review and assess whether it satisfied a standard, or benchmark, of reasonableness - even if the Panel might disagree with the outcome. The standard applied is whether the applicable laws were reasonably applied and whether the evidence was also reasonably applied in the circumstances. The evidence considered, however, is not just the evidence known at the Reconsideration Decision but includes any new or updated evidence the Panel admits. That means this decision assesses the reasonableness of the Reconsideration Decision based on what is known now.

Discussion of Issues

The parties did not contest that the Appellant was not one of the prescribed classes of persons who may be eligible for the PWD designation on alternative grounds under Regulation section 2.2. They also did not contest that the Appellant met the first 3 of the 5 criteria under the Act to be designated as a Person with Disabilities. The 5 are age, duration, severity of impairment, daily living activities, and help required with daily living activities.

The uncontested items are not examined here. The only matters at issue concern the impact upon the Appellant's daily living activities from the Appellant's impairments. The Appellant asserts that his daily living activities were severely affected by his severe mental impairment.

The Ministry is obligated to apply a standard set in the legislation. The standard that applies is set out in section 2(2) of the Act. In this case, it requires that the Ministry "is satisfied" that the Appellant has a "severe mental ... impairment" that "in the opinion of a prescribing professional" (such as the Appellant's family physician):

- (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.

To be satisfied the Ministry looks at the evidence from prescribing professionals. Here the Ministry looked at the Medical Report and Assessor Report (the "two reports") from the Appellant's family physician to determine whether it was satisfied that that physician's opinion showed that level of impact on the Appellant's daily living activities.

The question for the Panel is whether, on the evidence, the Ministry was reasonable in not being satisfied that the physician's opinion showed that level of impact.

There is a significant difference between the impact on the daily living activities of the Appellant, as described by the Appellant and as described in the two reports.

The Panel accepts the evidence that the Appellant is living in supportive housing that provides at least one balanced meal a day and assists with paying bills. This is not reflected in the two reports, where the Appellant is shown as independent in all respects, although slower in a few, physical tasks and no help is required for relationships, or to maintain community contact, due to mental impairment. Specifically in the Assessor Report, while the Appellant's living environment is recorded as "In a care facility", under "D - Assistance Provided for Applicant" no assistance is identified and the comment is made that "Pt does not receive assistance from others – does on his own."

The Panel reviewed the two reports in light of new evidence indicating that the Appellant is receiving assistance in supportive housing. The new evidence, including the Appellant's testimony, suggests that daily living activities are being performed by the supportive housing, or perhaps differently than accounted for in the two reports. The implication is that the two reports might better be read as referring only to physical capacity, and that those responses are not relevant where the issue is whether the Appellant's mental state significantly restricts his ability to perform daily living activities.

Despite this, the Panel believes that this view is speculative and lacks sufficient detail regarding the Appellant's daily living activities. Specifically, it is unclear which activities are restricted by the appellant's severe mental impairment, and whether this restriction is significant and either continuous or periodic for extended periods.

Such speculation and lack of information cannot stand in the face of the clear entry on the two reports showing independence despite his severe mental impairment. The Panel cannot find that the Ministry was unreasonable in not being satisfied, on all the evidence, that the opinion of the Appellant's family physician met the criteria under section 2(b) of the Act. It was reasonable for the Ministry to find that the prescribing professional was not of the opinion that the Appellant's daily living activities were directly and significantly restricted and required help to perform them.

The Appellant did not claim that the legislation was being interpreted unreasonably, and the Panel sees nothing that would have supported such a claim.

Concluding Decision

The **Appellant is not successful** on appeal, the Panel having found that the Reconsideration Decision is:

1. reasonably supported by the evidence, and
2. a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

Accordingly, the Panel **confirms** the Reconsideration Decision.

Appendix – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

Section 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 (EAPWD) Regulation

Section 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, or

(b) acting in the course of the person's employment as a school psychologist by

(i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or

(ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*, if qualifications in psychology are a condition of such employment.

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2 (2) [*persons with disabilities*] of the Act:

(a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;

(b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;

(c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act*;

(d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act* to assist that family in caring for the person;

(e) a person who is considered to be disabled under section 42 (2) of the *Canada Pension Plan* (Canada).

APPEAL NUMBER 2024-0061

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

Kent Ashby

Signature of Chair

Date (Year/Month/Day)

2024/03/09

Print Name

John Pickford

Signature of Member

Date (Year/Month/Day)

2024/03/09

Print Name

Dawn Wattie

Signature of Member

Date (Year/Month/Day)

2024/03/09