

### **Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (the “Ministry”) reconsideration decision dated February 20, 2024, denying the Appellant a persons with disability (“PWD”) designation.

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

- 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 a PWD designation on alternative grounds. As there was no information or argument on this point, the Panel did not consider this an issue in this appeal.

### **Part D – Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Act (“Act”), s. 2*

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

*Employment and Assistance Act (“EAA”), s. 22(4)*

Full text of the Legislation is in the Schedule of Legislation at the end of the Reasons.

**Part E – Summary of Facts**

The hearing took place by videoconference on March 19, 2024.

**Evidence Before the Ministry at Reconsideration:**

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

- Reasons for Reconsideration completed by the Appellant;
- Medical and Assessor Reports (the “Reports”) completed by the Appellant’s Doctor (the “Doctor”); and
- Appellant’s Self Report.

**Request for Reconsideration:**

In his Request for Reconsideration, the Appellant notes several reasons for his request:

- He has a severe disease which affects his daily living in an extreme way;
- He has days he cannot get out of bed other than to use the toilet;
- Chronic pain and dizziness make tasks difficult; he is very tired and requires frequent naps;
- Fatigue and weakness make meals (preparation) an impossibility;
- He has weakness, depression, and anxiety;
- He requires many breaks and help with daily living activities as he is unable to do many tasks necessary for daily living;
- He is nutritionally deficient and underweight (only 49 kg) with a complete loss of muscle mass;
- He is unable to lift most things;
- He avoids stairs and having to walk a reasonable distance;
- He is incontinent;
- He ends up hospitalized for long periods due to a flare up of his disease;
- He has difficulties with his mental state including emotionally and cognitively; and
- His teeth have rotted away resulting in longer eating time and much pain.

**Medical Report:**

The Doctor indicated that the Appellant has been their patient for more than 20 years.

*Diagnosis:*

The Doctor identifies a diagnosis of Crohn's Disease with onset 2006.

*Health History:*

The Doctor states that the Appellant has severe Crohn's and is followed by multiple gastroenterologists. The Doctor indicates that the Appellant, "has been trialled on innumerable meds [and has] had multiple bowel surgeries". In addition, the Doctor says, "Despite maximal medical therapy, [the Appellant has] ongoing severe disease and disability due to same". The Appellant has not been prescribed any medication or treatment that interfere with his abilities to perform daily living activities. The Doctor also notes that the Appellant does not require any prostheses or aids for his impairment.

*Degree and Course of Impairment:*

The Doctor marks "Yes" that the impairment is likely to continue for two years or more and explains further, "Disease has been refractory & severe since 2006, unlikely to see much improvement".

*Functional Skills:*

The Doctor indicates that the Appellant:

- Can walk less than 1 block unaided on a flat surface;
- Can climb 2-5 steps unaided;
- Has lifting limitations of 2 to 7 kilograms; and
- Can remain seated without limitation.

The Doctor indicates that the Appellant does not have any has deficits with cognitive and emotional function. The Doctor also provides comments, "Diffuse generalized weakness due to malnutrition and chronic anemia".

*Daily Living Activities*

The Doctor confirms that the Appellant's impairment directly restricts his ability to perform daily living activities. In particular, the Doctor notes the Appellant is restricted in his meal preparation, basic housework, and daily shopping activities; the extent of the restriction—whether continuous or periodic—is not indicated by the Doctor.

Regarding assistance with daily living activities, the Doctor says, "Patient has severe chronic diarrhea, pain, malnutrition, weakness". Finally, the Doctor provides additional comments, "[The Appellant's] disease has been severe despite all treatments, multiple specialists. He is chronically, severely malnourished (BMI 15), and weak".

Assessor Report:

*Mental or Physical Impairment:*

Asked to provide a brief summary of the Appellant's mental or physical impairments that impact his ability to manage daily living activities, the Doctor notes, "Physical—severe weakness, pain, chronic severe diarrhea".

*Ability to Communicate:*

The Doctor provided no responses.

*Mobility and Physical Ability:*

The Doctor indicates that the Appellant is independent in only two areas of mobility and physical ability—walking indoors and standing. Otherwise, the Appellant takes significantly longer in all remaining areas of mobility and physical ability:

- Walking outdoors;
- Climbing stairs;
- Lifting; and
- Carrying and holding.

The Doctor provides further explanation, which notes, "severe weakness, chronic anemia".

*Daily Living Activities:*

The Doctor indicates that the Appellant takes significantly longer to manage his daily living activities in a number of areas:

- Basic Housekeeping: Laundry, and Basic housekeeping;
- Shopping: Going to and from stores, and Carrying purchases home;
- Meals: Food preparation, and Cooking; and
- Transportation: Using public transit.

According to the Doctor, the Appellant is independent in all other aspects of daily living activities listed on the form:

- Personal care: Dressing; Grooming; Bathing; Toileting; Feeding self; Regulating diet; Transfers (in/out of bed); Transfers (on/off chair);
- Shopping: Reading prices and labels, Making appropriate choices, and Paying for purchases;
- Meals: Meal planning, and Safe storage of food;
- Pay rent and bills;
- Medications; and
- Transportation: Getting in and out of a vehicle, and Using transit schedules and arranging transportation.

The Doctor provides additional comments, “[The Appellant’s] disease is severe—terrible chronic malnutrition, weakness, anemia”.

*Assistance Provided for Applicant:*

The Doctor indicates that the Appellant’s family provides the help required for daily living activities and comments, “Partner helps with heavy lifting, etc.” The Doctor does not identify any assistance devices used by the Appellant to help compensate for his impairment.

*Self Report:*

*Description of the Disability*

The Appellant describes his disability as follows:

Severe Crohn’s disease, malnutrition and anemia resulting in very low body weight and loss of muscle mass, low blood pressure and fatigue.

I also have 4 fistulas which are constantly draining.

I am often light headed or dizzy and need to sit or lay down.

*How the Disability Affects Your Life and Your Ability to Take Care of Yourself*

The Appellant provides the following response:

I have been unable to work since Dec. 26, 2021.

I am unable to walk very far or climb stairs without resting. Completing(sic) tasks such as light housekeeping require many breaks if not done over multiple days. Heavier tasks such as moving objects over 20 pounds is very difficult if not impossible. The ability to lift things over my head is extremely limited and I am unable to use a ladder most days.

The malnutrition along with anemia lead me to napping frequently often 2 or 3 times daily an hour minimum. I am always tired and unmotivated to complete daily tasks such as cooking, housework, laundry and other things.

The Crohn's Disease has me using the toilet 4 times a day minimum and I don't get much warning so I must never be too far from a bathroom. This makes things like grocery shopping difficult if not [im]possible during the bad days.

The fistulas are constantly draining so I must wear a maxi pad and change it often to prevent it from smelling. Because of this I need to shower often which is very difficult for me.

Evidence presented at the Hearing

*Appellant's Submission:*

At the hearing, the Appellant said:

- He needs help most days and five out of seven days on average;
- He is 5' 10" and now weighs approximately 100 lbs;
- After a day where he does a daily living activity such as doing his laundry—which takes all day—or getting and bringing home groceries, the Appellant needs to spend the following day in bed;
- He is unable to drive himself as he is dizzy, weak, and tired;
- When his partner is not at work (she works full-time), he receives help from her with any and all lifting, taking him to appointments, and getting groceries;
- He outwardly presents himself to others including his Doctor(s) as positive, an optimist and that he is, "just fine, great" even when that is not at all accurate; and
- He did not talk with his Doctor about the mental and emotional impact his disease has on him including forgetfulness, trouble concentrating, decreased motivation, and that it is, "pretty depressing".

*Ministry's Submission:*

At the hearing, the Ministry said:

- The Ministry generally assesses an impairment directly and significantly restricts the person's ability to perform daily living activities if the restriction is periodically for extended periods of equal to or greater than, 51% of the time.

Admissibility of Additional Evidence:

Neither party objected to the admissibility of each other's additional oral evidence.

The Appellant's oral evidence provides further, up-to-date information about the Appellant's status and his current capabilities or limitations. The Ministry's evidence gives more detail about the measures it may use in assessing the extent of an impairment.

The Panel finds that the additional evidence provided by both parties is reasonably required for the full and fair disclosure of all matters in the appeal. Therefore, the Panel finds that the additional evidence is admissible under *EAA* section 22(4).

**Part F – Reasons for Panel Decision**

The issue on appeal is whether the Ministry's decision denying the Appellant a PWD designation is reasonably supported by the evidence or is a reasonable application of the legislation. The Ministry found the Appellant met the age (over 18), duration (likely to last more than two years), and severe impairment (severe physical impairment) requirements. However, the Ministry found the Appellant did not meet the requirements for:

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

Appellant's Position:

The Appellant says he should be granted the PWD designation. He is so weak and emaciated; his body is absolutely wasted and he weighs only about 100 lbs, he has severe deficiencies and his situation is so severe that he has a nutritionist to assist him. The Appellant argues that he meets the legislated criteria:

*Severe Mental Impairment*

The Appellant stated that his mental and emotional health has been greatly impacted by his impairment. He is forgetful, unmotivated, has trouble concentrating, and says his illness and the situation he is in is "pretty depressing". He says that it takes a lot of thought, planning, and build up mentally for him to do any activity.

*Daily Living Activities Significantly Restricted*

The Appellant says that his fatigue and weakness mean he needs a lot of time and rest throughout many activities; he takes three to four times longer than average for activities. The Appellant argues his impairment does directly and significantly restrict his ability to perform daily living activities:

- Laundry—without help, it takes him a full day to do a load or two;
- Shopping—getting groceries and carrying/bringing home groceries is limited as he can't lift or carry anything too heavy;
- Cooking—he needs to sit and rest during meal preparation such as boiling water for spaghetti, and he can doze off in that time which is not safe due to the fire hazard; and



- Transportation—he requires assistance as he cannot drive himself due to his dizziness, weakness, and tiredness.

### *Help Required*

The Appellant clarified that he does need help most days, about five days out of seven. When his housemate is not at work, the Appellant receives a lot of assistance from her for any and all lifting, getting to appointments, and for grocery shopping. He also regularly asks friends for help.

Therefore, the Appellant says that his request for PWD designation should be granted.

### Ministry Position:

The Ministry relied on the reasons provided in its reconsideration decision and emphasized that when determining PWD eligibility, the Ministry is governed by the legislation and all five criteria must be met. In the Appellant's case, the Ministry said that the Appellant met three of the five criteria however, the PWD designation could not be granted when all five criteria have not been met. In response to a question from the panel, the Ministry agreed that as the Appellant established that he had a severe physical impairment, the legislation did not also require him to demonstrate a mental impairment; the legislation says a severe physical *or* mental impairment. Finally, the Ministry argued that because the Appellant did not demonstrate that his daily living activities were directly and significantly restricted due to his impairment, or that the Appellant required help to perform the daily living activities, he did not meet the eligibility requirements for PWD designation.

### *Daily Living Activities Significantly Restricted*

The Ministry said it must rely on the Doctor's reports and the information does not indicate whether the impairment results in continuous or periodic restrictions to daily living activities. Although the Doctor does note that the Appellant takes significantly longer with many daily living activities, there is no additional information provided as to how much longer.

*Help Required with Daily Living Activities:*

The Ministry says that the Appellant has not established that he requires significant help with daily living activities. According to the Doctor, the Appellant does not require assistive devices, significant help of another person to perform his daily living activities and does not require the services of an assistance animal.

Panel 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. If the inability to work is the major reason for applying for PWD designation, the Panel encourages the applicant to speak to the Ministry about other potential programs such as PPMB or explore federal government programs such as Canada Pension Plan disability benefits.

The requirements for PWD designation include having an opinion from a prescribed professional outlined in the Medical and/or Assessor Report. 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 the evidence from the Appellant, unless there is a legitimate reason not to do so.

The Panel will review the reasonableness of the Minister's determinations and exercise of discretion regarding the criteria at issue in this appeal: 1. Restrictions to Daily Living Activities, and 2. Help Required.

*Restrictions to Daily Living Activities:*

A prescribed professional must provide an opinion that the applicant's impairment restricts their ability to perform the daily living activities ("Activities") listed in the legislation. The Activities that are considered are listed in the Regulation. Those Activities relevant to physical impairments are:

- 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 acceptable sanitary condition;

- Move about indoors and outdoors;
- Perform personal hygiene and self-care; and
- Manage personal medication.

According to the BC Supreme Court decision, *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2009 BCSC 146, at least two 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 Activities and are only relevant to the extent that they impact listed Activities.

The restrictions to 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 although 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 Appellant's case, throughout the Reports, the Doctor repeatedly provides comments indicating terrible weakness, anemia, pain, and severe malnourishment as additional explanation regarding the Appellant's abilities. As such, in Section 2 of the Medical Report, the Doctor responds "Yes", the impairment directly restricts the person's ability to perform daily living activities. Similarly, the Doctor also marks "Yes", activity is restricted for four daily living activities: Meal preparation; Basic housework; Daily shopping; and Mobility outside the home. Although the Doctor does not note whether the restriction is continuous or periodic, as described below, further clarification can be found in the completed Reports and from the Appellant himself. Indeed, the Appellant stated he needs help most days, five days out of seven.

Meal preparation—Food preparation and Cooking:

In Section 3 of the Assessor Report, the Doctor indicates the Appellant “Takes significantly longer than typical” for food preparation and cooking. This is supported by the evidence give by the Appellant at the hearing where he said that he required frequent sitting and rest breaks for food preparation and cooking; the required breaks are of such length that he may doze off and his safety is at risk due to fire.

Basic Housework/housekeeping—Laundry and Basic Housekeeping:

In Section 3 of the Assessor Report, the Doctor indicates the Appellant “Takes significantly longer than typical” for laundry and basic housekeeping. This is consistent with the Appellant’s Self Report where he said, “light housekeeping require(s) many breaks if not done over multiple days” and is also in line with his evidence at the hearing where he described that without help, doing a load or two of laundry takes him a full day. The activity is so draining that at each step he requires a lot of rest before the next step.

Daily Shopping—Going to and from stores and Carrying purchases home:

In Section 2 of the Medical Report, the Doctor notes the Appellant can walk less than one block unaided and in Section 3 of the Assessor report, the Doctor indicates the Appellant takes significantly longer with: Lifting; Carrying and holding; Going to and from stores; and Carrying purchases home. The limited walking and limitations in shopping related activities were confirmed by the Appellant at the hearing. He described shopping with the walking and the carrying and lifting required, as an activity he gets help with. He also said shopping is a physically taxing activity for him to the extent that he is required to rest in bed the following day.

Mobility outside the home

In Section 2 of the Medical Report, the Doctor notes the Appellant can walk less than one block unaided and in Section 3 of the Assessor report, the Doctor indicates the Appellant takes significantly longer than typical walking outdoors and climbing stairs and explains further, “Severe weakness, chronic anemia”. At the hearing the Appellant described being “housebound” and limited in his movements due to his fatigue, weakness, and dizziness. He further explained that due to the symptoms of his disease, he required frequent access to and lengthy periods of time in the bathroom, which further limited his movement outside his home.

Given the above, the Panel finds that the Ministry was not reasonable in finding that the information provided does not confirm that due to his severe physical impairment, there are direct and significant restrictions to the Appellant's ability to perform daily living activities. The Panel relies on the BC Supreme Court decision, *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2009 BCSC 146, which directs that the Panel must:

- Not limit its assessment to the tick boxes on the Medical Report and the Assessor Report;
- Consider the Medical and Assessor Reports in their entirety and in a broad way;
- Find eligibility confirmation elsewhere including in the narrative provided;
- Give significant weight to the Appellant's evidence; and
- Review and assess (eligibility) liberally and with a benevolent purpose.

Accordingly, the Panel gives significant weight to the evidence of both the Appellant and his Doctor. Independently while simultaneously consistent with each other, they described at least two of the Appellant's daily living activities are significantly restricted: Basic Housework/housekeeping—Laundry and Basic Housekeeping, and Daily Shopping—Going to and from stores and Carrying purchases home. As well, where the Doctor has not given greater explanation about the duration of the restricted activity, the Appellant's evidence explains the extent of the restriction—without help the Activities are restricted five out of seven days—due to his impairment.

Help Required:

A prescribed professional must provide an opinion that the person needs help to perform the restricted daily living activities. Help means using an assistive device, the significant help or supervision of another person, or using an assistance animal to perform the restricted daily living activities. An assistive device is something designed to let the person perform restricted daily living activities.

The Ministry said that because the Doctor did not directly indicate that the Appellant required an assistive device, or that he had the significant help of another person, or that he had an assistance animal, it was not established that help was required with daily living activities. However, the Panel finds that the Ministry's determination that the Appellant did not require help, was not reasonable. Indeed, the Doctor confirms "The help required for daily living activities is provided by: Family".

Using the test provided in the *Hudson* case, the Panel finds that information about whether help is required can be found throughout the Reports and is captured by the Appellant's evidence.

In the Medical Report, the Appellant's Doctor's response to the question, "What assistance does your patient need with Daily Living Activities" includes, "Patient has severe chronic diarrhea, pain, malnutrition, weakness". In the Assessor Report, the Doctor notes, "[The Appellant's] disease is severe—terrible chronic malnutrition, weakness, anemia" in reply to the request for "Additional comments (including a description of the type and amount of assistance required and identification of any **safety issues**)".

The Doctor's emphasis on the Appellant's weak state noting, "diffuse generalized weakness" and stating repeatedly, "severe weakness", in reply to questions about assistance needed may not be as clear as the Ministry expects, but it is instructive. It is reasonable that a malnourished and weak individual to the extent described by both the Doctor and the Appellant, requires significant help with daily living activities. The Appellant's evidence that he needs help with daily living activities including shopping and laundry, "most days, five days out of seven" confirms that significant help is required.

For the above reasons, the Panel finds that the Ministry was not reasonable in deciding that help was not required by the Appellant to perform the restricted daily living activities.

#### Conclusion:

The Panel finds that the Ministry's reconsideration decision, which determined that the Appellant was not eligible for PWD designation because his impairment did not restrict daily living activities and he did not require help to perform his daily living activities, was not reasonably supported by the evidence available at reconsideration and at the hearing. The decision was not a reasonable application of the legislation. The Panel finds that the Appellant met all the legislated criteria to be granted PWD designation including:

- Age (over 18);
- Duration (likely to last more than two years) ;
- Severe impairment (physical);
- Significant restriction on the ability to perform daily living activities; and
- Needing significant help to perform daily living activities.

Therefore, the Panel rescinds the Ministry's reconsideration decision. The Appellant is successful with his appeal.

Schedule – Relevant Legislation

**Employment and Assistance for Persons with Disabilities Act**

**Persons with disabilities**

s. 2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

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

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

#### Employment and Assistance for Persons with Disabilities Regulation

#### **Definitions for Act**

s.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.

(3) The definition of "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

**Employment and Assistance Act**

s. 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 2024-0075

**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

**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

Carmen Pickering

Signature of Chair

Date (Year/Month/Day)

2024/03/22

Print Name

Bill Haire

Signature of Member

Date (Year/Month/Day)

2024/03/22

Print Name

Robert Kelly

Signature of Member

Date (Year /Month/Day)

2024/03/24