

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“the Ministry”) decision dated January 24, 2024 which denied the Appellant persons with disabilities (PWD) designation.

The Ministry found the Appellant met the following requirements: age (over 18); severe mental or physical impairment; significant restriction on the ability to perform daily living activities; and needing significant help to perform daily living activities.

However, the ministry found the Appellant did not meet the requirement for duration (impairment likely to last two years).

The Ministry found the Appellant was not one of the prescribed classes of persons eligible for PWD on alternative grounds. The panel notes that the Appellant expressed confusion about this basis for PWD eligibility but 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

The hearing was held via teleconference on April 5, 2024. In attendance, along with the panel members, were the Appellant, his advocate, and the Ministry.

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 a patient since 2018 and has been seen 2-10 times in the past 12 months.
- Appellant’s Self Report.
- Health Assistance Branch Decision Summary dated December 21, 2023, which denied PWD designation because the Appellant met only the age requirement and did not meet all the other requirements.
- Additional Medical Reports from the Appellant’s doctor and hospital forms dated September 2022 to September 2023. The various Reports detail the Appellant’s injuries sustained in an accident, his surgery, and post surgery treatment plans.
- Letter from a pain clinic dated August 21, 2023, which documents the Appellant’s mental impairment and indicates that the ongoing symptoms are in keeping with post-concussion syndrome. The writer explains that 50-90% of concussions resolve by 3 months, but recovery can sometimes continue for up to two years. The letter outlines a treatment plan which includes a recommended 3–4-month trial of supplements; physiotherapy; active rehabilitation with a Kinesiologist, occupational therapy to address cognitive difficulties; clinical counselling for post-concussion symptoms; and follow-up with an Optometrist.
- A Request for Reconsideration where the Appellant writes as his reasons for requesting a reconsideration (comments specific to duration summarized):
 - Since his accident last year, everything has gotten worse and hinders him from participating in society.
 - His mental health impairment most likely will continue for two or more years.
 - He feels he is being discriminated against as an aboriginal person with long term and recurring physical (chronic pain) mental (psychiatric, learning impairment,

PTSD, mental health challenges/barriers) as he feels he is viewed as lacking in credibility because of his indigenous identity.

- He cites the Canadian Charter of Rights and Freedom section 15.

At Reconsideration, the Ministry determined that the Appellant meets four of the five requirements for persons with disabilities designation. However, he did not meet the duration requirement because a medical practitioner or nurse practitioner has not confirmed that the current severity of the impairment is likely to continue to last at least another two years.

The information in the Persons with Disabilities application form, that relates to the duration requirement, includes the following:

Self Report

The Appellant states:

- He was in a bad car accident on September 13, 2022.
- He was given emergency surgery for his kidney, which had ruptured.
- He suffered head trauma which he is still suffering from.

Diagnoses

The doctor provides diagnoses of post-concussion syndrome and low back pain with onset of both being since September 2022.

Health History

The doctor writes: "The Appellant was in a motor vehicle accident on September 13, 2022, and he hit the right side of his head with the window." "He reports dizziness, ringing, B/L intermittent, brain fog and has difficulty remembering." The doctor notes that the Appellant "has been prescribed medications that affect his daily living activities, but the medication prescribed did not help."

Degree and Course of Impairment

In the Medical Report, the doctor did not answer the question "Is the impairment likely to continue for two years or more from today?" The doctor wrote: "unknown" and "expect some improvement."

In Section F of the Assessor Report, the doctor wrote: "After concussion, 50-90% resolve by 3 months" and "Recovery can continue for up to two years."

Information Received After Reconsideration

On the Notice of Appeal form, the Appellant wrote that the reconsideration denial was not fair. He writes, (comments specific to duration summarized):

- The Ministry has accepted, age, severity of impairment, daily living activities and help required. The only requirement missing was the duration of his impairment. When he was with the doctor to have the application filled out, it was on a time limit appointment, and it was very rushed in the allotted time space.
- He feels discriminated against because it is not his fault the health system is broken right now and doctors have little to no time to spend with patients, especially when it comes to filling out forms such as the disability application. He hopes he can get in to see the doctor in a timely manner to discuss this letter with him and get a supporting letter for the Ministry.
- The duration will be 2 years or longer having my impairments.

On March 8, 2024, the Appellant submitted an additional letter from his doctor. The doctor writes of the Appellant's continuing symptoms and adds the following statements regarding the duration of his medical condition:

- There has been no significant improvement in his symptoms, therefore it is likely that his symptoms will continue for over a couple of years.
- Different interventions have been recommended, which he is following, and so far in terms have been persistent.

At the hearing, the Appellant explained that since he submitted the Reconsideration Request, he met with his doctor. The doctor agrees that the Appellant's symptoms haven't gotten any better, there has been no improvement, and he is still waiting to get in to see a psychiatrist. The doctor wrote a letter confirming that his condition will last for more than two years.

At the hearing, the Ministry accepts the additional letter from the Appellant's doctor, which confirms his condition is likely to last two years. The Ministry reviewed the Reconsideration Decision, indicating that the only reason for denying PWD designation was because the duration requirement had not been met. The Ministry stated that if they had this information when the Reconsideration Decision was made, it is her opinion that PWD designation would have been approved.

Admissibility of Additional Information

The panel accepts and admits the additional letter from the doctor, as well as the oral testimony provided by both the Appellant and the Ministry 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 his doctor has now confirmed that his medical condition is likely to last two years, therefore, he should receive PWD designation.

Ministry's Position

The Ministry's position at reconsideration was that a medical practitioner or nurse practitioner had not confirmed that the Appellant's condition is likely to last two years. The duration requirement was the only criteria that had not been met. The additional letter submitted at Appeal by the Appellant's doctor confirming that his condition is likely to last two years is all that was necessary to meet the duration requirement.

Panel's Decision*PWD Designation – Generally*

The legislation provides the Ministry with the discretion to designate someone as a PWD if all the requirements are met. Some requirements for PWD designation must have an opinion from a prescribed professional. The Ministry found the Appellant met: the age (over 18); 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 determined that a medical practitioner or nurse practitioner has not provided an opinion that the condition is likely to continue for at least two years.

Duration

Section 2(2) of the *Act* requires the opinion of a medical practitioner or nurse practitioner that a person's impairment is likely to continue for at least two years.

The Ministry initially did not have confirmation from a medical practitioner or nurse practitioner that the condition is likely to continue for at least two years. However, at appeal, the Appellant provided an additional letter from his doctor which confirms that his condition will last two years. The Ministry had no objection to the submission of this new information

and stated that if they had received this information at Reconsideration his PWD designation would have, most likely, been approved because the Appellant had met all the other criteria, other than the duration criteria.

The panel finds that the reconsideration decision by the Ministry was reasonable when it was made because there was no confirmation, at that time, that the Appellant's condition was likely to last for two years. However, the panel finds that the additional letter from the doctor states, "there has been no significant improvement in his symptoms, therefore it is likely that his symptoms will continue for over a couple of years", and therefore does confirm the Appellant's medical condition is likely to last two years, thus meeting the duration criteria.

At reconsideration, the Ministry had already determined that the Appellant met all the PWD criteria except for duration. The panel has found the duration criterion has been met. Therefore, based on the new evidence submitted, the panel finds that the Appellant has met all the criteria for PWD designation.

Conclusion

After reviewing the evidence submitted in this appeal, the panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation was not reasonably supported by the evidence and therefore rescinds the decision. The appellant is successful on 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

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)

2024/04/05

Print Name

Kenneth Smith

Signature of Member

Date (Year/Month/Day)

2024/04/06

Print Name

Glenn Prior

Signature of Member

Date (Year/Month/Day)

2024/04/06