

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“the Ministry”) decision dated March 6, 2024 in which the Ministry denied the Appellant’s request for 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 (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. 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’s Reasons)

Part E – Summary of Facts

The hearing was held via teleconference on April 3, 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 2015 and has been seen 2-10 times in the past 12 months.
- Appellant’s Self Report.
- Health Assistance Branch Decision Summary dated January 23, 2024, which denied PWD designation because the Appellant only met the age requirement and did not meet all the other requirements.
- The Appellant provided a letter from an advocacy agency with his Request for Reconsideration. The advocate requested that the Appellant’s mental health issues, and his use of alcohol to cope with those issues, should be considered in his application for PWD. The Appellant responded to a questionnaire which asked questions about how his conditions affects his daily life and his need for assistance. The Appellant’s doctor signed and stamped this questionnaire on February 14, 2024.
- At Reconsideration, the Ministry determined that the Appellant meets four of the five requirements for PWD designation. However, they determined that he did not meet the duration requirement because a medical practitioner or nurse practitioner had not confirmed that the impairment is likely to continue or last for at least another two years.

The information in the PWD application form, that relates to the duration requirement, includes the following:

Self Report

The Appellant states:

- For most of my adult life, I have worked with my hands. Over the past four to five years, I began to experience a lot of pain and weakness in my hands. As time went along, the

pain increased until I decided to see a doctor. I was referred to a specialist for more specific investigations.

- The specialist told me that I have advanced osteoarthritis in my right hand and left wrist. I was told I required surgery, however, due to Covid restrictions the surgery was put off.
- In October of 2023, my hand was operated on and was in a cast until November 17, 2023. I do not know how long it will take before they operate on my wrist. The specialist chose to not do both at the same time because it would be too debilitating to have both hands out of commission.
- Until both my hand and wrist recover, I do not know what it will mean for me down the road. I hope I will be able to take care of myself and my home, but time will tell.

Diagnoses

The doctor provides a diagnosis of arthritis in both of the Appellant's hands and wrists with onset being since 2019.

Health History

The doctor writes:

- "He just had a plastic surgery operation on his right wrist on September 25, 2023 and is still healing."
- "He awaits a CT scan of the left wrist; unsure yet whether another surgery will be offered".

Degree and Course of Impairment

In the Medical Report, the doctor answered "Unsure" to the question "Is the impairment likely to continue for two years or more from today?" The doctor wrote: "After any hand/wrist surgeries, he will require six months to recover."

The doctor provided an additional comment. The doctor wrote: "The x-rays show diffuse osteoarthritis throughout both hands; presently he is incapable of doing any work with his hands. It is unknown whether he will improve sufficiently after surgery to return to work."

In the Assessor Report, the doctor wrote: "He is healing from the right-hand surgery in September, and he awaits the left wrist CT scan and possible future surgery on his left hand.

Information Submitted After Reconsideration

With the Notice of Appeal, the Appellant submitted a letter from an advocacy group. The advocate writes, (summarized):

- The Appellant's doctor stated that he was "unsure" of the duration of the Appellant's inability to function doing his activities of daily living. The Appellant argues that he struggles to do even the simplest of tasks and has already been suffering with this problem for several years.
- Although the Appellant had surgery on his right hand, he is still in recovery. Although it was repaired, he feels no reduction in his pain and discomfort.
- His left hand is weak and painful, and there has been no surgical time booked to attempt a repair.

At the hearing, the Appellant explained that it has been six months since his surgery and he still cannot use his right hand, and there is no word about when the surgery for his left hand will be.

The Appellant's advocate stated that after he was initially denied PWD designation they met to discuss the other issues, besides his hands. He was suffering from mental health and chronic alcohol addiction issues, so he went to his doctor. The doctor prescribed medication for depression, but no planning has been done and the Appellant has had no further discussion about it with his doctor. The advocate argues that the doctor did not confirm the condition will last over two years because he does not know how long it would last.

At the hearing, the Ministry explained that to approve PWD designation there are five criteria that must be met. At reconsideration, the Ministry determined that the Appellant does have a severe medical condition that he requires significant help to manage his daily living activities. However, a medical practitioner has not confirmed that the condition will last for two years from today.

The panel asked for clarification about what legislation requires, regarding when the two-year period begins. The Ministry clarified that they consider the two-year period is from the date of the PWD application.

The Ministry advised that the Appellant may wish to apply for Persons with Persistent Multiple Barriers designation, which does not have as many restrictions and provides additional support and benefits above regular Income Assistance.

Admissibility of Additional Information

The panel accepts and admits 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 he had surgery on his right hand six months ago, and he is still unable to use it, and there is still no date set for surgery on his left hand. Although his doctor did not provide a concrete answer about how long his condition will last, it was because he did not know how long it would take.

Ministry's Position

The Ministry's position is that all five criteria for PWD designation must be met. Although they have determined the Appellant has met four of the conditions, a medical practitioner or nurse practitioner has not confirmed the duration of his medical condition. Specifically, that it is likely to continue for two years, which is legislatively required.

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* sets out that 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 if that the person has a severe mental or physical impairment that, in the opinion of a medical practitioner or nurse practitioner, is likely to continue for at least two years.

The Ministry considers that the two-year period begins from the date of the PWD Application. The Medical Report in the PWD Application specifically asks the medical practitioner or nurse practitioner to answer the question, "Is the impairment likely to continue for two years or more from today?" The panel finds it is reasonable to consider that the two-year period would begin from the date the medical practitioner or nurse practitioner signs the PWD Application because that is the date they are giving their opinion as to whether the condition is likely to last two years from.

In the Medical Report, the doctor diagnosed arthritis in the Appellant's hands and wrists with date of onset being 2019. The doctor notes that the Appellant had surgery on his right wrist on September 25, 2023, and is still healing. The doctor notes the Appellant is awaiting a CT scan of his left wrist and is unsure whether another surgery will be offered.

In the Medical Report, under section D, Degree and Course of Impairment, the doctor answered "unsure" to the question, "Is the impairment likely to continue for two years or more from today?" The doctor commented "after any hand/wrist surgeries, he will require at least six months to recover."

The Appellant argues that the doctor did not know how long the Appellant would be impaired with his hand condition, which is why he wrote "unsure". The Appellant states that it has already been six months since the surgery, and he is still not able to use his right hand and the surgery date has not even been set for his left hand.

The panel finds that, although the doctor indicates the arthritis in hands and wrists began in 2019, which is more than two years ago the legislative requirement is not how long an impairment has existed but how long the impairment is expected to continue, going forward. In the Appellant's case, the doctor indicates that surgery is an option, and does not confirm the condition will last over two years. The first surgery was in September 2023, which required at least six months recovery. It has now been six months and the Appellant is still not able to use that hand. However, there is no evidence that the Appellant followed up with the doctor about the effectiveness of the surgery, or whether it will continue to bother him for an additional period. Further, the PWD application was completed by the doctor on December 6, 2023, and the doctor has not provided an opinion that the condition is likely to last for two years from that date.

At reconsideration, the Appellant completed a questionnaire provided by the advocacy group. The questionnaire is dated February 14, 2024. It reviewed the Appellant's mental health and addictions issues along with his medical issues with his hands and was signed off at the bottom by the Appellant's doctor. With this additional information, the Ministry

determined that the Appellant did have a severe impairment that required significant assistance and help to manage his daily living activities.

The panel found no evidence in this additional questionnaire regarding the duration requirement. The panel cannot make assumptions about whether the Appellant's arthritis in his hands will, or will not, improve; whether his mental health will, or will not, improve with medication; or whether his alcohol addiction will, or will not, improve. This must be confirmed by a medical practitioner or nurse practitioner.

Despite the legislation's requirement for a medical practitioner or nurse practitioner to provide an opinion that the impairment is likely to last for two years, the Appellant's doctor, the medical practitioner, did not provide that opinion. Therefore, the panel finds that the Ministry was reasonable to determine that the Appellant has not met all the requirements for a PWD designation, namely he has not met the duration requirement.

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.

APPEAL NUMBER 2024-0089

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)

2024/04/08

Print Name

Julie Iuvancigh

Signature of Member

Date (Year/Month/Day)

2024/04/08

Print Name

Anil Aggarwal

Signature of Member

Date (Year/Month/Day)

2024/04/08