

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“the Ministry”) decision dated March 15, 2024, which denied the Appellant 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’s Reasons)

Part E – Summary of Facts

The hearing was held by videoconference on April 12, 2024. In attendance, along with the panel members, were the Appellant, her advocate, and the Ministry.

Information Before the Ministry at Reconsideration

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

- A PWD Application, comprised of Medical and Assessor Reports both completed by the Appellant's doctor. The doctor indicates that the Appellant has been a patient since July 8, 2015, and has been seen 2-10 times in the past 12 months. Also included is the Appellant's Self Report. Information from these Reports is set out below.
- The Ministry's Health Assistance Branch Denial Decision Summary. The letter and summary indicate that after review of the PWD Application, the Appellant is not eligible for PWD designation. The Appellant has met the age and duration requirement; however, it cannot be determined that there is a severe impairment that significantly restricts the Appellant's daily living activities and as a result requires help of a significant nature. As all criteria have not been satisfied, PWD designation is denied.
- A Request for Reconsideration where the Appellant reviewed the supplemental information provided by her doctor, which was submitted with the Request for Reconsideration. The Appellant writes, summarized:
 - Her doctor was asked to respond to a questionnaire, provided by an advocacy group, with the hopes that the additional information clarifies why the Appellant should be approved for PWD.
 - The doctor confirms the conditions that the Appellant is facing and that these conditions do impact her daily life; that she takes significantly longer than normal to perform daily activities; that her impairment significantly restricts her ability to perform daily living activities; and that she requires significant help with her daily living activities, including the use of mobility aids such as a walker.
- In a questionnaire prepared by an advocacy group, signed by the doctor, dated February 27, 2024, the doctor responded to seven questions.
 - "When the impact of your patient's medical conditions on her daily life are considered, does she have a severe physical or mental impairment (or both)?" The

doctor wrote: "has diabetes; tendinopathy; cannot use right arm; cannot do grocery; frozen shoulder".

- "Does it take your patient significantly longer than normal to perform daily living activities as a direct result of her physical and mental limitations? If so, can you estimate how much longer than normal it typically takes her to do routine tasks?" The doctor wrote: "unfit for work indefinitely".
- "Does she need to take frequent rest breaks during the day? If so, how often?" The doctor wrote: "unfit for work".
- "Is her level of activity significantly reduced due to her impairment(s)?" The doctor wrote: "Yes".
- "How often is she significantly restricted in performing daily living activities by one or more of her medical conditions?" The doctor wrote: "Yes".
- "Overall, does her impairment significantly restrict her ability to perform a range of daily living activities on a continuous basis, or periodically for extended periods? Please provide examples of tasks she has difficulty performing." The doctor wrote: "light duty; cannot do heavy activities".
- "As a result of her health restrictions, can you confirm that your patient requires significant help with daily living activities – either by taking much longer than typical to complete routine tasks, needing other people for ongoing help, or needing to use an assistive device?" The doctor wrote: "require significant help with daily activities; needs other people to help; uses walker".

The information in the PWD application included the following:

Self Report

An advocacy group used a questionnaire to create a report to assist the Appellant, and this was accepted as a Self Report. This Self Report is summarized as follows:

1. Please describe your disability:

- Appellant has been dealing with multiple medical conditions, which have adversely affected her life.
- Her rheumatoid arthritis affects her ability to walk due to acute knee pain.
- She finds it difficult to lift and carry items on her back, leading her to use a rolling bag for moving things. This issue started a decade ago and she attributes it to her old age.
- She manages pain with herbal medication and when in severe pain she uses an ointment. It helps relieve the pain, especially during winters and colder months.

- Her fatigue is significant, which makes it hard for her to perform tasks like walking, cleaning and cooking. The slightest bit of physical activity makes her tired and she cannot do things like she used to. There is a noticeable decrease in her stamina, which she attributes to aging.
- The Appellant also suffers from intense pain in her left shoulder, making lifting objects challenging. She believes this pain, along with pain in her shoulder, is due to her advancing age and to relieve this pain she uses extra strength Tylenol.
- She also experiences headaches, for which she holds responsible for her high levels of stress due to her son's illness.
- She sometimes has heart palpitations. An ECG revealed no heart problems, but her doctor attributes these sensations to anxiousness. She manages this with herbal remedies.
- Due to irregular eating habits, she feels dizzy and nauseous most of the time. She has low blood pressure and takes iron tablets and consumes green vegetables.
- Sleeping troubles plague her life and she often wakes up during the night.
- She faces blurred vision but hasn't been able to afford glasses or optometrist fees. She saw an optometrist in September 2022, got a prescription, but doesn't like wearing glasses. Instead, she uses eye drops at night to help maintain clear vision.
- She has been dealing with diabetes for a decade, with fluctuating blood sugar levels from extremely high to exceedingly low. This leads to dizziness and nausea. She manages this condition by taking medication each morning to control her blood sugar. She always carries candies and water in a bag with her in case an emergency arises.
- Her cholesterol issues emerged around the same time as diabetes, six years ago. Although she used to experience headaches and dizziness, her condition has improved with medication and since she started being more cautious about it and taking precautionary care. She has been able to control her cholesterol levels.
- She faces balance issues that began five years ago. She attributes these difficulties to aging and often relies on nearby objects for support while walking or climbing stairs. She frequently feels as though she might fall and has to sit down to prevent accidents.
- She has a stubborn callus on her right foot. Despite multiple visits to the doctor, who has performed procedures and applied medication, the callus continues to reappear.
- The Appellant is grappling with a complex set of challenges emotionally as well. She experiences extreme anxiety due to her son's mental health condition, which emerged four years ago following her husband's passing. She has been battling depression and excessive stress. Despite seeking professional help, she attempts to alleviate her distress by occasionally going out for meals to find some relaxation. Her anxiety continues to overwhelm her most of the time, often leading to severe headaches. The loss of her husband constantly haunts her, adding to her depression.

2) How does your disability affect your life and your ability to take care of yourself?

- The Appellant faces numerous challenges, including walking, which is limited to two to three blocks.
- Her physical mobility has declined over time, preventing her from participating in activities such as skipping rope and walking the treadmill. She occasionally visits the gym, where she is assisted with slow treadmill walking, followed by a hot water spa session for relief from the pain in her knees.
- The persistent callus on her foot adds to her walking difficulties.
- Lifting objects, even as light as an eight-pound bag of rice is difficult due to intense back and shoulder pain.
- Lower back pain is a concern, and she takes Epsom salt baths for relief.
- Turning in bed poses a challenge, and she often finds herself facing difficulty in lying straight.
- Standing is an additional challenge that the Appellant battles with as when she stands, she perceives a disconcerting clanking and clicking of bones, which she attributes to the aging process. Prolonged standing for more than 20 minutes is exhausting due to arthritis. This affects her using public transit and cooking at home because she frequently needs to sit down to alleviate discomfort and stiffness.
- Climbing stairs, particularly going up, is challenging due to knee pain and the need of using railings for support.
- After climbing 10-12 stairs, which is the maximum she can do at a time, she experiences severe pain in her knees.
- The Appellant faces difficulty with a range of emotional challenges. In terms of communication, she often feels confused and nervous while talking to others. Quick decision-making is a struggle, and she believes her mind operates at only 70-75% of capacity. She frequently forgets what she is saying during conversations and prefers solitude to group interactions.
- Emotionally, she describes herself as fragile and prone to getting angry and upset. Her anxiety intensifies, especially in response to her son's actions, leading to anxious outbursts and anger.
- Her son's hospitalization experiences after her spouse's death, coupled with inadequate treatment, have left her even more stressed and the memory of her late spouse brings her to tears, and she experiences symptoms of grief.
- Regarding her cognitive functions, her memory is weak, and she often forgets things, relying on notes to keep track. Her concentration is easily disrupted, and she is prone to distractions. Decision-making is a deliberate process for her, and overthinking disrupts her sleep, making her feel fatigued the day after.

- She struggles with low motivation levels.
- Personal self-care and hygiene are not a concern for her.
- She finds managing household chores to be a slow process due to fatigue and diminished strength.
- She relies on public transportation, and finds she generally feels okay commuting with that, but struggles to carry items. Her son handles shopping for her due to her inability to carry heavy items such as milk from the store.
- Her daughter takes care of bill payments, using the Appellant's income assistance funds, as she often forgets important details.

Medical and Assessor Reports

Diagnoses

The doctor provides diagnoses of diabetes, rheumatoid arthritis and herpes zoster with 2019 as the date of onset.

Health History

The doctor writes: "severe diabetes" and "rheumatoid arthritis". The doctor indicates that the Appellant has been prescribed medications (lists 5 medications) that interfere with her ability to perform daily living activities. The doctor notes that the anticipated duration of the medications and/or treatments is "indefinite". The doctor indicated that 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. The doctor wrote "indefinite" as explanation. The doctor wrote as an additional comment, "multiple medical problems".

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

Physical Functioning

In the Medical Report, the doctor reports:

- Can walk one to two blocks unaided;

- Can climb two to five steps unaided;
- Can lift two to seven kg;
- Can remain seated one to two hours;

In the Assessor Report, the doctor indicates that the Appellant is independent with standing and takes significantly longer than typical with walking indoors/outdoors, climbing stairs and lifting. No additional comments were provided.

Cognitive and Emotional Functioning

In the Medical Report, the doctor answered “No” to the questions, “Are there any difficulties with communication.” and “Are there any significant deficits with cognitive and emotional function?”

In the Assessor Report, the doctor indicated, in the Cognitive and Emotional Functioning Section, that the Appellant’s mental impairment moderately impacts her daily functioning in the area of emotion. No written comments were made. All other areas are indicated as no impact.

Daily Living Activities

In the Medical Report, 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 affected in all but one the areas listed: personal self-care; meal preparation; management of medications; basic housework; daily shopping; mobility inside/outside the home; use of transportation; management of finances, and that the restriction is continuous for all the areas listed. There was no restriction for social functioning. The doctor provided no written comments.

In the Assessor Report, the doctor indicates that the Appellant is independent in all areas of daily living activities: personal care; basic housekeeping/laundry; shopping; meals; paying rent and bills; medications; and transportation. The doctor commented “light” regarding laundry and basic housekeeping and “light weight” regarding carrying purchases home. No additional written comments were made.

In the Assessor Report, 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. The doctor notes that the Appellant has good functioning with immediate and extended social networks.

Assistance Provided for the Applicant

In the Medical Report, the doctor wrote “medications” in response to the question, “What assistance does your patient need with daily living activities?”

In the Assessor Report, the doctor indicated that help required for daily living activities is provided by family. The doctor notes that a walker is used as an assistive device and the Appellant does not have an assistance animal.

Information Submitted After Reconsideration

On the Notice of Appeal, the Appellant wrote, “I am diabetic. I have osteoarthritis and tendonitis. I barely walk with a walker. My right shoulder is frozen.”

At the hearing, the Appellant stated that she is unhappy with the decision because she is suffering. She has trouble walking and climbing stairs, needs help with minor things, such as signing paperwork, and she gets dizzy. She uses public transportation but has no help when doing so. Her son has mental health issues, and she gets anxious and nervous because of that.

The Appellant explained that she receives Old Age Security and Canada Pension Plan, which is about \$700. She also receives \$395 assistance from the Ministry, and if she had PWD designation she would receive additional money which would help her. She would also receive additional medical coverage, which would help her buy necessary equipment, such as a shower chair. She finds it difficult to shower because she has only one arm she can use.

The Appellant explained that she cannot use her right arm at all and finds it very difficult to use her left arm now, as it is getting worse. She states that she needs help putting her coat on and off and finds it very difficult to get dressed. The Appellant expressed concern about how she will survive if her condition continues to worsen. It takes her too long to walk anywhere as she walks, sits down, rests and then walks again. She uses a walker that her husband used to use before he passed away four years ago. Her daughter purchased another walker, that the Appellant now has to repay her for. She would like to have a cane right by her bed to help her get moving as she sometimes experiences dizziness.

The Appellant was asked about what help she provides to her son, as she noted in the Self Report that she cares for him. The Appellant responded that she provides emotional support, not physical, as he is able to physically care for himself. However, caring for him causes her anxiety.

The Appellant was asked whether she had spoken to her physician about how her condition is worsening. The Appellant stated that she had not and finds it difficult to even get in to see him. When she does see the doctor, he only instructs her to use a cold compress, but she is in such pain she requires pain relief. The Appellant's advocate indicated that their society would try to assist the Appellant with contacting medical resources.

At the hearing, the Ministry reviewed the reconsideration decision stating that the age and duration criteria have been met, but they do not have enough evidence to confirm that there is a severe physical or mental impairment that directly and significantly restricts daily living activities continuously or periodically for extended periods. Further, because they had determined that daily living activities are not significantly restricted, it could not be determined that significant help is required from other persons or a device.

Regarding a physical impairment, the Ministry explained that there were conflicting reports from the doctor. For example, in the Medical Report the doctor indicates no prosthesis or aids are required and that the Appellant can walk 1-2 blocks unaided. However, in the Assessor Report and with the questionnaire received at reconsideration, the doctor indicates that the Appellant uses a walker. This conflicting information makes it difficult to determine the Appellant's overall ability to walk because it is not explained why a walker is needed to mobilize. Although the doctor has indicated that it takes significantly longer than typical to walk indoors/outdoors, climbing stairs and lifting, they do not explain how much longer than typical. There was insufficient evidence to determine that the Appellant has a severe physical impairment.

Regarding a mental impairment, the Ministry noted that the doctor did not provide a diagnosis of a mental impairment. Further, the doctor indicated in the Medical Report that the Appellant has no difficulty with communication, and in the Assessor Report noted that the Appellant's ability to communicate is good in all areas. There is no evidence to determine that the Appellant has a severe mental impairment.

Regarding daily living activities, the doctor noted that the Appellant is taking medications that restrict her ability to manage daily living, however, did not explain why she is restricted or the degree of restriction. Further, the doctor indicated that the Appellant is independent

in all areas of daily living and did not provide any additional information in the questionnaire provided at reconsideration.

The Ministry was asked whether the Appellant's statements at the hearing and the information she provided in the Self Report provide enough confirmation of what she requires assistance with. The Ministry explained that if the information is confirmed and backed up by a doctor, it would be. However, the doctor does not provide this confirmation.

Admissibility of Additional Information

The panel accepts and admits the oral testimony provided by the Appellant 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 a doctor confirms the Appellant's medical conditions impact her daily life as she has impairments due to multiple medical conditions. These include rheumatoid arthritis which impacts her walking and a frozen shoulder which does not allow her to use her right arm. The doctor further confirms that the Appellant's impairment significantly restricts her ability to perform her daily living activities, takes her significantly longer than normal to perform those activities and that she needs significant help from other people and with mobility aids such as a walker.

Ministry's Position

The Ministry's position is 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 PWD 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.

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 qualifies 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

From reviewing all the information provided by the Appellant in the Self Report, and at the hearing, it seems that there are two main issues for the Appellant regarding a physical impairment. Her ability to walk is limited, and she cannot use her right arm.

The panel finds there are inconsistencies between what the Appellant indicates as her limitations and what the doctor indicates. The Appellant states that she finds that acute knee pain affects her ability to walk. At the hearing, she explained that she uses a walker when going to the bus stop because sometimes the buses are delayed. She explained that she walks a bit, must sit for a while, then walks again. The Appellant argues that the additional questionnaire submitted at reconsideration states that a doctor has confirmed she does have a severe impairment.

In the questionnaire, the doctor was asked “When the impact of your patient’s medical conditions on her daily life are considered, does she have a severe physical or mental impairment (or both)?” The doctor did not answer the question as “Yes” or “No”. The doctor

wrote, "has diabetes; tendinopathy; cannot use right arm; cannot do grocery; frozen shoulder". Further, the doctor was asked "Is her level of activity significantly reduced due to her impairment(s)?" and "How often is she significantly restricted in performing daily living activities by one or more of her medical conditions?" The doctor answered "Yes" to both questions, however, provided no additional comments to explain either of the questions. The panel finds that the doctor does not provide enough information to substantiate the severity of the Appellant's condition.

In the Medical Report, the doctor indicates that the Appellant can walk unaided for one to two blocks. In the Assessor Report, the doctor indicates that it takes the Appellant significantly longer than typical when walking indoors or outdoors and that she is independent with standing. However, the doctor does not provide any clarification as to how much longer than typical when walking, nor does he provide any clarification in the additional questionnaire about her ability to walk. The panel notes that, although the Appellant experiences some pain when walking, she does walk to use public transportation. In the Self Report, the Appellant stated she is limited to walking two to three blocks.

The Appellant states that she cannot use her right arm at all and so uses her left arm, which takes her longer to do things such as showering or getting dressed. The Appellant was specifically asked how much longer than typical it takes her to shower, but she did not specify how long it takes her to shower. In the Medical Report, the doctor indicates that the Appellant takes significantly longer than typical to climb stairs or to lift but provided no details about how much longer than typical. In the additional questionnaire, the doctor was specifically asked about how much longer than typical, and all he wrote was that she was unfit for work indefinitely.

Because of the conflicting and insufficient details from the doctor, the panel cannot determine that the Appellant's physical impairment is severe. 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 Appellant indicates in the Self Report and in her oral testimony that she experiences anxiety. However, the doctor did not provide any diagnosis of a mental impairment and answered "No" to the questions, "Are there any difficulties with communication or any significant deficits with cognitive and emotional function?" In the Assessor Report, the doctor indicates that the Appellant's ability to communicate is good with speaking, reading, writing, and hearing. The doctor indicates there is no impact for bodily functions,

consciousness, impulse control, insight/judgement, attention/concentration, executive, memory, motivation, motor activity, language, psychotic symptoms, or any other neuropsychological problems. The doctor indicates a moderate impact regarding emotion, however, provided no details as to how the Appellant is impacted. Further, the doctor indicates that the Appellant has good functioning regarding immediate and extended social networks.

The panel acknowledges that the Appellant experiences anxiety due to the stressors in her life, however, as noted above, there is insufficient evidence provided by the doctor to show there is a severe mental impairment. Therefore, the panel finds that the Ministry was reasonable to determine there was insufficient evidence to determine the Appellant has 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.

In the BC Supreme Court case of *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2009 BCSC 1461) it was decided that at least two daily living activities must be restricted in a way to satisfy 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 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 she finds it difficult to lift and carry items because of pain in her shoulder, leading her to use a rolling bag for moving things. She manages the pain with various herbal remedies and ointments. The Appellant argues that the doctor did confirm her impairment significantly restricts her ability to perform a range of daily living activities. However, in the questionnaire, all the doctor wrote was "light duty" and "cannot heavy activities". This was insufficient information to determine she is significantly restricted.

In the Medical Report, 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 all areas of activity are restricted continuously, however, provided no written narrative to describe the frequency and duration of the restrictions. In the Assessor Report, the doctor then notes that the Appellant is independent in all areas of personal care, basic housekeeping, shopping, meals, paying rent and bills, medications and transportation. The only note that the doctor wrote was "light" for laundry, housekeeping and carrying purchases home.

The panel finds that although the Appellant may not be able to use one arm as she wishes she could, the only thing she mentioned that she finds difficult to manage is showering and getting dressed. When specifically asked about how much longer it takes her to do these things, she stated it takes her a while, but did not indicate she could not manage these do personal tasks. The Appellant indicates she cannot lift or carry much weight, so she uses a

roll-along bag, which the panel considers is a good way for her to bring home groceries, etc.

For the reasons noted above, the panel finds the Ministry was reasonable to consider the level of physical functioning described by the doctor, that the Appellant is able to perform all daily living activities to a reasonable degree, doesn't show that the restrictions are significant.

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 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.

In summary, the panel finds that the Appellant has not provided sufficient evidence that proves she meets with all the requirements for a PWD designation, namely severe mental or physical impairment; significant restriction on the ability to perform daily living activities; and needing significant help to perform daily living activities.

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) a person who is 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.

APPEAL NUMBER 2024-0103

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)

2024/04/14

Print Name

Dawn Wattie

Signature of Member

Date (Year/Month/Day)

2024/04/14

Print Name

Carla Tibbo

Signature of Member

Date (Year/Month/Day)

2024/04/14