

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 6, 2024, denying the Appellant a persons with disability (“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 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 (the “Act”), s. 2

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

Employment and Assistance Act (the “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 teleconference on April 11, 2024. The Appellant, his Representative, and a Ministry representative attended.

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 Report (the “Medical Report”) completed by the Appellant’s Nurse Practitioner (the “NP”);
- Assessor Report (the “Assessor Report”) completed by the Appellant’s Registered Social Worker (the “RSW”);
- Appellant’s Self Report;
- January 3-6, 2006, Barr Psychological & Education Services: Neuropsychological/ Vocational Assessment; and
- March 2, 2006, Persons with Persistent Multiple Barriers Application.

Request for Reconsideration:

In his Request for Reconsideration, the Appellant says:

- His application was denied due to a lack of qualifying physical and mental disabilities;
- He neglected to include his 2004 Traumatic Brain Injury as part of his cognitive issues;
- The symptoms of his brain injury have never resolved and cause memory and processing issues such as, “it caused me to forget to mention it as part of my application despite it being one of the primary causes of needing disability assistance”;
- It is not possible for him to sustain full time employment and he needs to have the safety net of PWD;
- He is in and out of hospital a lot which affects his employment;
- He does not have finances to pay for medications or the deductibles;
- He needs extensive dental treatments; and
- His knee brace is broken and in need of replacement.

Medical Report:

The NP indicated that the Appellant has been their patient from January 2023, and they have seen the Appellant two-to-ten times in the last 12 months.

Diagnosis:

The NP identifies multiple diagnoses:

- Atrial Fibrillation;
- Nonischemic cardiomyopathy (date of onset: 2017);
- Psoriasis; and
- Torn ACL (date of onset: 1999).

Health History:

The NP states that the Appellant has, “significant cardiac health concerns that may lead to shortness of breath, dizziness and fatigue. This requires lifelong medication use and regular follow up appointments”. The NP indicates the Appellant is on lifelong medications and/or treatments that interfere with his ability to perform daily living activities and comments that the medications, “may cause considerable side effects”.

Degree and Course of Impairment:

The NP says the Appellant requires a knee brace for his impairment, and marks “Yes” that the impairment is likely to continue for two years or more.

Functional Skills:

The NP indicates that the Appellant:

- Can climb 2-5 steps unaided; and
- Can remain seated without limitation.

The NP indicates, “unknown” regarding the Appellant’s ability to walk unaided and limitations with lifting.

The NP notes, “Yes,” the Appellant has significant deficits with cognitive and emotional function including Executive, Memory, and Motivation. The NP also provides comments, “Pt demonstrates difficulty with planning and managing significant health conditions”.

Daily Living Activities

The NP notes it is, “Unknown” whether the Appellant’s impairment directly restricts his ability to perform daily living activities, and the NP provides no further information.

Assessor Report:

The RSW notes that their assessment was the first contact with the Appellant and they had known him for about an hour.

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 RSW notes, “I suffer from: memory issues. Antisocial Personality disorder. Psoriatic Arthritis, congestive heart failure, Atrial fibrillation, multiple organ embolisms, torn ACL, medial meniscus (sic) on the right knee. OCT, IBS, ADHD, Anxiety.”

Ability to Communicate:

The RSW indicates, “Good” in all listed areas: Speaking, Reading, Writing, Hearing.

Mobility and Physical Ability:

The RSW indicates that the Appellant is independent in only two areas of mobility and physical ability—standing and carrying and holding—while also requiring an assistive device—knee brace—for those two activities and for all remaining areas of mobility and physical ability:

- Walking indoors;
- Walking outdoors;
- Climbing stairs (takes 2x as long); and
- Lifting (takes 2x as long).

Cognitive and Emotional Functioning:

The RSW says the Appellant’s mental impairment or brain injury has no impacts on emotion, motor activity, psychotic symptoms, and other emotional problems, and minimal impacts on consciousness, impulse control, and language. However, the RSW identifies major impacts on bodily functions, insight and judgement, attention/ concentration,

memory, and other neuropsychological problems. The RSW further notes moderate impacts on executive and motivation.

Daily Living Activities:

The RSW indicates that the Appellant is not independent with four daily living activities:

- Bathing—requires assistive device, takes significantly longer than typical and “needs a chair and takes 2x longer”;
- Shopping: Making appropriate choices—periodic assistance and “not sure if he makes the right choices”;
- Medications: Filling/refilling prescriptions—requires periodic assistance and “impaired by memory”; and
- Transportation: Getting in and out of a vehicle—uses assistive device, takes significantly longer than typical and “impacted. Refrains from taking vehicles. Impacted by Antisocial Personality disorder”; Using public transit—uses assistive device and takes significantly longer than typical.

According to the RSW, despite taking longer or requiring the use of an assistive device, the Appellant is independent in all other aspects of daily living activities listed on the form:

- Personal care: Dressing; Grooming; Toileting—takes significantly longer and “impacted by IBS”; Feeding self—takes significantly longer and “impacted: loss of teeth and stomach issues”; Regulating diet; Transfers (in/out of bed); Transfers (on/off chair);
- Basic Housekeeping: Basic Housekeeping—takes significantly longer and “can be overwhelmed/tired”; Laundry;
- Shopping: Going to and from stores—uses assistive device and “needs knee brace”; Reading prices and labels; Paying for purchases—uses assistive device and “impacted by anxiety/knee brace”;
- Meals: Meal planning—takes significantly longer and “does not meal plan”; Safe storage of food;
- Pay rent and bills;
- Medications; and
- Transportation: Using transit schedules and arranging transportation—“Due to [the Appellant’s] (ASPD) Antisocial Personality Disorder—this greatly affects him as he is unable to take public transit”.

The RSW provides additional comments, “When [the Appellant] is experiencing symptoms from his embolisms this makes it very difficult for him to carry out activities or just to

walk/get to/from places. [The Appellant] has a personalized knee brace that was made for him...He needs this device daily”.

Daily Living Activities—Social Functioning:

The Appellant is identified as having very disrupted functioning in his relationships with his immediate social network—“relationships disrupted—ASPD” and good functioning with his extended social networks. The RSW says that the Appellant requires periodic support/supervision with developing and maintaining relationships and securing assistance from others; both of these restricted daily living activities include the comment, “impacted by antisocial personality disorder”.

Support/Supervision Required to Maintain Appellant in the Community:

The RSW indicates that Health Authority Professionals and Community Service Agencies provide the help required for daily living activities. The RSW remarks, “The applicant does not like help as he has a hard time with new people and relationships due to ASPD... [and] Commuting by foot in the winter. The cold and ice is a safety issues (sic) for [the Appellant]. This also affects his arthritis”.

Assistive Devices

The Appellant does not have an Assistance Animal. However, the RSW notes that the Appellant routinely uses braces, a commode, and bathing aids—chair for showering—to help compensate for his impairment. Additional details include, “He needs a new knee brace. The current brace is 33 years old and cracking/broken and needs new straps. Proper shower chair”.

Finally, the RSW provides additional information:

[The Appellant] is impacted daily from his ASPD and from his medical diagnosis (sic). He has had a knee brace for a torn ACL for 33 years. When he does not wear this brace, he is significantly impacted daily. (walking, daily activities).

[The Appellant] is severely impacted by his pulmonary adema (sic) of multiple organs. He experiences extreme pain and cramping due to the pain; he regularly needs hospitalization and ambulatory services. He is unable to walk or eat when his pain is present.

Self Report:*Description of the Disability*

The Appellant describes his disability as follows:

Psoriatic Arthritis, Congestive Heart Failure, Atrial Fibrillation, Multiple organ embolisms, Torn ACL and Medial Meniscus Right Knee. Multiple ER visits for symptoms of each. Multiple Ambulance calls.

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

The Appellant provides the following response:

Psoriatic Arthritis—causes intense pain, bleeding, irritable bowel syndrome, pain and difficulty moving knees, shoulders and hands

Congestive Heart Failure—greatly affects stamina, causes pain and hospital admissions, expensive/not-covered meds

Atrial fibrillation—see above, increase heart and stroke risk

Organ embolisms—intense abdominal pain

Ruined knee—can't stand/walk for more than 2-4 hours

January 3-6, 2006, Barr Psychological & Education Services: Neuropsychological/ Vocational Assessment (the "Neuropsychological/Vocational Assessment")—17 pages:

- Neuropsychological/Vocational Assessment to determine the current nature of the Appellant's learning difficulties and to identify learning strategies and accommodations to facilitate his education and employment endeavours;
- States, "[The Appellant's] current test results indicate that his primary disability is an Attention Deficit Hyperactivity Disorder...and head injuries have exacerbated his problems with attention and self-regulation as well as causing some adjustment reactions (depression, irritability, and diminished self-confidence)"; and
- Provides more than 20 treatment and life-style recommendations.

March 2, 2006, Persons with Persistent Multiple Barriers Application (the "PPMB Application")

- States Primary Medical Condition: Attention Deficit Disorder and Secondary Medical Condition: Closed Head Injury;
- Condition(s) expected to last 18-24 months; and
- Doctor comments that the Appellant is, "Unable to function adequately in work environment at present due to fatigue, poor concentration, etc."

Evidence after Reconsideration

Reasons for Appeal:

The Appellant notes the reasons for his appeal and why he disagrees with the Ministry as follow:

- His NP did not spend much time or go in depth on cognitive issues;
- His NP is willing to complete a new Medical Report going into more depth including about his traumatic brain injury; and
- He will be seeking Persons with Persistent Multiple Barriers (“PPMB”) designation.

Appellant’s Submission Prior to the Hearing—undated, 7 pages: 1 note + 6 pictures:

- 1st page—picture of a notebook page with handwritten notes May 23, 2020: stomach contents (4L) came up, continued dehydration, excessive sweating, and muscular fatigue; May 24, 2020: too sick to work, can’t keep down liquids, bedding soaked in sweat; May 25, 2020: extremely weak but able to keep liquids down
- 2nd-6th pages—various pictures showing bloody clothing, sheets, and wall; and dry, scaly, flaking and bleeding skin.

At the Hearing:

The Appellant and his Representative said:

- The Appellant works as/when able and he works 15 hours or less per week;
- There have been some changes with the information in the Assessor and Medical Reports—he now has moderate or major impacts in areas that were previously notes as minor or no impact; and
- The Appellant will be pursuing PPMB designation.

Admissibility of Additional Evidence:

The Ministry did not object to the admissibility of the Appellant’s additional written/ picture evidence and oral evidence.

The Appellant’s evidence provides further clarification about his status and his current capabilities or limitations.

The Panel finds that the additional evidence provided by the Appellant and his Representative 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 the *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) and duration (impairment likely to last more than two years) requirements. However, the Ministry found the Appellant did not meet the requirements for:

- severe physical or 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 and his Representative say he should be granted the PWD designation. He has a brain injury, and his day-to-day functioning is low. The Appellant says his physical and mental impairments severely affect his daily living; his struggles and difficulties remain longstanding. The Appellant and his Representative argue that although the medical reports did not fully flesh out his impairments, the Appellant should be granted PWD designation as it would be significantly beneficial for maintaining his health and well-being in the community. The Appellant has had multiple hospitalizations which further destabilize him and limit his ability to work. Finally, the Appellant says that along with pursuing another PWD application if unsuccessful on appeal, he will be applying for PPMB designation which he was granted in the past.

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 two of the five criteria however, the PWD designation could not be granted when all five criteria have not been met. The Ministry argued that the Medical and Assessor Reports did not confirm that in the opinion of the prescribed professional, the Appellant had a disability. The Ministry noted that the Medical Report was incomplete, while the Assessor Report was completed by the RSW who had only met the Appellant for the first time and for one hour to complete the application. The lack of information and inconsistent information was problematic; the Ministry recommended the Appellant complete another application. As there was not enough evidence to confirm that the Appellant met the remaining three eligibility requirements: 1. Severe Mental or Physical Impairment; 2. Daily Living Activities Significantly Restricted; and 3. Help Required with Daily Living Activities; PWD designation could not be granted.

Severe Physical Impairment

The Ministry noted that the NP indicates the Appellant can climb 2-5 stairs unaided and there is no limitation to how long he can remain seated, but the NP did not know how much the Appellant could lift or how far he could walk unaided on a flat surface. In comparison, the Appellant said in his self report that he can walk up to 2-4 hours.

The Ministry also said that information provided in the Assessor's Report completed by the RSW indicated that, with the use of his knee brace, the Appellant is independently able to manage all activities related to mobility and physical ability. The RSW also notes that the Appellant uses a shower chair and a commode for toileting as it is often difficult to go to and from the bathroom due to pain/irritable bowel syndrome. However, the Ministry says the use of a knee brace, shower chair, and commode do not support a severe degree of impairment or a significant restriction to the Appellant's daily living activities.

The Ministry says that although the RSW says that the Appellant's pulmonary edema of multiple organs causes a physical impairment due to extreme pain and cramping, the information is not clear, as a medical or nurse practitioner has not diagnosed pulmonary edema. Furthermore, pulmonary edema typically occurs in the lungs and not other organs as reported. While the RSW states the Appellant needs hospitalization and ambulatory services it is not clear how often this occurs, or the cause, or how this relates to the Appellant's overall functioning. While the Ministry acknowledges that the Appellant experiences extreme pain and cramping at times, they cannot determine how this relates to a severe physical impairment. Finally, the Ministry says that determining a severe physical impairment requires weighing the evidence provided against the nature of the impairment and its reported functional skill limitations. According to the Ministry, the evidence provided does not sufficiently describe or portray a severe impairment.

Severe Mental Impairment

The Ministry says that the current information provided is unclear and incomplete; the NP has not provided a diagnosis of a mental health condition or of a brain injury. Although the Appellant's past PPMB application from 2006 does reference a brain injury and ADHD, the reports are not current. Although the RSW has indicated in the Assessor Report the Appellant has two medical conditions—antisocial personality disorder and obsessive-compulsive disorder—these have not been diagnosed by a physician or NP.

The Ministry says the inconsistencies between the Medical and Assessor Reports and the incomplete and unclear information in both, make it difficult to obtain an accurate picture of the Appellant's mental impairment. Along with no diagnoses of mental impairment or

brain injury, the NP has not provided any current information on the impact of any brain injury. While the NP indicated that there are some deficits in the Appellant's cognitive and emotional functioning, they have not provided further information to describe the deficits. Similarly, in the Assessor Report the RSW identifies some major impacts to cognitive and emotional functioning, but no further information is provided to confirm that these impacts result in a severe degree of impairment.

Daily Living Activities Significantly Restricted

The Ministry said it must rely on the Medical and Assessor Reports and the information does not indicate that the impairment directly and significantly results in continuous or periodic restrictions to daily living activities. Although the NP says that the Appellant takes medications that may interfere with his daily living activities, the NP also says its unknown if the impairments directly impact his ability to perform daily living activities.

The Ministry notes that in the Assessor Report, the RSW has provided more information about daily living activities. Although the RSW has indicated that the Appellant takes two times longer with some activities, the Ministry does not consider taking twice as long to be a significant restriction. The RSW also notes that the Appellant requires assistance with some activities, but a significant restriction could not be found because the nature, frequency and duration of the assistance was not described. As well, according to the Ministry, the Assessor Report was problematic given the RSW met the Appellant for the first time to complete the Assessor Report; the RSW met with the Appellant one time, for one hour to complete the report. The RSW does not have an established history of contact and recent experience with the Appellant based on knowledge of him, observations, clinical data, and experience. From this, the Ministry said there was not enough evidence to confirm that in the opinion of a prescribed professional, the Appellant is directly and significantly restricted in his ability to perform daily living activities continuously or periodically for extended periods.

Help Required with Daily Living Activities:

The Ministry says that the Appellant has not established that he requires significant help with daily living activities. In the Medical Report, the NP provided no response about the assistance needed. At the hearing, the Ministry said that although the Assessor noted that the Appellant requires assistive devices, his use of a knee brace, shower chair and commode are not the type of assistive devices the Ministry looks for when determining that significant help is required with daily living activities. Finally, the Ministry says the

Appellant does not require help with daily living activities as he does not need 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. The ability to work is not a factor when assessing eligibility for PWD designation. If the inability to work is the major reason for applying for PWD designation, the applicant may 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 Ministry’s determinations and exercise of discretion regarding the criteria at issue in this appeal: 1. Physical or Mental Impairment; 2. Restrictions to Daily Living Activities, and 3. Help Required.

Severe Mental or Physical Impairment

“Severe” and “impairment” are not defined in the legislation. The Ministry considers the extent of any impact on daily functioning as shown by limitations with, or restrictions on, physical abilities and/or mental functions. The Panel finds that an assessment of severity based on physical and mental functioning including any restrictions is a reasonable application of the legislation.

A medical practitioner’s description of a condition as “severe” is not determinative. The Minister must make this determination considering the relevant evidence and legal principles.

1. Physical Impairment:

The Panel finds that the Ministry was reasonable in determining that there was insufficient information to confirm a severe physical impairment. In the Medical Report, the NP

indicates that the Appellant can climb 2-5 stairs unaided and has no limitation to how long he can remain seated, but the NP also did not know how much the Appellant could lift or how far he could walk unaided on a flat surface. In his self report, the Appellant said that he can walk up to 2-4 hours. At the hearing, the Appellant also said that he works at a grocery store up to 15 hours/week. Although the RSW described the Appellant as “significantly [and] severely impacted” by his impairment, this is not determinative of a severe physical limitation. Finally, although the 2006 Neuropsychological/Vocational Assessment and PPMB Application provide some additional description and clarification about the Appellant’s abilities *at the time*, the information is not current and is directed toward employability and is of limited value at present.

The Panel is unable to get a clear picture about the Appellant’s physical impairment. Given the gaps, and the conflicting and inconsistent information between the Appellant, the NP, and the RSW, it is unknown whether the Appellant’s physical impairment is severe. Accordingly, the Panel finds that the Ministry was reasonable in deciding that a severe physical impairment had not been established. Based on the Appellant’s information about his functional skills and abilities, and his degree of independence with functional skills, and the NP’s conflicting or limited information in the Medical Report as to functional skills, the Panel finds that it was reasonable for the Ministry to determine that there was unclear and insufficient information to conclude that the Appellant has a severe physical impairment.

2. *Mental Impairment*

The Appellant says the evidence of his brain injury including from his PPMB application and Neuro-Psychological assessment in 2006, confirm he has a severe mental impairment. However, although the 2006 Neuropsychological/Vocational Assessment and PPMB Application may provide some additional description and clarification about the Appellant’s impairment or abilities *at the time*, the information is not current and is directed toward employability and therefore, is of limited value at present. The NP reported significant deficits to the Appellant’s cognitive and emotional function (executive, memory, and motivation) and that the Appellant, “demonstrates difficulty with planning and managing significant health conditions.” However, the NP indicates it is “unknown” if the impairment directly restricts the Appellant’s ability to perform Daily Living Activities. Further, the NP has not provided any diagnoses of mental impairments.

Additionally, although in the Assessor Report the RSW indicates that the Appellant’s mental impairment impacts his cognitive and emotional functioning to varying degrees, it is not clear that the RSW has *assessed* this or simply transcribed information as stated by

the Appellant. Indeed, when asked, “What are the applicant’s mental or physical impairments...” the RSW states “I suffer from: ...” (**emphasis added**). The RSW also says that the Appellant has good functioning with his extended social networks (neighbourhood contacts, acquaintances, storekeepers, public officials, etc.) but “...has a hard time with new people and relationships due to ASPD”. However, having a hard time with new people is not consistent with good functioning with extended social networks.

As such, based on the available evidence from the Appellant and his NP, the Panel finds that the Ministry was reasonable in deciding that a severe mental impairment has not been established. The 2006 records provide more in-depth information about the Appellant’s cognitive function and limitations *at the time* however, given the current inconsistencies between the Appellant, the NP, and the RSW, they cannot be relied as an accurate reflection of his present status. In addition, the NP has not diagnosed any mental impairments and indicates it is “unknown” if the impairment directly restricts the Appellant’s ability to perform Daily Living Activities.

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.

As noted previously, the NP's Medical Report, the RSW's Assessor Report, and the evidence of the Appellant are inconsistent and sometimes in conflict, with each other. The information provided by the NP does not indicate that the impairment directly and significantly restricts daily living activities either continuously or periodically for extended periods; the NP has not provided any responses at all. The NP simply says it is unknown if the impairments directly impact the Appellant's ability to perform daily living activities. Although the NP says that the Appellant takes medications that may interfere with his daily living activities, no further explanation is given. As such, the Panel finds that the Ministry was reasonable in deciding that the Appellant had not demonstrated he had a severe impairment that results in direct and significant restrictions to his ability to perform daily living activities.

Help Required:

A prescribed professional must provide an opinion that the person needs help to perform the significantly 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 NP 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.

As well, given the previous determination that significant restrictions to daily living activities were not established, the Panel finds that the help criterion could not be met. The need for help must be due to significant restrictions with daily living activities. Without having shown that he had significant restrictions with his daily living activities, and in the absence of an opinion from the NP that the Appellant requires help to perform the restricted daily living activities, the Panel is unable to conclude that help is required. Therefore, the Panel finds the Ministry's determination that the Appellant has not met the help required criterion, was reasonable in the Appellant's case.

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, and was a reasonable application of the legislation. Although the Appellant met the age (over 18) and duration (impairment likely to last more than two years) requirements, he did not meet the requirements for:

- severe mental or physical impairment;
- significant restrictions in the ability to perform daily living activities; and
- needing significant help from others or an assistive device to perform daily living activities that are significantly restricted.

Based on the information available at Reconsideration, as well as the Appellant's new evidence considered with his appeal, the Panel finds that the Ministry was reasonable in deciding that the Appellant did not meet the requirements for PWD designation. The information provided was insufficient to establish that the Appellant meets all five criteria under Section 2 (2) and (3) of the *Employment and Assistance for Persons with Disabilities Act*. Therefore, the Panel confirms the Ministry's Reconsideration decision. The Appellant is not successful with his appeal.

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 2024-0104

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

Carmen Pickering

Signature of Chair

Date (Year/Month/Day)

2024/04/18

Print Name

Maryam Majedi

Signature of Member

Date (Year/Month/Day)

2024/04/18

Print Name

Effie Simpson

Signature of Member

Date (Year

2024/04/18