

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (the “Ministry”) reconsideration decision dated March 22, 2024 (the “Reconsideration”), denying the Appellant a persons with disability (“PWD”) designation.

The Ministry found the Appellant met four of the five requirements for PWD designation:

- 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 duration (impairment likely to last more than two years) requirement.

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 issue in this appeal.

Part D – Relevant Legislation

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

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

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

Full text of the Legislation is in the Schedule of Legislation at the end of this decision.

Part E – Summary of Facts

The hearing took place on April 26, 2024 by written submissions.

Background:

- January 22, 2024, original PWD designation application submitted to the Ministry;
- February 9, 2024, Ministry denies PWD designation noting the Appellant had met only the age (over 18) criterion;
- March 8, 2024, the Appellant submits his Request for Reconsideration with new information; and
- March 22, 2024, the Ministry provides its Reconsideration decision noting that the Appellant now met four of the five criteria but PWD designation continued to be denied due to not meeting the duration (impairment likely to last more than two years) requirement.

Evidence Before the Ministry at Reconsideration:

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

- January 16, 2024 PWD Application with documents:
 - Medical and Assessor Reports completed by the Appellant's Doctor;
 - (undated) Appellant's Self Report;
- March 7, 2024 Assessor Report completed by the Appellant's Social Worker; and
- March 7, 2024 Letter from the Appellant's Social Worker.

The Panel has carefully reviewed all documents and provides a brief summary with more detail given regarding the remaining issue in dispute preventing PWD designation: the duration (impairment likely to last more than two years) requirement.

January 16, 2024 Medical and Assessor Reports completed by the Doctor**Diagnosis:**

The Doctor identifies multiple diagnoses:

- Major depressive disorder (onset 2015);
- Irritable Bowel Syndrome (onset approximately 2012);
- IgA deficiency (onset birth);
- HIV (onset 1993); and
- AIDS (in 2007).

Health History:

The Doctor states that the Appellant, "has severe depression and anxiety that impairs his ability to interact with people and leave the house. He has ++ fatigue... Bowel motility

issues...makes it difficult to attend a job or leave home... pt is more susceptible to infections therefore decreased interaction with people...”.

Degree and Course of Impairment:

The Doctor provides no response to the Yes or No question, “Is the impairment likely to continue for two years or more from today”. In reply to the question, “What is the estimated duration of the impairment and are there remedial treatments that may resolve or minimize the impairment?”, the Doctor says, “Unable to say. With appropriate therapy may be able to function well again. Needs counselling with Psychiatrist & GI specialist.”

March 7, 2024 Assessor Report completed by the Social Worker:

The Social Worker indicates that due to his impairment(s), the Appellant experiences impacts in all areas of cognitive, emotional, and social functioning and activities of daily living. The Social Worker says, “Major depressive disorder greatly impacts client’s cognitive functioning... Client requires significant support and daily reminders to complete tasks of daily living. Continuous support from social workers and community organizations is required”.

As relates to the time frame of his impairment(s), the Social Worker comments, “Over the last two years the client states that his symptoms have gotten much worse”.

March 7, 2024 Social Worker’s Letter:

The Social Worker says the Appellant, “has severe mental and physical health impairments that are causing significant restrictions to the majority of the applicant’s daily living activities.” Commenting specifically about duration, the Social Worker notes, “there is evidence that the applicant has significant impairments and restrictions that are expected to last 2 years or more.”

Information Provided at Appeal:

The following evidence was submitted together with the Notice of Appeal:

March 26, 2024 Appellant’s Letter—1 page, typed

The Appellant indicates, “My doctor will confirm that my impairments are likely to continue for at least two years”.

March 26, 2023 Doctor's Letter—1 page, typed

The Doctor indicates oversights in their completion of the original PWD application and by their letter, clarifies and corrects things.

Specifically, regarding duration of the impairment(s), the Doctor states, "...the applicant's major depressive disorder, IBS, IgA deficiency, and HIV is expected to last 2 or more years".

March 26, 2024 Social Worker's Assessor Report

The March 26, 2024 Social Worker's Assessor Report is a duplication of their March 7, 2024 Assessor Report which was summarized above.

Admissibility of Additional Evidence:

The Ministry did not object to the admissibility of the Appellant's new documents.

The Panel accepts the Appellant's Letter and the Doctor's Letter as new evidence. The Doctor's Letter provides background as to their limited experience with PWD applications, acknowledges oversights with their completing the Appellant's application, and responds more completely about the Appellant's degree and duration of impairment.

The Panel finds that the additional evidence provided by the Appellant 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 s. 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 four of the five requirements for PWD designation:

- 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 duration (impairment likely to last more than two years) requirement.

Appellant's Position:

With his written submission, the Appellant says that because the letter from the Doctor confirms his impairments are likely to continue for two years or more, he should be granted the PWD designation.

Ministry Position:

The Ministry relied on the reasons provided in its written Reconsideration. The Ministry said that all the criteria in the legislation had not been met because a medical practitioner or nurse practitioner did not confirm that the severe impairment and significant restrictions are likely to continue for two years or more. The Appellant's Doctor did not report that the Appellant's impairments are likely to continue for at least two years so his PWD application did not meet the minimum duration requirement.

Panel Decision:***PWD Designation—Whether Duration Requirement Met***

The legislation provides the Ministry with the discretion to designate someone as a PWD if the requirements are met. The requirements for PWD designation include having an opinion from a medical practitioner or nurse practitioner that the impairment is likely to continue for at least two years.

With his appeal, the Appellant provided a March 26, 2024 letter from his Doctor of which, the Ministry had no objection to. The Doctor's Letter clearly stated their opinion that the Appellant's impairments are expected to last two or more years. In light of this new

evidence the Panel finds that the Ministry, was not reasonable in deciding that the Appellant had not met the duration requirement in the legislation. The Panel determines that the Doctor's Letter provides the required confirmation that in the opinion of a medical practitioner, the impairment is likely to continue for at least two years.

Conclusion:

The Panel finds that the Ministry's Reconsideration decision is now unreasonable given the submission of the latest Doctor's letter which states that the Appellant has an impairment that will last two or more years. As such, the Ministry's Reconsideration decision, which determined that the Appellant was not eligible for PWD designation because he did not meet the duration (impairment likely to last more than two years) requirement, was not reasonably supported by the evidence, and was not a reasonable application of the legislation. Therefore, the Panel rescinds the Ministry's Reconsideration decision. The Appellant is successful with his appeal.

Schedule – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

Persons with disabilities

s. 2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

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

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

Employment and Assistance for Persons with Disabilities Regulation

Definitions for Act

s.2 (1) For the purposes of the Act and this regulation, "daily living activities",

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

- (i) prepare own meals;
- (ii) manage personal finances;
- (iii) shop for personal needs;
- (iv) use public or personal transportation facilities;
- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self care;
- (viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

- (i) make decisions about personal activities, care or finances;
- (ii) relate to, communicate or interact with others effectively.

(2) For the purposes of the Act, "prescribed professional" means a person who is

(a) authorized under an enactment to practise the profession of

- (i) medical practitioner,
- ii) registered psychologist,
- (iii) registered nurse or registered psychiatric nurse,
- (iv) occupational therapist,
- (v) physical therapist,
- (vi) social worker,
- (vii) chiropractor, or
- (viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

- (i) an authority, as that term is defined in section 1 (1) of the Independent School Act, or
- (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the School Act,

if qualifications in psychology are a condition of such employment.

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

Employment and Assistance Act

s. 22 (4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

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Part G – Order

The panel decision is: (Check one) Unanimous By Majority

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

Legislative Authority for the Decision:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name

Carmen Pickering

Signature of Chair

Date (Year/Month/Day)

2024/04/30

Print Name

David Handelman

Signature of Member

Date (Year/Month/Day)

2024/04/30

Print Name

John Pickford

Signature of Member

Date (Year/Month/Day)

2024/04/30