

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated March 11, 2024, which determined the appellant was not eligible for the Persons with Disabilities designation because she did not meet the following criteria:

- Severe mental or physical impairment
- Severe impairment directly and significantly restricts daily living activities
- Assistance required with daily living activities as a result of significant restriction

The ministry found the appellant was not one of the prescribed classes of persons eligible for Persons with Disabilities designation 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), sections 2 and 2.1

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

Part E – Summary of FactsEvidence Before the Minister at Reconsideration**Person with Disabilities Application (*January 23, 2024*)*****Self-report - summary***

The appellant writes that she has severe lower back pain, which radiates to her left hip and foot. She suffers daily, beginning when she wakes up. Sometimes she sleeps on the bed and sometimes on the floor. She cannot find the most comfortable and suitable place. As well, she cannot sit on a chair continuously. If she does, her back begins to hurt and she feels numbness in her feet and therefore, she is forced to sit on the floor, leaning her back against the wall, and extending her feet to reduce the pressure on the vertebrae. But after a while, the pain returns and so on. When she walks to relieve the pain, she cannot stand for a long period and needs to sit down to relax her back and feet.

The appellant states she has had back pain for 10 years, but it worsened after she hurt her back in July 2023. The numbness in her feet and toes started bothering her a lot and does not allow her to perform her daily tasks. After work, she needs to stay in bed without movement until the next day to regain her health and have the ability to stand. Sometimes the pain increases due to cold weather and when she suffers from constipation. Sometimes her back becomes like a plank of wood and she cannot move or bend. With every movement she suffers from different but constant pain in her back, neck, knees and shoulders and can't lift heavy weights or push things quickly.

She works as a cashier, which requires her to stand for a long time, enduring pain. The appellant states she lives alone and there is no one to take care of her – she doesn't want to end up homeless.

Medical report (January 18, 2023) – signed by the appellant's doctor

The appellant's doctor (a general practitioner) provided the following information and responses to the questions below.

Diagnosis	Date of onset – month/year
Severe and chronic lower back 10 years	2013

Health History

The doctor states the appellant has severe lower back pain which has been ongoing for more than 10 years but has recently worsened since July 2023.

She has been prescribed gabapentin, which interferes with her ability to perform daily living activities. The anticipated duration of the medication is long term. She does not require prostheses or aids for her impairment.

Functional Skills

The doctor states the appellant can walk unaided on a flat surface less than one block due to severe back pain and numbness in her leg. She can climb two to five steps unaided but cannot lift at all due to nerve compression and can remain seated less than one hour due to lower back pain

The doctor states the appellant has no difficulties with communication but suffers with emotional disturbance (anxiety) because of her chronic lower back pain.

Daily Living Activities

The doctor adds that the following daily living activities are continuously restricted:

- personal self-care
- meal preparation
- management of medications
- basic housework
- daily shopping
- mobility inside/out the home
- use of transportation
- management of finances

The doctor also states social functioning (daily decision making; interacting, relating and communication with others) is impacted as the appellant is unable to work, walk or perform her daily living activities.

Assessor Report (January 18, 2024) – signed by the appellant’s doctor

Living Environment

The doctor states the applicant lives alone. Her family is in another country.

Mental or Physical Impairment

Ability to Communicate

The doctor indicates the appellant’s speaking, reading, writing and hearing are good.

Mobility and Physical Ability

The doctor indicates that due to chronic lower back pain, which recently flared up, the appellant takes significantly longer than typical walking indoors/outdoors, climbing stairs, standing, lifting and carrying and holding.

Cognitive and Emotional Functioning

The following assessment was provided regarding the degree the applicant’s mental impairment restricts her functioning.

	Impact on Daily Functioning			
	No impact	Minimal impact	Moderate impact	Major impact
Bodily functions		x		
Consciousness	x			
Emotion			x	
Impulse control	x			
Insight and judgement	x			
Attention/concentration		x		
Executive	x			
Memory	x			
Motivation			x	
Motor activity				x
Language	x			
Psychotic symptoms	x			
Other neuropsychological problems	x			
Other emotional or mental problems	x			

Daily Living Activities

The doctor states the appellant takes significantly longer than typical with:

- personal care
- basic housekeeping
- shopping
- cooking
- safe storage of food
- transportation

All activities are affected by severe lower back pain.

The doctor also states the appellant is independent with meal planning, food preparation, paying rent and bills and managing medications.

Social Functioning

The doctor states the appellant is independent making appropriate social decisions, is able to develop and maintain relationships, interacts appropriately with others, is able to deal appropriately with unexpected demands and is able to secure assistance from others.

Assistance Provided for Applicant

The doctor indicates the appellant does need help but has no family or friends and is unable to afford help. No equipment or devices are used by the applicant, nor needed and the appellant does not have an assistance animal.

Letter to the Appellant from the Ministry (February 14, 2024)

The ministry states it denied the appellant's application and included the reasons for the denial.

Request for Reconsideration (February 23, 2024) – summary

The appellant states it appears the decision was based solely on what the doctor wrote. She questions why the specialist's diagnosis and her explanation of her condition, and how she spends her day, wasn't given more consideration.

The appellant reiterated the information provided in the self-report and adds that she cannot walk long distances (cannot exceed five minutes). She noted that she needs help, but she doesn't trust people easily, so has to do most of her tasks herself. The appellant adds that despite her suffering, she endures and goes to work to obtain money to pay her rent and personal needs.

Additional Information received after the Reconsideration Decision

Notice of Appeal (March 15, 2024)

The appellant states that because her health condition is unstable, she deserves to receive assistance from the government until she reaches a solution to her health condition.

Appellant Submission (April 29, 2024)

Letter from the Appellant's Doctor (April 3, 2024)

The doctor states the letter is written to provide more details to help the appellant's application process.

1. Physical Exam

- The appellant has severe lower back pain (24 hours), which flares up with certain positions. When sitting or standing for long times she has to change her posture to help the pain. Lifting any kind of weight will definitely aggravate her lower back pathology or might lead to cauda equina, which is a surgical emergency.

2. Prosthesis

- Although the appellant is able to walk, she has a lot of limitations. She does not need any prosthesis now as she is not falling. The main limiting factor is the lower back pain, which the prosthesis has not helped.

3. Continues to work as a cashier

Although the appellant told her doctor she has to work to pay the bills, she is definitely struggling and therefore not doing her job properly. The doctor is concerned that if she keeps pushing herself she will make her symptoms worse, which will lead to homelessness.

4. Treatment options

The doctor writes that the appellant has been reviewed by neurosurgery and they have suggested a surgical option. However, the appellant is not able to undergo this option because she is afraid she will lose her job and would need help at home to support herself after the surgery. The appellant chose to go with conservative management, which includes regular exercise, painkillers, avoiding lifting, walking or sitting down for a long time.

5. Cognitive and emotional health

The appellant's severe lower back pain has massively impacted her mental health. She constantly thinks about her worsening pain, which in turn affects her anxiety and depression and which is quite severe in intensity. The doctor states the appellant does not have any social life as she is not able to go out in the evenings because of worsening pain. The impact on all her areas of cognitive and emotional functioning is severely affected.

6. Can take significantly longer than typical in most daily activities

The doctor writes that the appellant has to walk slowly and cannot sit for long periods as she is in pain all day. This puts all her activities throughout the day at a very slow pace. If she pushes and tries to do things quicker, her lower back flares up, which can last for many days.

7. Help

The doctor states that the appellant is trying to be independent and does not have any help to do her grocery shopping, banking needs or food preparation. However, these activities do flare up her lower back.

Telehealth Consultation (December 14, 2023), with a Doctor at a Spinal Clinic

The doctor writes that the appellant reports a long history of back pain, left leg pain and right leg pain. Her MRI scan confirmed she has a left L4-5 disc herniation moderate in size and mid right L5-S1 disc protrusion.

The doctor told the appellant that the MRI does show a disc herniation and she certainly is a candidate for surgery, but she's adamant she does not want surgery. Therefore, the only thing they could suggest is exercise with physical therapy and consideration of epidural steroid injections.

Ministry Submission (April 30, 2024)

The ministry states the letter from the appellant's doctor (April 3, 2024) does not address the frequency and severity of restrictions, nor does it specify the level of assistance required for daily living activities on a day-to-day or week-to-week basis. Therefore, the ministry relies on the reconsideration decision as the ministry's submission in this matter.

Admissibility

The panel determined the additional information (the doctor's letter dated April 3, 2024, the letter from the doctor at the spinal clinic and the ministry's response to the submission) is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

Issue

The issue on appeal is whether the ministry's Reconsideration Decision was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Did the ministry reasonably determine the appellant was not eligible for the Persons with Disabilities designation because the following criteria were not met:

- Severe mental or physical impairment
- Severe impairment directly and significantly restricts daily living activities
- Assistance required with daily living activities as a result of significant restriction

Appellant Position

The appellant argues that she has severe lower back pain that radiates to her left hip and foot. She has had back pain for 10 years, but it worsened after she hurt her back in July 2023 and the numbness in her feet and toes started bothering her a lot. This does not allow her to perform her daily tasks. With every movement she suffers from different but constant pain in her back, neck, knees and shoulders. She states she can't lift heavy weights or push things quickly and cannot walk long distances (cannot exceed five minutes).

Ministry Position

Mental or Physical Impairment

Mental functioning

Although the doctor indicates the appellant experiences significant deficits with her cognitive and emotional functioning and that chronic lower back pain affects her anxiety, the doctor notes the appellant does not have any difficulties with communication and indicates she is independent with all aspects of social functioning.

As well, the doctor states the appellant has very disrupted functioning with both her immediate and extended social networks, however, does not indicate that she requires help to maintain in the community. In addition, the doctor indicates the appellant is independent with daily living activities that would typically be difficult for someone who experiences significant restrictions to their mental functioning, such as making decisions about personal activities, care, or finances. The ministry finds this level of independence is not indicative of a severe mental impairment.

Physical functioning

The appellant's doctor indicates the appellant does not require any aids or prosthesis for her impairment and notes the appellant is independently able to manage tasks such as walking indoors/outdoors, climbing stairs and lifting. The doctor states these tasks take significantly longer than typical but do not describe how much longer.

Although the ministry finds the information demonstrates that the appellant experiences limitations to her physical functioning due to lower back pain, the ministry determines that these assessments speak to a moderate rather than a severe physical impairment.

Daily Living Activities

The ministry is not satisfied that the appellant has a severe impairment that, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform the daily living activities set out in the legislation.

In the medical report, the appellant's doctor indicates the appellant has been prescribed gabapentin that interferes with her ability to perform daily living activities and indicates her impairment continuously restricts her from being able to perform daily living activities such as personal self-care, meal preparation and management of medications. However, when asked what assistance the appellant needs with daily living activities, the doctor notes the appellant can independently manage all aspects of her daily living activities, although taking significantly longer for tasks such as dressing, bathing and basic housekeeping. They do not describe how much longer than typical it takes.

Considering the appellant's medical history, it is reasonable to expect that the appellant would encounter some restrictions to her ability to perform daily living activities and require assistance as a result. However, the ministry finds there is not enough evidence to confirm that the impairment significantly restricts the appellant's ability to perform daily living activities continuously or periodically for extended periods.

Help Required with Daily Living Activities

The ministry submits that as it has not established that daily living activities are significantly restricted either continuously or periodically for extended periods, it cannot be determined that significant help is required from other persons, an assistive device or assistance animal.

In its submission, the ministry adds that the letter from the appellant's doctor (April 3, 2024) does not address the frequency and severity of restrictions, nor does it specify the level of assistance required for daily living activities on a day-to-day or week-to-week basis.

Panel Analysis

Section 2(2) of the Act sets out the requirements that must be met for the minister to designate a person as a person with disabilities. One requirement is that the minister is satisfied that the person has a severe mental or physical impairment.

The panel notes, “severe” and “impairment” are not defined in the legislation. The ministry considers the extent of any impact on daily functioning as shown by restrictions on mental or physical abilities. The panel finds that an assessment of severity based on physical and mental functioning, including any restrictions, is a reasonable application of the legislation.

Mental Impairment

The panel notes, in the medical report when asked if there are any significant deficits with cognitive and emotional function, the doctor stated, “emotional disturbance (anxiety)” and noted that chronic lower back pain is affecting the appellant’s anxiety.

The panel also notes in the assessor report, under cognitive and emotional functioning, the appellant’s doctor indicates no impact on daily functioning for nine items, minimal impact for two items, moderate impact for two items and major impact for only one item.

In the doctor’s letter (April 3, 2024), they state the appellant constantly thinks about her worsening pain, which in turn affects her anxiety and depression, which is quite severe in intensity.

The panel finds that although the evidence states the appellant experiences anxiety and depression because of her pain, as the doctor indicated no impact on daily functioning for nine items, minimal impact for two items, moderate impact for two items and major impact for only one item for emotional functioning, the evidence is insufficient to conclude that the appellant has a severe mental impairment.

The panel finds the ministry reasonably determined that it was not satisfied that the appellant has a severe mental impairment.

Physical Impairment

The panel notes in the medical report, the doctor provides a diagnosis of severe and chronic lower back. They indicate the appellant can walk less than one block, unaided, due to severe back pain and numbness in her leg and cannot lift at all due to nerve compression. As well, the doctor states the appellant can remain seated for less than one hour due to lower back pain. In the doctor’s letter (April 3, 2024), they state that the

appellant has severe lower back pain (24 hours), which flares up with certain positions. Lifting any kind of weight will definitely aggravate her lower back pathology or might lead to cauda equina, which is a surgical emergency.

In the self-report, the appellant writes that she has to move carefully so as not to hurt her back. Sometimes she sleeps on the bed and sometimes on the floor and cannot sit on the chair continuously; if she does, her back begins to hurt and she feels numbness in her feet. So, she is forced to sit on the floor, leaning her back against the wall, and extending her feet to reduce the pressure on the vertebrae. After work, she needs to stay in bed without movement until the next day to regain her health and have the ability to stand. The panel finds the appellant's self-report assists the panel in understanding the severity of her physical impairment.

The panel finds the above evidence satisfies the requirement of a severe physical impairment. The appellant's doctor states the impairment is severe and describes the appellant's limited functionality (e.g. not being able to lift at all and could lead to emergency surgery). The appellant provides a further description of her limited functionality (e.g. sleeping in her bed and on the floor to minimize the pain).

Therefore, the panel finds the ministry decision, that it was not satisfied the appellant has a severe physical impairment unreasonable.

Restrictions in Ability to Perform Daily Living Activities

Section 2(2) of the Act also states the minister must be satisfied that in the opinion of a prescribed professional, a severe physical or mental impairment directly and significantly restricts the person's ability to perform daily living activities continuously, or periodically for extended periods. Daily living activities are defined in section 2 of the Regulation.

At least two activities must be restricted in a way that meet the requirements. To be significant, the restriction must be to a great extent, such as not being able to do the activities without a lot of support. Continuous means the activity is generally restricted all the time.

In the April 3, 2024 letter, the appellant's doctor (a prescribed professional) writes that the appellant has to walk slowly and cannot sit for long periods as she is in pain all day (24 hours). This puts all her activities throughout the day at a very slow pace. If she pushes and tries to do things quicker, her lower back flares up, which can last for many days.

In the medical and assessor reports the doctor states all activities are affected by severe lower back pain and the appellant takes significantly longer than typical with many daily living activities such as shopping, public transportation, getting in/out of vehicles, basic housekeeping and moving about indoors/outdoors.

In the medical report, the appellant's doctor states the following daily living activities are continuously restricted:

- 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
- manage personal medication

Although the ministry argues the letter from the appellant's doctor (April 3, 2024) does not address the frequency and severity of restrictions, the panel finds the letter does confirm the frequency and severity of restriction. It states the appellant is in pain all day (24 hours) and states if she pushes, her lower back flares up, which can last for many days.

This would, in the opinion of the panel, satisfy the requirement for an impairment that restricts a person's ability to perform daily living activities on a continuous, or periodic basis for extended periods.

Therefore, the panel finds the ministry decision, that it was not satisfied that the appellant has a severe impairment that, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform the daily living activities set out in the legislation, unreasonable.

Help to Perform Daily Living Activities

The panel notes section 2(2) of the Act also requires that as a result of these restrictions, the person requires help to perform these activities and in order to perform them, the person requires an assistive device or the significant help or supervision of another person.

In the assessor report, the doctor states the appellant does need help but has no family or friends and is unable to afford help. In the doctor's letter (April 3, 2024), the doctor states

that the appellant is trying to be independent and does not have any help to do her grocery shopping banking needs or food preparation. However, these activities do flare up her lower back.

The ministry argues the doctor's letter (April 4, 2024) doesn't specify the level of assistance required for daily living activities on a day-to-day or week-to-week basis.

Considering the appellant's self-report describing her chronic and severe pain coupled with the doctor's statements that help is needed, the panel finds it is reasonable to conclude that significant help of another person is required as a result of the appellant's restrictions.

The panel finds the ministry's determination that it was not satisfied that assistance was required, unreasonable.

Conclusion

In conclusion, the panel finds the ministry's decision that determined the appellant was not eligible for Persons with Disabilities designation, as per section 2(2) of the Act, was not reasonably supported by the evidence. The panel rescinds the ministry's decision.

The appellant is successful on appeal.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Act

Persons with disabilities

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....

Employment and Assistance for Persons with Disabilities 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

(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...

Part 1.1 — Persons with Disabilities

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2

(2) [*persons with disabilities*] of the Act:

- (a)a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b)a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c)a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act*;
- (d)a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act* to assist that family in caring for the person;
- (e)a person who is considered to be disabled under section 42 (2) of the *Canada Pension Plan* (Canada).

APPEAL NUMBER 2024-0095

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

Connie Simonsen

Signature of Chair

Date (Year/Month/Day)

2024/05/13

Print Name

David Handelman

Signature of Member

Date (Year/Month/Day)

2024/05/13

Print Name

Robert McDowell

Signature of Member

Date (Year/Month/Day)

2024/05/13