

Part C – Decision Under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development and Poverty Reduction (“Ministry”). The Ministry decided that the Appellant did not meet all of the requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* for person with disabilities designation (“PWD”). The Ministry found that the Appellant met the age, duration and severe mental or physical impairment requirements, but did not meet the following:

- the Appellant’s daily living activities are directly and significantly restricted either continuously or periodically for extended periods; and
- because of those restrictions, the Appellant needs an assistive device, significant help or supervision from another person, or needs an assistance animal.

The Ministry also found that the Appellant is not qualified for PWD designation on alternative grounds, which includes: a person who is in palliative care; a person who received At Home Program payments through the Ministry of Children and Family Development; a person who gets or ever got Community Living BC for community living support; and a person who is considered disabled under section 42(2) of the *Canadian Pension Plan Act*.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (“the Act”), section 2

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

The complete legislation is found at the end of this decision in Appendix A.

Part E – Summary of Facts**Evidence at the time of Reconsideration**

The Appellant's PWD application that includes:

- A Medical Report and an Assessor's Report dated December 12, 2023 which was completed by the Appellant's doctor who has seen the Appellant 2-10 times in the last 12 months. The doctor has known the Appellant since September 2023. This report was complete through an office interview with the Appellant and file/chart information.
- The PWD application also included the Appellant's self-report dated November 20, 2023. The self-report, in part, stated the following about the Appellant: a) has been in treatment for alcoholism, an eating disorder, posttraumatic stress disorder (PTSD), mood disorder, obesity and she suffers from sleep apnea; b) disrupted sleep causes the inability to function in daily tasks due to excessive fatigue; c) she has seen a professional for these issues; d) she has financial difficulties, lacks skills and unable to work at times; e) it is difficult for her to care for herself; f) physical health has declined to the point she cannot work or get out of bed; and g) she becomes very overwhelmed, stressed out and has panic attacks.

Request for Reconsideration dated February 29, 2024 was submitted. In it the Appellant stated, in part, the following: "I then reached out to my psychiatrist upon denial and he has provided me with these medical reports and a personal letter that will assure section 2 and section 3 noted in [the Ministry's] decision were addressed, along with established severe mental impairment".

Three letters from the Appellant's psychiatrist were submitted. The summary of these letters is as follows:

- Date November 27, 2023: This letter provided a detailed account of the Appellant's familial and romantic relationship history, trauma history, description of the psychological impact of the trauma, a description of the treatment the Appellant undertook to overcome the trauma and psychological obstacles, a diagnosis of the Appellant's mental impairments and a detailed description of her treatment plan.
- Date December 18, 2023: This letter provided a detailed description of why the Appellant is, at times, unable to work or maintain a job. It describes the social and physical challenges she experiences at work due to her mental health issues.
- Date February 22, 2024: This letter outlines the Appellant's diagnosis of Attention Deficit Hyper-activity Disorder (ADHD), PTSD, Major Depressive Disorder, and Alcohol Abuse and how these conditions impact her ability to be employed.

Diagnoses

In the Medical Report, the doctor diagnosed the Appellant with PTSD, Attention Deficit Disorder (ADD), Alcohol Use Disorder (remission in 2011), Major Depressive Disorder and Eating Disorder. The onset for each diagnosis is indicated as “years”.

Health History

The doctor said the following about the Appellant’s condition:

- Medications and/or treatments that interfere with the ability to perform daily living activities have not been prescribed.
- No prostheses or aid are required for the impairment.
- “Lifelong mood/anxiety problems with unstable work, relationships, substance problems. Has been on disability in [another province] and relocated [to BC] in 2023. Seen regularly by a psychiatrist until moved [to BC]”.
- “Was considered psychiatrically unable to work in a regular job in [her previous province].
- “Could perhaps do low commitment part-time under 15 hours/week”.

Degree and Course of Impairment

The Appellant’s impairment is likely to last 2 or more years from the date of the PWD application.

Physical Impairment

The Medical Report, indicated the following about the Appellant:

- Can walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, can lift 15-35lbs and can remain seated without limitation.

The Assessor’s Report indicated the following about the Appellant:

- Walking indoors, walking outdoors, climbing stairs, standing, lifting and carrying/holding are performed independently.

Mental Impairment

The Medical Report indicated the following about the Appellant:

- There are cognitive difficulties with communication.
- There are significant deficits with cognitive and emotional function in the areas of executive function, emotional disturbance, impulse control and attention or sustained concentration.
- “Physically only mild limitations. Her problems are interpersonal, emotional, organizational, and anxiety related”.

The Assessor Report indicated the following about the Appellant:

- “Severe psychiatric illness”.
- Speaking, reading, writing, and hearing are satisfactory.
- There are major impacts on daily functioning with cognitive and emotional functioning in the areas of bodily functions, emotion, impulse control, and insight/judgment.
- There are moderate impacts on daily functioning with cognitive and emotional functioning in the areas of attention/concentration, executive and other emotional or mental problems (e.g. hostility) – “at times lashes out with anger”.
- All tasks listed under social functioning are performed with continuous supervision from another person and there is very disrupted functioning with immediate and extended social networks.

Daily Living Activities

The Assessor Report said the following about the Appellant:

- All listed tasks under personal care, basic housekeeping, pay rent/bills, medications and transportation are performed independently.
- Under shopping all listed tasks are performed independently except making appropriate choices which requires continuous assistance – “needs help regulating diet at times but is on a meal plan and sticks to it”.
- “Her connection to community groups for eating disorder and alcoholism helps her follow through with good/better choices when shopping”.
- Under shopping all listed tasks are performed independently except meal planning which requires periodic assistance.
- “This is currently. At times she has been so unwell that she was unable to carry out any of the above independently”.

Help

The Medical Report indicated that there is no requirement for any prostheses or aids for the Appellant’s impairment.

The Assessor Report said the following about the Appellant:

- She lives with family, friends, or a caregiver.
- Help with social functioning is provided by community groups and psychiatric supervision.
- Assistance is provided by family and community service agencies.
- Meal plans are required to help compensate for the impairment.
- No assistance is provided by Assistance Animals.

Evidence At Appeal

A Notice of Appeal was submitted on March 20, 2024. In it the Appellant stated that “a severe mental impairment was established in [the] application, noted and submitted from [the psychiatrist]. The impairment does directly and significantly restrict my ability to perform daily living activities (DLA) and I do require help with DLA”.

The Appellant also submitted a letter from her doctor dated April 4, 2024. In this letter the doctor stated that, “This letter is to certify that [the Appellant] was assessed in this office and [she] has DAILY difficulty and needs constant, daily support for her medical condition, in order to carry out her ADLs”.

Evidence at the Hearing

From the Appellant

At the hearing, the Appellant’s psychiatrist appeared as a witness. The psychiatrist questioned whether it would be helpful to include official documentation to demonstrate that the Appellant was the recipient of disability benefits in another province. It was explained by the Panel Chair that the Appellant has the right to request an adjournment to submit all information that she thinks is important for a full and fair disclosure of matters related to the appeal. However, since the legislative criteria differ from province to province, she would still need to meet the legislative requirements established in BC. This was echoed by the Ministry as well. The Appellant decided to go ahead with the hearing and not request an adjournment.

At the hearing, the Appellant’s witness stated, in part, the following:

- The Appellant’s difficulties arise from a mental health condition.
- At times she is so distraught with rage and anxiety that she cannot function in her daily living activities such as preparing meals, complete laundry or organize her schedule.
- When she endures an episode of anxiety and rage, she needs constant help with her activities, she needs long periods of rest and the recovery from an episode takes weeks.
- If she does not take the time to rest and recover, she can regress easily.
- She has a dependent personality which requires help from others.
- She is ashamed of her condition and does not give accurate information.
- It is believed that she cannot cope for weeks at a time and has an episode of rage and anxiety once per month.
- She does not have the skill to work through difficult social situations.
- There is no fixed pattern to her disability.

- During the recovery time, the Appellant does not eat healthily.
- Her psychiatric issues are invisible to most.

At the hearing the Appellant, in part, stated, in part, the following:

- The doctor who completed the PWD application did not know her well at that time so the information is not accurate.
- She has support from friends and family for decisions, organization, and budgeting.
- She also has support from counselling and support groups.

From the Ministry

Prior to the hearing commencing the Ministry stated that with the addition of the information provided in the April 4, 2024 letter, the Ministry now concludes that the criteria has been met and the hearing may not be necessary.

At the hearing, the Ministry relied on its Reconsideration Decision. The Ministry also stated that with the new information provided at the hearing, the Appellant now meets the legislative requirements.

Admissibility of Additional Information

The Ministry did not object to the admission of any additional information the Appellant submitted at the hearing.

A panel may consider information that is not part of the record that the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The panel found that the Notice of Appeal and April 4, 2024 letter from the doctor and the witness's testimony at the hearing provided additional detail or disclosed information that provides a full and fair disclosure of all matters related to the decision under appeal. The panel has admitted this new information as being in accordance with s. 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's Reconsideration Decision, which found that the Appellant is not eligible for designation as a PWD, was reasonably supported by the evidence or was a reasonable application of the legislation.

Panel Decision

In the Reconsideration Decision, the Ministry found that the Appellant does have a severe mental impairment. Therefore, the panel will not provide an analysis of the evidence regarding physical or mental impairment.

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.

Restrictions in the ability to perform Daily Living Activities

Section 2(2)(b)(i) of the Act requires that the Minister must be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the Appellant's ability to perform daily living activities either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the Ministry's decision is based on the evidence from prescribed professionals. The term "directly" means that there must be a connecting link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a part related to time or duration – the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended periods. So, in the cases where the evidence shows that a restriction happens periodically, it is appropriate for the Ministry to ask for evidence about the duration and frequency of the restriction to be "satisfied" that it is for extended periods. Moreover, at least two activities, as provided by the authority *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2009 BCSC 1461, must be restricted in a way that meets the requirements.

The Appellant argued that due to complications from her mental impairment she is unable to function and complete her daily living activities.

The Ministry argued that it is not satisfied that the information in the PWD application shows that the impairment directly and significantly restricts daily living activities continuously or periodically for extended periods.

In its Reconsideration Decision, the Ministry noted the doctor's narrative as indicated in the Medical and Assessor's report. The Ministry also noted that the Appellant does not take significantly longer to complete any of the listed tasks under each of the listed daily living activities. The Ministry noted that the Appellant requires continuous assistance with making appropriate choices when shopping, and periodic assistance with meal planning when preparing meals. The Ministry stated that it was reported in the Assessor's report that the Appellant is independent in all other daily living activities.

The Ministry stated that the Appellant has a significant restriction with social functioning. However, in order to meet this requirement in legislation, one must be significantly restricted in daily living activities continuously or periodically for extended periods that are related to making decisions about personal activities, care or finances. The Appellant is continuously restricted in making appropriate choices while shopping and needs periodic assistance for meal planning. However, no information was provided regarding the frequency or duration required for meal planning. Additionally, the Appellant needs assistance with regulating diet 'at times' without further detail provided. The Ministry concluded that there is not enough evidence to confirm that in the opinion of a prescribed professional, the Appellant is directly and significantly restricted in the ability to perform daily living activities continuously or periodically for extended periods. Therefore, the legislative criteria have not been met.

The panel finds that the Ministry analysis of the evidence and findings based on the evidence provided at Reconsideration to be reasonable. The evidence demonstrates that the Appellant independently performs the majority of listed task under each of the listed daily living activities. The panel notes that the legislation requires that an impairment must directly and significantly restriction daily living activities either continuously or periodically for extended periods. The Appellant is directly and significantly restricted in completed the daily living activity of social functioning but the majority of listed task for all other daily living activities are performed independently. Being restricted either continuously and periodically for extended periods with 1 of 5 tasks under shopping or 1 of 4 tasks under meals does not meet the legislative requirements.

The panel considered the 3 letters submitted by the Appellant's psychiatrist. The panel found that the letters did not provide sufficient information regarding the Appellant's ability to complete her daily living activities to change the panel's assessment of the Ministry's Reconsideration Decision. Rather the 3 letters focused on the Appellant's ability to gain and maintain employment which is not a consideration in a PWD application.

At the hearing, the Ministry stated that the April 4, 2024 letter from the doctor contained sufficient information to allow it to determine that the Appellant now meets the legislative requirement. The panel finds that the information in the April 4, 2024 letter from the doctor was vague but in combination with the additional information provided by the Appellant's psychiatrist at the hearing, the legislative requirements have been met.

The PWD application had already established that the Appellant cannot function independently with social functioning and requires continuous assistance. At the hearing, the Appellant also stated that she needs support from her family with decisions, organization and budgeting. At the hearing, the psychiatrist and doctor in the April 4, 2024 letter confirmed that the Appellant is unable to perform all of her daily living activities for weeks at a time at least once per month. During these periods, the psychiatrist and doctor established that the Appellant requires constant help. Therefore it has been established that the Appellant is restricted in all of her daily living activities periodically for extended periods.

As a result, the panel finds that in view of the new evidence, the ministry's Reconsideration Decision which found that the appellant does not have a severe physical or mental impairment that directly and significantly restricts daily living activities as is required by Section 2(2)(b) of the Act is no longer reasonable.

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 in order to perform daily living activities.

The Appellant stated that due to her mental impairment she needs help with daily living activities.

The Ministry argued that since the legislative requirements regarding direct and significant restriction to daily living activities was not met, the need for help cannot be met.

In the PWD application, it was indicated that help for the Appellant is provided by community support groups and psychiatric supervision. The doctor indicated that help is provided by family, meal plans, community groups and psychiatric supervision. At the

hearing, both the Appellant and psychiatrist indicated that the constant help that is needed for weeks at a time every month is provided by family and friends.

As a result, the panel finds that in view of the new evidence, the Ministry's Reconsideration Decision which found that the Appellant does not have a severe impairment that directly and significantly restricts daily living activities and therefore, does not require help to complete her daily living activities is no longer reasonable.

Conclusion

The panel finds that the Ministry's Reconsideration Decision, which found that the Appellant was not eligible for PWD designation, was not reasonably supported by the evidence and is not a reasonable application of the legislation. The panel rescinds the Ministry's Reconsideration Decision. The Appellant is successful on appeal.

Appendix A

The criteria for being designated as a PWD are set out in Section 2 of the EAPWDA as follows:

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.

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

The EAPWDR provides as follows:

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, 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.

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*

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

Neena Keram

Signature of Chair

Date: 2024/05/03

Print Name

Corrie Campbell

Signature of Member

Date: 2024/05/08

Print Name

Mimi Chang

Signature of Member

Date: 2024/05/06