

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) Reconsideration Decision dated April 8, 2024, which determined the appellant was not eligible for the Persons with Disabilities designation because she did not meet three of the five criteria. The ministry was satisfied that she met the age and duration criteria but not satisfied, based on the evidence presented, that she met 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 (application) (October 24, 2023)*****Self-Report -summary***

The appellant states that months ago she started to feel pain in her lower back, legs and feet. It has slowly become worse and prescribed medication only gives her about two to two and a half hours of sleep. She cries most of the night. Lack of sleep makes her feel like her immune system is suffering. She states she also has pain in her shoulders, arms and hands, but her back and legs are the worst.

The appellant adds that it takes her at least an hour longer to complete her jobs. When she goes to work she is in pain the whole time. She can no longer perform tasks such as raking leaves or lifting anything over about 5 lbs.

On November 13, 2023, the appellant added the following information to the self-report. She wrote that the medication has not relieved her pain, she was unable to go to work and the pain kept her up most nights. Her doctor prescribed gabapentin, which resulted in a psychotic episode. She called a relative to take her to the hospital and noticed her left leg was numb. In the hospital, she was given tests. Upon release she went to a relative's place as she couldn't take care of herself; she was getting sudden dizzy spells. After a few days she thought she could leave but had another dizzy spell and asked to return to the hospital. The appellant also discovered that she could not write properly and didn't know what was going on with her body. She only knew that something is changed, and she's scared.

Medical Report (February 1, 2024) – signed by the appellant's doctor

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

A. Diagnosis	Date of onset – month/year
Ankylosing spondylitis	2022
Cerebrovascular disease	2023
Ischemic heart disease	2023
Anxiety disorder	

B. Health History

- *Please indicate the severity of the medical conditions related to this person's impairment and how the medical conditions impair this person.*
- The appellant has severe lower back pain, which will worsen as she gets older and develops more lumbar spine disease due to ankylosing spondylitis progression.
- The appellant had a small stroke probably in October or November 2023 and is at high risk for more due to cerebrovascular disease aggravated by smoking.
- In November 2023, the appellant developed cardiac ischemic with a positive troponin. This was probably a non ST elevation myocardial infarction.
- The appellant's heightened anxiety creates a catastrophic reaction when she develops a new symptom. Her anxiety is generalized and constant and is a great hindrance to living a normal life.
- The appellant has a sleep disorder due to pain, which worsens her anxiety.

- *Has the applicant been prescribed any medications and/or treatments that interfere with her ability to perform daily living activities? – no*
- *Does the applicant require prostheses or aids for her impairment? – no*

C. Degree and Course of Impairment

- Is the impairment likely to continue for two years or more from today? – yes*
- Lifelong and will worsen as she gets older.

D. Functional Skills

- *How far can this person walk unaided on a flat surface? – 1-2 blocks*
- *How many stairs can this person climb unaided? – 5+*
- *Are there difficulties with communication? - no*
- *Are there any significant deficits with cognitive and emotional function? – yes*
 - The doctor checked emotional disturbance (e.g. depression, anxiety).

What assistance does your patient need with daily living activities? (includes help from another person, equipment and assistance animals)? - no response

F. Additional Comments

The appellant is unable to work in her present state, which will not improve with time or treatment.

G. Frequency of Contact

The doctor states they have known the appellant for four years and have seen her two to ten times.

Assessor Report (December 7, 2023) – signed by the appellant’s physiotherapist

The physiotherapist provided the following information and responses to the questions below.

A. Living Environment

The physiotherapist states the appellant lives alone.

B. Mental or Physical Impairment

- *What are the applicant’s mental or physical impairments that impact her ability to manage daily living activities?*

- chronic low back and leg pain related to a diagnosis of ankylosing spondylitis
- anxiety disorder that causes increased stress and depression

Ability to Communicate

<i>Please indicate the level of ability in the following areas</i>	Good	Satisfactory	Poor	Unable	Explain
speaking	x				
reading	x				
writing	x				
hearing		x			

Mobility and Physical Ability

<i>Indicate the assistance required related to impairment (that directly restricts the applicant’s ability to manage in the following areas).</i>	Independent	Periodic assistance from another	Continuous assistance from another person or	Uses assistive device	Takes significantly longer than typical	Explain and specify device
Walking indoors	x					
Walking outdoors					x	afraid of falling
Climbing stairs					x	
Standing	x					
Lifting		x				requires help >15 lbs.
Carrying and holding		x				"

Comments: increased low back pain with lifting activities

Cognitive and Emotional Functioning

For each item indicate to what degree the applicant's mental impairment restricts her functioning.

If impact is episodic or varies over time, please explain.	Impact on Daily Functioning			
	No impact	Minimal impact	Moderate impact	Major impact
Bodily functions (e.g. eating problems, toileting problems, poor hygiene, sleep disturbance)	x			
Consciousness (e.g. orientation, alert/drowsy, confusion)			x fog brain	
Emotion (e.g. excessive or inappropriate anxiety, depression etc.)				x anxiety/ stress about future well-being & finances
Impulse control (e.g. inability to stop doing something or failing to resist doing something)	x			
Insight and judgement (e.g. poor awareness of self and health condition (e.g. grandiosity, unsafe behavior)	x			
Attention/concentration (e.g. distractible, unable to maintain concentration, poor short-term memory)			x poor short-term memory	
Executive (e.g. planning, organizing, sequencing, abstract thinking, problem-solving, calculations)			x	
Memory (e.g. can learn new information, names etc., and then recall that information, forgets over-learned facts)			x	
Motivation (e.g. lack of initiative, loss of interest)	x			
Motor activity (e.g. increased or decreased goal-oriented activity, coordination, lack of movement, agitation, ritualistic or repetitive actions, bizarre behaviours, extreme tension)	x			

Language (e.g. expression or comprehension problems (e.g. inability to understand, extreme stuttering, mute, racing speech disorganization of speech)	x			
Psychotic symptoms (e.g. delusions, hallucinations, disorganized thinking)				x one-time episode of psychosis
Other neuropsychological problems (e.g. visual/spatial problems, psychomotor problems, learning disabilities etc.)	x			
Other emotional or mental problems (e.g. hostility)			x anger and frustration	

C. Daily Living Activities

<i>Indicate the assistance required related to impairment(s) that directly restrict the applicant's ability to manage in the following areas.</i>	Independent	Periodic Assistance from another person	Continuous assistance from another person or unable	Uses assistive device	Takes significantly longer than typical	Explain/ Describe
Personal Care	x					
Dressing	x					
Grooming	x					
Bathing	x					
Toileting	x					
Feeding self	x					
Regulating diet	x					but doesn't eat much
Transfers (in/out of bed)					x	due to stiffness and soreness
Transfers (on/off chair)	x					
Basic Housekeeping						
Laundry	x					
Basic housekeeping	x					
Shopping						
Going to/from stores	x					
Reading prices and labels	x					

Making appropriate choices	x				
Paying for purchases	x				
Carrying purchase home		x			requires assistance >15 lbs.
Meals	x				
Meal planning	x				
Food preparation	x				
Cooking	x				
Safe storage of food (ability, not environmental)	x				
Pay rent and bills					
Banking	x				
Budgeting	x				
Pay rent and bills	x				
Medications					
Filling/refilling prescriptions	x				
Taking as directed	x				
Safe handling and storage	x				
Transportation					
Getting in and out of a vehicle				x	
Using public transit	x				
Using transit schedules and arranging transportation	x				

Social Functioning – only complete if applicant has an identified mental impairment

<i>Indicate the assistance required related to impairment(s) that directly restrict the applicant's ability to manage in the following areas.</i>	Independent	Periodic support/supervision	Continuous support/supervision	Explain/Describe
Appropriate social decisions (including avoiding situations dangerous to self or others, good social judgement)	x			
Able to develop and maintain relationships	x			
Interacts appropriately with others (e.g. understands and responds to social cues, problem solves in social context)	x			

Able to deal appropriately with unexpected demands	x			
Able to secure assistance from others	x			

Describe how the mental impairment impacts the applicant's relationship with - immediate social network

- marginal functioning – little significant participation/communication: relationships often minimal and fluctuate in quality
- disrupted due to anger and frustration/tendency to go on rants
- **extended social networks** – good functioning – positively interacts with the community; often participates in activities with others

Comments:

If the applicant requires help, as indicated above, please describe the support/supervision required, which would help to maintain her in the community.

- appointments with social work, clinical counsellor and psychiatry

D. Assistance Provided for Applicant

Assistance provided by other people

- family, health authority professionals, community service agencies, friends

Comments:

- job retraining for less physical jobs

Assistance provided by Assistance Animals – no

E. Additional Information

The physiotherapist states the appellant has a combination of physical and mental health issues. She is motivated to continue working but is trained only for labour jobs. It is not recommended that she continue to do labour with her current health conditions.

G. Frequency of Contact

The physiotherapist states this is their first contact with the appellant. They have known her for three weeks and have seen her two to ten times.

Briefly describe the type and duration of the program or services you or your organization are providing or have provided to the applicant.

- Assessment for Persons with Disabilities application

Letter from the Ministry to the Appellant (March 6, 2024)

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

Request for Reconsideration (March 20, 2024)

The appellant states the reason she is requesting reconsideration is because her back, shoulder and neck pain is getting worse.

She wakes up hurting; it can hurt to just make her bed. Through all of this, she is getting more and more depressed. Some days the depression is really severe. But the real issue is all the pain she is in. She takes her medication but can still feel the pain through her medication – although not as bad.

The appellant adds that she has worked for 46 years (since she was 15) in physical labour but just cannot do it anymore.

The following medical reports were attached with the Request for Reconsideration.

Ultrasound Report – (March 13, 2024)

Findings:

Minor mixed atherosclerotic plaques at the carotid bifurcations without significant narrowing. Peak systolic velocities within normal limits.
Antegrade vertebral artery flow.

MRI – (February 26, 2024)

Findings:

There are five lumbar type vertebrae. Osseous alignment is normal. No fractures are present.

The conus terminates at L2 and is normal in appearance.

T12-L1: Mild loss of disc height small anterior osteophytes. No significant central canal or foraminal stenosis.

L1-2: Mild loss of disc height small anterior osteophytes. No significant central canal or foraminal stenosis.

L2-3: Mild generalized disc bulge. Small Schmorl's node inferior endplate of L2. Mild generalized disc bulge lateral osteophyte formation. Minimal central stenosis and bilateral foraminal compromise. Mild bilateral facet arthropathy. No significant central canal or foraminal stenosis.

L3-4: Mild generalized disc bulge. Mild bilateral facet arthropathy. Moderate right and mild left foraminal stenosis. No central canal compromise.

L4-5: Moderate loss of disc height. Mild bilateral facet arthropathy. Mild generalized disc bulge. Mild central canal narrowing. Moderate left and mild right foraminal compromise. L5-S1: Mild generalized disc bulge and mild bilateral facet arthropathy. No significant central canal narrowing. Mild right and left foraminal compromise. SI Joints: On limited assessment visualized portions of the SI joints are normal.

IMPRESSION:

Multilevel spondylotic change without evidence of high-grade central stenosis. Foraminal compromise most pronounced on the right L3-L4 and on the left L4-L5, moderate in degree.

CT Scan Report (January 4, 2024)

Findings:

Non-contrast CT head

No acute hemorrhage. No acute large territory infarct. Mild patchy background white matter low attenuation changes are noted that are nonspecific but most likely related to mild chronic small vessel ischemic disease.

No midline shift. No hydrocephalus or herniation.

No extra-axial collections or intra-axial lesions identified.

Mucous retention cyst within the left maxillary and right ethmoid sinuses. Bubbly secretions within the right maxillary sinus. Remaining sinuses are unremarkable. Mastoid air cells are well aerated. Unremarkable orbits. Unremarkable calvaria.

CT Angiogram

ARCH: Normal three-vessel branching pattern without significant proximal stenosis.

CAROTIDS: No significant extracranial ICA stenosis by NASCT criteria. Medial retropharyngeal loop of the left ICA at the level of the oropharynx. Mild atherosclerotic calcification of the left carotid siphon. No significant intracranial stenoses.

VERTEBROBASILAR: Right dominant vertebral artery. Hypoplastic left vertebral artery with short segment occlusion at the distal V2 proximal V3 segments, beginning within the transverse foramen of C3 with reconstitution within the transverse foramen of C1. Normal basilar artery.

CIRCLE OF WILLS:

Patent bilateral MCAs and ACAs. Bilateral patent fetal type PCAs.

No aneurysm or vascular malformation seen.

OTHER:

Patent dural venous sinuses.

No significant neck abnormalities. Unremarkable visualized lung apices.

C4 on C5, grade 1 anterolisthesis of C3 on C4 and C7 on T1. No acute or aggressive osseous lesions. No significant spinal canal narrowing is demonstrated.

Impressions:

1. No acute intracranial pathology
2. Short-segment chronic appearing occlusion of hypoplastic left vertebral artery within the distal V2/proximal, V3 segments. No other significant stenosis or occlusion of the major arteries in the head or neck.
3. Bubbly secretions within the right maxillary sinus possibly related to acute sinusitis for clinical correlation.

Additional Information received after the Reconsideration Decision

Appellant

Notice of Appeal (April 11, 2024)

The appellant states her doctor filled out the forms incorrectly and they don't understand the pain she is experiencing.

Testimony at the Hearing

Appellant

At the hearing, the appellant stated, when shopping, she can only carry a few items at a time, which is significantly different than a few years ago. The appellant added that when cleaning her house, she can't do more than one hour at a time. She can take care of herself and she doesn't have any help. However, she states she hurts all day, every day.

She added that once her rent and utilities are paid, she has only approximately \$130/month left for groceries. The appellant also stated that although her doctor stated her medications don't affect her ability to perform daily living activities, the medication makes her feel weird - "her brain gets stuck". She wondered how broken she needs to be to receive help.

Ministry

At the hearing, the ministry relied on its record and also explained some of the criteria required to qualify for the Persons with Persistent Multiple Barriers benefits.

Admissibility

The ministry did not object to the additional information provided by the appellant. The panel determined the additional information 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*.

The information the ministry provided regarding the Persons with Persistent Multiple Barriers Program, while helpful to the appellant, is not relevant to the issues before the panel and is therefore inadmissible.

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 minister was not satisfied that:

- 1) the appellant has a severe mental or physical impairment and
- 2) in the opinion of a prescribed professional:
 - i) that severe impairment directly and significantly restricts daily living activities, and
 - ii) as a result of those restrictions, the appellant requires help to perform those activities.

Appellant Position

The appellant states she has pain in her lower back, legs, feet, shoulders, arms and hands but her back and legs are the worst. Her prescribed medication only gives her about two to two and a half hours of sleep.

The appellant adds that it takes her at least an hour longer to complete her tasks; she is in pain the whole time. She can no longer perform tasks such as raking leaves or lifting anything over about five lbs.

In addition, the appellant states that once her rent and utilities are paid, she has only approximately \$130/month left for groceries. She also states that although her doctor stated her medications don't affect her in performing daily living activities, the medication certainly does affect her functioning.

Through all of this, the appellant states she is getting more and more depressed.

Ministry Position

Mental or Physical Impairment

Mental functioning

The ministry states it cannot determine that the appellant has a severe mental impairment.

The appellant's doctor notes the appellant does not have any difficulties with communication and the physiotherapist notes the appellant's ability with speaking, reading and writing are good and hearing is satisfactory.

The physiotherapist indicates the appellant is independent in all aspects of social functioning. They also state that the appellant is independent with daily living activities that would typically be difficult for someone experiencing significant restrictions to their mental functioning. The physiotherapist notes the appellant is independent with most daily living activities. They also note the appellant can independently make appropriate social decisions, develop and maintain relationships, interact appropriately with others, deal appropriately with unexpected demands, and secure assistance from others.

The ministry finds although the information demonstrates anxiety, this level of independence is not indicative of a severe mental impairment.

Physical functioning

Based on the information provided, the ministry states it cannot determine that the appellant has a severe physical impairment. The appellant's doctor indicates the appellant does not require any aids or prosthesis nor the assistance of another person, assistive device, or assistance animal. They note the appellant can walk one to two blocks unaided on a flat surface and climb five and more steps unaided.

The physiotherapist notes the appellant is independent with walking indoors and standing. They state the appellant takes significantly longer than typical walking outdoors and climbing stairs but do not describe how much longer than typical it takes. The physiotherapist indicates the appellant requires periodic assistance from another person to manage lifting and carrying and holding.

The ministry finds the information provided in the application demonstrates limitations to the appellant's physical functioning. However, these assessments speak to a moderate rather than a severe physical impairment.

Daily Living Activities

The appellant's doctor indicates the appellant has not been prescribed medication/treatment that interferes with her ability to perform daily living activities.

The physiotherapist notes the appellant can independently manage all daily living activities except for taking longer than typical to transfer in/out of bed and getting in/out

of a vehicle and requires periodic assistance from another person to carry purchases home.

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

Help Required with Daily Living Activities

The ministry states that as it has not been 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.

The appellant's doctor and the physiotherapist report that the appellant is unable to function in a work environment; however, the ministry notes that employability is not a factor when determining the Persons with Disabilities designation.

The ministry adds that the appellant is welcome to contact the ministry to be assessed for income assistance as a person with persistent multiple barriers to employment.

Panel Analysis

The panel acknowledges the appellant's self-report and does not question her description of her ongoing difficulties or her good faith in doing so. This matter is determined on the appellant's evidence as well as the evidence of the health and prescribing professionals whose opinions are relied upon.

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

In the medical report, the appellant's doctor states the appellant's heightened anxiety creates a catastrophic reaction when she develops a new symptom. Her anxiety is generalized and constant and is a great hindrance to living a normal life. As well, the appellant has a sleep disorder due to pain, which worsens her anxiety.

The physiotherapist includes anxiety disorder as an impairment that impacts the appellant's ability to manage daily living activities. For impact on functioning, they indicate a moderate impact for consciousness, attention, concentration, executive, memory and other emotion problems (hostility) and a major impact for emotion and psychotic symptoms. In the Request for Reconsideration, the appellant states she is getting more and more depressed and some days the depression is really severe.

However, the physiotherapist also indicates the appellant's ability to communicate (speaking, reading, and writing) is good and hearing is satisfactory, and there is no impact on bodily functions, impulse control, motivation, motor activity, language or other neuropsychological problems. As well, the physiotherapist indicates the appellant is independent with all aspects of social functioning.

Although the doctor shows a diagnosis of anxiety in the medical report, the panel finds without further information regarding this diagnosis, this information alone is insufficient to conclude a severe mental impairment. The panel finds the ministry was reasonable in determining that it was not satisfied that the appellant has a severe mental impairment.

Physical Impairment

The appellant's doctor provides diagnoses of ankylosing spondylitis, cerebrovascular disease and ischemic heart disease. They add that the appellant has severe lower back pain, which will worsen as she gets older. They also state the appellant had a small stroke probably in October or November 2023 and is at high risk for more due to cerebrovascular disease aggravated by smoking. In November 2023, the appellant developed cardiac ischemic with a positive troponin. The appellant states that months ago she started to feel pain in her lower back, legs and feet. It has slowly become worse.

The physiotherapist states the appellant is independent walking indoors and standing, needs periodic assistance with lifting, carrying and holding and takes significantly longer with walking outdoors and climbing stairs. The physiotherapist adds that the appellant would benefit from job retraining for less physical jobs. However, the physiotherapist also noted that the appellant is independent with almost all tasks associated with personal

care, shopping and transportation and all tasks associated with basic housekeeping, meals, paying rent and bills and medications.

The panel finds although the appellant's doctor and the physiotherapist state the appellant is unable to work and would benefit from job retraining for less physical work, the Persons with Disabilities designation does not include the ability to work.

As well, the panel finds that although the doctor provides diagnoses of ankylosing spondylitis, cerebrovascular disease and ischemic heart disease, the evidence from the physiotherapist does not demonstrate a severe limitation to physical functionality. With the above, and the CT report submitted by the appellant, the panel finds there is insufficient evidence to conclude a severe physical impairment.

The panel finds the ministry was reasonable in determining that it was not satisfied that the appellant has a severe physical impairment.

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 and periodic for extended periods means frequently or for longer periods of time.

The appellant's physiotherapist (a prescribed professional) states that the appellant is independent with all tasks related to the following daily living activities:

- prepare own meals (meal planning food preparation, cooking and safe storage of food)
- manage personal finances (banking, budgeting, paying rent and bills)
- use public or personal transportation facilities (using public transit and using transit schedules and arranging transportation)
- perform housework to maintain the person's place of residence in acceptable sanitary condition (laundry and basic housekeeping)
- manage personal medication (filling/refilling prescriptions, taking as directed and safe handling and storage).

The evidence from the appellant's doctor and physiotherapist indicate some restrictions for the following daily living activities.

- shop for personal needs
- move about indoors and outdoors

The panel finds that although the doctor and physiotherapist state the appellant has some restrictions, there is insufficient evidence to conclude that these restrictions are severe. For example, the physiotherapist states the appellant requires assistance carrying purchases home over 15 lbs and takes significantly longer than typical, but doesn't provide a further explanation (e.g., how much longer). As well, the physiotherapist states the appellant is able to independently manage most of her daily living activities.

The panel finds the ministry reasonably determined that it was not satisfied that in the opinion of a prescribed professional, a severe physical or mental impairment directly and significantly restricts the appellant's ability to perform daily living activities continuously, or periodically for extended periods as required by section 2 of the Act.

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.

However, as the panel found that the ministry was reasonable in finding that the daily living activities were not restricted periodically for extended periods or continuously, the panel also finds the ministry was reasonable in its determination that no assistance is required to perform the daily living activities.

Conclusion

In conclusion, the panel finds the ministry's decision that determined the appellant was not eligible for Persons with Disabilities designation was reasonably supported by the evidence. The panel confirms the ministry's decision.

The appellant is not 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 2024-0129

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)

2024/05/02

Print Name

John Pickford

Signature of Member

Date (Year/Month/Day)

2024/05/05

Print Name

Kent Ashby

Signature of Member

Date (Year/Month/Day)

2024/05/04