

### **Part C – Decision Under Appeal**

Under appeal is a decision of the Ministry of Social Development and Poverty Reduction (the “Ministry”) dated March 7, 2024 (the “Reconsideration Decision”) denying the Appellant a Persons with Disabilities (“PWD”) designation.

The Ministry determined that the Appellant met the first 2 of 5 criteria, specifically the age and duration requirements. The basis for the denial was that the Ministry was not satisfied on the information provided at reconsideration that:

- the Appellant has a severe mental or physical impairment,
- in the opinion of a prescribed professional, that impairment directly and significantly restricts the Appellant’s ability to perform the daily living activities set out in the legislation, and
- lacking meeting the criteria above, that the Appellant requires significant help from other persons or a device.

Additionally, The Ministry found no evidence that the Appellant was one of the prescribed classes of persons who may be eligible for the PWD designation on alternative grounds under Section 2.1 of the Regulation (defined below).

### **Part D – Relevant Legislation**

This decision cites:

*Employment and Assistance for Persons with Disabilities Act* (the “Act”):

Section 2

*Employment and Assistance for Persons with Disabilities Regulation* (the “Regulation”):

Section 2

Section 2.1

Text of the above legislation is attached at the end of the decision.

**Part E – Summary of Facts****Hearing Proceeding**

The hearing was held in person as requested by the Appellant with an advocate and advocate assistant/trainee. The Ministry attended by conference telephone and had no objection to the assistant/trainee's presence.

**Background and Relevant Information**

The following is a summary of the key information related to this Appeal:

2024-January-11: The Appellant submitted a PWD designation application. It included Persons with Disabilities Designation Application forms as follows:

- Section 1 – Applicant Information dated 2023-November-27 that included:

Disabling Condition and Affect

[About 6 years ago I was struck by a motor vehicle.] My ankle took the impact and I have had constant pain since. ... I rarely can sleep due to pain and discomfort. This has also caused me to often feel ill, distracted, and depressed.

Physical Functioning

- Constant pain in left ankle, hard to stand or walk for moderate durations, and avoids doing things to avoid the pain getting worse.
- Sitting is uncomfortable and can only be done for a limited time (ankle starts to pop).
- Fatigue and rarely sleeps due to pain and discomfort.

Mental Functioning

- Constant pain and often avoids things to avoid more pain.
  - Often feels ill, distracted, and depressed.
  - Fatigue and discomfort affect motivation and ability to do most daily tasks.
  - Extreme anxiety that wakes you up at night, have thoughts of hurting yourself or others.
  - Lack of sleep puts a strain on social relationships.
- Section 2 – Medical Report dated 2024-January-03 (the "Medical Report") and signed by the Appellant's medical practitioner (the "MD"). It shows the Appellant's diagnoses, health history, duration of over 2 years, and the assessment of functional skills and restrictions to daily living activities. The Medical Report described functional limitations as:

### Physical Functioning

- Can walk 2 to 4 blocks unaided.
- Can climb 5+ steps unaided.
- No limits with lifting.
- No limits remaining seated.
- No difficulties with communication.
- Continuous restrictions with mobility inside and outside of the home (take 3 x longer).
- Periodic restrictions with personal self-care, meal prep and basic housework depending on the amount of pain.

### Mental Functioning

- A personality disorder, mood disorder, and severe daily chronic left ankle pain.
- The accident that injured the Appellant's ankle, and loss of function and jobs has led to depression, anxiety, panic attacks and emotional dysregulation.
- Pain affects sleep resulting in daytime fatigue and loss of concentration.
- Deficits are evident with emotional disturbance.
- Significant emotional upset and depression affect the ability to communicate easily and freely.
- No restrictions managing meds, finances or social functioning.

### Daily Living Activities

- Personal self-care, periodic restriction.
  - Meal preparation, periodic restriction.
  - Basic housework, periodic restriction.
  - Mobility inside the home, continuous restriction.
  - Mobility outside the home, continuous restriction.
  - Mobility is affected and it takes the patient 3x longer to complete activities such as walking.
  - No restrictions on the Management of medications, Daily shopping, Use of transportation, Management of finances, or social functioning.
  - "Grandparent" [Great-grandparent] helps with laundry, housekeeping, and cooking.
- Section 3 – Assessor Report dated 2023-December 21 (the "Assessor Report") signed by a Registered Social Worker (the "RSW"). The Assessor Report described mental and physical functional limitations in summary as follows:

Chronic pain of left ankle following a motor vehicle accident in 2018. Pain occurs daily and is severe/persistent through day impacting ability to walk, cook, clean and care for himself. Applicant also struggles with insomnia as he is unable to fall asleep at night due to pain which causes daily fatigue and difficulty with concentration. As a result of chronic pain, applicant experiences depression and panic attacks which includes frequent low mood, emotional dysregulation, and anxiety.

#### Communication, and Mobility and Physical Ability

- Ability to speak is poor (good with reading, writing and hearing).
- Walking takes 2 x longer (immediate severe pain when walking)
- Avoid stairs due to severe pain.
- Can stand for 20 minutes before needing to sit.
- Independent lifting, carrying and holding.

#### Cognitive and Emotional Functioning

- Major impacts to emotion and motivation.
- Moderate impacts on bodily functions, consciousness, insight and judgement, attention/concentration, and language.
- Minimal impact to memory.
- No impact on impulse control, motor activity, or episodes of psychosis or neurological problems.

#### Daily Living Activities

- Personal Care: Independent with the exception that diet regulation is with periodic assistance of meals cooked by the "grandparent" [great-grandparent], and sometimes does not change clothes for days).
- Basic Housekeeping: Continuous assistance required from the "grandparent" [great-grandparent].
- Shopping: Takes 3x longer to walk to the store and to carry purchases home due to pain.
- Meals: Continuous assistance for planning, preparation and cooking.
- Pay rent and bills, medications, and transportation: All independent except that getting in and out of vehicles can cause ankle pain and take 2x longer.

#### Social Functioning

- Independently makes appropriate social decisions and deals with unexpected demands.
- Marginal close relationship functioning - little significant participation/communication: relationships are often minimal and fluctuate in

quality. Periodic assistance or support is needed to develop or maintain relationships (socially isolated, limited relationships outside of immediate family).

- Very disrupted social network functioning - overly disruptive behaviour; major social isolation. Periodic assistance or support needed to interact appropriately with others (easily agitated and often withdrawn. Appears to have difficulty responding to social cues in a typical way) described as.

Assistance provided [for Appellant]

- The help required for daily living activities is provided by family.

2024-February-15: The Appellant was advised of the Ministry's denial of eligibility for PWD designation.

2024-February-23: The Appellant submitted a Request for Reconsideration.

2024-March-7: The Ministry completed its review of the Appellant's Request for Reconsideration gave reasons, discussed below, and again denied the Appellant a PWD designation with reasons, discussed below, leading to the determination that the Appellant met the age and duration criteria but:

- Did not have a severe mental or physical impairment.
- The impairment does not significantly restrict his ability to perform daily living activities.
- The Appellant did not require significant help to perform daily living activities.

It also found that the Appellant had not demonstrated being a person in a prescribed class eligible for the PWD designation on alternative grounds, as set out in the Regulation section 2.1.

2024-March-14: Notice of Appeal to this tribunal was filed. The "Reasons for Appeal" stated:

My physician who did not see me when she filled out the form made errors. As well if not enough information was given then I could give you the information in person.

2024-May-07: The Appellant provided a written submission offering the following as evidence:

- 2024-April-25: Letter “To Whom It May Concern” on Health Authority letterhead from a Registered Social Worker (the “RSW Letter”) prepared from a second interview with the Appellant,
- 2024-April-26: Affidavit from the Appellant’s great-grandparent (the “Affidavit”), and
- 2024-May-03: Letter “To Whom It May Concern” on medical clinic letterhead from the MD (the “MD Letter”),
- 2024-May-06: Memorandum “To Whom It May Concern” from the Appellant (the “Appellant’s Memo”).

2024-May-10: The Appellant’s advocate provided the Ministry and panel with a copy of her speaking notes addressing the evidence and legal argument but not intended as evidence.

### **Admissibility of New Evidence**

Under section 22(4) of the Act, the Panel may admit evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The Panel admits as evidence the “Reasons for Appeal” stated by the Appellant, the RSW Letter, the Affidavit, the MD Letter, and the Appellant’s Memo. Any testimony that is admitted as relevant and given weight to possibly affect the finding is specifically mentioned in the Panel’s reasons. The speaking notes of the Advocate are treated with the oral submission of the Appellant and Ministry as argument and not admitted as evidence.

### **Appellant Submissions**

The Appellant, through his Advocate, reviewed the original PWD Application, Sections 1, 2 and 3, with comparison to the new evidence and the 3 criteria not found met in the Reconsideration Decision.

The submission included references to the limitations set out in the RSW Letter. Added to that was testimony that when going shopping the Appellant tends to just ride then stay in the car while his great-grandparent goes in and does the shopping.

The submission was that the Appellant’s physical and mental functioning, considered together, was severely impaired, that they directly and significantly restrict his daily living activities, and that the information established that he requires help to perform those restricted daily living activities, thus satisfying the legislation to be designated a person with disabilities.

### **Ministry Submissions**

The Ministry relied upon the reasons in the Reconsideration Decision. The representative stated that the addition of the RSW Letter, MD Letter, and the Appellant’s Memo would likely have altered the outcome. The representative considered that with that evidence the

Appellant met the criteria for a PWD designation. The representative stated that the addition of new evidence would have satisfied the ministry that the Appellant likely has a severe impairment based on mental and physical function and that it was the opinion of the MD and the RSW that the impairment directly and significantly restricts the Appellant's ability to perform daily living activities, and as a result of those restrictions requires help to perform those activities.

The representative stated that the MD adopted the RWS's description of limitations of daily living activities and referred to the Appellant being homebound 5-6 days as severe and requiring significant help from his great-grandparent for daily living activities.

**Part F – Reasons for Panel Decision****Purpose and Standard of Review**

The purpose of the Panel is not to redo the Reconsideration Decision under appeal or decide whether it agrees with the Ministry's decision. It is to decide whether the Ministry did, or did not, reasonably come to the decision it made. The standard applied is whether the applicable laws were reasonably applied and whether the evidence was also reasonably applied in the circumstances. However, any new or updated evidence the Panel admits is considered as if the Ministry knew it at the time. That means this decision assesses the reasonableness of the Reconsideration Decision based upon what is known now.

**Discussion of Issues**

In the Reconsideration Decision the basis for the denial was that the Ministry was not satisfied that 3 of the 5 criteria were met. The 3 outstanding criteria were that:

- the Appellant has a severe mental or physical impairment,
- in the opinion of a prescribed professional, that impairment directly and significantly restricts the Appellant's ability to perform the daily living activities set out in the legislation, and
- lacking meeting the criteria above, that the Appellant requires significant help from other persons or a device.

This discussion will focus on the 3 criteria. The panel accepts the age and duration criteria as having been met, and that the Appellant does not satisfy the alternate grounds for qualification under section 2.1 of the Regulation.

The Appellant's new evidence provides additional information from the MD and RSW, that that the Panel considers changes the outcome, as does the Ministry's representative.

***Severe Mental or Physical Impairment***

Relevant to the issues is the provision under section 2(2) of the *Act* that the Ministry must be satisfied that the Appellant "has a severe ... mental or physical impairment".

In the Reconsideration Decision a moderate rather than the required severe physical impairment was found. The impairment was seen as severe chronic pain in the Appellant's left ankle, pain affecting the ability to walk or stand for longer periods, and daytime fatigue.

In terms of mental impairment, the Ministry stated that the Medical Report identified only one deficit as emotional disturbance. The Assessor Report was noted as indicating "a few major impacts" but arising from a single meeting. That discrepancy in the levels of impact posed a problem that the Ministry described as making it "difficult to assess how



significantly the applicant is restricted. It therefore found that "a severe mental impairment cannot be established."

The MD Letter and the RSW Letter do not conflict with, or meaningfully alter, the information in the Medical and Assessor Reports in regard to the Appellant's physical functioning and the impact on the Appellant. They do, however, clarify or update the information on the Appellant's mental functioning, its impact on him, and the help needed, as a result. This is discussed below.

The MD Letter provides more information on the mental impairment stating - (underlining added):

I confirm that his impairments directly restrict his abilities to perform activities of daily living... [The Appellant] presents with significant restrictions in social functioning, including challenges with communicating and interacting with others.

He struggles with constant pain and I support any options that are available, to help him manage activities of daily living, including medical emotional and financial support.

The RSW Letter supplemented the Assessor Report description of functional limitations by stating:

[The Appellant] reports that together, his physical and mental conditions have major impacts on his ability to leave his home. His impairments include symptoms of chronic ankle pain, depression, anxiety, anxiety attacks, and emotional dysregulation. On average he is often restricted to home five or six days per week.

The degree of isolation at home is significant. It is greater than is apparent in the Assessor Report.

The RSW Letter also identifies with greater clarity the level of reliance on the Appellant's great-grandparent, showing it to be greater than as apparent in the Assessor Report.

The RSW Letter restates the Appellant's reports of suicidal ideation, without plan or intent, and identifies the frequency and duration of anxiety attacks.

The Affidavit from the great-grandparent describes the impact of the above and the help provided by this person, a person in their 90's, whose statements conform with the information of the RSW and MD. Among other things the Affidavit states:

... I help the appellant with different daily living activities, including house cleaning, laundry, grocery shopping, and reminders to eat. I sometimes help him by making meals, changing his bed sheets and making his bed. Most of the time the appellant cannot do his laundry due to in anxiety, depression and pain, and I do his laundry. If

I am not available to help with laundry regularly, his clothes will often stay unwashed and build up in his room.

Due to the appellant struggles with depression, low motivation, anxiety and pain, I help him with housekeeping/house cleaning, for example by vacuuming, and cleaning bathrooms like the bathtub and toilet. I also helped by reminding by prompting him to clean.

...

The appellant spends most of his time at home, because of his anxiety, low moods, and pain in his ankle.

Before the new evidence, the Ministry had found it difficult to assess how significantly the Appellant is restricted due to a perceived disparity between the Medical Report and the Assessor Report. In the panel's view, the new information removes that difficulty by removing the perceived discrepancy between the RSW and the MD. The MD Letter identifies the Appellant as having significant social functioning issues (not just emotional disturbance) which the letter explicitly states "directly restricts his daily living activities" for which help was recommended by the MD. The information from the RSW and MD (supported by the Appellant's Section 1 - Applicant Information, the Appellant's Memo, and the Affidavit) reasonably establish that the Appellant is anxious, depressed and socially isolated as a major impairment.

There is now no reasonable discrepancy on the impact of the impairment or the help provided by the great-grandparent, nor any on the substantive degree of the Appellant's home isolation. The Ministry accepted that there was a "report of 3 areas of daily living having major impacts from the mental impairment." It is also established that as a result of the impairment and daily living restrictions the help of another person - the great-grandparent - is required.

Conclusion:

In the panel's view, the Ministry reasonably interpreted and applied the legislation in its Reconsideration Decision. However, the panel finds that with the new evidence it was unreasonable for the Ministry to have found that the Appellant did not meet 3 of the criteria, specifically that:

- the Appellant did not suffer from a severe mental impairment,
- the Ministry was not satisfied that in the opinion of a prescribed professional, the impairment directly and significantly restricts the Appellant's ability to perform the daily living activities set out in the legislation, and

- as a result of those restrictions the Appellant did not require help to perform daily living activities.

The finding above is determinative and unaffected by the Panel finding that the Ministry, otherwise, reasonably interpreted and applied the enactments.

### **Concluding Decision**

The Appellant is **successful** on appeal, the Panel having found that the Reconsideration Decision is not reasonably supported by the evidence.

Accordingly, the Panel **rescinds** the Reconsideration Decision.

## Appendix – Relevant Legislation

### *Employment and Assistance for Persons with Disabilities Act*

#### Section 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***

**Section 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* (Canada).

APPEAL NUMBER 2024-0093

**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  
Kent Ashby

Signature of Chair

Date (Year/Month/Day)  
2024/05/12

Print Name  
Corrie Campbell

Signature of Member

Date (Year/Month/Day)  
2024/05/15

Print Name  
Jan Broocke

Signature of Member

Date (Year/Month/Day)  
2024/05/14