

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

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated April 17, 2024. The ministry denied the appellant designation as a person with disabilities (PWD). They determined that the appellant met the age requirement (18 years or older) and the duration requirement (impairment is likely to continue for at least 2 years). However, the ministry was not satisfied that the evidence establishes that:

- the appellant has a severe physical or mental impairment;
- the appellant's impairment significantly restricts his ability to perform daily living activities; and
- the appellant requires the significant help or supervision to perform daily living activities.

The ministry also found the appellant was not one of the prescribed classes of persons eligible for PWD on the alternative grounds. As there was no information that the appellant is one of these prescribed classes, the panel considers it not to be an issue in this appeal.

### **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 full text of these sections of legislation is set out at the end of the decision.

**Part E – Summary of Facts**

The hearing took place on May 8, 2024, as a teleconference.

**Evidence Before the Ministry at Reconsideration**

1) The appellant's PWD application:

- The Medical Report (January 29, 2024) completed by a general practitioner (the doctor) who has been the appellant's doctor since November 9, 2023 and has seen the appellant 2-10 times in the past 12 months.
  - The doctor commented: "Records from old family doc + psychiatrist used in preparation of this report."
- The Assessor Report completed by a Registered Clinical Counsellor (the counsellor) (September 27, 2023) who has known the appellant for 3.5 years and has seen the appellant 11 or more times in the past 12 months.
  - To complete this form, the counsellor used an office interview and file/chart information of "clinical notes over the past 3.5 years".
  - "The client is engaged in weekly therapy sessions to work on his depression, anxiety, and social anxiety. The client is also participating in group therapy once a week as a step in exposing himself to a social group where there is a safe atmosphere to engage and participate."
  - According to the Regulation, the counsellor is not a prescribed professional.
  - The doctor, who is a prescribed professional, signed and stamped the Assessor Report.
- The appellant completed the Applicant Information (Self Report) section (October 10, 2023)

2) The appellant's Request for Reconsideration (August 24, 2023)

3) A letter from the counsellor (April 1, 2024)

**New Evidence Provided on Appeal and Admissibility**

The appellant submitted a Notice of Appeal (April 17, 2024).

At the hearing, the appellant and his mother provided additional information about his medical condition and its impact on his functioning. The ministry did not provide additional evidence but restated their reconsideration decision.

The ministry did not object to the admission of the additional information. The panel finds that the information provided by the appellant on appeal and at the hearing is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, because it provides more information on the appellant's impairment and contributes to the panel's understanding of the circumstances surrounding his PWD application. The panel therefore admits this information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

### **Summary of Relevant Evidence**

#### Medical Report

##### Diagnoses:

- Depression / Mood Disorder;
- Anxiety; and
- "Pt dealing in above condition for >10 yrs."

##### Health History:

- "Severe persistent Major Depressive Disorder that is refractory to traditional medications. Pt is currently undergoing ketamine treatments at the direction of his psychiatrist."
- "His depression is accompanied by severe generalized anxiety."
- He has been prescribed medications/treatments that interfere with his ability to perform daily living activities.
- "Ketamine infusions may impair his ability to perform DALs, @ short intervals post-infusion."
- No indication of "What is the anticipated duration of the medication and/or treatments."
- The appellant does not require any prostheses or aids for his impairment.

##### Degree and Course of Impairment:

- The impairment is likely to continue for two years or more.
- "His prognosis is yet to be determined. Unclear if future therapies will help."

##### Functional Skills:

- Can walk 4+ blocks unaided on a flat surface.
- Climb more than 5 steps unaided.
- Has no limitations in lifting.

- Has no limitations remaining seated.
- Has no difficulty with communication.
- Has significant deficits with cognitive and emotional function in the areas of
  - Emotional disturbance; and
  - Motivation.

Daily Living Activities:

- Social functioning (daily decision making; interacting, relating and communicating with others) is continuously restricted.
- "Anxiety makes interacting with others (including communication) difficult."
- "Depression – lack of motivation + mood makes relating with others difficult."
- The degree of the restriction is moderate-severe.
- "N/A" to the question of what assistance the patient needs with daily living activities.
- No comment or yes/no check on any other daily living activities.

Assessor Report

The appellant lives with family.

Ability to Communicate:

- Speaking, reading, writing, and hearing abilities are good.

Mobility and Physical Ability:

- The appellant is independent with walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding.

Cognitive and Emotional Functioning (impact on daily functioning)

- No impact: bodily functions, psychotic symptoms
- Minimal impact: consciousness, impulse control, insight and judgement, memory, motor activity, language;
- Moderate impact: attention/concentration, executive; and
- Major impact: emotion, motivation.

Daily Living Activities:

- Personal Care: All tasks are managed independently.
- Basic Housekeeping: All tasks are managed independently.
- Shopping: All tasks are managed independently.
- Meals: All tasks are managed independently.

- Pay Rent and Bills:
  - Banking is managed independently.
  - Budgeting requires periodic assistance from family.
  - Paying rent and bills require continuous “help with financial aid due to lack of work”.
- Medications: All tasks are managed independently.
- Transportation: All tasks are managed independently.
- Social Functioning:
  - Independent with making appropriate social decisions.
  - Periodic support/supervision required with interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others).
  - Continuous support/supervision required with developing and maintaining relationships. “Social anxiety impedes ability for client to engage in social settings + new situation [sic] of exposure that are unforced and supported by a safe connection.”
  - Marginal functioning with immediate and extended social networks.

Assistance Provided:

- The help required for daily living activities is provided by family.
- The appellant does not have an assistance animal.

Additional Information:

- “The client’s mental health impedes his ability to engage in a structure [sic] lifestyle with multiple demands and responsibility.
- In addition, environments where there is a requirement for social engagement overwhelms the client and impairs his ability to be present, focus or participate.”

Self Report

The appellant writes:

- “I have depression and anxiety.
- This has caused me to have much difficulty supporting myself. Depression has caused me to have much difficulty finding work and maintaining it. Anxiety around work has also been a factor.
- Anxiety fills me with a lot of fear of things I am unfamiliar with when I am put in situations in unfamiliar locations.
- And/or unfamiliar people I develop panic attacks. [sic]

- The emotion and fear that comes from a panic attack can only be calmed by retreating to a familiar and safe location.
- Depression has made my life a real challenge.
- I often languish in dark and frightening thoughts. These thoughts are upsetting and cause me to use much of my energy trying to keep them from overwhelming me.
- I struggle to sleep as a result, spending much of my waking time very exhausted.
- Depression has also taken much of my motivation and energy from me.
- Daily living tasks are often all I have energy for. Tasks such as feeding myself, hygiene, attending therapy, taking medication etc. I can look after my usual daily tasks at home by myself most of the time.
- Depression and anxiety have made it very difficult to work or go to university.
- So financially it has been quite debilitating.
- I am only able to work part time, at most 4-6 hours a week. But my job is gig work with no guaranteed pay and as a result pay is inconsistent and low. This has been the only job in the last 6 years I have been able to maintain."

### Request for Reconsideration

The appellant repeats information from his self report and adds:

- "Anxiety in particular causes intense panic attacks that makes communication impossible."
- "Anxiety clouds my judgement and I often make unwise decisions and embarrassing mistakes."
- "As a result I often become an outcast in social settings. This is a problem because much of what I need to do to look after myself requires me to be in such social settings (E.g. shopping, medical appointments, work, school, etc.)."
- "Depression and mood disorders can also cause me to be bedridden for extended periods of time."

### Counsellor's Letter

The appellant's counsellor writes that:

- They have been involved in the process of the appellant's application and request for reconsideration.
- "After reading the reasons ... that [the appellant] has provided, I want to provide my support and reassurance that his statements about his disability are valid and should be considered for re-evaluation."

### Notice of Appeal

- The appellant wrote that he believes he meets the requirements for PWD designation.
- He was told that his application was denied at reconsideration, but he was not told why.
- The file that was sent to him via my self serve does not open.
- In an email to the tribunal the appellant writes (April 17, 2024):
  - “ ... I cannot read the decision for why my reconsideration was denied. The file sent to me on my self-serve does not exist, when I click it I get an error saying the file is not found. Given the short time required to submit this appeal form I know it will take too long for the ministry to mail me the decision. So I am sending it to you now, and hoping that someone can help me get that decision from the ministry, if it was ever properly decided on at all...”

### At the Hearing

The appellant reported:

- It was not clearly communicated to him in the application process how to address his impairment.
- The way the form is laid out it makes it difficult to convey his situation.
- The medical report should have included that at times he was bedridden.
- There was not enough time for the doctor to include more information.
- The impact of his depression and anxiety varies; sometimes it is very difficult for him to do household chores or take care of his meals or finances. At other times he can do them.
- The appellant struggles with making decisions about his personal activities, care and finances, and is severely restricted in these areas.
- Interacting with others can be upsetting and lead to panic attacks. That is why he mostly stays home and interacts with his family who cares for him.
- He has suicidal ideas.
- His impairment and restrictions have been a life-long problem. They are confirmed by his doctor and his therapist.
- Finding a doctor who understands his situation was challenging. He only found his current family doctor recently, who does not know him well.
- The therapist understands him best and has helped him with his mental health. He sees her once a week for 1 hour.
- He does not receive CPP disability benefits but believes he would qualify.

- He wants to work and understands that PWD legislation does not consider employability. However, he needs financial help because of his impairment. The ministry should have considered this.
- His mother has seen how he was not able to get out of the car because a new social situation brought on anxiety and panic.
- To questions from the panel the appellant replied that his “down” periods last for 2-3 years. His impairment began when he was in his early teens. He is now a young adult. His family is the main source of support.
- To another question from the panel, he responded that he vacuums, and does dishes and laundry regularly. When he is not able a family member covers for him.
- He does not use public transport.

The appellant’s mother reported:

- Her son’s daily living activities are always affected. He can do them only on some days. It is extremely challenging for him to do all of them consistently at the same time.
- His decision making capacity and social interactions are consistently compromised by his anxiety.
- He is comfortable with family members but not with strangers. It took 6 months until he was ready to participate in group sessions with his therapist.
- The therapist helped him to navigate his ups and downs.
- His mother wakes him up at 10 am every morning. He then takes his medication and showers.
- She cleans, plans the meals, shops, cooks, and puts food in the fridge for him on most days.
- Her son helps around the house.
- Sometimes he manages his own schedule, sometimes she helps him with it.
- He drives most of the time.
- He would not be able to manage on his own.



**Part F – Reasons for Panel Decision**

The issue on appeal is whether the ministry's decision that the appellant was ineligible for PWD designation was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. That is, was the ministry reasonable when it determined that:

- the appellant does not have a severe physical or mental impairment;
- the appellant's impairment does not significantly restrict his ability to perform daily living activities; and
- the appellant does not require significant help or supervision to perform daily living activities.

**PANEL DECISION****Severity of Impairment – Physical or Mental**

Section 2 of the Act requires the Minister to be satisfied that the appellant has a severe impairment. "Severe" and "impairment" are not defined. The panel finds that an assessment of severity based on daily physical and mental functioning including any restrictions is a reasonable interpretation of the legislation. However, the panel notes that frequency and/or duration of impairment is not required in the assessment of severity by the legislation at this stage of the legislative test. The panel also notes that the legislation does not identify employability or financial limitations as considerations when determining PWD eligibility.

**Physical Impairment**

The ministry's position is that the assessments provided by the appellant's doctor do not establish that the appellant has a severe physical impairment.

The panel finds that the ministry's determination that the appellant does not have a severe physical impairment is reasonably supported by the evidence. The panel finds that neither the doctor nor the appellant provided any evidence of a severe physical impairment.

**Mental Impairment**

The appellant argues that his mental impairment is severe, and that this is recognized by his doctor and counsellor in the PWD application. Anxiety clouds his judgement, and unfamiliar situations trigger intense panic attacks that make communication impossible. Depression has consumed much of his motivation and energy. His mood disorders can cause him to be bedridden for extended periods of time.

The ministry acknowledged that the information provided demonstrates that the appellant experiences anxiety and panic attacks in unfamiliar locations and with unfamiliar people. They determined, however, that the information provided does not establish a severe mental impairment.

The panel finds that, based on the evidence, the ministry did not reasonably determine that the appellant does not have a severe mental impairment. Contrary to the ministry's determination, the panel finds that the doctor's assessment describes a severe mental impairment: the doctor states that the appellant suffers from a severe persistent major depressive disorder for which he is undergoing treatment as directed by his psychiatrist. He suffers from severe generalized anxiety and has significant deficits with cognitive and emotional function in the areas of emotional disturbance and motivation. His social functioning is continuously restricted. While the doctor indicates that the appellant experiences moderate as well as severe restrictions, they consistently describe the appellant's impairment as severe and report significant deficits with the appellant's mental functioning. The panel finds that, considering all of the doctor's evidence, the appellant's impairment must be classified as severe rather than moderate.

### **Restrictions in the ability to perform daily living activities**

The appellant's position is that his ability to make decisions about personal activities and care, as well as his ability to socially interact, are significantly restricted because of his depression and anxiety.

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

Section 2(2)(b) of the Act requires that the ministry be 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 either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether it is satisfied, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and restriction. The direct restriction must also be significant.

The panel finds that the ministry reasonably determined that there is not enough evidence to confirm that the appellant's impairment significantly restricts his ability to perform his daily living activities continuously or periodically for extended periods.

The counsellor indicates that the appellant is independent in managing personal care, basic housekeeping, shopping, meals, medications, and transportation. Neither the doctor nor the counsellor provide evidence that the appellant's ability to manage personal finances and make decisions about finances is restricted. While the counsellor indicates that the appellant needs periodic assistance from family with budgeting and continuous financial help for paying rent and bills, the panel notes that financial help is not a criterion set out in the Act or Regulation. While the appellant states he struggles with making decisions about his personal activities, care and finances, and is severely restricted in these areas, this is not confirmed by the doctor's or counsellor's evidence.

While the doctor indicates that the appellant's social functioning (daily decision making, interacting, relating and communicating with others) is continuously restricted, the counsellor indicates that the appellant is independent with making appropriate social decisions and needs periodic support/supervision with interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The counsellor indicates that the help required is provided by the family but does not describe the nature of the required support or how often and for how long it is needed. The counsellor indicates further that the appellant needs continuous support/supervision with developing and maintaining relationships and adds that the appellant's ability to engage in unfamiliar social settings is impeded. Again, the counsellor indicates that the required continuous support is provided by the family but does not describe the nature of this support.

The appellant explains that he stays at home most of the time, and only interacts with his family who he is comfortable with. It took him 6 months to participate in a group setting with his counsellor. His mother reported incidents when her son was not able to leave the car because of his anxiety in an unfamiliar setting. She states that her son would not be able to manage on his own. While the appellant's and his mother's testimony illustrate the appellant's difficulties with daily living activities, the panel finds that there is not enough evidence from a prescribed professional that the appellant is directly and significantly restricted in his daily living activities either continuously or periodically for extended periods of time.

The panel notes that the counsellor who has completed the Assessor Report is not a prescribed professional as set out in section 2(2)(a) of the Regulation. However, the doctor, who is a prescribed professional, has signed and stamped the Assessor Report.

Consequently, the panel finds that the Assessor Report is to be considered as completed by a prescribed professional.

### **Help to perform daily living activities**

The appellant's position is that he needs the help of his family to cope with his daily living activities.

The ministry's position is that as it has not been established that daily living activities are significantly restricted it cannot be determined that significant help is required.

The panel notes that direct and significant restrictions with daily living activities must first be shown to decide that help is needed because of significant restrictions. As the panel already found that significant restrictions with daily living activities were not shown, the panel also finds that the ministry was reasonable to decide that the help requirement is not met.

### **Conclusion**

The panel acknowledges that, in addition to the age requirement and duration requirement, the appellant also meets the severity requirement. However, the panel finds that the appellant's impairment does not significantly restrict his ability to perform daily living activities, and he does not require significant help or supervision to perform daily living activities. The panel confirms that the ministry's reconsideration decision that the appellant is not eligible for PWD designation is reasonably supported by the evidence. The appellant is not successful on appeal.

**Appendix – Relevant 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.

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

## **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

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**Part G – Order**

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

The Panel     Confirms the Ministry Decision     Rescinds the Ministry Decision

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

**Legislative Authority for the Decision:**

*Employment and Assistance Act*

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

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

**Part H – Signatures**

Print Name

Inge Morrissey

Signature of Chair

Date (Year/Month/Day)

2024-05-15

Print Name

Julie Iuvancigh

Signature of Member

Date (Year/Month/Day)

2024-05-15

Print Name

Edward Wong

Signature of Member

Date (Year/Month/Day)

2024-05-15