

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

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“Ministry”) Reconsideration Decision dated April 23, 2024, which determined the Appellant was not eligible for the Persons with Disabilities (“PWD”) designation because she did not meet three of the five criteria necessary for designation. The Ministry found that the age and duration requirements were met, but stated the following criteria were not met:

- severe physical or mental impairment;
- severe impairment directly and significantly restricts daily living activities; and
- assistance required with daily living activities because of a significant restriction.

Further, the Ministry found the Appellant was not one of the prescribed classes of persons eligible for PWD 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”), section 2.

*Employment and Assistance Act, section 22(4).*

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

## Part E – Summary of Facts

A hearing based on the written evidence and without parties present was held on June 6, 2024.

### Evidence Before the Minister at Reconsideration

The Appellant is over 18 years of age and has applied for PWD designation. In support of the application, the Appellant submitted:

- a PWD application that included the Medical Report and the Assessor Report completed by the Appellant's Doctor and Social Worker, respectively, and
- the Appellant's Request for Reconsideration, with supporting letters.

This evidence is summarized below.

#### Medical Report

The Appellant's Doctor completed the Medical Report on February 9, 2024, and indicated that the Appellant has been a patient in his practice for 12 months and has seen her two to 10 times preceding the date the application was completed.

#### *Diagnosis*

The Doctor diagnosed the Appellant with:

- Fibromyalgia (onset January 2005).
- Myalgic Encephalomyelitis (onset January 2009).
- Restless Leg Syndrome (onset January 2005).

#### *Health History*

The Doctor describes how:

- Chronic Fatigue and pain limit the amount of time the Appellant can work and perform activities such as shopping, household chores, and childcare.
- The fatigue causes severe impairments which can vary day to day.
- Pain and restless leg syndrome can interfere with sleep, which further exacerbates fatigue.
- Lab work has been done and consultation with internal medicine work up has been negative for autoimmune and other potential causes for pain and fatigue.
- The Appellant's vitamin D level was noted to be low.

### *Functional Skills*

The Doctor in the Medical Report does not indicate the Appellant requires any aids or prosthesis for her impairment. He also assesses her basic functional skills:

- She can walk 4+ blocks unaided on a flat surface.
- She can climb 5+ steps unaided.
- She can lift 5 to 15lbs.
- She can remain seated for 2 to 3 hours.

The Doctor indicates the Appellant experiences significant deficits with cognitive and emotional functioning in the following areas:

- Motivation.
- Attention or sustained concentration.

The Doctor notes, "Her chronic fatigue can cause issues with motivation because of lack of energy to do tasks. Fatigue makes it difficult at times to focus and pay attention." He added that the Appellant does not have any difficulties with communication. In terms of social functioning, the Doctor does not indicate that her impairment restricts her ability to manage social functioning.

### *Daily Living Activities*

In the Medical Report, the Doctor indicates the Appellant has been prescribed Gabapentin that interferes with her ability to perform daily living activities. He indicates her impairment periodically restricts her from being able to perform the following daily living activities:

- Meal preparation;
- Basic housework; and
- Daily shopping.

The Doctor notes, "Fatigue interferes with her ability to perform daily living activities at least 2-3 times per week. At times restriction can be severe. She will get assistance from family members when possible." The Doctor indicates the Appellant's ability to manage meal preparation, basic housework and daily shopping is periodically restricted and at times is a severe restriction. The Doctor does not indicate how often she is severely restricted, which would have enabled the reader to determine if it represents a significant restriction to her overall level of functioning. For example, a restriction that occurs once a month is much less significant than one that occurs several times a week. The Doctor

provided no information in the Medical Report with respect to daily living activities, leaving that page blank.

### Assessor Report

The Assessor Report was completed by a Social Worker, who wrote that she has known the Appellant since December 2023 and has met her once before the date the Assessor Report was completed. The Social Worker did not indicate that the Appellant requires any aids or prosthesis for her impairment.

### *Mental or Physical Impairment*

The Assessor Report indicates the mental and physical impairments that impact the Appellant's ability to manage daily living activities are the following:

- Fibromyalgia;
- Prolapse;
- Myalgic Encephalomyelitis; and
- Restless leg syndrome.

### *Ability to Communicate and Mobility and Physical Ability*

In the Assessor Report the Social Worker assessed the Appellant's mobility and physical ability, noting that she takes significantly longer than typical to manage the following:

- Walking indoors;
- Walking outdoors. (When pain is bad, requires breaks if need to walk long distances);
- Climbing stairs. (Requires breaks when going up and down stairs);
- Standing. (Can stand for 30 minutes before needing to sit);
- Lifting. (Can only lift 15 lbs).; and
- Carrying and holding. (If it is light items, can carry and hold, but anything heavier would require assistance from someone).

The Social Worker also indicated that the Appellant requires continuous assistance from another person as she is unable to carry purchases home. She notes the Appellant takes significantly longer than typical to manage the following aspects of her daily living activities:

- Dressing (Wears clothes easy to get on. E.g. sweatpants).
- Grooming (Takes time to do due to fatigue.).
- Bathing (Depends on pain. May adjust time to have energy to do).

- Laundry (Requires frequent breaks to complete tasks.).
- Basic housekeeping.
- Food preparation (Requires breaks when in pain. Daughter assists with meal prep/cooking).
- Cooking.
- Laundry takes more time to do. Needs to sit as bending hurts at the hips. Takes time and if days when pain is bad, will not do. Can drive at this time. If drowsy does not go out."

The Assessor Report does not describe how much longer than typical it takes the Appellant to manage walking indoors, walking outdoors, climbing stairs, standing, lifting, carrying, and holding, as is requested in the PWD application in order to determine if the extra time represents a significant restriction to her overall level of physical functioning.

#### *Cognitive and Emotional Functioning*

The Assessor Report indicates that these deficits impact the Appellant's cognitive and emotional functioning as follows:

- Five major impacts in the areas of bodily functions, consciousness, attention/concentration, memory, and motivation.
- Two minimal impacts in the areas of motor activity and language.
- There are no impacts in the remaining areas.
- Her level of ability with speaking, reading, writing and hearing are good.

The Assessor Report notes the following:

- Chronically tired; on pain med. Makes her drowsier in morning. If in a lot of pain, sleep is restless. Due to fatigue and pain, has trouble concentrating and experiences brain fog and struggles to remember things. Hard to be motivated when in pain and tired.

#### *Assistance Provided for Applicant*

The Assessor Report indicates the Appellant can independently manage all aspects of her social functioning. She has good functioning with both her immediate and extended social networks and the Social Worker does not indicate that any help is required for her to function in the community. The Assessor Report indicates the Appellant is independent with daily living activities such as making decisions about personal activities, care, or finances, as well as relating to, communicating, or interacting with others effectively. The Social Worker notes the Appellant is independent with dressing, grooming, bathing,

toileting, feeding herself, regulating diet, going to and from stores, reading prices and labels, making appropriate choices while shopping, paying for purchases, meal planning, cooking, safely storing food, banking, budgeting, paying rent and bills, filling/refilling prescriptions, taking medication as directed, safely handling and storing medication, using public transit and using transit schedules and arranging transportation. She also notes the Appellant does not have difficulties with communication, and can independently make appropriate social decisions, develop and maintain relationships, interact appropriately with others, deal appropriately with unexpected demands and secure assistance from others.

### *Self-Report*

In the self-report section of the application form, the Appellant states that:

- I struggle with Chronic Fatigue and Fibromyalgia in January 2024. I also struggle with restless leg syndrome. I also have a prolapse. I struggle with energy and motivation. It takes time to complete tasks due to pain and exhaustion. I require frequent breaks to complete tasks. I am on a pain medication that makes me drowsy and dizzy. Due to the drowsiness and dizziness, it takes time to complete tasks as I need breaks. I try to conserve energy as much as possible so I can complete tasks I need to do. My mother and daughter assist me as much as possible.
- I require frequent naps during the day and need to plan my schedule around my naps.
- Pain is all over my body. It's in the hips, neck, shoulder, knee, arm and back of hamstring. It makes walking indoors/outdoors and doing stairs difficult and require breaks. If I sit too long, I need to shift in the seat. When I stand for long periods, I need to shift and then have a seat when in pain. I find bending a challenge.
- I adjust my day around pain, more naps, time to complete tasks, and when taking pain medication.
- At times, my restless leg syndrome keeps me up at night which impacts my sleep, energy, and motivation.
- I experience brain fog daily. I struggle with word finding and lose my train of thought easily. I often forget things I need to do. I use a calendar to keep track of appointments. I feel I am more zoned out and find it hard to concentrate on tasks when on pain medication.
- I struggle to carry items 15lbs or more due to pain, fatigue, and weakness in arms and legs and back.
- If I want to do something, I need to plan my days to conserve energy to be able to do it. If I overexert myself, then I am in bed for 2-3 days due to fatigue and pain.

## Request for Reconsideration

In the Appellant's Request for Reconsideration submission, a medical opinion was attached in a letter dated April 5, 2024, where the Doctor indicated the following:

- He is in support of the Appellant's application for her disability claim. Her symptoms of pain and fatigue have a severe impact on her daily life. Her symptoms fluctuate day to day. These episodes can vary in severity. At times the flare up of pain and fatigue can cause her to take longer to complete tasks and requires frequent breaks. Other times, they can cause her to be bed ridden for several days. These flare ups cause her to struggle with motivation, attention, and concentration to complete tasks. During these flare ups she requires assistance from family members to help her manage ADLs and childcare. She is affected daily by these symptoms. These symptoms continue despite treatment with medications.
  
- In a written submission, the Appellant stated:
  - I understand that Fibromyalgia is a disease which is somewhat up to each person's interpretation and that pain is not a scale to which we all have the same understanding.
  - Myalgic Encephalomyelitis (chronic fatigue syndrome) also appears to be up to each person's interpretation as well. For me these symptoms range from cognitive issues, brain fog, work finding, headaches, sinus issues, swollen and damaged lymph nodes, chronic flare ups that lead to extended illness (colds and flus), chronic IBS, muscle pains, nerve pains, joint pains, restless sleep, restless legs, night sweats, lack of energy, fatigue, and exhaustion. All these symptoms fluctuate in severity each day, and this impacts how I function each day. There are times when tasks take me longer to complete (10 to 20 minutes longer) or I do not complete them at all due to fatigue and pain and the need to for frequent breaks and need to go slower.
  - I have lived in cycles for most of my life and as I get older, these cycles are becoming longer and harder to handle. A cycle is where I may feel reasonably okay. I will have symptoms, but they have a minimal impact on my functioning. This cycle lasts for a short period of time. During these times, I can complete daily tasks in a reasonable manner but with frequent breaks. However, I can easily overextend myself which results in burn out, even when I try to pace myself. Overextending can be something as simple as having a long day, standing too long or looking at a computer/phone screen for long periods, lifting something heavy or having to take too many stairs. The burn out and overextending myself triggers a flare up. When I am in a flare up, all

my symptoms are at their extremes, and I cannot function to complete daily tasks. At these times, I rely on my mother, and I spend my days in bed because it is a challenge to move due to pain and fatigue. My mother must assist me with tasks such as shopping, taking care of my child, making meals, doing housework, getting my daughter to/from school, walking my dog, and running my household.

- After a flare up, I also experience what I call a sickness cycle where I will be sick on and off with other illnesses like cold or flu. It takes me longer to recover. A sickness cycle for me recently was 4 months to which I caught a cold, then a stomach bug, then the flu and then bronchitis. These cycles are difficult to heal from and I am getting about 2-3 major flares a year and each time, I feel it is taking me longer to recover.
- My Gabapentin medication helps relieve some pain but does not remove it. It does not work consistently and each day my symptoms are different. I will continually have to increase my dosage the longer I use it. From when I first submitted my PWD application until now, I have had to increase my dosage. I find Gabapentin increases my fatigue and brain fog and adds a level of grogginess.
- My fatigue is consistent. I require naps 1-3x per day anywhere from 40 minutes to 1.5 hours depending on where I am in my fibromyalgia cycle.
- My brain fog and cognitive issues range in severity sometimes occurring a few times a day to throughout most of the day. I can be discussing or explaining something and lose my train of thought mid sentence and can't get recall. I have difficulty finding the word I want and sometimes I can describe the word and sometimes I am completely blank. I have become forgetful so I must put everything in my phone calendar such as a phone call or pick up something, otherwise I won't remember. Anytime I have a bill emailed to me, I pay it right away but I have also set up my daughter's phone to receive the bill so she can remind me. I have two bottles of Gabapentin that I keep on opposite ends of the house so that if I am in a bad cycle, I don't have to stress myself trying to go far to take my dosage. I have a specific sound on my daily pill alarm so my daughter checks that I have in fact taken my medication when it goes off.
- My ability to function ranges greatly as well as the length of my flare ups or when they occur are out of my control. This makes it difficult for me to hold consistent work as I am away sick so often or I have difficulty functioning with my brain fog and cognitive issues.

*New Evidence Provided on Appeal*



### *Appellant's Evidence*

The hearing was based on written submissions of evidence only. An additional written submission was made by the Appellant on May 27, 2024. This written submission included:

- An email dated May 8th and 24th, 2024, from the Appellant to the Tribunal, which re-iterated her concerns with the decline in her health and physical ability and requesting that the panel take into consideration the entirety of her application and subsequent letters of support to form a complete picture of her chronic illnesses and their affect on all aspects of her life.
- A letter of support from the Appellant's mother dated May 21st, 2024, indicating how the Appellant experiences daily challenges related to her illness and requires additional support from herself and other family members several times a month depending on the severity of the flare up.
- A letter of support dated May 8, 2024, from the Social Worker who completed the Assessor Report.

Much of the information that the Appellant provided was the same as that set out in her Request for Reconsideration, as mentioned above.

In the Appellant's email, she indicated:

- These chronic illnesses make her life difficult on many levels, and it has affected her friendships. She has cancelled social interactions quite often due to the general pain and fatigue, or because she is having a flare up.
- She has anywhere from 1-3 flare ups per month, each flare up lasts 2-5 days at a time, and during these flare ups all her symptoms will be extreme.
- During these flare ups she requires help from her mother to complete the basics like general care for her daughter, household chores, cooking & cleaning, errands, and walking the dog.

In the Appellant's mother's letter, her mother stated:

- Her daughter's health has declined significantly in the past two to three years.
- Now, it is no longer possible for her to maintain even part time employment and everyday household routines are challenging for her to maintain.
- This condition has significantly impacted her physical and mental health and she requires assistance in maintaining daily activities and her physical and mental health.
- Flare ups now occur approximately every few weeks or roughly 2-4 times per month and can last for several days.

- During these flare ups, the Appellant is mostly sleeping or resting as it takes exceptional effort to maintain minimal function due to increased pain and fatigue.
- Additional support is therefore necessary to ensure nutritional needs are met for the Appellant and her daughter, medications are on hand and daily life can continue as best as is possible in the difficult circumstances this illness brings for her daughter and granddaughter.
- The Appellant's father does provide additional support when the mother is unable to provide them. Without these supports, it would be exceptionally difficult for the Appellant to maintain daily activities necessary for herself and her daughter.
- The Appellant experiences daily challenges related to her illness and requires additional support from her mother and other family members several times a month depending on the severity of the flare up.

In the letter of support dated May 8, 2024, from the Social Worker, she stated:

- The Appellant requires frequent breaks and naps during the day, which impacts her ability to complete tasks, resulting in tasks taking longer to complete or not get completed at all.
- The Appellant reports that she is experiencing an increase in flare ups, and it is taking longer to recover from them. If she has a flare up where her symptoms do not get better for several weeks, her mother needs to manage her household tasks such as cooking, groceries, cleaning and look after her daughter.

### *Ministry's Evidence*

The Ministry relied on the Reconsideration Decision and submitted no further evidence. The Ministry stated that there was a lack of evidence to establish that the Appellant is a Person with Disabilities.

### *Admissibility of Evidence*

The panel finds that much of the additional written evidence of the Appellant was already before the Ministry at reconsideration. However, where the testimony provided further detail, the panel finds that the testimony was reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The Ministry submitted no new evidence.

Accordingly, the panel admits all the new information as evidence pursuant to section 22(4) of the *Employment and Assistance Act*.

**Part F – Reasons for Panel Decision****Issue on Appeal**

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. The evidence considered includes new evidence accepted by the panel. That is, was the Reconsideration Decision reasonable, considering the previous evidence and new evidence not previously available to the Ministry? The question to be answered is whether the Reconsideration Decision is reasonable noting that the Ministry held that the requirements of section 2(2) of the *Act* were not met because:

- a severe mental or physical impairment was not established,
- the Appellant's daily living activities were not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods, and
- it has not been established that daily living activities are significantly restricted and therefore it cannot be determined that significant help is required from other persons or a device to complete restricted activities.

**Appellant's Position**

The Appellant states that she meets the criteria for PWD designation. She says that:

- her impairments should be considered severe physical and mental impairments because she has chronic pain in her joints, back knees, and hips, struggles with brain fog, dizziness, decreased motivation, decreased energy and fatigue,
- she meets the criteria regarding restrictions on daily living activities because she either requires assistance or takes significantly longer than normal to perform all daily living activities, and
- based on the new evidence, she should qualify for PWD designation.

**Ministry Position**

The Ministry explained in its Reconsideration Decision, that the Appellant does not meet three of the five required criteria for designation as a person with disabilities under the *Act*.

**Panel Decision**

*PWD Designation – Generally*

The legislation provides the Ministry with the discretion to designate someone as a person with disabilities if the requirements are met. In the panel's view, PWD designation is for persons who have significant difficulty in performing regular self-care activities. If the inability to work is the major reason for applying for designation, the panel encourages applicants to speak to the Ministry about other potential programs such as Persons with Persistent Multiple Barriers to Employment (PPMB) or explore federal government programs such as Canada Pension Plan disability benefits.

Some requirements for PWD designation require an opinion from a professional, and it is reasonable to place significant weight on these opinions. The application form also includes a Self Report. It is appropriate to also place significant weight on the Self Report and evidence from the Appellant, unless there is a legitimate reason not to do so. The panel will review the reasonableness of the Ministry's determination and exercise of discretion.

#### *Severe Mental or Physical Impairment*

"Severe" and "impairment" are not defined in the legislation. The Ministry considers the extent of any impact on daily functioning as shown by limitations with or restrictions on physical abilities and/or mental functions. The panel finds that an assessment of severity based on physical and mental functioning including any restrictions is a reasonable application of the legislation.

A medical practitioner's description of a condition as "severe" is not determinative. The Minister must make this determination considering the relevant evidence and legal principles.

#### 1. Physical Impairment:

The Doctor and Social Worker confirm that the Appellant has serious medical conditions. She has Fibromyalgia, Myalgic Encephalomyelitis, and restless leg syndrome. However, under the legislation, the Ministry must be satisfied that the serious medical conditions result in severe physical impairment.

The Doctor indicates that the Appellant can walk 4+ blocks unaided on a flat surface, climb 5+ steps unaided, lift 5 to 15lbs, and remain seated for 2 to 3 hours. She also has communication difficulties and significant cognitive and emotional function (motivation and sustained concentration issues). The panel noted that the Medical Report found the

Appellant to be basically independent in her daily living activities with no daily living activity impacted continuously, and only meal preparation, basic housework and daily shopping periodically impacted by her physical impairments.

In the Assessor Report the Social Worker assessed the Appellant's mobility and physical ability, noting that she takes significantly longer than typical to manage walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding. The Social Worker also notes the Appellant takes significantly longer than typical to manage her daily living activities, including dressing, grooming, bathing, laundry, basic housekeeping, food preparation, and cooking.

However, neither the Doctor nor the Assessor clearly explain or describe how much longer than typical it takes the Appellant to manage her daily living activities, as is requested in the PWD application. This would help to determine if the impact of the impairment represents a significant restriction to the Appellant's overall level of physical functioning. Neither the Doctor nor the Social Worker indicate that the Appellant requires any aids or prosthesis for her impairment.

The panel was concerned by the inconsistency in the Appellant's evidence about the frequency of the "flare ups" when she suffers the greatest impact to her daily living activities. This inconsistent evidence challenges the panel in finding whether the physical impairment is severe. The Doctor stated in the medical report that "fatigue interferes with her ability to perform daily living activities at least 2-3 times per week". The Appellant stated in her email of May 8, 2024, that she has one to three flare ups per month and later, she states two to three major flare ups per year. She also states that her ability to function ranges greatly, as well as the length of her flare ups and when they occur is out of her control. The panel could not determine the severity of the Appellant's physical impairments because there was no clear evidence that describes the frequency and duration of the impacts of her impairments – they are clearly not continuous, but their periodic impact is confusing and unclear on the evidence provided, especially in the Medical and Assessor Reports.

The Appellant has serious medical conditions, some of which have been classified as severe by the medical professionals. However, considering all the information in the Doctor's and Social Worker's reports about the Appellant's physical functioning with those medical conditions, the panel finds that the medical professionals fail to describe how frequently, and how much longer than typical it takes the Appellant to manage her daily living activities. Therefore, the panel is unable to determine if her physical impairments directly and significantly restrict the Appellant's ability to perform daily living activities

either continuously, or periodically for extended periods. Based on the information provided, the panel finds that the Ministry was reasonable in its determination that the information does not establish that the Appellant has a severe physical impairment.

## 2. Mental Impairment:

The Doctor has not diagnosed a mental condition. In the Medical Report the Doctor indicates significant deficits with cognitive or emotional functioning, namely motivation and attention or sustained concentration. The Assessor Report indicates the Appellant's cognitive and emotional functioning has five major impacts in the areas of bodily functions, consciousness, attention/concentration, memory, and motivation. There are two minimal impacts in the areas of motor activity and language.

The panel acknowledges that the Appellant's serious medical conditions affect her mental wellbeing. However, the panel notes that the Appellant is independent with daily living activities that would typically be difficult for someone who experiences significant restrictions to their mental functioning, such as making decisions about personal activities, care, or finances, as well as relating to communicating or interacting with others effectively. For example, the Appellant is independent with dressing, grooming, bathing, toileting, feeding herself, regulating diet, going to and from stores, reading prices and labels, making appropriate choices while shopping, paying for purchases, meal planning, cooking, safely storing food, banking, budgeting, paying rent and bills, filling/refilling prescriptions, taking medication as directed, safely handling and storing medication, using public transit and using transit schedules and arranging transportation. Further, it is noted that the Appellant does not have difficulties with communication, and she can independently make appropriate social decisions, develop and maintain relationships, interact appropriately with others, deal appropriately with unexpected demands and secure assistance from others. This level of independence is not indicative of a severe mental impairment. Therefore, the panel finds that the Ministry was reasonable in its determination that the information in the medical reports does not indicate a severe mental impairment.

### *Restrictions to Daily Living Activities:*

A prescribed professional must provide an opinion that the applicant's impairment restricts the ability to perform the daily living activities ("activities") listed in the legislation. Those activities are:

- Prepare own meals;
- Manage personal finances;

- Shop for personal needs;
- Use public or personal transportation facilities;
- Perform housework to maintain the person's place of residence in acceptable sanitary condition;
- Move about indoors and outdoors;
- Perform personal hygiene and self care; and
- Manage personal medication.

For a person who has a severe mental impairment, activities also include:

- Make decisions about personal activities, care, or finances;
- Relate to, communicate, or interact with others effectively.

The Medical Report and Assessor Report also have activities that are listed, and though they do not match the list in the Regulation exactly, they generally cover the same activities. The Medical Report and Assessor Report provide the professional with an opportunity to provide additional details on the applicant's restrictions. The inability to work and financial need are not listed as activities and are only relevant to the extent that they impact listed activities.

At least two activities must be restricted in a way that meets the requirements. Not all activities, or even the majority, need to be restricted.

The restrictions on activities must be significant and caused by the impairment. This means that the restriction must impact a person to a great extent, and they must be unable to do the activities without a lot of help or support. In other words, the restrictions must have a large impact on the person's life. The Appellant writes in a letter that "...to complete tasks without help it takes me anywhere from 10-20 minutes longer than it should per task and when completing daily activities, I need to take a break between them". This amount of time and the need to take a break, does not suggest a large impact on the Appellant's life. The Doctor wrote in the Medical Report that the Appellant gets assistance from family when possible. This comment implies that the Appellant's restrictions do not impact her life to a great extent. When assistance is not available, she still manages her activities - it just takes some unclear amount of extra time.

The restrictions on activities must also be continuous or periodic. Continuous means the activity is generally restricted all the time, while a periodic restriction must be for extended periods, meaning frequent, or longer periods of time. For example, the activity is restricted most days of the week, or for the whole day on the days that the person cannot do the activity without help or support. To figure out if a periodic restriction is for

extended periods, it is reasonable to look for information on the duration or frequency of the restriction. In considering the duration or frequency of the restrictions, the panel considered the evidence on the frequency of the flare ups, when the Appellant is most impacted by the restrictions to her daily living activities. The evidence was inconsistent, as cited previously. However, if we rely on the Appellant's letter where she stated that the flare ups occur one to three times per month for two to five days, and where the major flare ups occur two to three times per year, it is not clear to the panel that this is sufficiently frequent or for long enough periods of time to meet the requirement in the legislation that "impairments significantly restrict the person's ability to perform daily living activities ....periodically for extended periods". Moreover, the duration or frequency of the restrictions is not clear.

The Appellant and the Doctor have confirmed that when she is having a flare up, she is bed ridden for several days and requires extra assistance from family to manage her daily living activities. The panel understands this but is unclear on the duration or frequency of the restrictions on her activities.

The Ministry, and the panel, must determine the Appellant's ability to perform activities now, and the panel finds that the information provided by the Doctor and Assessor does not confirm direct and significant restrictions to the Appellant's ability to perform two or more activities at present. Therefore, the panel finds that the Ministry was reasonable in its determination that there is insufficient evidence to establish that the Appellant's ability to manage activities is directly and significantly restricted either continuously or periodically for extended periods of time.

*Help Required:*

A prescribed professional must provide an opinion that the person needs help to perform the restricted activities. Help means using an assistive device, the significant help or supervision of another person, or using an assistance animal to perform the restricted activities. An assistive device is something designed to let the person perform restricted activities.

As the Panel has found that the Ministry was reasonable in determining that the Appellant was not directly and significantly restricted in his ability to perform activities, the Panel finds that the Ministry was also reasonable in determining that it could not find that the Appellant needs help to perform those activities.

*Conclusion:*



The Panel finds that the Ministry's decision to deny the Appellant PWD designation was reasonably supported by the evidence. The Panel confirms the Reconsideration Decision. The Appellant is not successful in the appeal.

### Schedule – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

#### **Persons with disabilities**

s. 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**

s. 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.

(3) The definition of "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

Employment and Assistance Act

s. 22 (4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

APPEAL NUMBER 2024-0179

**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

Bill Farr

Signature of Chair

Date (Year/Month/Day)

2024/06/14

Print Name

Carla Tibbo

Signature of Member

Date (Year/Month/Day)

2024/06/14

Print Name

Bill Haire

Signature of Member

Date (Year/Month/Day)

2024/06/14