

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) Reconsideration Decision dated January 4, 2024, which determined the appellant was not eligible for the Persons with Disabilities designation because he did not meet two of the five criteria. The ministry was satisfied that he met the age, duration and severity criteria but not satisfied that he met the following criteria:

- Severe impairment directly and significantly restricts at least two daily living activities
- Assistance required with daily living activities as a result of significant restriction

The ministry found the appellant was not one of the prescribed classes of persons eligible for Persons with Disabilities designation on alternative grounds. As there was no information or argument on this point, the panel considers it not to be an issue in this appeal.

Part D – Relevant Legislation

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

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

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

Part E – Summary of Facts

Summary of Relevant Evidence Before the Minister at Reconsideration

Psychological Evaluation and Diagnostic Report (Assessment Date May 21, 2022) – Examiner – Appellant’s Psychologist

The report states the appellant self-referred to the clinic. He was diagnosed with attention deficit hyperactivity disorder in childhood and with anxiety for the past decade. However, he suspects he is also on the autism spectrum. The appellant identified several symptoms consistent with an autistic profile.

A series of tests were performed concluding that the appellant presents with behavior consistent with the diagnosis of autism.

Summary of Information provided by the Appellant (March 2023 - April 2024)

(self-report (March 25, 2023, response to ministry denial letter (no date), self-report (April 22, 2024)

The appellant writes he is diagnosed with autism spectrum disorder, anxiety/depression and attention deficit hyperactivity disorder. Below he describes his experiences with his diagnoses.

The appellant states his ears don't always hear the same volume and every day he has problems understanding what people say. He adds that many times there is noise around him, making it hard to understand people, almost always leading to repetition, anger and frustration for the appellant and the other person. The appellant also states he is bad with social cues, which leads to more explanations, confusion and often anger because of his inability to have a conversation. He requires several explanations of the same conversation to understand or for the other person to understand him. He therefore is left behind in many events or activities.

He can speak, read and write, but with great difficulty. He finds himself rereading the same words several times before he realizes or remembers the meaning. Reading is very hard due to distraction/noises and memory issues so any learning that is done in that way is much harder.

Not only does he see things, in what he’s told is a very different way, but apparently makes it easy to misunderstand situations and create problems for him or someone else, which often leads to someone being hurt. From what he can tell his emotions are often in

disarray. He doesn't know how to feel or what the right situation for his specific emotion is. Making choices tends to be complicated due to the constant feeling of blankness and or pressures in his mind and remembering options or choices. When he's picturing choices he's constantly forgetting the details that help make up the bits of information needed for decisions, taking longer to achieve the more important decisions. In many cases he doesn't end up making the decision. He either postpones it to when he feels he can think straight or more likely forgetting it as time passes.

The appellant adds that he doesn't realize what he's feeling so it's hard for him to be aware of his feelings. He gets very strong sensations he calls drives, that compel him to do something or not do something. For example, he could be showering and at that moment he can freely imagine other people being in the bathroom but if he's not in the bathroom he has a very hard time being able to think of someone even being in a bathroom. These drives rule a great part of his behavior.

Combined with anxiety, distractions and forgetting things, this makes his daily living a horribly slow and stressful experience. He then becomes anxious and starts overthinking.

Person with Disabilities Application (application) (March 25, 2023)

Medical Report (March 1, 2023) – signed by the appellant's doctor

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

Diagnosis	Date of onset – month/year
autism spectrum disorder	September 2022
anxiety	
attention deficit hyperactivity disorder	

Health History

The doctor states the impairment includes short-term memory, challenges with executive functioning, motivation, task completion, working memory, being easily overwhelmed and rigid thinking patterns.

The applicant has been prescribed paroxetine. There are no major side effects. The anticipated duration of the medications is said to be ongoing and the duration of the impairment is described as "it will not improve".

Functional Skills

No particular restrictions are noted under functional skills. The doctor only indicates there are difficulties with communication - the cause is cognitive. As well, there are significant deficits with cognitive and emotional function.

Daily Living Activities

No particular restrictions are noted under daily living activities. It is noted that the Appellant is restricted in the area of social functioning (daily decision making; interacting, relating and communication with others) is continuously restricted.

The doctor has known the appellant for nine years and has seen him two to ten times.

Assessor Report (March 1, 2023) – signed by the appellant’s doctor

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

The doctor states the appellant’s mental impairment impacting his daily living activities include difficulty with executive function and communication.

Daily Living Activities

The doctor completed the following chart regarding the appellant’s social functioning.

	Periodic support/ supervision	Continuous support/supervision
Appropriate social decisions	x	
Able to develop and maintain relationships		x
Interacts appropriately with others		x
Able to deal appropriately with unexpected demands		x
Able to secure assistance from others	x	

The doctor also indicates that the appellant has marginal functioning with his immediate social network and very disruptive functioning with his extended social networks.

Assistance Provided for Applicant

The doctor states assistance is provided by family and community support groups.

Letter from the Ministry to the Appellant (November 1, 2023)

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

Requests for Reconsideration (November 23/December 18, 2023)

The appellant requested extensions to allow time to gather updated medical information.

Letter of Support from the Appellant's Doctor (December 8, 2023)

The doctor states they are writing in support of the appellant due to the significant impact that autism has on his ability to function socially. They are familiar with the challenges the appellant faces daily.

They write that autism is a complex neurological condition that affects social interactions, communication and behavior. In the appellant's case, the limitations in social functioning are particularly pronounced making it difficult for him to navigate various aspects of daily life. He struggles with initiating and sustaining conversations, interpreting nonverbal cues and forming and maintaining relationships. These challenges significantly impact his ability to engage in activities that many of us take for granted, such as attending social events or participating in community activities. As a result, the appellant faces substantial barriers in achieving independence.

The doctor adds, autism is a lifelong condition and that while individuals may develop coping mechanisms and skills over time, the core challenges often persist. The appellant has shown resilience and determination in managing his condition, but the ongoing difficulties highlight the necessity for continued support.

Additional Information received after the Reconsideration Decision

Notice of Appeal (January 11, 2024)

The appellant did not provide reasons for his appeal in the Notice of Appeal

Appellant Submission (May 25, 2024)

The appellant provided another application with his submission.

Application for Persons with Disabilities Designation (April 22, 2024)

Medical Report (April 18, 2024)

The appellant’s doctor provided the following information and responses to the questions below.

Diagnosis	Date of onset - month/year
autism spectrum	January 2021
anxiety	January 2014
depression	January 2014
attention deficit hyperactivity disorder	January 2004

Functional Skills

There are difficulties with communication (cognitive) and significant deficits with cognitive and emotional function. The applicant has difficulty communicating with people; he tends to isolate and avoids voice calls. He lacks concentration as he is bothered by noise. In addition, he stresses with social communication and social expectations.

Daily Living Activities

The doctor indicates that the impairment directly and continuously restricts the person’s ability to perform the daily living activity of social functioning – daily decision making; interacting, relating and communication with others. The applicant has difficulty following social cues, is easily angered and tends to isolate.

Assessor Report (April 6, 2024) – signed by the appellant’s psychologist

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

Mental or Physical Impairment

The applicant was diagnosed with autism spectrum disorder in 2022; his adaptive functioning is in the extremely low range.

Ability to Communicate

The applicant’s speaking and reading ability is poor. He can speak but has a lot of anxiety due to his autism spectrum disorder. He has to re-read text multiple times to retain the information. His ability with writing and hearing is satisfactory.

The psychologist completed the following chart.

Cognitive and Emotional Functioning

	Impact on Daily Functioning		
	Minimal impact	Moderate impact	Major impact
Bodily functions		x	
Consciousness	x		
Emotion			x
Impulse control		x	
Insight and judgement			x
Attention/concentration			x
Executive			x
Memory			x
Motivation			x
Motor activity			x
Language		x	
Psychotic symptoms		x	
Other neuropsychological problems			x
Other emotional or mental problems		x	

The psychologist adds that the client's adaption behaviors are in the extremely low range.

Daily Living Activities

The psychologist completed the following chart.

	Independent	Periodic Assistance from another person	Continuous assistance from another person or unable	Uses assistive device	Takes significantly longer than typical	Explain/ Describe
Personal Care						
Dressing	x					
Grooming		x				Receives constant reminders from family
Bathing		x				
Toileting					x	Requires longer time due to obsessive compulsive disorder
Feeding self		x				Does not cook, heating up takes a lot longer
Regulating diet	x					
Transfers (in/out of bed)					x	
Transfers (on/off chair)	x					

Basic Housekeeping						
Laundry	x					
Basic housekeeping		x				
Shopping						
Going to/from stores	x					
Reading prices and labels					x	Cannot comprehend what he is reading, needs others to list choices
Making appropriate choices					x	
Paying for purchases	x					
Additional comments: He needs assistance (such as social/emotional/moral, on a continual basis). He is easily overwhelmed with decisions that are too complex.						
Carrying purchase home	x					
Meals						
Meal planning				x		Doesn't know how to do meal planning
Food preparation					x	
Cooking		x				
Safe storage of food (ability, not environmental)	x					
Pay rent and bills						
Banking		x				Needs constant reminders, support for financial planning
Budgeting					x	
Pay rent and bills		x				
Medications						
Filling/refilling prescriptions					x	Failed to follow up, needs early reminders
Taking as directed					x	
Safe handling and storage					x	
Transportation						
Getting in and out of a vehicle	x					
Using public transit	x					
Using transit schedules and arranging transportation	x					

The appellant’s executive functioning is relatively low due to lack of planning and organizing. He often needs reminders from others to do these things and has difficulty comprehending instructions.

Daily Living Activities (continued) - Social Functioning

	Periodic support/supervision	Continuous support/supervision	Explain/ Describe
Appropriate social decisions (avoiding situations dangerous to self or others, good social judgement)		x	Significant difficulty in social situations. He does not read social cues well and may come across lacking social empathy due to misreading social situations.
Able to develop and maintain relationships	x		
Interacts appropriately with others (e.g. understands and responds to social cues, problem solves in social context)		x	Difficulty communicating effectively with other people
Able to deal appropriately with unexpected demands		x	Transition is always challenging
Able to secure assistance from others	x		

Assistance

The psychologist states assistance is provided by family, friends, health authority professionals and community service agencies. The appellant will need support from different adults and professionals (e.g., psychiatrist for medication and therapist for social emotional support). The appellant does not have an assistance animal.

They add that autism spectrum disorder impacts the appellant’s social skills, abstract information processing, communication, sensory issues, and his daily living functioning overall, requiring much longer to process information.

Frequency of Contact

The psychologist states they have known the applicant since 2022 and have seen him two to ten times.

Testimony at the Hearing

Appellant

At the hearing, the appellant reiterated the information he provided, in the ministry record as well as in his submission. He added that he is not physically disabled. He just needs someone who can talk to him as he misunderstands many things. He also stated he needs reminders with prescriptions or he will forget to take his medication or fill the prescription.

Regarding grooming, the appellant's mother, his representative, stated that the appellant will wear the same clothes day and night, week after week. She has to remind him to change his clothes.

Ministry

At the hearing, the ministry stated in addition to its finding that the appellant met the requirement for the daily living activity of social functioning, it believes if it had had the evidence in the appellant's submission, it would have made a different decision. The ministry states it finds the new evidence demonstrates that a prescribed professional confirmed that the daily living activities of personal care, shopping, meals, paying rent and bills, and managing medication directly and significantly restrict the appellant's ability to perform daily living activities, as the appellant needs constant reminders.

Admissibility

The ministry did not object to the additional information provided in the appellant's submission. The panel determined the additional information (the appellant's submission, and the information from the ministry regarding that it would have made a different decision), is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

As the information in the appellant's submission was provided by a doctor and a psychologist, both of whom are prescribed professionals, the panel gives the additional information full weight.

Part F – Reasons for Panel Decision

Issue

The issue on appeal is whether the ministry's reconsideration decision was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Specifically, did the ministry reasonably determine the appellant was not eligible for the Persons with Disabilities designation, because it was not satisfied that the following criteria were met.

- Severe impairment directly and significantly restricts at least two daily living activities
- Assistance required with daily living activities as a result of significant restriction

Appellant Position

The appellant states autism spectrum disorder, anxiety/depression and attention deficit hyperactivity disorder cause many issues with daily living. He has problems understanding people and is bad with social cues leading to repetition, confusion, anger and frustration.

Combined with anxiety, distractions and forgetting things, this makes his daily living a horribly slow and stressful experience.

Ministry Position

At reconsideration, the ministry was not satisfied that the appellant has a severe physical impairment but found he has a severe mental impairment. Regarding daily living activities, at reconsideration, the ministry found that the impairment restricts social functioning, as required by the legislation. However, the ministry also stated that a prescribed professional must confirm that the appellant is restricted in at least two daily living activities as set out in legislation, and the appellant's restricted social functioning is only one daily living activity. The doctor indicated that a few other daily living activities are restricted - but there is not enough information about the frequency and duration of those restrictions. Therefore, the criteria as set out in the legislation were not met.

At the hearing, the ministry stated with the information in the appellant's updated medical evidence, it now believes that a prescribed professional confirmed that the appellant's impairment directly and significantly restricts his ability to perform the daily living activities of personal care, shopping, meals, paying rent and bills, and managing medication because the appellant needs constant reminders for these daily living activities.

Panel Analysis

Section 2(2) of the Act sets out the requirements that must be met for the minister to designate a person as a Person with Disabilities. At reconsideration, the ministry was satisfied that the appellant has reached 18 years of age, has a severe mental impairment that in the opinion of a medical practitioner is likely to continue for at least two years and met the legislative requirement for one daily living activity.

Restrictions in Ability to Perform Daily Living Activities

Daily living activities are defined in section 2 of the Regulation. Section 2(2) of the Act states the minister must be satisfied that in the opinion of a prescribed professional, the severe mental impairment directly and significantly restricts the appellant's ability to perform daily living activities continuously, or periodically for extended periods.

As per the court's decision (*Hudson v. British Columbia (Employment and Assistance Tribunal)*, 2009 BCSC 1461), at least two activities must be restricted in a way that meet the requirements.

To be significant, the restriction must be to a great extent, such as not being able to do the activities without a lot of support. Continuous means the activity is generally restricted all the time and periodic for extended periods means frequently or for longer periods of time.

The panel notes, in the application (March 2023), the doctor indicates there are difficulties with communication - the cause is cognitive. As well, relating and communicating with others is continuously restricted. In the letter of support, the doctor states the appellant struggles with initiating and sustaining conversations, interpreting nonverbal cues and forming and maintaining relationships.

The panel notes the appellant's psychologist, indicates the appellant needs periodic assistance with grooming, bathing and feeding himself. He receives constant reminders from his family for grooming and needs periodic assistance with banking and paying rent, constant reminders and support for financial planning, and reminders for managing medications. Regarding grooming, the appellant's mother provided further information stating that the appellant needs continuous support as he will wear the same clothes day and night, week after week. She has to remind him to change his clothes. The ministry stated it finds the new evidence submitted in April 2024 demonstrates that a prescribed professional confirmed that the daily living activities of personal care, shopping, meals, paying rent and bills, and managing medication directly and significantly restrict the

appellant's ability to perform those daily living activities, as the appellant needs constant reminders.

The panel finds the evidence above demonstrates that a prescribed professional has confirmed that a severe mental impairment directly and significantly restricts the appellant's ability with at least two daily living activities (relate to, communicate or interact with others effectively, personal care, shopping, meals, paying rent and bills, and managing medication) periodically for extended periods or continuously, as is required by section 2(2) of the Act. In light of the new evidence, the panel finds the ministry's decision that this criterion was not met, unreasonable.

Help to Perform Daily Living Activities

The panel notes section 2(2) of the Act also requires that as a result of these restrictions, the person requires help to perform these activities and to perform them, the person requires the significant help or supervision of another person.

The psychologist states assistance is provided by family, friends, health authority professionals and community service agencies. The appellant will need support from different adults and professionals (e.g., psychiatrist for medication and therapist for social emotional support).

As the psychologist confirmed that the appellant requires support from various sources to manage his impairment, the panel finds this criterion has been met.

The panel finds, with the additional information, the criteria for 2(2) and (3) of the Act have now been met. Therefore, the panel finds the ministry decision that it was not satisfied that the appellant has a severe impairment that directly and significantly restricts daily living activities requiring assistance, is unreasonable.

Conclusion

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

The appellant is successful on appeal.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Act

Persons with Disabilities

2 (1) In this section:

"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person is in a prescribed class of persons or that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal....

Employment and Assistance for Persons with Disabilities Regulation

Definitions for Act

2 (1) For the purposes of the Act and this regulation, "daily living activities",

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

- (iv) use public or personal transportation facilities;
 - (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
 - (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self care;
 - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.

- (2) For the purposes of the Act, "prescribed professional" means a person who is
- (a) authorized under an enactment to practise the profession of
 - (i) medical practitioner,
 - (ii) registered psychologist,
 - (iii) registered nurse or registered psychiatric nurse,
 - (iv) occupational therapist,
 - (v) physical therapist,
 - (vi) social worker,
 - (vii) chiropractor, or
 - (viii) nurse practitioner...

Part 1.1 — Persons with Disabilities

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2

(2) *[Persons with Disabilities]* of the Act:

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act*;
- (d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act* to assist that family in caring for the person;
- (e) a person who is considered to be disabled under section 42 (2) of the *Canada Pension Plan* (Canada).

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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

Connie Simonsen

Signature of Chair

Date (Year/Month/Day)

2024/06/11

Print Name

Bill Farr

Signature of Member

Date (Year/Month/Day)

2024/06/11

Print Name

Simon Clews

Signature of Member

Date (Year/Month/Day)

2024/06/13