

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) Reconsideration Decision dated April 5, 2024, which determined the appellant was not eligible for the Persons with Disabilities designation because she did not meet three of the five criteria. The ministry was satisfied that she met the age and duration criteria but not satisfied, based on the evidence presented, that she met the following criteria.

- Severe mental or physical impairment
- Severe impairment directly and significantly restricts daily living activities
- Assistance required with daily living activities as a result of significant restriction

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

Part D – Relevant Legislation

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

Employment and Assistance for Persons with Disabilities Regulation (Regulation), sections 2 and 2.1

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

Part E – Summary of FactsSummary of Relevant Evidence Before the Minister at Reconsideration**Persons with Disabilities Application (received January 30, 2024)*****Self-Report (December 5, 2023)***

The appellant writes that she suffers from coronary artery disease and angina. She feels constant pain in her chest and arms, has had several heart attacks and several stents put in. One artery is blocked for life causing great pain during the day while doing basic tasks such as cleaning and walking. When she walks or climb stairs, she feels a heavy shortness of breath. She is forced to limit her activity and rest most of the day to avoid pain.

The appellant adds she needs help with most of her basic chores such as washing her clothes. Sometimes she needs help to get out of bed. Some days the pain in her left arm and back are unbearable and she has to stay in bed and have someone help her constantly. Most days are bad, which is why her husband is with her most of the day.

She takes five medications; her husband makes sure she takes them every day. The appellant adds that she tries to avoid stress to avoid another heart attack, but some days are really hard. She hopes with new technology the doctors can help further treatment of her condition. But for now, she needs continuous help from her husband and people around her.

Medical Report (January 2, 2024) – signed by a specialist in internal medicine

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

Diagnosis	Date of onset – month/year
Coronary artery disease	2003

Health History

The doctor writes that the patient has had about seven myocardial infarctions in the last 20 years with recurrent interventions and stenting to the left anterior descending artery and the left circumflex artery. She now has a chronic occlusion of the left circumflex artery with ongoing angina. She is limited in her activity due to chest pain.

- The patient is on a number of medications, but they should not impair her ability to perform daily living activities.
- The patient does not require prostheses or aids for her impairment.

Functional Skills

The doctor indicates that the applicant can walk two to four blocks unaided on a flat surface, climb five plus stairs and lift under two kilograms. There is no limitation in remaining seated, no communication difficulties and no significant deficits with cognitive and emotional function.

Daily Living Activities

The doctor states the impairment directly and continuously restricts the applicant's ability to perform basic housework.

The following daily living activities are not noted to be restricted:

- Personal self care
- Management of medications
- Daily shopping
- Mobility inside/outside the home
- Use of transportation
- Management of finances
- Social functioning (daily decision making, interacting, relating and communicating with others)

Additional Comments

Patient will have angina if she exerts herself too much (e.g. walking uphill or doing housework). Patient needs assistance with housework. She needs help if she is having a prolonged episode of chest pain, to administer nitroglycerin and ensure her safety .

Assessor Report – signed by the specialist (January 11, 2024)

The specialist also completed the Assessor Report and provided the following information and responses to the questions below.

Mental or Physical Impairment

Severe coronary artery disease with ongoing angina impairs the applicant's ability to perform daily living activities.

Ability to Communicate

The applicant's ability with speaking, reading, writing and hearing are all good.

Mobility and Physical Ability

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

Cognitive and Emotional Functioning

The specialist indicates there is no impact on:

- Bodily functions
- Consciousness

- Impulse control
- Insight and judgement
- Attention/concentration
- Executive (e.g. planning, organizing)
- Memory
- Motivation
- Motor activity
- Language
- Psychotic symptoms
- Other neuropsychological or emotional problems

There is a moderate impact with emotion. The patient has anxiety related to her health condition.

Daily Living Activities

The specialist indicates the applicant is independent with the following.

- Personal Care
- Dressing
- Grooming
- Bathing
- Toileting
- Feeding self
- Regulating diet
- Transfers in/out of bed, on/off chairs

Shopping

- Going to/from stores
- Reading prices and labels
- Making appropriate choices
- Paying for purchases

The appellant requires periodic assistance carrying purchases home.

Basic Housekeeping

The applicant requires continuous assistance with laundry and basic housekeeping.

The applicant is independent with the following.

Meals

- Meal planning
- Food preparation
- Cooking
- Safe storage of food

Pay rent and bills

- Banking
- Budgeting
- Pay rent and bills

Medications

- Filling/refilling prescriptions
- Taking as directed
- Safe handling and storage

Transportation

- Getting in and out of a vehicle
- Using public transit
- Using transit schedules and arranging transportation

Social Functioning

The applicant is independent with the following.

- Appropriate social decisions
- Able to develop and maintain relationships
- Interacts appropriately with others
- Able to deal appropriately with unexpected demands
- Able to secure assistance from others

The doctor describes the appellant's relationship with her immediate and extended social networks as, "good functioning".

Assistance Provided for Applicant

Assistance is provided by family. The appellant does not have an assistance animal.

Frequency of Contact

The doctor states they have seen this applicant two to ten times since December 2023.

Consult Report (December 7, 2023 provided by a medical doctor

- The appellant had her first myocardial infarction at the age of 32 and her first percutaneous coronary intervention in 2008.
- About nine months later, she presented with a stent occlusion to the left circumflex.
- In 2011, she had another late stent occlusion.
- In 2013, she again presented with an acute coronary.

- In 2021, she had another myocardial infarction, and apparently presented with a ventricular tachycardia arrest.
- Three months ago, she had another, acute coronary syndrome.
- Since the end of August, she has been having chest pain about every other day.

Letter from the Ministry to the Appellant (February 21, 2024)

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

Request for Reconsideration (March 11, 2024)

The appellant states she lives with a difficult, critical and very dangerous health situation. Her husband helps her around the clock with preparing food, washing, bathing, bringing medicines, and sprays inside her mouth when she is in great pain.

Additional Information received after the Reconsideration Decision

Notice of Appeal (April 18, 2024)

The appellant states that due to the severe and permanent blockage in her main artery, she can't go to work due to chronic pain in her chest and back during the day and night. In addition, she has headaches, heart pulses, high cholesterol and ulcers in her stomach because of the medication she has been taking for 15 years.

Appellant Submission

Note from the Appellant's Doctor (May 2, 2024)

The doctor referred to the medical history in the Consult Report and added that the appellant had another cardiac catheterization on January 23, 2024, which showed that her left main coronary artery was free of disease. Conservative management was recommended for her angina pain. Unfortunately, despite her current medical management, the appellant reports that she has angina several days per week, at rest, usually related to stress, and with exertion. The specialist states they are working to maximize medical therapy for her angina, but thus far have not been able to significantly improve her symptoms.

Note from an alternate Medical Doctor (May 16, 2024)

The doctor states the appellant is well known to them. She has a very complicated cardiac history and has had multiple heart attacks. She has undergone multiple cardiac investigations and consultations. She has persistent symptoms of chest discomfort and shortness of breath with minimal exertion. However, she has been told there is no further intervention which can help these symptoms given her complicated cardiac condition.

The doctor adds that the appellant needs assistance with tasks such as cooking, cleaning, shopping and medication management.

Ministry Submission (May 30, 2024)

The ministry states it has reviewed the written submission provided by the appellant and notes that both medical practitioner’s letters do not explain the frequency and severity of restrictions, nor do they specify the level of assistance required for daily living activities on a daily or weekly basis. Therefore, the ministry relies on the Reconsideration Decision as its submission to this matter.

Admissibility

The panel determined the additional information in the appellant’s submission (notes from both medical practitioners), is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

The ministry did not provide any new information.

Part F – Reasons for Panel Decision

Issue

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

Did the ministry reasonably determine the appellant was not eligible for the Persons with Disabilities designation, because she did not meet the following criteria.

- Severe mental or physical impairment
- Severe impairment directly and significantly restricts daily living activities
- Assistance required with daily living activities as a result of significant restriction

Appellant Position

The appellant states she has had several heart attacks and is forced to stay in bed and rest most of the day to avoid stress and pain. She needs continuous help from her husband and people around her.

Because of her disability, when she walks or climb stairs, she feels a heavy shortness of breath. She tries to avoid stress to avoid another heart attack, but some days are really hard.

Ministry Position

Mental Functioning

A severe mental impairment has not been established. The medical practitioner only reports some anxiety, does not include a diagnosis of a mental health condition or brain injury, reports there are no significant deficits with cognitive and emotional function, and that the appellant is independent with all daily living activities related to decision-making, and with all areas of social functioning.

It is unclear how a moderate impact on emotion is impacting the appellant's daily living activities as there is no report of any deficits with cognitive functioning and no report of the appellant taking longer with any of her basic functioning and/or decision-making.

Physical

The ministry determines a moderate physical impairment has been established given the report of class III angina, the limits with walking and lifting, and increased shortness of breath on exertion. However, a severe physical impairment has not been established given that the medical practitioner does not report how much longer the appellant takes with basic functional skills and daily living activities, and reports minimal to no help is needed with many daily living activities.

Although the self-report indicates needing continuous help around the clock, this was not supported by the assessment provided by the medical practitioner.

Restrictions to Daily Living Activities

The ministry is not satisfied that the appellant has a severe impairment that, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform the daily living activities set out in the legislation.

Although the medical practitioner reports severe coronary artery disease with ongoing angina, they report the appellant is almost fully independent with daily living activities with the

exception of housework and carrying heavier items, and do not include any detail about restrictions.

Help Required with Daily Living Activities

The medical practitioner reports no assistive devices or services of an assistance animal are needed. They report some help of another person is needed; however, do not report significant help of another person is needed with daily living activities. Also, as it was not established that daily living activities are significantly restricted, it cannot be determined that significant help is required.

Employability is not a factor when assessing Persons with Disabilities designation. However, as a recipient of income assistance, the appellant may apply for Person with Persistent Multiple Barriers income.

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. One requirement is that the minister is satisfied that the person has a severe mental or physical impairment.

The panel notes, "severe" and "impairment" are not defined in the legislation. The ministry considers the extent of any impact on daily functioning as shown by restrictions on mental or physical abilities. The panel finds that an assessment of severity based on physical and

mental functioning, including any restrictions, is a reasonable application of the legislation.

Mental Impairment

The panel notes in the medical report, the specialist states there are no significant deficits with cognitive and emotional function but states the appellant has anxiety related to her health condition. In the assessor report, they indicate there is moderate impact with emotion but no impact on other cognitive and emotional functioning such as executive, memory, language, or other neuropsychological or emotional problems.

The panel finds "anxiety", without any further details and only a moderate impact with emotion, is insufficient evidence to conclude a severe mental impairment. The panel finds the ministry reasonably determined that it was not satisfied that the appellant has a severe mental impairment.

Physical Impairment

In the self-report the appellant writes that she suffers from coronary artery disease and angina, feeling constant pain in her chest and arms, and is forced to limit her activity and rest most of the day to avoid pain.

In the medical report, the specialist states the appellant has had about seven myocardial infarctions in the last 20 years and in the assessor report state, "severe coronary artery disease" with ongoing angina impairs the applicant's ability to perform daily living activities.

However, the doctor also adds that the appellant can walk two to four blocks unaided, climb five plus stairs and lift under two kilograms. The doctor also states the appellant is independent with walking indoors/outdoors, climbing stairs, standing, lifting and carrying and holding. As the panel finds an assessment of severity can be based on physical functioning and the doctor states the appellant's physical functioning is not severely restricted (as described above), the panel finds the evidence does not demonstrate that the appellant has a severe physical impairment.

The panel acknowledges that the appellant has a serious disease. However, the panel finds the evidence describing her physical functioning, does not demonstrate that this disease is causing a severe physical impairment.

Therefore, the panel finds the ministry determination that it was not satisfied the appellant has a severe physical impairment, reasonable.

Restrictions in Ability to Perform Daily Living Activities

Section 2(2) of the Act also states the minister must be satisfied that in the opinion of a prescribed professional, a severe physical or mental impairment directly and significantly restricts the person's ability to perform daily living activities continuously, or periodically for extended periods. Daily living activities are defined in section 2 of the Regulation. 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 acknowledges that the doctor (a prescribed professional) states the appellant requires periodic assistance carrying purchases home and continuous assistance with laundry and basic housekeeping. However, as the panel determined the evidence is insufficient to conclude a severe mental or physical impairment, it cannot be concluded that a severe physical or mental impairment directly and significantly restricts the appellant's ability to perform daily living activities continuously, or periodically for extended periods.

Therefore, the panel finds the ministry determination that it was not satisfied that a severe impairment directly and significantly restricts the appellant's ability to perform daily living activities continuously, or periodically for extended periods, reasonable.

Help to Perform Daily Living Activities

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

The panel notes the appellant states her husband helps her around the clock and the specialist states the appellant needs help with housework. However, as the panel determined daily living activities were not restricted, assistance to perform them is not relevant.

Conclusion

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

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Act

Persons with Disabilities

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

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

Employment and Assistance for Persons with Disabilities Regulation

Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

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

(2)For the purposes of the Act, "prescribed professional" means a person who is

- (a)authorized under an enactment to practise the profession of
 - (i)medical practitioner,
 - (ii)registered psychologist,
 - (iii)registered nurse or registered psychiatric nurse,
 - (iv)occupational therapist,
 - (v)physical therapist,
 - (vi)social worker,
 - (vii)chiropractor, or
 - (viii)nurse practitioner...

Part 1.1 — Persons with Disabilities

Alternative grounds for designation under section 2 of Act

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

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

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

APPEAL NUMBER 2024-0143

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)

2024/06/08

Print Name

Vivienne Chin

Signature of Member

Date (Year/Month/Day)

2024/06/08

Print Name

Jennifer Armstrong

Signature of Member

Date (Year/Month/Day)

2024/06/08