

Part C – Decision Under Appeal

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

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

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

Part D – Relevant Legislation

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

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

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

Part E – Summary of Facts

The hearing took place on June 12, 2024, as a teleconference.

Evidence Before the Ministry at Reconsideration

1) The appellant's PWD application:

- Medical Report (July 13, 2023) completed by a general practitioner who provides family medical services (the doctor), who has been the appellant's doctor since 2020, and who has seen the appellant 11 or more times in the past 12 months.
- Assessor Report (July 13, 2023) completed by the doctor.
 - To complete this form, the doctor used file/chart information.
- The appellant did not complete the Applicant Information (Self Report) section.

2) Doctor's Letter (March 13, 2024)

3) Request for Reconsideration (March 19, 2024)

New Evidence Provided on Appeal and Admissibility

4) Medical Imaging Report (May 9, 2024)

5) Notice of Appeal (April 19, 2024)

- The appellant provided no reasons why he disagreed with the ministry.

6) Doctor's Letter (June 9, 2024)

7) At the hearing

At the hearing, the appellant and their friend provided additional information about the appellant's medical condition and its impact on the appellant's ability to perform daily living activities. The ministry did not provide additional evidence but restated the reconsideration decision and responded to the new doctor's letter (June 9, 2024).

Admissibility of New Evidence

The ministry did not object to the admission of the additional information. The panel finds that the new information provided by the doctor (June 9, 2024), the appellant and the friend is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, because it provides more information on the appellant's

impairment and contributes to the panel's understanding of the circumstances surrounding the PWD application. The panel therefore admits this information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

Summary of Relevant Evidence

Medical Report

Diagnoses:

- Mood disorders;
- Anxiety disorders; and
- Degenerative disc disease.

Health History:

- "Constant aggravation of lower back pain and low mood, loss of interest, low motivation and social isolation."
- The appellant has been prescribed medications and/or treatments that interfere with their ability to perform daily living activities.
- "Pain and mood medications can cause sedation and dizziness."
- The anticipated duration of the medications and/or treatments is "permanent and continuous".
- The appellant does not require any prostheses or aids.

Degree and Course of Impairment:

- The impairment is likely to continue for two years or more.
- "Chronic and permanent medical condition."

Functional Skills:

- Can walk less than 1 block unaided on a flat surface.
- Climb 2-5 steps unaided.
- Lift under 2kg.
- Remain seated for 2-3 hours.
- Has no difficulty with communication.
- Has significant deficits with cognitive and emotional function in the areas of
 - Emotional disturbance; and
 - Motivation.
- "Continuous back pain and chronic depression and anxiety causing the symptoms as explained above."

Additional Comments:

- “Chronic and permanent medical conditions rendering him unable to work continuously.”

Assessor Report

The appellant lives alone.

Impacts on the ability to manage daily living activities:

“Chronic low mood and low back pain” impact the appellant’s ability to manage daily living activities.

Ability to Communicate:

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

Mobility and Physical Ability:

- The appellant is independent with standing.
- He needs periodic assistance from another person with walking indoors, walking outdoors, and climbing stairs.
- He needs continuous assistance from another person with lifting, carrying and holding.

Cognitive and Emotional Functioning (impact on daily functioning)

- Moderate impact: insight and judgement; executive.
- Major impact: emotion; attention/concentration; motivation.
- “Chronic low mood, loss of interest, low motivation, decreased concentration, social isolation.”

Daily Living Activities:

- Personal Care:
 - Dressing, grooming, bathing, toileting, feeding self, transfers in/out of bed, and transfers on/off chair are managed independently.
 - Regulating diet requires periodic assistance from another person.
- Basic Housekeeping:
 - Laundry and basic housekeeping require continuous assistance from another person.
- Shopping:
 - All tasks are managed independently.

- Meals:
 - Safe storage of food is managed independently.
 - Meal planning and food preparation requires periodic assistance from another person.
 - Cooking requires continuous assistance from another person.
- Pay Rent and Bills:
 - all tasks are managed independently.
- Medications:
 - All tasks are managed independently.
- Transportation:
 - Using transit schedules and arranging transportation is managed independently.
 - Getting in and out of a vehicle, and using public transit require periodic assistance from another person.
- “Assistance needed for physical work requirements.”
- Social Functioning:
 - Periodic support/supervision required with dealing appropriately with unexpected demands, and securing assistance from others.
 - Continuous support/supervision required with making appropriate social decisions, developing and maintaining relationships, and interacting appropriately with others.
 - Marginal functioning with immediate and extended social networks.
 - The appellant requires “social and family support” to help maintain him in the community.

Assistance Provided:

- The help required for daily living activities is provided by friends.
- The appellant does not have an assistance animal.
- The appellant routinely uses a “walking cane”.

Additional Information:

- “Suffering from chronic and permanent medical conditions rendering unable to pursue suitable employment.”

Doctor’s Letter (March 13, 2024)

- “[The appellant] presents with a complex constellation of symptoms, including chronic low back pain, stress, anxiety, lack of sleep, and depression.
- These symptoms have significantly impacted the patient’s quality of life and ability to work, leading to functional impairment and disability.

- He is experiencing chronic low back pain which is exacerbated by prolonged sitting, lifting heavy objects, and bending.
- The pain is often described as sharp, and may radiate to the buttocks, thighs, and legs.
- In addition to the physical symptoms, the patient also reports experiencing significant psychological distress, including stress, anxiety, and falling asleep.
- These symptoms have been further exacerbated by chronic sleep disturbances, characterized by difficulty falling asleep, frequent awakenings, and non-restorative sleep.
- The patient's symptoms have had a profound impact on various aspects of daily functioning, including:
 - 1. Work: The patient is unable to work due to the severity of symptoms and functional limitations imposed by chronic low back pain, stress, anxiety, and depression.
 - 2. Activities of Daily Living: The patient experiences difficulty performing routine activities such as household chores, errands, and personal care tasks due to pain and fatigue.
 - 3. Social and Recreational Activities: The patient has withdrawn from social and recreational activities, including hobbies and social gatherings, due to decreased energy levels, mood disturbances, and physical discomfort.

Doctor's Letter (June 9, 2024)

- The appellant suffers from mood disorder, anxiety disorder, and Degenerative Disk Disease. [same as in MR]
- As a result, he experiences chronic depression and lower back pains.
- This pain and chronic low mood render him unable to perform his basic activities of daily living, with severe restrictions with walking, bending, lifting.
- He is unable to cook, shop, shower, and do laundry. He continuously needs assistance for these activities.
- He also suffers from social isolation, emotional disturbance, executive planning and complete loss of motivation which results in severe difficulties with communication.
- His conditions are permanent and severe.

Medical Imaging Report

"Again noted are the multi-level disc changes more accentuated at L4-5 and L5 -S1."

Request for Reconsideration

The appellant reports:

- His injury affected him in all areas of life.

- It affected his family who is responsible for taking care of.
- He has been unable to support himself since January 2023 because of several injuries. At work he fell from 10 feet.
- This injury has affected his sleeping, moving, standing, and sitting.
- He is unable to obtain treatment because he lacks the necessary money to travel by public transportation to see the doctor and to pay for physiotherapy.
- Currently he does not have food and important medications.
- He is sad because he has to struggle and no longer has a normal life.

At the Hearing

In response to questions from the ministry the appellant stated:

- They can walk less than 1 block with a cane, but no farther. They cannot walk without a cane.
- It is both the chronic back pain and the low mood that render the appellant unable to cook, shop, shower, and do laundry.
- The friend brings him cooked oatmeal and noodles (“Indomie”) to eat.
- The appellant bathes once a month, using a wet cloth. They are not able to reach the lower part of the body.

In response to questions from the panel the appellant stated:

- The doctor examines them at each appointment and discusses their situation.
- Their condition has worsened since the time of the PWD application in July 2023, and the doctor is aware of this.
- The appellant can’t push themselves anymore as they still could in July 2023.
- The doctor prescribed medications for pain as well as for low mood.
- No family members live in Canada. The advocate is the only friend, there are no other friends.
- Shopping where things must be carried is not possible without continuous help.

The friend reported:

- They have been in the appellant’s city for 6 months for business reasons. They are staying with the appellant.
- During a visit it was found that that there was no food at the appellant’s place and the place was a mess.
- Clothes do not get washed.
- The appellant has lost a lot of weight and appears disturbed.
- The appellant is a proud person and does not want to ask for help.
- The friend wants the ministry to look at the appellant’s file on compassionate grounds.

The ministry summarized the reconsideration decision and stated:

- The newest doctor's letter provides a better picture of the appellant's condition.
- While the PWD application was filled out 1 year ago, the doctor's letter is recent. It shows that the appellant's physical and possibly mental capacity have deteriorated.
- Had the ministry had the new doctor's evidence at reconsideration, they would have found the appellant eligible for PWD designation.

Part F – Reasons for Panel Decision

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

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

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

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

Physical Impairment

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

The panel finds that the ministry's determination that the appellant does not have a severe physical impairment is not reasonably supported by the evidence. On the contrary, the panel finds that the doctor's evidence indicates the appellant has a severe physical impairment: The doctor reports that the appellant's degenerative disc disease is chronic and permanent and is accompanied by continuous low back pain, which is exacerbated by prolonged sitting, lifting, and bending. The appellant has been prescribed pain medications and routinely needs a walking cane. The doctor characterizes the appellant's condition as severe and speaks of severe restrictions with walking, bending, lifting. The appellant clarifies that their condition has deteriorated since their PWD application and that they cannot walk without a cane and can only walk less than 1 block with the help of the cane.

Mental Impairment

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

The panel finds that, based on the doctor's evidence, the ministry was not reasonable in their determination that the appellant does not have a severe mental impairment. On the contrary, the panel finds that the evidence shows that the appellant has a severe mental impairment: The doctor reports that the appellant has significant deficits in the areas of emotional disturbance and motivation and suffers from depression and anxiety, stress, loss of interest, low motivation and social isolation. The mental impairment is chronic and permanent, has a major impact on the appellant's daily functioning and causes social isolation. The doctor has prescribed medications for the appellant's mental impairment, and the anticipated duration of the medications is permanent and continuous. In their most recent assessment, the doctor characterizes the appellant's condition as severe and speaks of a complete loss of motivation resulting in severe difficulties with communication. The appellant clarified that their condition has deteriorated since the time of their PWD application (July 2023).

Restrictions in the ability to perform daily living activities

Section 2(2)(b) of the Act requires that the ministry be satisfied that in the opinion of a prescribed professional, a severe physical or mental impairment directly and significantly restricts the appellant's ability to perform daily living activities either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether it is satisfied, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and restriction. The direct restriction must also be significant. The plural "activities" signifies that at least 2 of the legislated daily living activities must be restricted, which is confirmed in the case of *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2009 BCSC 1461.

The ministry's position is that there is not enough evidence to confirm that in the opinion of a prescribed professional, the appellant is directly and significantly restricted in their ability to perform daily living activities continuously or periodically for extended periods.

The panel finds that the ministry was not reasonable when it determined that there is not enough evidence to confirm that in the opinion of a prescribed professional, the appellant is significantly restricted in their ability to perform daily living activities continuously or periodically for extended periods.

Meal preparation

The panel finds that there is enough evidence that the appellant is directly, significantly and continuously restricted with preparing their own meals: In the PWD application the doctor indicates that the appellant needs continuous assistance with cooking and confirms this in their most recent letter. However, in the PWD application the doctor also indicates that periodic assistance is needed with food preparation but does not provide information on duration and frequency of the required help, which means that there is not enough evidence to establish that help with food preparation is needed for extended periods. Accordingly, the panel finds that the appellant needs continuous assistance with cooking and periodic assistance with food preparation.

The panel finds that the meaning of “preparing meals” as used in section 2(1)(a)(i) of the Regulation is ambiguous. While the daily living activity listed in the Regulation is “prepare own meals”, the PWD application form distinguishes between “food preparation” and “cooking”. It is not clear whether the Regulation considers “preparing meals” to be synonymous with “cooking” and/or “food preparation”, or how it distinguishes between cooking and preparing a meal. The panel finds that this ambiguity must be approached in a liberal manner and, because of the social mandate of the legislation, must be resolved in favor of the appellant.

Housework

The panel finds that there is enough evidence that the appellant is directly, significantly, and continuously restricted with performing housework. The doctor indicates that the appellant is unable to do laundry or basic housekeeping and requires continuous assistance from another person with these activities. The appellant’s friend states that the appellant’s place of residence is a mess, and that the appellant does not wash his clothes. Accordingly, the panel finds that the appellant is continuously restricted with performing housework.

Moving about indoors and outdoors.

The panel finds that there is enough evidence the appellant is directly, significantly, and continuously restricted with moving about indoors and outdoors. The doctor reports that, because of the degenerative disc disease, the appellant routinely uses a cane. The panel notes that in the PWD application (July 2023) the doctor had indicated that the appellant can walk less than 1 block unaided on a flat surface and climb 2-5 steps unaided, “unaided” meaning “without the assistance of another person, assistive device or assistance animal”. In their most recent letter, the doctor describes the appellant’s restrictions with walking as

severe, requiring continuous assistance. The appellant clarifies that their condition has deteriorated since July 2023 and that they now cannot walk without a cane. Accordingly, the panel finds that the appellant is continuously restricted with mobility indoors and outdoors.

Personal Care.

The panel finds that there is enough evidence the appellant is directly, significantly, and continuously restricted with managing personal care. In their most recent letter (June 2024), the doctor writes that the appellant is unable to shower and needs continuous assistance with this task. The appellant clarifies they use a wet cloth to wash themselves once a month but are not able to reach the lower part of the body. While, in the PWD application (July 2023), the doctor indicated that the appellant is independent with dressing, grooming, bathing, toileting, feeding self, transfers in/out of bed, and transfers on/off chair, the panel puts more weight on the most current medical finding, as this describes the appellant's current situation most accurately. In addition, the panel finds that the appellant's inability to keep their body clean is sufficient evidence that the appellant is significantly and continuously restricted with managing personal care. Accordingly, the panel finds that the appellant is continuously restricted with managing personal care.

Shopping

The panel finds that there is enough evidence that the appellant is directly, significantly, and continuously restricted with shopping for personal needs. In their most recent assessment (June 2024), the doctor writes that the appellant is continuously restricted with shopping and needs continuous help to get it done. In July 2023 the doctor had indicated that the appellant manages all shopping tasks independently; however, the panel puts more weight on the most current doctor's assessment, as this describes the appellant's current situation most accurately. Accordingly, the panel finds that the appellant is continuously restricted with shopping for personal needs.

Relating to and Communicating with Others

The panel finds that there is enough evidence from the doctor that demonstrates that the appellant is directly, significantly, and continuously restricted with relating to and communicating with others effectively. The doctor reports a complete loss of motivation which results in severe difficulties with communication. They report that the appellant has withdrawn from social and recreational activities, due to decreased energy levels, mood disturbances, and physical discomfort. The appellant requires "social and family support" to help maintain them in the community. The doctor indicates that the appellant needs

continuous support/supervision with making appropriate social decisions, developing and maintaining relationships, and interacting appropriately with others. They further indicate that the appellant has marginal functioning with immediate and extended social networks. Accordingly, the panel finds that the appellant is continuously restricted with relating to, communicating or interacting with others efficiently.

Remaining Daily Living Activities

The panel finds that there is not enough evidence that the appellant is significantly restricted with any of the remaining legislated daily living activities. The doctor indicates the appellant is independent with managing personal finances and managing their medications. They indicate that the appellant is independent or needs periodic assistance with public or personal transportation but provides no evidence on how often and for how long this assistance is needed. The doctor reports no restrictions on the appellant's ability to make decisions about personal activities, care or finances.

Help to perform daily living activities

Section 2(3)(b) of the Act sets out that the help required to perform a daily living activity can be an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

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

The panel finds that the ministry was not reasonable when it determined that as it has not been established that daily living activities are significantly restricted it cannot be determined that significant help is required. As previously established, the panel finds the appellant is significantly restricted with several daily living activities. The panel finds further that the appellant needs continuous help from another person to complete those tasks and needs the use of a cane for mobility. The doctor indicates that support is provided by friends. The appellant clarifies that they only have 1 friend who currently assists the appellant in completing those impacted activities.

Conclusion

The panel finds that the appellant meets all 3 criteria that are at issue in this appeal. In other words, the ministry was not reasonable when it determined that the appellant does not have a severe physical or mental impairment, that the appellant's impairment does not significantly restrict his ability to perform daily living activities, and that the appellant

does not require significant help or supervision to perform daily living activities. The panel rescinds the ministry's decision, and the appellant is successful on appeal.

Appendix - Relevant Legislation***Employment and Assistance for Persons with Disabilities Act*****Persons with disabilities**

2 (1) In this section:

"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a

severe mental or physical impairment, the person is unable to perform;

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

Employment and Assistance for Persons with Disabilities Regulation

Definitions for Act

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

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

activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

(i) make decisions about personal activities, care or finances;

(ii) relate to, communicate or interact with others effectively.

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

(a) authorized under an enactment to practise the profession of

(i) medical practitioner,

(ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner

APPEAL NUMBER 2024-0147

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

Legislative Authority for the Decision:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)
Section 24(2)(a) or Section 24(2)(b)

Part H - Signatures

Print Name

Inge Morrissey

Signature of Chair

Date (Year/Month/Day)

2024/06/18

Print Name

Bill Haire

Signature of Member

Date (Year/Month/Day)

2024/06/19

Print Name

Mary Chell

Signature of Member

Date (Year/Month/Day)

2024/06/19