

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) Reconsideration Decision dated May 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 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 Facts**Summary of Relevant Evidence Before the Minister at Reconsideration****Persons with Disabilities Application (January 19, 2024)*****Self-Report***

The appellant states she has been in a depression since 2006. She has the following symptoms and her ability to take care of herself is affected most days.

- Sadness, fearfulness, emptiness and hopelessness
- Loss of interest and pleasure in activities
- Sleep disturbances, including severe insomnia
- Tiredness and lack of energy
- Anxiety, agitation and restlessness
- Slowed thinking and speaking
- Trouble concentrating
- Difficulties with memory, making decisions and personality changes
- High blood pressure
- Physical aches and pains (e.g. headaches)
- Increased craving for food and a lot of weight gain
- Wanting to stay at home rather than go out to socialize

Medical Report (February 5, 2024) – signed by the appellant’s doctor

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

Diagnosis	Date of onset
Major depressive disorder	June 2023
Left leg lymphedema and cellulitis	May 2023
Head injury with concussion	August 2023

Health History

The doctor writes that the applicant suffers from major depressive disorder, which gives her symptoms of fatigue, problems with sleep, poor concentration, etc. The impairment is likely to continue for more than two years.

She cannot work and needs assistance with daily living activities. The appellant has not been prescribed any medications or treatment that interfere with her ability to perform daily living activities and does not require any prosthesis or aids for her impairment. She needs treatment and counselling.

Functional Skills

The doctor indicates the applicant can walk one to two blocks on a flat surface and climb five plus steps unaided. She can lift under two kilograms. There are no limitations in remaining seated. She has no difficulty with communication.

The following significant deficits are indicated under cognitive and emotional functioning.

- Executive (planning, organizing, sequencing, calculations, judgement)
- Memory (ability to learn and recall information)

- Emotional disturbance (e.g. depression, anxiety)
- Motivation (loss of initiative or interest)
- Attention or sustained concentration

Daily Living Activities

The doctor indicates meal preparation, basic housework and social functioning (daily decision making, interacting, relating and communicating) are continuously restricted.

Assessor Report (February 5, 2024) - signed by the appellant’s doctor

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

They state the applicant lives alone. She is independent walking indoors/outdoors, climbing stairs, standing, lifting and carrying and holding.

The doctor completed the following chart.

Cognitive and Emotional Functioning

	Impact on Daily Functioning			
	No impact	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	

Daily Living Activities

The doctor indicates the applicant is independent with:

- Personal care (dressing, grooming, bathing, toileting, feeding self/regulating diet transferring in/out of bed and on/off chairs)
- Basic Housekeeping (laundry)
- Shopping (reading prices and labels, making appropriate choices, paying for purchases)
- Paying Rent and Bills (banking, budgeting)
- Medications (filling prescriptions, taking as directed, safe handling and storage)
- Transportation (getting in/out of a vehicle, using public transit, using transit schedule and arranging transportation)

The applicant needs periodic assistance with:

- Basic housekeeping
- Shopping (going to and from stores, carrying purchases home)

The applicant needs continuous assistance with:

- Meals (meal planning, food preparation, cooking, safe storage of food)

Social Functioning

The doctor states the applicant needs continuous support/supervision with:

- making appropriate social decisions (including avoiding situations dangerous to self or others, good social judgement)
- developing and maintaining relationships
- interacting appropriately with others (e.g., understands and responds to social cues, problem solves in social context)
- dealing appropriately with unexpected demands
- securing assistance from others

The doctor describes the applicant's relationship with her immediate social network as, "marginal functioning" – little significant participation/communication: relationships often minimal and fluctuate in quality. The doctor also describes her relationship with her extended social networks as, "marginal functioning" – little more than minimal acts to fulfill basic needs.

Assistance Provided for Applicant

The doctor states the applicant needs assistance with housekeeping and shopping etc. Assistance is provided by "other". The applicant doesn't have an assistance animal.

Report from Hospital Emergency Department (August 17, 2023)

The report states the diagnosis is a concussion.

Letter from the Ministry to the Appellant (March 6, 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 (April 5, 2024)

The appellant requested an extension.

Additional Information received after the Reconsideration Decision

Notice of Appeal (May 14, 2024)

The appellant states she is dealing with many pressures. Her landlord gave her an eviction notice, she cannot find a place and her dad's health is not good. She has severe depression and can't do anything by herself.

Appellant Submission (June 12, 2024)

Letter from the Appellant (May 27, 2024) – endorsed by the appellant's doctor

The appellant states this letter is to clarify the severity of her condition and its impact on daily living activities. She writes the following.

Background

The appellant has been struggling with mental illness for many years. In 2006 she suffered from delusions and was admitted to a psychiatric facility for treatment. A head injury and reduced mobility (due to lymphedema), adds to severely impairing her functioning.

Severity of impairment.

The appellant states her doctor indicated she is limited to walking one to two blocks unaided; however, this would be under ideal circumstances on flat, level ground. Walking any distance outdoors takes her at least two to three times longer than normal and requires stopping frequently to rest due to severe pain in her left leg. With stairs, she is able to climb five plus stairs using a handrail; however, it also takes her at least two to three times longer. She has to stop and rest due to pain. While she is capable of lifting under two kilograms, she generally avoids lifting altogether as it only exacerbates the pain in her leg. In addition, any exertion (walking, climbing stairs or lifting) makes her dizzy, resulting in headaches.

The appellant states her doctor's assessment of cognitive and emotional functioning is incorrect. Bodily functions (sleep disturbance), consciousness (drowsy) emotion (inappropriate depression) attention/concentration, executive functioning and lack of motivation all have a major impact on her functioning. In addition, lack of impulse control, poor short memory, motor activity (bizarre behavior) and psychotic symptoms (disorganized thinking) have a moderate impact. These impacted areas result in a very severe mental impairment with respect to social functioning. They prevent her from going out in the community and pursuing social activities.

Daily Living Activities

The appellant states that daily living activities are significantly restricted. Most days she stays home while struggling to deal with depression and disrupted thoughts. She has difficulty with decision making and prioritizing tasks. She doesn't know what to keep or throw away, so her home is cluttered and disorganized. She is unable to adequately perform basic housekeeping and laundry duties and lacks the motivation to plan and cook so tends to binge eat. Her limited mobility prevents her from shopping, which involves walking around large stores bending or reaching for items on shelves, carrying bags more than two kilograms, or standing in long checkout lines.

Assistance Required for Daily Living

The appellant states she requires assistance to develop a regular weekly schedule for organizing basic housekeeping and laundry duties and supervision to ensure that she is following it. She also requires assistance to develop a weekly meal plan and grocery list, and assistance at least three times a week to plan and cook healthy meals, and direction for cleaning up afterwards. As she is unable to lift and carry heavier purchases, she needs weekly assistance carrying bags of groceries and other basic items. Additionally, she requires continuous counseling to assist with all aspects of social functioning.

Additional information

The appellant adds that she is socially isolated due to her appearance. While she has difficulty motivating herself to get through each day she feels constantly exhausted and often feels like she is in a daze.

On June 11, 2024, the appellant's doctor signed the statement below.

Upon further assessment of the appellant and after reviewing this information, they can confirm that the appellant's physical and mental impairments will continue to persist and are severe enough to restrict her daily living activities to the point where she requires significant assistance or takes considerably longer than normal to perform. If there are any discrepancies noted between the information contained in this letter and the appellant's application then this letter should take precedence.

Letter from a Disability Resource Centre (May 29, 2024) – written by a resource assistant

The resource assistant states daily living activities are defined in the Regulation and contrary to the ministry's ruling the appellant's ability to prepare own meals, shop for personal needs, perform housework to maintain the person's place of residence in acceptable sanitary condition, move about outdoors and relate to, communicate or interact with other effectively, is in fact severely restricted. The appellant provided a letter, which details the degree of her restrictions and the amount and type of assistance she requires. Most importantly the letter has been endorsed by her physician giving it the added weight of a medical opinion and not merely a self-report.

The resource assistant adds that in addition to the appellant's letter, it is critical to consider section 8 of the *British Columbia Interpretation Act*, which governs all legislation. It states that every "enactment must be construed as being remedial and must be given such fair large and liberal construction and interpretation as best ensures the attainment of its object." Therefore, this section dictates that the impairment with the appellant's daily living activities and support needs, must be interpreted in a large and liberal manner rather than a restrictive manner. In reference to the *Interpretation Act*, the Supreme Court of British Columbia ruled in *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2009 BCSC 1461, that the Act and Regulation are benefit conferring pieces of legislation and as such must be interpreted generously keeping in mind the benevolent intent of the legislation with any ambiguity being resolved in favour of the appellant. In *Garbett v. British Columbia (Social Development)*, 2012 BCSC 1276, the court ruled that the Hudson decision established there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two daily living activities in to find that a person's ability to perform daily living activities is significantly restricted.

The letter provided by the appellant and endorsed by her physician establishes that she is significantly restricted in:

1. basic mobility
2. performing basic housekeeping and laundry duties
3. cooking and preparing healthy meals
4. shopping for needs
5. social functioning

The above considerations and more generous review of the appellant's application and subsequent letter would indicate that severe medical impairments exist to the extent that she requires significant assistance with her daily living activities and should therefore be granted the Persons with Disabilities designation.

Ministry Submission (June 19, 2024)

Letter from the Ministry (June 19, 2024)

The ministry states the appellant's submission addresses information that the ministry found unable to determine in the reconsideration decision.

Regarding a severe mental impairment:

The reconsideration decision found that the information provided represented only a mild-to-moderate impairment. However, more information has been provided regarding the severity of the appellant's mental impairment.

The letter states that the appellant is majorly impacted in the areas of bodily functions, consciousness, emotion, attention/concentration, executive functioning, and lack of motivation and moderately impacted on impulse control, short-term memory, motor activity, and psychotic symptoms. In addition, the letter states the appellant has significant restrictions performing daily living activities related to mental functioning, such as basic housekeeping, laundry duties, and planning and cooking regular meals.

Regarding restrictions and assistance required to perform daily living activities

In the original medical and assessor reports, it was reported that the appellant had continuous restrictions in meal preparation, basic housework, and social functioning, and needed periodic assistance with basic housekeeping and shopping and needed continuous assistance with meals. However, no information was provided regarding the nature of the continuous and periodic assistance needed.

More information has been provided indicating that the appellant requires assistance at least three times a week to plan and cook meals, create a grocery list, develop a regular weekly schedule for organizing basic housekeeping and laundry duties, and offer supervision to ensure schedules are followed. Additionally, she is unable to lift and carry heavier purchases, so needs assistance weekly for carrying purchases home and performing other basic needs at home. Further information has been provided regarding the appellant's continuous restrictions in social functioning, as she reports being socially isolated due to lack of motivation, feeling exhausted, and being in a daze. The appellant has an inability to build relationships and requires continuous assistance with counselling to assist in all aspects of social functioning. The ministry also notes that the appellant required the assistance of an advocate to write the letter as they have difficulty focusing their thoughts and struggle to express themselves.

Therefore, had the ministry had this information at the time of reconsideration, a different decision may have been reached.

Admissibility

The panel determined the additional evidence in the appellant's and ministry's submissions, 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*.

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 a very severe mental impairment and has been struggling with depression for many years. A head injury and reduced mobility due to lymphedema severely impairs her functioning and ability to adequately perform daily living activities.

She requires assistance developing schedules for housekeeping, laundry and meals, and carrying items home. She also requires continuous counseling to assist with all aspects of social functioning.

Ministry Position

The ministry states the appellant's submission addresses information that the ministry found unable to determine in the reconsideration decision.

The ministry states if it had had this information at the time of reconsideration, a different decision may have been reached.

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

Mental Impairment

The panel notes in the medical report, the doctor states social functioning is continuously restricted and the appellant needs support/supervision in many areas of social functioning. They describe the appellant’s relationships with her immediate and extended social networks as, “marginal functioning”. As well, the panel notes in the appellant’s letter, endorsed by her doctor, the assessment of her cognitive and emotional functioning, with respect to social functioning, is a very severe mental impairment. The panel finds, the evidence provided by the doctor in the medical report, as stated above, as well as the additional information in the appellant’s letter, demonstrates a severe mental impairment.

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

Physical Impairment

In the appellant’s letter, she describes how her mobility is restricted with walking, managing stairs and lifting because of lymphedema in her left leg. It takes her at least two to three times longer than normal and requires stopping frequently to rest due to severe pain in her left leg. She states that while she is capable of lifting under two kilograms, she generally avoids lifting altogether as it only exacerbates the pain in her leg. In addition, any exertion (walking, climbing stairs or lifting) makes her dizzy, resulting in headaches. This information assists the panel in understanding the severity of the appellant’s daily physical functioning. The panel finds this evidence (endorsed by her doctor), demonstrates a severe physical impairment.

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

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.

prepare own meals

In the medical Report, the doctor states the appellant needs continuous assistance with meals and has endorsed the information in the appellant's letter describing the type of continuous assistance needed (i.e., assistance to develop a weekly meal plan and grocery list, and assistance at least three times a week to plan and cook healthy meals, and direction for cleaning up afterwards).

shop for personal needs

In the assessor Report, the doctor states the appellant needs periodic assistance with shopping. They also endorsed the information in the appellant's letter describing her limited mobility and the weekly assistance required carrying bags of groceries and other basic items.

perform housework to maintain the person's place of residence in acceptable sanitary condition

In the medical Report, the doctor states basic housework is continuously restricted. In the appellant's letter (endorsed by her doctor), she states she requires assistance to develop a regular weekly schedule for organizing basic housekeeping and laundry duties.

make decisions about personal activities, care or finances

In the medical report, the doctor states meal planning, basic housework and daily decision making are continuously restricted. The doctor also states the appellant requires continuous support/supervision making appropriate social decisions (including avoiding situations dangerous to self or others, good social judgement).

relate to, communicate or interact with others effectively

In the medical report, the doctor states social functioning (relating and communicating with others) is continuously restricted. They describe the applicant's relationship with her immediate and extended social networks as, "marginal functioning".

The panel finds the evidence demonstrates that a prescribed professional has confirmed that the above daily living activities are continuously or periodically restricted for extended periods of time.

As mentioned in the letter from the resource assistance, as per *of Hudson v. British Columbia (Employment and Assistance Appeal Tribunal), 2009 BCSC 1461* at least two daily living activities are required to be restricted to meet the requirements.

As the panel found the daily living activities of preparing meals, shopping, performing housework, making decisions and relating to, communicating or interacting with others effectively are restricted in a way that meets the requirement under section 2 of the Act and section 2 of the Regulation, the panel finds the ministry decision that it is not satisfied there are at least two significant restrictions to the appellant's ability to perform daily living activities continuously or periodically for extended periods of time, 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 in order to perform them, the person requires an assistive device or the significant help or supervision of another person.

In the assessor report, the doctor states the applicant needs continuous support/supervision in many areas of social functioning. In the appellant's letter, she describes the assistance she

requires on a continual basis, including counselling. The panel finds this evidence supports the legislation in that the appellant requires the significant help or supervision of another person for her restrictions. Therefore, the panel finds the ministry decision that it was not satisfied that significant help is required, unreasonable.

The panel notes, the ministry stated that if it had had the additional information at the time of reconsideration, a different decision may have been reached.

Conclusion

In conclusion, the panel finds the ministry's determination that the appellant was not eligible for Persons with Disabilities designation, was 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).

APPEAL NUMBER 2024-0187

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)
2024/06/28

Print Name
Kulwant Bal

Signature of Member

Date (Year/Month/Day)
2024/06/28

Print Name
Maryam Majedi

Signature of Member

Date (Year/Month/Day)
2024/06/28