

Part C – Decision Under Appeal

The decision under appeal is the May 6, 2024, Reconsideration Decision of the Ministry of Social Development and Poverty Reduction (“Ministry”). The Ministry determined that the Appellant did not meet all the requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* for person with disabilities designation (“PWD”). The Ministry found that the Appellant met the age, duration and severe mental or physical impairment requirements, but did not meet the following:

- the Appellant’s daily living activities (DLAs) are directly and significantly restricted either continuously or periodically for extended periods; and
- because of those restrictions, the Appellant needs an assistive device, significant help or supervision from another person, or needs an assistance animal.

The Ministry also found that the Appellant is not qualified for PWD designation on alternative grounds, which includes: a person who is in palliative care; a person who received At Home Program payments through the Ministry of Children and Family Development; a person who gets or ever got Community Living BC for community living support; and a person who is considered disabled under section 42(2) of the *Canadian Pension Plan Act*.

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 complete legislation is found at the end of this decision in the Appendix.

Part E – Summary of Facts

The hearing took place on June 27, 2024, as a teleconference hearing. Note, at Reconsideration, the Ministry found the Appellant met the criteria of age, duration of impairment and severity of impairment. Accordingly, this decision only provides background needed to evaluate the Ministry's finding regarding restrictions on DLAs and assistance required with DLAs.

Evidence at the time of Reconsideration

The Ministry considered the Appellant's March 18, 2024, Persons with Disabilities (PWD) application including the Self Report and the Medical Report and Assessor Report completed by his doctor. The Appellant has been a patient of the doctor for a year and has seen them 2 – 10 times in that period.

Self Report

- *I have been suffering from addiction, depression and anxiety for over a decade now and am having a very hard time with it in recent years. The stress of work makes it worse and causes me to relapse. My life is unmanageable, and I cannot keep a job.*
 - *Addiction: alcohol, weed, cocaine.*
- The Appellant notes:
 - In a work environment he has difficulty dealing with colleagues and customers;
 - Feels sick at work from withdrawal;
 - Depression makes it difficult to speak and think;
 - Feels run down after working and escapes with booze and other substances;
 - Cannot keep a job, work triggers substance use;
 - Can't wake up for work;
 - Major mood swings;
 - Social environments, work dealing with customers gives him major anxiety, sometimes panic attacks contributing to substance use; and
 - His disability affects his life in the following ways: constant anxiety, depression, struggle, shame, keeping a job, working, keeping relationships.

Medical Report

Diagnoses

- Unspecified depressive disorder, onset 2014;
- Unspecified anxiety disorder, onset 2014; and
- Alcohol use disorder, severe, onset 2014.

Daily Living Activities (Medical Report)

Periodically restricted DLAs include meal preparation and daily shopping which are affected when the Appellant is depressed, or acutely intoxicated/in withdrawal due to low motivation and physical illness. Social motivation is also periodically restricted as the Appellant has mood swings, negative interactions with others, social anxiety, easily overwhelmed, reports freezing, intermittent depending on duration and severity of depressive episode and substance use.

Regarding assistance required for DLAs, the doctor states: **"no formal assistance."**

The doctor notes while the Appellant is at times highly functional with his depressions, anxiety, and alcohol use disorder, he also suffers extreme periods of impairment, withdrawal and inability to perform work duties. He is currently experiencing a relapse when motivation and daily function are impaired, and he requires support to take care of himself.

Daily Living Activities (Assessor Report)

C. Mental or Physical Impairment

- *Comments:* "alcohol use disorder severe; unspecified anxiety and depressive disorders that have caused variable but cumulative severe impairment in social, vocational and self care functions."
- *Ability to Communicate:* good in all aspects, except Speaking which is satisfactory (with the comment added that the Appellant has occasional word finding difficulties/ stutter related to anxiety).
- *Mobility and Physical Ability:* independent in all aspects.
- *Cognitive and Emotional Functioning:*
 - Major impact: emotion, impulse control, insight and judgement attention/concentration and motivation;
 - Moderate impact: bodily functions, consciousness, executive and memory;
 - Minimal impact: language; and,
 - No impact: psychotic symptoms.
 - Doctor comments: "sleep disturbance as both symptom and aggravating factor in both mood and substance use; altered consciousness when acutely intoxicated; variable but alternatively severe anxious and depressed mood; poor impulse control leading to ongoing severe alcohol abuse; poor concentration when acutely anxious or depressed; very poor motivation as a result of depression."

D. Daily Living Activities

- *Personal Care; Basic Housekeeping; Shopping; Meals; Pay Rent and Bills; Medications and Transportation:* Independent all aspects, no comments provided.
- *Social Functioning:* Independent all aspects. Comments are set out below.

- Appropriate social decisions: "independent, but often avoids these situations (social interaction) when unable to manage on own".
- Able to develop and maintain relationships: "no formal assistance but reports unable to maintain close relationships in recent years."
- Able to interact appropriately with others: independent.
- Able to deal appropriately with unexpected demands "no formal assistance but avoids/freezes due to anxiety and low self worth."
- Able to secure assistance from others.
- Regarding impact of the Appellant's impairment on his immediate social network the doctor comments: this is very disrupted, "has lost most close contacts due to depressions, withdrawal and substance use."
- Regarding impact of the Appellant's impairment on his extended social network, the doctor comments: "has minimal extended networks due to isolation, withdrawal, shame."

E. Assistance Provided for Applicant

- Nothing is indicated for help for DLAs provided by others.
- In response to the question "If help is required but there is none available, please describe what assistance would be necessary" the doctor states:

He would benefit from social engagement in his community as he suffers from being isolated and withdrawing from others.

- Nothing is indicated regarding the use of Assistance Devices.
- Nothing is indicated regarding the use of Assistance Animals.
- Additional Information

Given impairment is primarily in emotional and cognitive domains, and is therefore subjective, I know it can be hard to ascertain how impaired an individual is. By my interview with (the Appellant) he has had periods of high level of functioning but has suffered dramatically from depression and anxiety over the years, exacerbated recently by pandemic related isolation, and has recently had a relapse of his chronic alcohol use disorder that has made him poorly able to take care of his physical and emotional needs. Although all of his conditions are variable, they have worsened in a waxing and waning pattern over the years, and he now is severely impaired especially in emotions, impulse control, mental health and judgement and this leaves him unable at present to engage in meaningful social and vocational objectives.

On April 8, 2024, the Ministry completed its review of the Appellant's original application and found the Appellant met the criteria of age and duration of impairment, but not of severity of mental or physical impairment, impact on activities of daily living and need of assistance with affected activities.

On April 22, 2024, the Appellant submitted a Request for Reconsideration.

- In his reasons for the Request for Consideration the Appellant provided the following information.
 - He is requesting assistance because his day to day has become unmanageable because of his alcoholism. He cannot take care of himself.
 - At times he is too sick to be mobile and too sick to cook.
 - He is not able to get and keep a job.
 - His mental health is at an all time low, making it difficult to put the words together for his reconsideration request.
 - He is unable to cook and shave on most days and unable to work.
 - He requests help with his disability so he can try to fix his life.

- The Request for Reconsideration included an April 22, 2024, letter from the Appellant's doctor, stating:
 - The Appellant has been their family practice patient since May 2023.
 - Over the years his function but has been persistently affected by his mental health diagnoses.
 - Often, he is significantly impaired in his alcohol/polysubstance use or in a major depressive episode. Affected areas include:
 - activities of daily living such as feeding self regularly, attention to personal hygiene;
 - instrumental activities of daily living such as responsible financial management, performing chores, such as laundry or dishes, shopping for groceries and preparing meals; and,
 - social isolation and destructive behaviours including escalating substance use with risk of self harm.

On May 6, 2024, the Ministry provided the Appellant with its Reconsideration Decision. The Ministry found the Appellant met the criteria of age, duration of impairment and severe mental impairment. The Ministry did not find the Appellant met the criteria of severe physical impairment, nor did it find a significant impact on activities of daily living caused by the severe mental impairment. As a result of not finding a severe impact on ability to perform DLAs, the Ministry did not find assistance was needed from people, a device or assistance animals.

Evidence at Appeal

On May 8, 2024, the Appellant submitted his Notice of Appeal to the Tribunal. His reasons for Appeal are as follows:

As stated in my denial for PWD, "I am capable of performing my daily duties" this is NOT correct. Due to my severe depressions, anxiety and alcoholism, I am unable to

accomplish daily tasks such as cleaning, cooking and paying bills, etc. This was also stated by my doctor in her letter submitted with the reconsideration form.

On June 20, 2024, the Appellant submitted a letter from his doctor, dated June 12, 2024, which stated:

- The Appellant is a family practice patient since May 2023. The letter is intended to update the March 2024 PWD application and appeal letter dated April 22, 2024.
- Appellant's function has varied over the years and has been persistently affected by his mental health diagnosis.
- Often significantly impaired in ability to care for himself when experiencing a depressive episode and or/relapse with alcohol/polysubstance use.
- Areas affected:
 - DLAs (feeding self, regularly, attention to personal hygiene).
 - instrumental activities of daily living (responsible financial management, performing chores such as laundry, dishes, shopping, preparing meals).
- Social isolation and destructive behaviours include escalating substance use with risk of harm to self.
- Appellant reports severe impairment, most often experienced with relapses with alcohol and polysubstance use. Other days of the month he has severe depression.
- Most of the month he is unable to function. Frequency of relapse is 15 days per month on average, every month for the past two years.
- During periods of impairment, the Appellant's friends help with grocery shopping, cleaning and laundry.

On June 24, 2024, the Appellant submitted a letter from his legal advocate. The advocate summarizes the content provided by the Appellant's doctor in their letter and in the original PWD application. Additionally, the advocate cites the relevant legislation and submits both the original application and the doctor's letters demonstrate the restriction of the Appellant's ability to complete DLAs independently, and his need for assistance with these DLAs. The advocate submits the doctor is of the opinion at least two or more DLAs are directly and significantly restricted continuously or periodically for extended periods of time. The advocate suggests that the doctor's letter plus the remarks from the Assessor report, taken in totality amount to evidence that the Appellant requires assistance with activities of daily living.

Evidence at the Hearing

From the Appellant

The Appellant's advocate reviewed the information provided by the Appellant's doctor in the PWD application as well as the letters of April 22 and June 12, 2024, and reiterated her submissions as set out above.

When asked, the Appellant stated during times when he is abusing substances, he is severely impaired. He does not prepare his own meals or do his own shopping. The Appellant provided the clarification that he receives assistance from others with his daily living tasks such as cleaning or buying food or making food for him a couple of times a month. Sometimes someone will bring him take out food. When asked for clarification the Appellant said this was a few times a week.

The Appellant noted that in his original application he did not indicate his degree of impairment because he was afraid he would be committed. (He did not specify what was meant by this.) He says on a monthly basis about half of his days are affected by severe substance abuse, and half are affected by severe depression. In either case, his ability to acquire food and prepare, as well as other tasks it is limited. When asked about the impact of his impairment on personal financial management, the Appellant stated that he is declaring bankruptcy as all his credit cards are maxed out.

From the Ministry

The Ministry representative reviewed the Reconsideration decision and commented on the June 12, 2024, doctor's letter. In the Reconsideration decision, the Ministry found there was insufficient evidence to establish that the Appellant's DLAs are directly and significantly restricted continuously or periodically for extended periods. The Ministry acknowledged the Appellant has a severe impairment stemming from his mental health condition. The Ministry held it was unclear about the level of persistent impacts on DLAs on an average week to week or month to month basis, when experiencing a severe episode. The representative noted the Assessor Report that the Appellant functions independently with all mobility, physical ability all DLA's when not having a severe episode. The Ministry found insufficient evidence to conclude there is a direct and significant restrictions to DLA's continuously and unable to conclude there are significant restrictions to DLA's periodically for extended periods. The Ministry said more detail is required from the Medical Practitioner to confirm the Appellant meets this requirement.

Regarding help required, the Ministry notes that no assistive devices are required, nor need of a service animal. The Ministry notes the doctor reports the Appellant is independent with all DLAs but is currently in relapse and requires support to take care of himself and to achieve remission. However, they do not demonstrate that the Appellant requires significant help from another person to perform DLAs. Also, as it has not been established that DLAs are significantly restricted, it cannot be determined that significant help is required.

When asked the Ministry representative provided the following evidence:

- Alcohol and substance abuse are considered a mental impairment.
- The Appellant's impairment is mostly cognitive and emotional.
- In this case, 15 or more days a month would qualify as an extended period of time, however, that significant assistance is required during these periods is not established.

Admissibility of Additional Evidence

The Ministry did not object to the admission of any additional evidence submitted by the Appellant prior to the hearing. A Panel may consider evidence that is not part of the record that the Panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The Panel finds that the Notice of Appeal, June 12 letter from his doctor and July 24, 2024 (sic) letter from the Appellant's legal advocate provide additional detail or disclosed information that provides a full and fair disclosure of all matters related to the decision under appeal. The Panel has admitted this new information as being in accordance with s. 22(4) of the *Employment and Assistance Act*. The Ministry did not provide any additional submissions.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's Reconsideration Decision, which found that the Appellant is not eligible for designation as a PWD, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant. In the Reconsideration Decision, the Ministry found that the Appellant does have a severe mental impairment. Therefore, the Panel will not provide an analysis of the evidence regarding physical or mental impairment.

The Panel also notes that the ability to work is not a consideration for PWD eligibility because the ability to work is not a requirement of Section 2(2) of the *Act* and is not listed as a daily living activity.

Appellant Position

The Appellant said due to his severe depression, anxiety and alcoholism, he is unable to accomplish daily tasks such as cleaning, cooking and paying bills. He requires assistance to accomplish these activities. This is also stated by his doctor in the April 22, 2024, and June 12, 2024, letters.

The Appellant's advocate provided the following argument:

- The PWD Application and the additional letters from the Appellant's doctor demonstrate the restrictions on his ability to complete DLAs independently including self care, such as feeding himself and attention to personal hygiene as well as instrumental activities such as responsible financial management, doing chores, shopping and social functioning.
- He meets the criteria of "a prescribed professional must be of the opinion the impairment directly and significantly affects the person's ability to do daily living activities" which has been held to mean two or more DLAs.
- The doctor indicates the impairment is severe (alcohol and substance use) 15 days per month every month for the past two years and for the balance of the month the Appellant experiences severe depression. The Appellant therefore meets the criteria of, in the opinion of a prescribed professional, the impairment occurs periodically for extended periods of time.
- Regarding the criteria of requiring assistance with activities of daily living, the Appellant's doctor says he would benefit from social engagement, furthermore, the advocate submits the Appellant receives assistance from friends and this is tantamount to requiring assistance.
- With the new information from the doctor, the Appellant meets the legislative criteria to obtain the PWD designation. He has a severe impairment that directly and significantly

restricts his ability to do daily living activities continuously or periodically for extended periods of time, and he needs help from other people for those activities.

Ministry Position

- The Ministry found the Appellant met the age, duration and severe mental impairment requirements. However, the Ministry was not satisfied there was sufficient evidence to demonstrate that, in the opinion of a prescribed professional, the severe impairment directly and significantly restricts DLAs continuously or periodically for extended periods. The Ministry noted:
 - In the PWD assessment, the Appellant's doctor reports he is independent with all DLA's including social functioning, albeit with the caveat that his close and extended relationships are compromised. The exceptions are meal preparation and shopping which are periodically restricted when depressed or intoxicated.
 - There are gaps in the PWD assessment, and the April 22, 2024 letter, provided by the doctor such that it is difficult to establish frequency and duration of the severe episodes, nor exactly how the episodes compromise the Appellant's ability to function when they do occur.
 - At the hearing, the Ministry representative acknowledged the doctor's June 12, 2024, letter states the Appellant's functioning is compromised due to substance use 15 days per month, and severe depression the other 15 days. However, more information is needed to determine in what way the activities (preparing meals and feeding self, personal hygiene, financial management, household chores etc.,) are restricted, what help is required, how frequently and for how long.
- Regarding help required, the Ministry noted the Appellant does not require assistive devices nor the services of an assistance animal. No information is provided on the nature and type of assistance provided by friends. Moreover, as the Appellant does not meet the criteria of having a significant restriction on activities of daily living, it cannot be determined that significant help is required.

Panel Decision

Restrictions in the ability to perform Daily Living Activities

Section 2(2)(b)(i) of the *Act* requires that the Minister must be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly

restricts the Appellant's ability to perform DLAs either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the Ministry's decision must be based on the evidence from prescribed professionals. The term "directly" means that there must be a connecting link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a part related to time or duration – the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended periods. So, in the cases where the evidence shows that a restriction happens periodically, it is appropriate for the Ministry to ask for evidence about the duration and frequency of the restriction to be "satisfied" that it is for extended periods. Moreover, as provided by the authority *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2009 BCSC 1461, at least two activities must be restricted in a way that meets the requirements.

The Ministry found there was insufficient evidence to establish the Appellant's impairment directly and significantly restricts his DLAs continuously or periodically for extended periods. In this case, the Panel must weigh the evidence available to Ministry at reconsideration against the totality of the evidence available to the Panel. That is the evidence available at reconsideration combined with the additional evidence supplied by the Appellant's doctor as part of the Appeal, as well as the oral evidence supplied by the Appellant and his advocate. The doctor's letter notes the Appellant's function has varied over the years and has been persistently affected by his mental health diagnosis. He is often significantly impaired in ability to care for himself when relapsed (15 days a month) or in a depressive episode. In part, this information addresses the Ministry's question of the frequency and duration of impairment. However, there is little information about what the impairment is on a practical level. For example, does the impairment lead to lack of motivation to undertake necessary DLAs or is the Appellant intoxicated such he is unable to take the physical steps to prepare meals, shop or undertake other activities? Although these considerations are referenced, no detail is provided to clarify how significant the impairment is, or what happens with the Appellant on a day-to-day basis.

According to the doctor's letters and the Appellant, he is assisted by friends from time to time. However, when asked the Appellant stated he is assisted by friends with meal preparation, cleaning and shopping "a couple of times a month" and "a couple of times a week". No additional information is provided by the doctor or the Appellant regarding the impact of lack of shopping or undertaking meal preparation, or other aspects of daily living. Although the supplementary information provided by the Appellant's doctor establishes that the Appellant's ability to perform DLAs either continuously or periodically for extended periods is compromised, there is insufficient information to establish how the DLAs are directly *and significantly* restricted. Accordingly, the Panel finds the Ministry's determination, that there is insufficient evidence to establish the Appellant's impairment directly and significantly restricts his ability to perform DLAs either continuously or periodically for extended periods, reasonable.

Help to perform Daily Living Activities

Section 2(2)(b)(ii) of the Act requires that, *because of direct and significant restrictions in the ability to perform daily living activities*, a person needs help to perform those activities. Under section 2(3) of the legislation a person requires help in relation to a DLA if the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

The Appellant stated that due to his mental impairment he needs help with DLAs. The Ministry notes the doctor indicates no assistive devices are required, nor the help of an assistance animal. The doctor indicates the Appellant is independent with all DLA activities except when experiencing a relapse of substance use disorder or experiencing severe which means that he is unable to function properly most of the month. The doctor states during periods of impairment his friends help him with shopping, cleaning and laundry. However, this does not demonstrate that the Appellant *requires significant help* of another person to complete DLAs. Said differently, no detail is provided on how the Appellant's impairment keeps him from accomplishing these things or what would be the outcome for the Appellant from lack of assistance. The Panel notes the Appellant's evidence he is helped up to three times a week with shopping and meal preparation. Although this is not nothing, it does not provide substantiation that the Appellant requires the significant help of another person to perform DLAs. Rather it suggests that the Appellant benefits from occasional assistance but does not require it on a continuous basis or to a high degree. The Ministry also stated that as it was not established that DLAs are significantly restricted, it cannot be determined that the Appellant requires significant help. The Panel therefore finds the Ministry's determination, that the Appellant does not meet the requirement of requiring significant assistance from another person (or device or assistance animal) to be reasonable.

Conclusion

The Panel finds that the Ministry's Reconsideration Decision, which found that the Appellant was not eligible for PWD designation, was reasonably supported by the evidence and is a reasonable application of the applicable legislation in the circumstances of the Appellant. Although the Ministry found the Appellant met the criteria of age, duration and severity of impairment, the Ministry was reasonable in determining he did not meet the requirements of:

- DLAs are directly and significantly restricted either continuously or periodically for extended periods; and

- because of those restrictions, the Appellant needs an assistive device, significant help or supervision from another person, or needs an assistance animal.

The Panel therefore confirms the Ministry's Reconsideration Decision. The Appellant is not successful on appeal.

Appendix

The criteria for being designated as a PWD are set out in Section 2 of the Act as follows:

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).

The Regulation provides as follows:

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, or
- (b) acting in the course of the person's employment as a school psychologist by
- (i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or
 - (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*, if qualifications in psychology are a condition of such employment.

APPEAL NUMBER 2024-0177

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

Corrie Campbell

Signature of Chair

Date (Year/Month/Day)

2024/07/04

Print Name

Gordon Thompson

Signature of Member

Date (Year/Month/Day)

2024/07/04

Print Name

Charlie Schellinck

Signature of Member

Date (Year/Month/Day)

2024/07/04