

### **Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "ministry") Reconsideration Decision dated May 22, 2024, denying the appellant a persons with disability ("PWD") designation.

The ministry found the appellant met the age (over 18) and duration (likely to last more than two years) requirements. However, the ministry found the appellant did not meet the requirements for:

- severe mental or physical impairment;
- significant restriction on the ability to perform daily living activities; and
- needing significant help to perform daily living activities.

The ministry found the appellant was not one of the prescribed classes of persons eligible for a PWD designation on alternative grounds. As there was no information or argument on this point, the panel did not consider this issue in this appeal.

### **Part D – Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Act* ("Act"), s. 2  
*Employment and Assistance for Persons with Disabilities Regulation* ("Regulation"), s. 2  
*Employment and Assistance Act* ("EAA"), s. 22(4)

Full text of the Legislation is in the Schedule of Legislation at the end of these Reasons.

## **Part E – Summary of Facts**

The hearing took place by videoconference on June 24, 2024. The appellant attended together with her support person who also provided witness testimony.

### Evidence Before the Ministry at Reconsideration:

The information the ministry had at the time of the decision included:

- Request for Reconsideration completed by the appellant;
- Medical and Assessor Reports (the "Reports") completed by the Appellant's Doctor (the "Doctor"); and
- Appellant's Self Report.

### Request for Reconsideration:

In her Request for Reconsideration, the appellant notes several reasons for her request:

- The pain in her thumb and knee severely affects her quality of life;
- The ministry's decision is incorrect because they have not considered the impact knee and thumb pain has on the appellant's daily activities;
- The appellant relies on her family to help perform tasks such as opening jars, carrying groceries, and supporting her when she goes up and down the stairs as her knee is weak;
- The appellant is currently waiting for an MRI of her right knee, specialist consultation for her carpal tunnel, as well as a kidney ultrasound due to her low potassium; and
- She uses a CPAP machine at night.

### **Medical Report:**

The Doctor indicated that the appellant has been their patient for 19 years, and they have seen the appellant more than 11 times in the past 12 months.

### Diagnosis:

The Doctor identifies multiple diagnoses:

- Carpal tunnel syndrome - right more than left (date of onset: November 2023)
- Right knee patellofemoral pain syndrome (date of onset: February 2022)
- Hyperaldosteronism (date of onset: November 2023)

### Health History:

#### *Severity*

The Doctor describes the severity of the appellant's medical conditions as, "Pain to knee/wrist impairs function, fatigue due to electrolytes disturbances associated with hyperaldosteronism also limit stamina thus function".

### *Whether medications/treatments interfere with daily living activities*

The appellant's Doctor checks, "No", the appellant has not been prescribed medications and/or treatments that interfere with her ability to perform daily living activities.

*Whether prostheses or aids are required*

The appellant's Doctor indicates, "Yes", the appellant requires prostheses or aids. The Doctor provides further explanation and says, "Wears a right knee patellar tracking device and bilateral carpal tunnel wrists splints at night to minimize symptoms".

*Degree and Course of Impairment:*

The Doctor marks "Yes" that the impairment is likely to continue for two years or more and explains further, "uncertain duration and response to treatment as these have just been initiated e.g. bracing trial and kinesiology".

*Functional Skills:*

The Doctor states they, "do not perform functional assessments so [functional assessment] was completed by patient interview".

The Doctor indicates the appellant:

- Can walk less than 1 block unaided on a flat surface;
- Can climb 2-5 steps unaided; and
- Can remain seated 1-2 hours.

The Doctor indicates that lifting restrictions are unknown and comments, "not formally tested but patients [sic] reports not able to lift at all due to pain".

The Doctor further notes no difficulty with communication. The Doctor indicates "unknown" as to whether the appellant has significant deficits with cognitive and emotional function and comments, "not formally tested but anxiety present".

**Assessor Report:**

*Mental or Physical Impairment:*

Asked to provide a brief summary of the appellant's mental or physical impairments that impact her ability to manage daily living activities, the Doctor says, "Trouble performing activities of daily living due to knee musculoskeletal pain, fatigue, parasthesias [sic] to hands from CTS [Carpal Tunnel Syndrome] Rt >> Left, deconditioning, poor balance".

*Ability to Communicate:*

The Doctor indicates that the appellant has good abilities in all areas of communication except writing and says, "Poor penmanship as unable to hold pen properly due to pain."

*Mobility and Physical Ability:*

The Doctor indicates that the appellant takes significantly longer than normal climbing stairs—she, “needs to hold onto railing”, and standing—she is, “unable to stand for prolonged period [sic] due to pain”, and the appellant requires continuous assistance or is unable to lift and to carry and hold—“pain limits lifting, carrying and holding”.

*Cognitive and Emotional Functioning:*

The Doctor indicates that the appellant’s conditions have no impact on her cognitive and emotional functioning.

*Daily Living Activities:*

The Doctor indicates that the appellant is independent with the following daily living activities:

- Feeding self;
- Regulating diet;
- Transfers on/off chair;
- Making appropriate (shopping) choices;
- Meals: Meal planning and 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; and
- Transportation: Using transit schedules and arranging transportation.

The Doctor further indicates that in the category of Shopping—Carrying purchases home, the appellant requires continuous assistance with or is unable to perform the activity.

With all other daily living activities, the Doctor says that the appellant takes significantly longer than typical:

- Personal:
  - Dressing;
  - Grooming;
  - Bathing;
  - Toileting; and
  - Transfers in/out of bed.
- Basic Housekeeping—the Doctor comments, “requires assistance for these”:
  - Laundry; and
  - Basic Housekeeping.
- Shopping:
  - Going to and from stores—“hand pain while driving”;
  - Reading prices and labels—“difficulty holding some items”; and

- Paying for purchases—"pain holding cards, money".
- Meals—the Doctor comments, "Pain to hands and legs limit":
  - Food preparation; and
  - Cooking.
- Transportation—the Doctor comments, "Pain causes difficulty and prolonged time to get in/out of car":
  - Getting in and out of vehicle.

Finally, the Doctor says the appellant uses an assistive device in the Transportation category: Using public transit and comments, "Uses rails on bus".

*Social Functioning:*

The appellant is noted to be independent in all areas of social functioning and has good functioning with her immediate and extended social networks.

*Assistance Provided for Applicant:*

*Help required*

The Doctor indicates that the appellant's family provides the help required for daily living activities.

*Assistive devices*

The Doctor indicates the appellant requires braces: 1. splints for pain wrists, 2. knee brace —to help compensate for her impairments. The Doctor comments, "1. splints e.g. bilateral wrists worn for comfort as needed and at QHS [bedtime] for carpal tunnel syndrome, 2. right knee patellar tracking brace".

The appellant does not have an Assistance Animal.

*Self Report:*

The appellant states that, "I discovered I have arthritis by doing a CT scan, and they also discovered that I have carpal tunnel and I need surgery for it. I have patellofemoral pain syndrome in my right knee, and I need a knee brace, they recommend I do exercises as much as I can. They also found that I have very low potassium that causes me alot of side-effects such as dizziness and nausea. I'm on medication for it".

Additional Evidence Submitted After Reconsideration:

*Notice of Appeal-Reasons:*

With her Notice of Appeal, the appellant said the reasons she disagrees with the ministry's decision include, "I believe that the Ministry should reconsider the impact that the pain in my R

thumb and R knee has on my ability to work as a cleaner. Additionally, the combined impact of my thumb and knee pain, the poor quality of sleep due to my...[incomplete]"

*Evidence prior to the Hearing—Appellant:*

With her Appeal submission, the appellant provided two additional documents:

1. May 17, 2024, MD letter (the "MD letter")—3 pages typewritten noting:
  - i. Past Medical History;
  - ii. Current Medications;
  - iii. Physical Exam;
  - iv. Investigations; and
  - v. Assessment and Plan.
2. June 6, 2024 Email confirming an August 12, 2024, Specialist appointment.

In a one-page typewritten letter accompanying the above documents, the appellant advises:

- She wishes "to bring to the panel's attention that I am on the waitlist for surgery to address carpal tunnel syndrome in right hand. I am also waiting for MRI to be scheduled for my right knee"; and
- "Since my original application, my condition continues to deteriorate. I believe that my original application is outdated and would require updated assessments to properly effect [sic] new symptoms or my worsened condition".

*New Evidence at the Hearing-Appellant:*

At the hearing, the appellant and her support person/witness said:

- The appellant is unable to work and receives income assistance;
- The appellant has not applied for Persons with Persistent Multiple Barriers ("PPMB") designation;
- The support person helps the appellant with all daily living activities;
- The appellant now has pain every day;
- The appellant's condition and pain are getting worse and have changed from when she submitted her original application;
- The appellant has balance problems, so she sometimes uses a cane when she is outside her home;
- The appellant is no longer able to climb stairs—it's too difficult for her and she must take the elevator;
- The appellant no longer drives as it is too uncomfortable for her;
- The appellant is waiting for further investigations and surgery;
- The appellant and her support person/witness agree and understand that the information in the Reports is incomplete and/or are different from what the appellant is reporting at the hearing; and

- The appellant and her support person/witness agree and understand that the information submitted by the appellant and her Doctor does not meet the requirements of the legislation for PWD designation.

*New Evidence at the Hearing-Ministry:*

The ministry explained that the PPMB application process provides another option for financial support where the eligibility criteria may be an easier match to the appellant's circumstances. The ministry further confirmed that the appellant is eligible to apply for PPMB designation.

Admissibility of Additional Evidence:

Neither party objected to the admissibility of each other's additional oral evidence. The ministry made no objection to the appellant's additional documents provided prior to the hearing.

The appellant's and her support person's oral evidence provide further, up-to-date information about the appellant's experiences and capabilities, and the additional supportive measures she requires. The additional medical documents provide further information about the appellant's current health status and pending investigations and/or treatment. The ministry's testimony gives information about additional options available to the appellant in the absence of PWD designation.

The panel finds that the additional evidence provided by both parties is reasonably required for the full and fair disclosure of all matters in the appeal. Therefore, the panel finds that the additional evidence is admissible under Section 22(4) of the EAA.

**Part F – Reasons for Panel Decision**

The issue on appeal is whether the ministry's decision denying the appellant a PWD designation is reasonably supported by the evidence or is a reasonable application of the legislation. The ministry found the appellant met the age (over 18) and duration (likely to last more than two years) requirements. However, the ministry found the appellant did not meet the requirements for:

- severe mental or physical impairment;
- significant restriction on the ability to perform daily living activities; and
- needing significant help to perform daily living activities.

**Submissions**Position of the Appellant:

The appellant and her support person/witness say they disagree with the ministry's decision; the appellant should qualify for PWD designation, and she should be granted the PWD designation. At the hearing, the appellant and her witness note that the appellant's condition is getting worse. With her appeal, the appellant stated, "since my original application, my condition continues to deteriorate. I believe that my original application is outdated and would require updated assessments to properly effect new symptoms or my worsened condition". At the hearing, the appellant said she is in pain all the time and the witness says that the appellant requires her support person's help with daily living activities including laundry, cleaning, cooking, and getting dressed. The appellant and her witness also highlight that the appellant requires additional help with personal care activities; the appellant's niece assists her to wash her hair.

The appellant told the panel that she is in need. She has worked her entire life and is now unable to work due to the pain and the physical difficulties she has. With her Reasons for Appeal, the appellant said she, "believe[s] the ministry should reconsider the impact that the pain in my R [right] thumb and R [right] knee has on my ability to work as a cleaner." The appellant reports that due to right knee pain and limited movement, she has balance problems and almost falls so sometimes uses a cane when outside her home and her right hand is not functional—she has numbness that extends from the right side of her face, down her arm and into her hand so she is not able to grasp/hold things or even write. The appellant wonders how she is to meet her living expenses without being able to work and earn an income.

Finally, at the hearing the appellant and her support person/witness say she has submitted the May 17, 2024, MD letter because it provides additional information and is a more current, accurate representation of the state of her health. The appellant says that although she has



received some treatment for her carpal tunnel pain—a Cortisone shot—it helped for a short while but was not long lasting. She is having an MRI to further assess her right knee and is waiting for wrist surgery which is expected to greatly improve her function. The appellant and her witness confirmed that her pain and function have significantly changed from the time her Doctor completed their Reports for her PWD application and the state of her health has not been fully or accurately captured in these Reports. Further, the appellant and her witness said they now understand and agree that there is a conflict between what was submitted and the appellant's current, reported state. They said that based on the information provided that was not fully complete and considering the requirements in the legislation, they now agree that the ministry was not likely to decide in favour of PWD designation for the appellant.

#### Position of the Ministry:

At the hearing, the ministry referred to the reasons provided in its Reconsideration Decision and emphasized that when determining PWD eligibility, the ministry is governed by the legislation and all five criteria must be met. In the appellant's case, a PWD designation could not be confirmed because the appellant met only two of the five criteria: she met the age (over 18) and duration (impairment(s) likely to last two years or more) criteria. In all other criteria, the ministry said that, based on the available medical evidence, a severe impairment could not be determined.

#### *Physical Impairment:*

The ministry maintains that, based on the information in the appellant's original PWD Application and Reconsideration Request, there is no evidence that she has a severe physical impairment.

The ministry acknowledges that the appellant has some limitations in her physical functioning. However, the ministry says that the evidence provided does not sufficiently describe or portray a severe impairment. While the ministry acknowledges that the appellant experiences some degree of restriction due to her impairments, the ministry is not satisfied that the combined limitations in her functional skills, mobility and physical abilities exhibit a severe impairment.

Although the appellant is noted to need continuous assistance to lift, carry, and hold, the ministry cannot confirm that continuous assistance is needed, as her Doctor previously reported that it is unknown how much the appellant can lift. The ministry says that while the appellant is reported as being unable to walk one block unaided on a flat surface, the Doctor also reports that she can walk independently both indoors and outdoors. While it is acknowledged that the appellant takes significantly longer to climb stairs and remain standing, no indication is given as to how much longer than typical these activities take to complete, making it difficult to determine if this results in a severe degree of impairment.

The ministry notes that while the appellant is reported to need wrist splints, a knee brace, and uses a CPAP machine, these are not considered devices that reflect that the appellant has severe restrictions to her physical functioning. At hearing, the ministry acknowledged the appellant's report of needing a cane for assistance but maintained their position that all the conditions for PWD designation had not been met.

Finally, at the hearing the ministry says that it reviewed the additional documents provided by the appellant after reconsideration and prior to the hearing. The ministry says that the November 23, 2023, MD letter confirms the health issues the appellant experiences but does not provide sufficient information to support a finding that the appellant has a severe impairment. Similarly, the notice of appointment with a Specialist does not provide details to demonstrate the appellant has a severe impairment.

*Mental Impairment:*

The ministry notes that in the case of the appellant, the Doctor has not provided any diagnoses suggesting a mental impairment. Although the Doctor states, "anxiety present" and reports one deficit in emotional disturbance, the Doctor also confirms no formal testing has been conducted and the information was collected during a patient interview. The ministry also relies on the Doctor's findings which say the appellant has good abilities in speaking, reading, and hearing. While the ministry acknowledges that the appellant has poor writing ability due to an inability to hold a pen properly because of pain, this is not attributed to a mental impairment. Therefore, the ministry says that the appellant's application does not provide enough information to establish a severe mental impairment.

*Daily Living Activities:*

According to the ministry, the appellant has not demonstrated that she 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. The ministry acknowledges that the Doctor reports the appellant takes significantly longer for daily living activities related to personal care, basic housekeeping, shopping, meals, and transportation. However, no explanation has been provided to describe how much longer than typical is required to carry out these activities, and if the extra time needed represents a *significant and severe* restriction to the appellant's ability to perform daily living activities.

*Social Functioning*

Regarding social functioning, the ministry says that the appellant is reported as independent in all areas and has good functioning with both her immediate and extended social networks.

Further, there is no indication of safety issues or that the appellant requires supervision to be maintained in the community.

### *Help with Daily Living Activities*

The Doctor stated the appellant requires an assistive device when using public transit; the appellant uses the rails of the bus. However, the ministry says that rails on a bus are not considered an assistive device as meant in the PWD application. Further, the Doctor indicates that the appellant requires continuous assistance with carrying purchases home. However, no information was provided to explain the type and duration of assistance required and whether this is for extended periods of time.

At the hearing, the ministry recognized that the appellant was reporting greater limitations from her impairment(s) than was submitted at application but due to the inconsistencies between the Reports and the evidence of the appellant, as well as information being limited and/or incomplete, the ministry remained unable to confirm that the criteria for PWD designation were met. Based on the available medical information, the ministry found that here was not enough evidence to confirm that *in the opinion of a prescribed professional*, the appellant is *directly* and *significantly* restricted in her ability to perform daily living activities continuously or periodically for extended periods. Therefore, according to the ministry, the legislative criteria have not been met and the appellant is not eligible for PWD designation.

### Panel Decision:

#### *PWD Designation – Generally*

The legislation provides the ministry with the discretion to designate someone as a PWD if the requirements are met. In the panel's view, PWD designation is for persons who have significant difficulty in performing regular self-care activities. If the inability to work is the major reason for applying for PWD designation, the panel encourages the applicant to speak to the ministry about other potential programs such as PPMB or explore federal government programs such as Canada Pension Plan disability benefits, as employability is not assessed in a PWD application.

The requirements for PWD designation include having an opinion from a prescribed professional outlined in the Medical and/or Assessor Report. It is reasonable to place significant weight on these opinions. The application form includes a Self Report. It is also appropriate to place significant weight on the Self Report and the evidence from the appellant, unless there is a legitimate reason not to do so.

The panel reviewed the reasonableness of the ministry's determinations and exercise of discretion.

### *Severe Mental or Physical Impairment*

“Severe” and “impairment” are not defined in the legislation. The ministry considers the extent of any impact on daily functioning as shown by limitations with, or restrictions on, physical abilities and/or mental functions. The panel finds that an assessment of severity based on physical and mental functioning including any restrictions is a reasonable application of the legislation.

A medical practitioner’s description of a condition as “severe” is not determinative. The Minister must make this determination considering the relevant evidence and legal principles.

#### *1. Physical Impairment:*

The Doctor says that the appellant’s pain in her right wrist and knee, “impairs function” while, “fatigue due to electrolytes disturbances associated with hyperaldosteronism also limit stamina thus function”. According to the Doctor, the appellant needs continuous assistance to lift, carry, and hold. However, the Doctor also reports that it is unknown how much the appellant can lift as they did not conduct formal testing. The ministry says that while the appellant is reported as being unable to walk one block unaided on a flat surface, the Doctor also reports that she can walk independently both indoors and outdoors. While the ministry acknowledged that the appellant takes significantly longer to climb stairs and remain standing, there is no indication from the Doctor as to how much longer than typical these activities take to complete.

The appellant and her support person/witness described different abilities and greater limitations than those set out in the Reports such as not being able to climb stairs at all. They also noted she has even greater restrictions to her physical abilities including that the appellant is unable to walk unaided more than 100-200 metres and requires her cane and knee brace to do so. The difference between the appellant’s and the Doctor’s evidence may be explained by the passage of time and the cumulative effects of her degenerative conditions. However, when the Doctor has not confirmed the same limitations, and has given a different opinion in their Reports based on their assessment at the time, consistent with the legislation requiring the *opinion of a prescribed professional*, the panel finds the ministry was reasonable when it determined that the appellant’s submitted medical did not establish a severe impairment. Indeed, at Appeal, the appellant stated, “since my original application, my condition continues to deteriorate. I believe that my original application is outdated and would require updated assessments to properly effect [sic] new symptoms or my worsened condition”.

With her Notice of Appeal and at the hearing, the appellant pointed to her inability to work as evidence of her PWD eligibility. While people often equate disability with the ability to work, the legislation relates PWD designation to the ability to perform regular self-care activities. The

appellant has medical conditions that prevent her from working. However, as noted above, the ability to work is not one of the considerations for PWD designation.

. There are a number of inconsistencies in the evidence related to the appellant's independent functioning and functional skills. For example, while the appellant and her support person/witness said that she cannot climb stairs at all, in the opinion of a prescribed professional the appellant could climb stairs with noted limitations. The Doctor said the appellant can climb two to five steps unaided (Doctor's Medical Report), but she takes significantly longer to climb stairs and, "needs to hold onto railing" (Doctor's Assessor Report). With her Notice of Appeal, the appellant confirmed the mismatch in information and recognized the impact on her PWD application, "since my original application, my condition continues to deteriorate. I believe that my original application is outdated and would require updated assessments to properly effect [sic] new symptoms or my worsened condition".

Given the inconsistencies in evidence about the appellant's degree of independent functioning, and the differences described with her functional skills, the panel finds the ministry was reasonable in deciding that the appellant did not have a severe physical impairment.

## *2. Mental Impairment:*

The appellant and her support person/witness confirmed the Doctor's submission that the appellant experiences anxiety due to her current situation and medical conditions. The Doctor also indicates the appellant has no difficulties with communication and has good speaking, reading, and hearing abilities; the appellant is unable to write due to pain and difficulty grasping and holding a pen. In the Assessor Report, the Doctor notes that the appellant does not have any daily impacts on cognitive and emotional function due to her impairment(s). Other than confirming anxiety and stress, the appellant and her support person/witness did not present argument to dispute the Doctor's findings. As well, the Doctor did not expressly diagnose a mental health condition.

Considering that no mental health diagnosis has been provided, the panel finds that the ministry was reasonable in its determination that the information provided does not establish that the appellant has a severe mental impairment.

## *Restrictions to Daily Living Activities (Activities):*

A prescribed professional must provide an opinion that the applicant's impairment restricts their ability to perform the daily living activities ("Activities") listed in the legislation. The Activities that are considered are listed in the Regulation. Those Activities are:

- Prepare own meals;
- Manage personal finances;

- Shop for personal needs;
- Use public or personal transportation facilities;
- Perform housework to maintain the person's place of residence in acceptable sanitary condition;
- Move about indoors and outdoors;
- Perform personal hygiene and self-care; and
- Manage personal medication.

For a person who has a severe mental impairment, Activities also include:

- Make decisions about personal activities, care, or finances; and
- Relate to, communicate, or interact with others effectively.

As provided in the case of *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. Not all Activities, or even the majority, need to be restricted. The inability to work and financial need are not listed as Activities and are only relevant to the extent that they impact listed Activities.

The restrictions to Activities must be significant and caused by the impairment. This means that the restriction must be to a great extent and that not being able to do the Activities without a lot of help or support will have a large impact on the person's life.

The restrictions also must be continuous or periodic. Continuous means the activity is generally restricted all the time. A periodic restriction must be for extended periods meaning frequent or for longer periods of time. For example, the activity is restricted most days of the week, or for the whole day on the days that the person cannot do the activity without help or support. To determine if a periodic restriction is for extended periods, it is reasonable to look for information on the duration or frequency of the restriction.

The Medical Report and Assessor Report also have activities that are listed, and although they do not match the list in the Regulation exactly, they generally cover the same activities. The Medical Report and Assessor Report provide the professional with an opportunity to provide additional details on the applicant's restrictions.

As noted above, the Doctor's Reports are inconsistent with the evidence of the appellant and her support person/witness. The appellant and her support person/witness report that she requires significant help with all her daily living activities; her support person helps her with everything including laundry, cleaning, cooking, shopping, and dressing. Although the Doctor confirms the appellant takes significantly longer for daily living activities related to personal care, basic housekeeping, shopping, meals, and transportation, the Doctor has not provided any

explanation to describe how much longer than typical is required to carry out these activities, and if the extra time needed represents a significant restriction to the appellant's ability. Similarly, while confirming that the appellant is restricted in personal self-care, meal preparation, basic housework, daily shopping, mobility inside the home, mobility outside of the home, and use of transportation, the Doctor does not report if the restrictions are continuous or periodic. Further, regarding the degree of restrictions, the Doctor comments only that the appellant has, "trouble doing daily tasks such as cleaning, trouble driving with affected hand". Finally, the Doctor indicates that the appellant requires continuous assistance with carrying purchases home. However, no information was provided to explain the type and duration of assistance required and whether this is for extended periods of time.

Given the above, the panel finds that the information provided by the Doctor does not confirm direct and significant restrictions to the appellant's ability to perform daily living activities. The panel notes that the appellant and her support person/witness describe greater restrictions than the Doctor has indicated in the Medical and Assessor Reports, such as not being independent with aspects of her personal care to the extent that the appellant's niece must wash her hair for her. However, without an updated opinion from the Doctor about the degree and extent of her limitations and the changes in her function, the panel is unable to conclude that the appellant is directly and significantly restricted in performing daily living activities because of her impairment(s). The panel also notes the appellant's and her support person/witness's comments at the hearing that they, "agree and understand" that per the legislation, the ministry could not decide based on the conflicting or incomplete information provided.

The panel finds that the ministry was reasonable in its determination that, in the opinion of a prescribed professional, a severe impairment resulting in direct and significant restrictions to the appellant's ability to perform daily living activities had not been established.

*Help Required:*

A prescribed professional *must provide* an opinion that the person needs help to perform the restricted daily living activities. Help means using an assistive device, the significant help or supervision of another person, or using an assistance animal to perform the restricted daily living activities. An assistive device is something designed to facilitate the person to perform restricted daily living activities.

As noted previously, the medical information about the help required by the appellant is inconsistent with the current details provided by the appellant and her support person/witness at the hearing. Although the Doctor confirms the appellant receives help from family, there is insufficient information in the Reports to conclude that the family help is *significant*. The appellant and her support person/witness report that she requires significant help with all her

daily living activities; the appellant's support person must help her with all activities. Although the Doctor confirms the appellant take significantly longer and receives help with some daily living activities, the Doctor has not provided any explanation to describe the extent of, and the duration of the help required with the daily living activities.

Although the Doctor noted that the appellant requires an assistive device when using public transit and states the appellant, "uses rails on bus", rails on a bus are not considered an "assistive device" for the purpose of determining PWD eligibility. The Act defines assistive device as, "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". The PWD Application Form also lists recognized assistive devices of which, rails on a bus, are not included. The Doctor also confirms that the appellant wears a wrist splint, "as needed [and for] sleep" and has a knee brace. However, without additional information about the time frame the appellant wears the knee brace and recognizing that "as needed" and "for sleep" indicates periodic or occasional use, significant help from an assistive device cannot be established. At the hearing, the appellant also said that she used a cane, "sometimes, when outside for balance". As previous, "sometimes" does not suggest significant help of an assistive device is required.

In the absence of an opinion from the Doctor that the appellant requires significant help to perform the restricted daily living activities, and without further explanation from the Doctor about the extent of, and the duration of, the help required, the panel is unable to conclude that significant help is required. Therefore, the panel finds that the ministry's determination that the appellant has not met the help required criterion, was reasonable in the appellant's case.

#### Conclusion:

The panel finds that the ministry's Reconsideration Decision, which determined that the appellant was not eligible for PWD designation, was reasonably supported by the evidence, and was a reasonable application of the legislation. Although the appellant met the age (over 18) and duration (likely to last more than two years) requirements, she did not meet the requirements for:

- severe mental or physical impairment;
- significant restriction on the ability to perform daily living activities; and
- needing significant help to perform daily living activities.

Therefore, the panel confirms the ministry's Reconsideration Decision. The appellant is not successful with her appeal.

The panel acknowledges the difficult circumstances faced by the appellant and acknowledges her concerns about having sufficient resources upon which to live, while also being unable to work due to pain and her limited right hand and right knee function. The panel is mindful of the ministry's suggestions provided at the hearing about the appellant submitting an application for



PPMB designation and the effect that getting an updated and more fulsome medical report may have on a future PWD application.

Schedule – Relevant Legislation

**Employment and Assistance for Persons with Disabilities Act**

**Persons with disabilities**

s. 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**

s.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.

(3) The definition of "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

### **Employment and Assistance Act**

s. 22 (4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

APPEAL NUMBER 2024-0215

**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  
Carmen Pickering

Signature of Chair

Date (Year/Month/Day)  
2024/07/05

Print Name  
Bill Haire

Signature of Member

Date (Year/Month/Day)  
2024/07/05

Print Name  
Carla Tibbo

Signature of Member

Date (Year  
2024/07/05