

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) Reconsideration Decision dated May 10, 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 was not satisfied, based on the evidence presented, that she met the following criteria:

- Severe mental or physical impairment;
- Severe impairment directly and significantly restricts daily living activities; and
- 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

The hearing was held as a written hearing on July 10, 2024.

Summary of Relevant Evidence Before the Minister at Reconsideration

Person with Disabilities Application (application) (March 5, 2024)

Self-Report

The appellant writes that she suffers from osteoarthritis in her right knee, bursitis in her right hip and asthma. The combination of her health conditions causes her to rely on others for assistance with daily living activities.

She provided the following information regarding her daily living activities.

Mobility and Physical Ability

She is unable to walk more than two blocks at a time, has to use handrails when climbing stairs and can only sit or stand for 30 minutes at a time.

Personal Care

She has to sit to get dressed, uses the counter/sink for support when getting off the toilet and uses chair arms for support when getting on/off a chair.

Basic housekeeping

She has to take frequent breaks when doing her housekeeping due to her physical limitations.

Shopping

She has to use a shopping cart for support when grocery shopping. She needs her eyeglasses when reading prices or labels. She is able to carry purchases up to 30 lbs.

Transportation

She has to use the handle, seat, and door for support when getting in and out of a vehicle.

The appellant adds that all the above daily living activities take her at least two times longer than typical to complete.

The self-report was completed with the assistance of an advocate.

Medical Report (March 12, 2024) – signed by the appellant’s doctor

The doctor (general practitioner) provided the information below.

Diagnosis	Date of onset
Right knee osteoarthritis	January 2024

Health History

In describing the severity of the medical conditions related to the appellant’s impairment and how the medical conditions impair her, the doctor stated that ongoing right knee pain results in the following restrictions.

- walking 2 blocks maximum;
- needs handrails when climbing stairs;
- lifting and carrying maximum 30 lbs.;
- sitting and standing limited to 30 minutes; and
- lack of sleep due to pain and exhaustion.

The applicant has not been prescribed any medications and/or treatments that interfere with her ability to perform daily living activities.

She requires a walking cane for her impairment.

Degree and Course of Impairment

The doctor states the impairment is likely to continue for two years or more. It is expected to be chronic. Exercise and physiotherapy may improve the symptoms.

Functional Skills

The doctor indicates the applicant can walk 1-2 blocks unaided, but cannot climb any stairs unaided. She can lift between 15 – 35 lbs. She can remain seated for less than 1 hr. There are no difficulties with communication nor any significant deficits with cognitive and emotional function.

Additional Comments

Chronic pain is disrupting the appellant’s daily living activities including basic functions of walking, sitting, transferring, dressing and doing housework.

The doctor states the applicant has been their patient for six months and they have seen her 11 or more times.

Assessor Report (March 12, 2024) – signed by the appellant’s doctor

The doctor provided the information below.

The applicant lives with family, friends or caregiver.

The mental or physical impairments that impact her ability to manage daily living activities are chronic right knee pain secondary to osteoarthritis.

Mental or Physical Impairment

The doctor indicates the appellant’s speaking, reading, writing and hearing capability is good.

She is independent with lifting, and carrying and holding, but takes two times longer than typical walking indoors/outdoors and climbing stairs. As well, she is limited to two blocks when walking outdoors, has to use handrails climbing stairs and is limited to 30 minutes standing.

The doctor did not provide any information regarding a mental impairment restricting the applicant’s functioning.

Daily Living Activities

The doctor indicates the applicant is independent with:

- personal care (grooming, feeding self, regulating diet);
- basic housekeeping (laundry);
- shopping (going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, carrying purchases home);
- meals (meal planning, food preparation, cooking, safe storage of food);
- paying rent and bills (banking, budgeting);
- medications (filling/refilling prescriptions, taking as directed, safe handling and storage); and
- transportation (using public transit, using transit schedules and arranging transportation).

However, the doctor indicates the applicant takes twice as long for the daily living activities below:

- personal care (has to sit to get dressed);
- bathing, toileting (uses counter/sink for support);
- transfers in/out of bed, on/off chairs (uses chair arms for support);

- basic housekeeping (needs frequent breaks);
- shopping (uses shopping cart for support); and
- getting in/out of vehicles (uses handles, seat and door for support).

The doctor did not complete the chart for a mental impairment.

Assistance

The doctor indicates the help required for daily living activities is provided by family - children help her with housework. As well, the doctor states assistance is provided with a cane and handrails. The appellant does not have an assistance animal.

Letter from the Ministry to the Appellant (April 9, 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 30, 2024)

The appellant submits she qualifies for Persons with Disabilities benefits and re-stated the information provided by her doctor on the original application.

Information Received After Reconsideration

Notice of Appeal (May 30, 2024)

The appellant states she is unable to do daily tasks without needing help – at times even to get pants on or to stand, or sit for extended periods.

The appellant did not make a subsequent submission.

The ministry's submission is the reconsideration summary provided in the Record of Ministry decision.

Admissibility of New Evidence

The panel is authorized under Section 22(4) of the *Employment and Assistance Act*, to consider evidence in addition to the information the ministry had at the time of the reconsideration decision if it is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. In this case no new evidence was submitted by either the appellant or the ministry

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 it was not satisfied that the following criteria was met?

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

Appellant Position

The appellant submits that she meets the legislative criteria for Persons with Disabilities designation.

1. She is over 18 years of age.
2. Her doctor has stated that her medical condition is likely to continue for two years or more.
3. Her medical condition is severe and life-long (right knee osteoarthritis).
4. Her medical condition directly and significantly restricts her ability to get through her daily living activities on her own without assistive devices (supports) and her daily living activities take her significantly longer than typical to complete.

Ministry Position*Mental Impairment*

The ministry is not satisfied the appellant has a severe mental impairment. The appellant's doctor does not provide a diagnosis of a mental health condition, or brain injury, and does not note significant deficits to cognitive and emotion function. There are no difficulties indicated with communication or social functioning.

Physical impairment

The ministry is not satisfied that the appellant has a severe physical impairment. The ministry acknowledges the appellant experiences pain and takes twice as long for her mobility and physical tasks, however the ministry does not consider the extra time needed to represent a severe impairment to the appellant's physical functioning.

Also, handrails do not meet the definition of an assistive device because they were not designed to enable a person to perform a daily living activity, which because of a severe impairment they are unable to perform. Handrails are a safety requirement intended for

all users. As the appellant can walk two blocks, lift 30 pounds and stand for 30 minutes at a time, the ministry finds she can function independently, effectively and for a reasonable duration.

Daily Living Activities

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

The appellant's doctor indicates the appellant has not been prescribed any medications or treatments that interfere with her ability to perform daily living activities. The ministry is not satisfied that the extra time required (two times longer) for some daily living activities (e.g., personal care, basic housekeeping, shopping) represents a significant restriction to the appellant's ability to perform these activities.

Although the doctor reports the appellant needs an assistive device (e.g. shopping cart, handle, seat and door) for some daily living activities, (e.g. personal care, shopping), these items do not meet the definition of an "assistive device", which is defined in section 2 of the Act. These items are designed to assist all people to perform tasks and aide movement.

As well, as the doctor indicates the appellant is independent with several daily living activities, the ministry finds there is 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.

Assistance

Although the doctor reports that the appellant receives help from family, as it has not been established that daily living activities are significantly restricted, it cannot be determined that significant help is required from other persons or a device.

Panel Analysis

Section 2(2) of the *Act* sets out the requirements that must be met for the minister to designate a person as a Person with Disabilities. One requirement is that the minister is satisfied that the person has a severe mental or physical impairment.

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

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

Mental Impairment

The panel notes in the assessor report, the doctor indicates there are no difficulties with communication nor any significant deficits with cognitive and emotional function. As well, the appellant does not indicate any mental impairment issues. The panel finds there is insufficient information to conclude that the appellant has a severe mental impairment and therefore finds the ministry reasonably determined that the appellant had not established that she has a severe mental impairment.

Physical Impairment

In the medical report, the doctor indicates the appellant can walk one to two blocks unaided, but cannot climb any stairs unaided. She can lift 30 pounds. She can remain seated for less than one hour.

In the assessor report, the doctor indicates the appellant is independent with several daily living activities (e.g., laundry, shopping, meals), but takes twice as long as typical with daily living activities such as bathing, toileting and getting in/out of vehicles, and requires devices such as counters/sinks, chair arms and shopping carts for support. The appellant's self-report also describes the same limitations with her physical functioning.

The panel finds the evidence above, does not demonstrate an assessment of severely restricted physical functioning. Although the evidence does indicate some restriction in physical function in that the appellant takes twice as long to perform some daily living activities, the evidence also shows she is independent with many daily living activities. The panel finds taking twice as long to perform some daily living activities does not conclusively determine a severely restricted physical impairment.

When considering the appellant's physical functionality as a whole, the panel finds a severe physical impairment, based on functionality, has not been established.

Therefore, the panel finds the ministry reasonably determined that based on the information submitted, the appellant has not established that she has a severe physical impairment.

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 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.

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 meet the requirements. To be significant, the restriction must be to a great extent, such as not being able to do the activities without a lot of support. Continuous means the activity is generally restricted all the time and periodic for extended periods means frequently or for longer periods of time.

The panel notes that the doctor (a prescribed professional) identified some daily living activities that take twice as long as typical to perform (e.g. personal care (getting dressed), transfers in/out of bed, on/off chairs, basic housekeeping), and supports such as a cane and handrails are required. However, the panel finds this evidence is insufficient to conclude that a lot of support is required all the time or periodically for extended periods. Although the appellant may take twice as long to perform some daily living activities, the panel finds taking twice as long cannot be viewed as a significant restriction.

As well, as the panel found a severe mental or physical impairment was not established, the panel also finds it cannot be established that 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.

The panel finds the ministry reasonably determined there is not enough evidence to confirm that in the opinion of a prescribed professional, a severe physical or mental impairment directly and significantly restricts the appellant's ability to perform at least two daily living activities continuously, or periodically for extended periods.

Help to Perform Daily Living Activities

The panel notes section 2(2) of the Act requires that as a result of significant restrictions with daily living activities, the person requires help to perform these activities which is defined as an assistive device, assistance animal, or the significant help or supervision of another person. The panel also notes "assistive device" means a device designed to enable a person to perform a daily living activity.

The appellant's doctor states the appellant receives assistance from family and requires a cane to walk. However, without further clarification about the extent of the family

assistance, the panel is unable to find that significant assistance is required from another person. As well, the panel finds there is insufficient evidence to conclude that the appellant would not be able to walk without a cane.

In addition, as the panel found that the ministry was reasonable in finding that there was insufficient information to show that the daily living activities were significantly restricted periodically for extended periods or continuously, the panel also finds the ministry was reasonable in deciding that it cannot be determined that the appellant requires significant help from other persons or a device to perform the daily living activities.

Conclusion

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

The panel confirms the ministry's reconsideration decision.

The appellant is not successful on appeal.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Act

Persons with Disabilities

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

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

Employment and Assistance for Persons with Disabilities Regulation

Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

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

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

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

- (i)medical practitioner,
- (ii)registered psychologist,
- (iii)registered nurse or registered psychiatric nurse,
- (iv)occupational therapist,
- (v)physical therapist,
- (vi)social worker,
- (vii)chiropractor, or
- (viii)nurse practitioner...

Part 1.1 — Persons with Disabilities

Alternative grounds for designation under section 2 of Act

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

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

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

APPEAL NUMBER 2024-0206

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)

2024/07/11

Print Name

Carmen Pickering

Signature of Member

Date (Year/Month/Day)

2024/07/13

Print Name

John Pickford

Signature of Member

Date (Year/Month/Day)

2024/07/14