Appeal Number 2024-0062

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") Reconsideration Decision dated February 8, 2024, in which the ministry found the appellant was not eligible for designation as a Person with Disabilities ("PWD") under section 2 of the *Employment and Assistance for Persons with Disabilities Act* ("Act"). The ministry found that the appellant met the age requirement and the requirement for the impairment to continue for at least two years ("duration"), but was not satisfied that:

- The appellant has a severe mental or physical impairment.
- The severe impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform daily living activities either continuously or periodically for extended periods; and
- as a result of restrictions caused by the impairment, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform daily living activities.

The ministry found that the appellant is not one of the prescribed classes of persons eligible for PWD designation on the alternative grounds set out in section 2.1 of the Employment and Assistance for Persons with Disabilities Regulation ("Regulation"). As there was no information or argument on this point, the panel considers it not to be at issue in this appeal.

Part D – Relevant Legislation

The ministry based the reconsideration decision on the following legislation:

Employment and Assistance for Persons with Disabilities Act - section 2

Employment and Assistance for Persons with Disabilities Regulation - sections 2 and 2.1

The panel also relied on:

Employment and Assistance Act - section 22(4) and 24

The full text is available in the Schedule after the decision.

Part E – Summary of Facts

Evidence Before the Ministry at Reconsideration

The information the ministry had at the reconsideration included:

1. A Decision Record that said the PWD application was submitted on October 31, 2023, and denied by the ministry on November 29, 2023. The Denial Summary explained the criteria that were not met.

On January 11, 2024, the appellant submitted a Request for Reconsideration with a request for an extension of time which the ministry approved. On February 8, 2024, the ministry completed its review and found that the requirements for severe impairment, restrictions to daily living activities, and the need for help were still not met.

2. The PWD application with three parts:

The Applicant Information ("self-report" – *date illegible*) with hand-written statements from the appellant.

A Medical Report dated May 11, 2023, signed by a general practitioner ("walk-in clinic doctor") who saw the appellant once, and

An Assessor Report dated May 25, 2023, also signed by the walk-in clinic doctor who based the assessment on an office interview with the appellant.

Summary of relevant evidence from the application

Diagnoses

In Section B of the Medical Report, the doctor said that the appellant has the following conditions:

- anxiety disorder (onset 2021),
- mood disorder (PTSD, onset 2021); and
- personality disorder (query borderline).

Functional skills

Self-report
The appellant said that complex post-traumatic stress disorder ("C-PTSD") and borderline personality disorder create daily turmoil in her life. The appellant reported the following symptoms:

- social isolation and alienation; difficulty connecting with people and communicating due to high anxiety;
- cognitive problems including disorganized thinking and the inability to process information, understand what is said, or retain what she reads ("disorientation, confusion, poor memory").
- high anxiety "in any task that is requested of her;" anxiety causes her to "pick her skin off;" always on high alert…mental."
- continuous trauma, "like walking a tightrope, avoiding more turmoil."
- disassociation, depression, eating disorder, and agoraphobia "sometimes lasting months."

Medical Report
In Section C – Health History, the walk-in clinic doctor said they only met the appellant once and reviewed her history from a previous clinic which "captured mental health struggles and seems ongoing concerns."

In Section E - Functional Skills, the doctor wrote that the section was completed by the appellant. Questions regarding how far the appellant is able to walk/number of steps she can climb unaided, were left blank.

The appellant reported limitations with lifting ("no lifting") and remaining seated ("less than 1 hour"). The appellant checked "yes" when asked if she has difficulties with communication. The appellant checked "cognitive" as the cause of her communication difficulties.

When asked if there are any significant deficits with cognitive and emotional function, the appellant indicated deficits for 7 of the 12 areas listed:

- consciousness,
- executive,
- memory,
- emotional disturbance,
- motivation,
- impulse control; and

- attention or sustained concentration.

There was no check mark to indicate deficits in the remaining 5 areas:
- language,
- perceptual psycho-motor,
- psychotic symptoms,
- motor activity; and
- other.

In Part G – Additional Comments, the doctor said that most of the appellant's medical history was from another province ("Province B") where the appellant had started the process of applying for disability. The appellant recently moved to British Columbia. The doctor is completing the PWD medical forms with information from the appellant "and a few encounters with last GP, no consults seen of psychiatrist."

Assessor Report

In Section C-2, the walk-in clinic doctor checked "satisfactory" communication for all areas: speaking, reading, writing, and hearing.

In Section C-3 - Mobility and Physical Ability, the doctor checked "independent" for all areas:
- walking indoors,
- walking outdoors,
- climbing stairs,
- standing,
- lifting; and
- carrying and holding.

In section C-4, Cognitive and Emotional Functioning, the assessor is asked about the impact of a mental impairment on various functions. For the 14 areas listed, the doctor check marked the following impacts:
- major impact for 5 areas: emotion (appellant's comment, "eating disorder as a result" – since childhood); attention/concentration, executive, memory, and motivation.
- moderate impact for 3 areas: insight and judgment, motor activity, and language.
- minimal impact for 2 areas: other neuro-psychological problems, and other emotional or mental problems.

The doctor checked "no impact" for 4 functions:
- bodily functions,

- consciousness,
- impulse control; and
- psychotic symptoms.

The space for comments was left blank.

Daily living activities

The walk-in clinic doctor gave the following information:

Medical Report
In Section C-3, the doctor checked “no” the appellant has not been prescribed medications or treatments that interfere with the ability to perform daily living activities.

In Section F, the doctor checked “yes” the impairment directly restricts the person’s ability to perform daily living activities. The doctor indicated that 4 of the 8 activities listed on the form are periodically restricted:

- personal self-care,
- use of transportation,
- management of finances; and
- social functioning.

When asked to explain “periodic” the doctor wrote, “comes and goes. Anxiety can be debilitating.”

When asked to explain the restriction to social functioning, the doctor wrote, “unable to connect with people, maintain her job, poor with organization.”

When asked for additional comments regarding the degree of restriction the doctor wrote, “feels in constant anxious state including hard to cope.”

Assessor Report
In Section C-1, the doctor said that “C-PTSD/BPD” impacts the appellant’s ability to manage daily living activities.

In Section D of the Assessor Report, the doctor indicated a restriction for 1 of the 8 daily living activities listed in the form:

Social Functioning

The appellant needs periodic assistance from another person in one area: able to develop and maintain relationships. The space to explain the restrictions and write the degree and amount of support required was left blank.

The doctor checked "independent" for 4 areas of social functioning:

- appropriate social decisions (comment, "unsure"),
- interacts appropriately with others,
- able to deal appropriately with unexpected demands; and
- able to get assistance from others.

The doctor checked "marginal functioning" for both immediate and extended social networks.

The sections for comments (including the support required to maintain the appellant in the community and identification of any safety issues) were left blank.

The doctor checked "independent" for all areas of 7 daily living activities listed in the Assessor Report:

- **Personal Care**: the appellant is "independent" with dressing, grooming, bathing, toileting, feeding self, regulating diet, and transfers – bed and chair.
- **Basic Housekeeping**: the appellant is "independent" with laundry and basic housekeeping.
- **Shopping**: the appellant is "independent" with going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home.

Under Additional Comments for the above daily living activities the doctor wrote, "independent living."

- **Meals**: the appellant is "independent" with meal planning, food preparation, cooking, and safe storage of food.
- **Pay Rent and Bills**: the appellant is "independent" with banking, budgeting, and paying rent/bills.
- **Medications**: the appellant is "independent" with filling/refilling prescriptions, taking as directed, and safe handling and storage.
- **Transportation**: the appellant is "independent" with getting in and out of a vehicle, using public transportation, and using transit schedules and arranging

transportation.

The spaces for Additional Comments for the above activities, and in Section F, were left blank.

Information on daily living activities from the appellant's self-report

The appellant said that she "cannot establish relationships…unable to work (fired due to being "unfit for the job"); unable to properly care for myself. No relationships all my life – no family, friends, boyfriends, etc." The appellant added that she is sometimes unable to drive due to always being in a state of "fight or flight."

The appellant said that she is "unable to care for myself financially, some days hygienically" due to disorganized thinking. Agoraphobia makes her "afraid of being around people or going outside." Her body is "locked in fear" which makes taking care of herself difficult if not impossible.

Need for Help

Medical Report
In Section C-4, the walk-in clinic doctor checked "no" when asked if the applicant requires any protheses or aids for the impairment.

Assessor Report
In Section B-1, the doctor checked that the appellant lives alone.

In Section E - Assistance provided by other people, the doctor checked "other" – comment "welfare." The doctor wrote, "unknown, on her own as I know."

The doctor wrote "none" and did not provide any check marks in the next part of Section E - Assistance provided through the use of assistive devices.

The doctor checked "no" the appellant does not have an assistance animal.

Request for Reconsideration

In the Request for Reconsideration signed by the appellant on January 11, 2024, the appellant said that she needs an extension of time because she has an appointment with a psychiatrist on February 29, 2024. She would also like to book appointments with a brain specialist and a psychologist.

The appellant did not submit additional medical reports or documents with the Request for Reconsideration.

Procedural matter

The hearing was adjourned by the Tribunal four times between February and May 2024 as the appellant stated that she needed more time for a social worker to fill out a new PWD form. The appellant was also looking for a new general practitioner and referral to a psychiatrist. The Tribunal denied the appellant's request for a fifth adjournment and the hearing went ahead on June 28, 2024.

Additional evidence provided after the Reconsideration

The appellant filed a Notice of Appeal, received by the Tribunal on February 14, 2024. The appellant included a hand-written statement which the panel accepts as argument for the appeal.

Medical documents

The appellant submitted 63 pages of medical documentation received at the Tribunal on June 21, 2024. The documents included chart notes (30 entries from a family doctor in Province B) and mental health assessment reports from a social worker and psychiatrist in Province B. The appellant also submitted several imaging reports and reports from specialists regarding a physical impairment. In addition, the appellant provided a new Assessor Report from a social worker in British Columbia which detailed the appellant's physical and mental functioning.

Admissibility

The ministry had no objections to admitting the documents as evidence. The panel finds that the documents provide detailed information on physical and mental impairments, daily living activities, and the need for help. The panel admits all the documents under section 22(4) of the *Employment and Assistance Act* as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Mental impairment

The submissions for a mental impairment include:

1. Medical chart notes from a family doctor in Province B, dated from October 27, 2020, to April 13, 2023. The appellant became a patient in October 2020 (“meet and greet visit”). The appellant did not previously have a family a family doctor. The notes provide the following descriptions of the appellant’s mental impairment:

- In 2020/2021, the doctor noted that the appellant had been approved for medical cannabis use “for anxiety.” The appellant also smokes due to anxiety.
- In July 2021, the doctor noted anxiety for the past year. The appellant had recently moved and lives alone.
- The appellant was prescribed various medications for depression/anxiety since adolescence which she said “made her a zombie.” The appellant reported a distrust of doctors due to her past experiences. The appellant declined medication trials throughout her appointments with the doctor who encouraged her to consider them for the future. The appellant initially declined a referral for counselling but agreed to take Ativan sparingly for panic attacks.
- In August 2021, the doctor noted “prolonged post-traumatic stress.” The appellant described specific traumatic events: she was the victim of a crime at her home last year. Since then, she reported a “hyper-vigilant fight or flight system” and emotional outbursts (“easily triggered and angry”) with occasional flashbacks and no clear nightmares. She was also “unfairly evicted” from her home which caused “descent into mental disability.” The appellant said that her nervous system is “always in a state of flight or flight.” She either cannot relax, or she feels lethargic. The doctor noted that the appellant chews her fingernails and is fearful.
- On review of the appellant’s counselling/psychiatric records the doctor noted the diagnosis of borderline personality disorder. The doctor noted “complex financial and mental health issues.” The appellant was worried about becoming homeless. The doctor provided the provincial disability application but did not know if the appellant would qualify. The appellant agreed that the best treatment would be psychotherapy, but she had difficulty covering the cost.
- By October 2021, the appellant started a new job and felt unable to cope without a “whole mental health team” for which she needed government funding. The appellant was suffering anxiety and panic attacks and agreed to a referral for free counselling.
- In 2021/2022, the appellant reported weight gain “due to high stress levels.” The doctor noted that the appellant’s anxiety is also related to her diet and prescribed a

weight loss medication. The appellant began to lose weight with medication and a low carb diet. By April 2023, the appellant's weight loss had plateaued.

- The appellant struggled with her mental health throughout the winter of 2022. She said that intruders broke into her home; her phone was tapped by someone, and her building managers took pictures of her belongings without her consent. The appellant said that she tried contacting the police but her stress level "was incredible, full of anxiety, dis-associating."
- The appellant reported feeling "very nervous" and "screwed up" when she attended a community event. She also had difficulty driving to the event. The appellant cancelled medical appointments as she "doesn't feel comfortable" with people. The appellant agreed to schedule follow-up "once she feels ready to leave her apartment."
- In February 2022, the appellant was brought to the hospital by the police and underwent a psychiatric assessment. The assessment noted Delusional disorder – persecutory type as the primary diagnosis. Borderline personality disorder was the secondary diagnosis. The appellant felt as though "people have taken over her ID, email, passwords; she had to destroy her phone." The appellant left her apartment, moved, changed vehicles, and declared bankruptcy. The appellant now felt safe overall but would not reveal where she was living.
- In March 2022, the appellant reported a panic attack when she visited a friend and was reminded of a discussion from the past. The appellant felt depressed but more motivated despite struggling with mental health and financial stress. The doctor did not think the appellant would qualify for provincial disability but was willing to work on the application.
- By May 2022, the appellant was living in a shelter with no fixed address and no phone. The appellant had been receiving provincial income support, but her file was closed because she did not provide a medical note. The appellant described a "breakdown" in front of staff at the shelter because she was "stressed out about not having her glasses." Otherwise, she has been meditating and trying to keep an "even keel." The appellant was planning to take a "trauma and healing course" to address her mental health issues.
- In September 2022, the appellant reported anxiety and worsening financial stress from owing money for student loans. The appellant's family was not helping her. The appellant was now living in British Columbia, waiting for a new student loan to start school. The appellant stated that she felt safe, but once again she would not reveal her location. The appellant reported that she was not sleeping well. The doctor renewed the prescription for Ativan and prescribed sleeping pills to use sparingly.
- In November 2022, the appellant reported "a minor glimpse of hope" from starting school in British Columbia. She continued to struggle with her mental health and

had limited counselling support through school and limited access to follow-up medical care. The appellant was referred to a psychiatric nurse and psychiatrist but "denied treatment." The appellant would like a referral to a private clinic for psilocybin treatment.

- By late November 2022, the appellant was feeling "tense overall" with "high anxiety, starting to feel agoraphobic, no supports, feeling depressed as well, eating out of control." The appellant continued to attend school and was waiting to get into a dormitory.
- In December 2022, the appellant had no fixed address and was unsure if she would return to Province B intermittently. The appellant asked for a referral to a psychiatrist in Province B whom she had seen 13 years prior. The referral was rejected as they are not accepting patients. The doctor suggested a medication trial which the appellant declined "quite strongly."
- In January 2023, the appellant felt that her mental health "has slightly improved" but she still experienced anxiety, especially at school. The appellant said she had been bullied at school but indicated that had lessened. She continued to take Ativan and sleeping pills as needed.

2. A referral for medical cannabis assessment dated October 23, 2020. The appellant was referred by her doctor in Province B for "anxiety, generalized ache." The appellant had no history of alcohol dependence or cannabis use disorder. The appellant was prescribed a trial of "CBD edibles."

3. A Mental Health Screening Report from a registered social worker dated October 21, 2021. The social worker was a mental health navigator employed at a community medical clinic in Province B. The appellant was concerned about "not being able to last" at her new job. The appellant reported a "long history of job changes" due to her mental health concerns.

The appellant described her apprehension with medications as they made her feel like a "zombie" and "numb." She would take medication for anxiety on an as-needed basis for moments of relief. The appellant described her "high fight or flight response" and shared that she felt "overall depressed" and was working in a toxic job environment. The appellant said that she was seeing a therapist regularly (paying out of pocket).

When asked about self-harm, the appellant responded with "no comment" but confirmed that she did not have suicidal intent. The appellant said that she had never been "formally diagnosed" with a mental health impairment but she would like to access counselling/therapy for trauma as she has "no supports from people emotionally at this time."

The appellant said that she was interested in applying for provincial disability. The social worker indicated that the appellant might not qualify, and that the disability program does not allow access to continuous therapy. The social worker referred the appellant to a psychiatrist in Province B for treatment recommendations, diagnosis, and medical history review.

4. A Psychiatry Assessment Consultation Report dated December 23, 2021. The psychiatrist noted that the appellant lived alone with no current employment or income. The appellant said that she did not qualify for income support and had no one to help her.

The referral noted that the appellant has PTSD but was also mis-diagnosed for various health concerns. The appellant was on several medications in the past for her mental health and did not find the medications helpful.

The appellant is "easily triggered and angry" and feels "on edge and always on guard." The appellant interprets the facial expressions of other people as negative towards her. The appellant stated that she rarely has suicidal thoughts and does not pay them any attention.

The appellant said that many bad things had happened to her. The "consistency in her life" is that she is "always edgy and uncomfortable to her core." The appellant has "constant rumination and self-judgment." She feels a "huge rage inside" and "if she let her rage build up, she feels she might hurt someone" but she currently had no specific violent thoughts.

The appellant's first contact with the mental health system was in early adolescence. She was asked questions and prescribed anti-depressant medication. In late adolescence the appellant was told that she had bipolar disorder. She felt happy for about a 6-month period but that was the only time she experienced an elevated mood.

The appellant has been off medications for the past seven years and saw a counsellor a few times. The appellant never attempted suicide but had strong suicidal thoughts in the past. The appellant denied self-harm but stated that she overeats. The appellant described a lifelong pattern of overeating and said that she is "not safe to exercise" as it makes her obsess about weight loss. The appellant's blood tests/lipid profile were normal.

The appellant said that she is somewhat agoraphobic, especially during the pandemic. She reported physical abuse and neglect in childhood. The appellant isolates herself "because she was brought up to believe that people are the enemy." The appellant was "disowned"

by her family at a young age and has always been single and lived alone.

The appellant rarely used recreational drugs or alcohol and denied any legal or gambling issues. During the interview, the appellant was neither depressed nor elated. Her affect was congruent; and her speech was coherent. The appellant's thought content was marked by rumination regarding anger and frustration. No psychotic elements were identified. Psychomotor activity was within normal limits.

The appellant was not irritable or disorganized during the interview but showed some elements of "splitting." The appellant's insight was partial, and her practical judgment was very basic. The psychiatrist wrote that the most likely diagnosis is borderline personality disorder.

The appellant did not appear to fulfill the criteria for post-traumatic stress disorder as those criteria are geared toward an acute trauma rather than a traumatic childhood. Axis IV showed severe financial stressors as well as occupational and residential instability. Axis V showed a Global Assessment of Functioning score of approximately 60 [out of 100].

The psychiatrist explained that medications are not the first-line treatment for borderline personality disorder. Psychotherapy is the recommended treatment. The psychiatrist suggested an ancillary medication that can be used as needed for moments of emotional dysregulation. Medications could also be added when the appellant feels depressed.

The psychiatrist acknowledged the appellant's difficulty in accessing therapy and recommended behavioural therapy workbooks. The appellant should get on the waitlist for group therapy (for personality disorders) as soon as possible.

Physical impairment

1. The submissions on appeal for a physical impairment include the chart notes from the doctor in Province B with the following entries:

- The appellant reported vertigo and hearing loss which the doctor treated. The appellant was referred to Audiology and tested in 2021. The doctor noted "normal hearing testing."
- The appellant was concerned about hair loss and skin problems and was referred to Dermatology. The doctor also noted a right shoulder issue for which an x-ray was ordered.
- In December 2021, the appellant continued to have "shooting pain" in her right shoulder. The pain was chronic ("has been years") but recently got worse and may

be caused by her work occupation. No specific injury was indicated but the appellant "had trouble lifting arms above her head." The appellant was receiving chiropractic treatment and physiotherapy. The doctor noted "right shoulder strain/impingement" with both "slightly limited" and "limited" rotation, as well as normal abduction. The doctor suggested conservative management with ice/heat, over-the-counter pain medication, and physiotherapy.

- In January 2022, the doctor diagnosed tendinopathy and frozen shoulder but noted that the right shoulder x-ray was normal. The doctor recommended an injection, and more physiotherapy. The appellant also complained of right knee and hip pain due to her work occupation. She can no longer work in her industry. The appellant reported difficulty sitting cross-legged and it was "difficult even sitting on the toilet." The appellant reported pain while driving as well. The doctor diagnosed "complete sprain of knee and leg."
- In March 2022, the doctor noted no abnormalities in the right hip and knee and no significant degenerative changes. The appellant declined an injection for her shoulder and had not yet received physiotherapy.
- In April 2022, the appellant's right shoulder issues continued: "constant ache, basically left-handed now, limited range of motion, sometimes can't eat using her right arm." There was a 2-month waiting list for physiotherapy.
- By May 2022, the appellant was willing to have an injection for her right shoulder issues. She was planning to attend a college program that autumn for students with prolonged disabilities. The doctor reported that the main disability is "right shoulder pain/calcific tendinitis" (in addition to borderline personality disorder). The appellant was doing exercises for her shoulder.
- In January 2023, the appellant reported that her hips have been bothering her, "feel tight when sitting." The doctor said that the pain is "likely muscular" and prescribed physiotherapy. The doctor noted that the appellant's x-ray from a year ago was normal.

The appellant also submitted the following reports that assessed a physical impairment:

2. An assessment report from a registered audiologist dated October 18, 2021. The appellant reported decreased hearing and a "broken speaker feeling" in her left ear. The assessment showed normal hearing in both ears and excellent word recognition/ability to repeat words. Audiology follow-up was not required. If symptoms persist, the appellant may want to consult a dentist, physiotherapist, etc. to determine if ear symptoms are related to neck or shoulder issues.

3. X-ray results (right shoulder) dated December 20, 2021. The appellant was referred for chronic right shoulder pain, limited internal rotation, and pain with impingement. The x-ray showed normal bone alignment and minimal/no joint narrowing. Radiographic findings were "concerning for calcific tendinitis."

4. A dermatology report dated December 21, 2021. The appellant was referred for a "one year history of hair loss which is getting worse." On investigation, the appellant's hair looked healthy. The hair loss could be due to stressful life events or underlying medical conditions such as iron deficiency. The appellant was prescribed shampoos and multi-vitamins for hair growth and strengthening. Blood work was recommended to rule out any underlying condition [other documentation said that the appellant's blood/lipid profile was normal].

5. Ultrasound results (right shoulder) dated January 5, 2022. Some tendons showed normal features while others had small to multiple calcifications. Overall findings indicated bursitis.

6. X-ray results (right hip and right knee) dated February 17, 2022. The appellant was referred due to chronic hip and knee pain. The right hip findings indicated no abnormalities or significant degenerative changes. The right knee findings indicated no significant degenerative changes, osteoarthritis, or acute abnormality.

7. Ultrasound results (shoulder injection) dated June 13, 2022. The appellant was referred due to chronic right shoulder pain, calcific tendinopathy, supraspinatus, bursitis, and impingement. The appellant's pain score before the injection was 6/10, and 2/10 afterwards. The injection was successful, but a dedicated rehabilitation program was recommended to optimise function. Additional ultrasound procedures may benefit further pain management if needed.

New Assessor Report, June 2024

In addition to the medical chart notes and various reports, the appellant provided an Assessor Report dated June 7, 2024, completed by a registered social worker employed by a British Columbia health authority. The social worker indicated two interviews with the appellant to complete the form as well as a review of Meditech and the appellant's medical record from Province B. The social worked assessed both physical and mental functioning as follows:

Functional skills

In Section C-2, the social worker checked "satisfactory" communication for one area (writing) and "poor" ability for speaking, reading, and hearing. The social worker explained that:

- the appellant is quite isolated, "90% of the time."
- The appellant struggles to find words – will respond in strange ways due to paranoia.
- She struggles with retaining information.
- She loses track of her thoughts; and
- She struggles with comprehension due to paranoia.

In Section C-3 - Mobility and Physical Ability, the social worker checked "continuous assistance from another person or unable" for one of the 6 functions listed on the form:

- walking outdoors (comment, "unable due to fear 90% of time").

The social worked checked "independent" for the remaining 5 functions:

- walking indoors (comment, "painful"). Walking indoors also "takes 2 times longer than typical."
- climbing stairs (comment, "painful;" also takes 2 times longer than typical).
- standing,
- lifting; and
- carrying and holding.

In section C-4, Cognitive and Emotional Functioning, the assessor is asked about the impact of a mental impairment on various functions. For the 14 areas listed, the social worker check marked the following impacts:

- major impact for 7 areas: bodily functions, emotion, impulse control, insight and judgment, attention/concentration, motivation, and language.
- moderate impact for 2 areas: executive and memory.

The social worker explained that:

- The appellant has a lot of anxiety around food (overeats, binges, or does not eat at all). The appellant also uses laxatives, "lack of regulation."
- The appellant has similar issues with sleep (sleeps too much or too little) and she lacks consistent hygiene.
- The appellant has issues with money management and impulse shopping.
- She experiences a lot of paranoia, "major isolation, shuts down over minor stressors. Lack of emotional regulation. Requires a lot of reminders."

The social worker checked “no impact” for 5 functions:
- consciousness,
- motor activity,
- psychotic symptoms,
- other neuropsychological problems; and
- other emotional or mental problems.

Daily living activities

In Section C-1, the social worker said that “borderline personality disorder – childhood trauma; depression/anxiety, and chronic muscle pain” impacts the appellant’s ability to manage daily living activities.

In Section D, the social worker indicated restrictions for all 8 daily living activities listed in the form:

Personal Care
- The appellant needs continuous assistance from another person with dressing, grooming, and bathing (comment, “doesn’t do 90-95% of time”).
- The appellant needs continuous assistance with regulating diet (comment, “fluctuates between binge eating and not eating”).

The appellant is independent with toileting and feeding self. She is independent with transfers (bed and chair) but these take 2 times longer (comment, “painful”).

Basic Housekeeping
- The appellant needs continuous assistance with laundry and basic housekeeping. These activities also take 3 times longer than typical (comment, “will neglect until out of options”).

Shopping
- The appellant needs continuous assistance with going to and from stores (which also takes 3 times longer); reading prices and labels, and making appropriate choices (comments, “unable 90% of time, struggles with prices due to anxiety, unable/impulsive, very anxiety inducing”).

The appellant is “independent” with paying for purchases and carrying purchases home.

Under Additional Comments for the above daily living activities, the social worker said that

the appellant "only leaves home for necessities – food and urgent appointments." Depression and the lack of emotional regulation "greatly impacts" daily living activities. The appellant "has very few relationships so lacks people able to provide support."

Meals

- The appellant needs continuous assistance with meal planning (comment, "paranoia impacts capacity, illogical planning").
- The appellant needs periodic assistance from another person with food preparation and cooking (comment, "50% of time").

The social worker checked "independent" for safe storage of food.

Pay Rent and Bills

- The appellant needs periodic assistance with banking (comment, "neglects due to anxiety").
- She requires continuous assistance with budgeting (comment, "lack of impulse control if has money").

The appellant is "independent" with paying rent and bills.

Medications

- The appellant needs continuous assistance with all areas: filling/refilling prescriptions, taking as directed, and safe handling and storage (comment, "refused due to paranoia").

Transportation

- The appellant needs continuous assistance with using public transportation (comment, "unable due to anxiety").
- She needs periodic assistance with using transit schedules and arranging transportation (comment, "unable 50% of time due to being overwhelmed").

The social worker checked "independent" for getting in and out of vehicle, but it takes the appellant 2 times longer (comment, "painful").

Under Additional Comments, the social worker said that the appellant neglects the above activities "due to lack of support system to provide assistance."

Social Functioning

The appellant needs continuous support/supervision in 4 of the 5 areas listed on the form:

- appropriate social decisions (comment, “avoids most social situations – hypervigilant”).
- able to develop and maintain relationships (comment, “unable to develop trust”).
- interacts appropriately with others (comment, “paranoia impacts understanding”).
- able to deal appropriately with unexpected demands (comment, “anxiety impacts capacity to make decisions – shuts down”).

The social worker checked “independent” for able to secure assistance from others (comment, “dependent on applicant’s perceptions”). The social worker checked “very disrupted functioning” for both immediate and extended social networks.

In the sections for comments (including the support required to maintain the appellant in the community and identification of any safety issues) the social worker wrote, “psychiatrist recommended psychotherapy and medication.” The appellant’s isolation “increases risk for increased paranoia and decompensation.”

Under Additional Information, the social worker noted that the appellant was on disability in Province B. The appellant has “a long history of mental health concerns since childhood – well documented.” The appellant has tried many different medications over the years and now refuses medication. Borderline personality disorder seems to be consistent with the appellant’s difficulties.

The social worker noted that C-PTSD and delusional disorder were also mentioned in the medical record. There is also a well-documented history of muscle and joint pain.

Need for Help

In Section B-1, the social worker checked that the appellant lives alone (comment, “was homeless, may have recently found rental”).

In Section E - Assistance provided by other people, the social worker checked “other” (comment, “sporadically accesses counselling at college or when able to afford it”).

The social worker did not provide any check marks or comments in the next part of Section E - Assistance provided through the use of assistive devices.

The social worker checked “no” the appellant does not have an assistance animal.

Testimony at the hearing

Appellant

In addition to argument the appellant added the following details about her circumstances:

- She took “brain medication” for 14 years that did not take away her symptoms but made her a “zombie” with “no thought processes.” She complied with all the treatment including new medications and increased dosages, but they never worked. She has “low trust” in medications and is reluctant to try any new ones. She is able to take Ativan for anxiety and a sleeping medication as needed because those medications are not for everyday use.
- She tried to get an appointment with a psychiatrist for a psilocybin prescription as she had read about “micro-doses from clinical trials.” She sees a “somatic therapist” currently with any money that she can spare.
- She can no longer work, “not even a simple job.” She was fired from two jobs due to her anxiety.
- She has managed to take two classes as that is the minimum required to get a student loan. She obtained a medical note so that she could get a loan with only a 2-course load. It is “not easy to go to school due to difficulty being around people” and with only two classes at a time “it will take forever to get any degree.”
- When she lived in Province B, a psychiatrist told her to apply for disability (the equivalent of PWD). In response to questions, the appellant said that she never received disability payments from Province B and she did not know why her doctor did not think she would qualify (“I do not remember that conversation”). The appellant explained that she did not initially accept her need for disability because she had been living alone and working since adolescence. She is applying for PWD now because her life has become “inoperable, not functioning.”

In response to further questions the appellant explained that:

- she filled out some of the Medical Report “but not all the way through.” The walk-in clinic doctor filled out the rest and ticked the boxes. The appellant does not think all the comments are her handwriting, but she did not have the form in front of her to

confirm which parts she filled out.

- When asked why the walk-in clinic doctor checked daily living activities as "independent" in the Assessor Report and wrote "independent living" on the form, the appellant explained that she is "independent" in the sense that she has "lived alone my whole life." She "stayed in bed all day" until it was time for the hearing. She only got up to use the bathroom and make a sandwich. She did not "have it in [her] to make coffee or tea or have a shower." She has worn the same clothes for the last two days.
- When asked if she attended the February 24, 2024 appointment with the psychiatrist [as mentioned in the Request for Reconsideration], the appellant explained that she missed the appointment because she forgot that British Columbia is in a different time zone. She did not have cell phone service and missed the calls to re-schedule the appointment. The psychiatrist "fired her" because she did not answer to confirm the appointment.
- She saw a social worker 2-3 times to fill out a new Assessor Report [submitted on appeal]. She also talked to the social worker "many times" on the phone and by email but does not have ongoing contact with them. The appellant has an appointment with a nurse practitioner in July for a "meet and greet" and to get a new Medical Report filled out if required.
- When asked if she is getting any help with daily living activities, the appellant explained that she does not have anyone helping her. She is managing on her own "as best she can" and does not use any device or assistance animal.

Ministry

At the hearing the ministry provided argument on the original decision and the new information but said she was not sure that PTSD was diagnosed in the additional medical reports. The ministry noted that the psychiatric assessment (December 23, 2021) said that PTSD was more relevant to an acute or short-term traumatic event.

The ministry acknowledged that the walk-in clinic doctor diagnosed PTSD in the original Medical Report and said that the ministry "is looking for a diagnosis by medical health professionals." The ministry accepts the diagnosis of borderline personality disorder as it was mentioned in records that date back to 2020.

In response to a question from the appellant, the ministry said that it would accept the Assessor Report from the social worker as a submission if the appellant were to complete a new PWD application in the future.

Admissibility - oral submissions

The panel finds that the appellant's testimony adds detail about her medical history, including mental health symptoms and their daily impact. The ministry provided clarification on its view of the appellant's diagnosis and how it treats new medical evidence.

The panel finds the testimony admissible under section 22(4) of the *Employment and Assistance Act* as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

In addition to evidence, both parties provided argument at the hearing. The panel will consider the arguments in Part F - Reasons.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Reconsideration Decision that said the appellant is not eligible for PWD designation was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. The panel's role is to determine whether the ministry was reasonable in finding that the following eligibility criteria in section 2 of the Act were not met:

- the appellant has a severe mental or physical impairment.
- the severe impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform daily living activities either continuously or periodically for extended periods; and
- as a result of restrictions caused by the impairment, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform daily living activities.

Analysis

PWD designation - generally

The legislation provides the Minister with the discretion to designate someone as a Person with Disabilities if all the requirements are met. In the ministry's view, PWD designation is for persons who have significant difficulty in performing regular self-care activities including social interaction and making decisions about personal activities, where a severe impairment is shown.

Some requirements must have an opinion from a professional, so it is reasonable to place significant weight on those opinions. The ministry found that two of the five requirements were met because the appellant is at least 18 years of age; a doctor has given the opinion that the impairment is likely to continue for at least two years.

The application form includes a self-report, so it is appropriate to place significant weight on evidence from the appellant unless there is a legitimate reason not to do so. The panel has reviewed the reasonableness of the ministry's determinations and exercise of discretion.

Severe 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 interpretation of the legislation. A medical practitioner's description of a condition as "severe" is not determinative on its own. The ministry must make this determination considering the relevant evidence and legal principles.

Restrictions to Daily living activities

A prescribed professional must provide an opinion that the applicant's impairment restricts the ability to perform daily living activities. The BC Supreme Court decision in *Hudson* v. *Employment and Assistance Appeal Tribunal* [2009 BCSC 1461] determined that at least two daily living activities must be restricted in a way that meets the requirements of the Act, and that **not all activities need to be restricted**.

The restrictions to daily living activities must be significant and caused by the impairment. "Significant" means that not being able to do daily 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 how often the restriction occurs and the nature and frequency of the help that is required.

The requirements for restrictions to daily living activities are set out in subsection 2(2)(b)(i) of the Act. Specific activities are listed in section 2(1) of the Regulation. The Medical Report and Assessor Report also list activities, and though they do not match the daily living activities in the Regulation exactly, they generally cover the same activities.

The Medical Report and Assessor Report give the professional the opportunity to provide additional details on the applicant's restrictions. **The inability to work and financial need are not covered by section 2 of the Act and are only relevant to the extent they impact daily living activities.**

Help Required

A prescribed professional must provide an opinion that the person needs help to perform the restricted daily living activities. This requirement is set out in subsection 2(2)(b)(ii) of

the Act. Under subsection 3 of the Act, "help" means needing an assistive device, the significant help or supervision of another person, or an assistance animal to perform daily living activities. An assistance device, defined in section 2(1) of the Act, is something designed to let the person perform restricted daily living activities.

Severe impairment

Appellant's position

The appellant's position is that her mental health conditions are severe because she is "inoperable" in any capacity required to take care of herself. The appellant said that she can understand why the ministry disagreed with her application for PWD given that the walk-in clinic doctor only saw her one time and did not review her full history from Province B. However, she has seen a social worker for a new assessment, and she hopes that her upcoming appointment with a nurse practitioner will provide better information for her application.

The appellant argued that her life "has been hard the whole time." She has done "everything she can to be successful in life" but has not yet found an effective treatment to take away her symptoms long term.

Ministry's position at the reconsideration

Mental impairment

The ministry's position is that the reconsideration decision was reasonable based on the information provided for the PWD application and request for reconsideration. The ministry argued that the appellant's mental health conditions do not severely impair her ability to function because the walk-in clinic doctor "did not develop an opinion based on a history of contact" and only met the appellant one time.

The ministry argued that the PWD application was also "problematic" because the appellant completed the section of the Medical Report regarding significant cognitive and emotional deficits. The ministry said that the appellant's information "does not constitute confirmation from your medical practitioner that in their opinion you have a severe mental impairment."

The ministry summarized the impacts to cognitive and emotional functioning reported in the Assessor Report but argued that the appellant's impairment is not severe because her ability to communicate was assessed as "satisfactory." The ministry argued that the mental

impairment is not severe because daily living activities requiring cognitive and social decisions were "independent."

Physical impairment

The ministry argued that the appellant does not have a severe physical impairment because the walk-in clinic doctor did not diagnose a physical condition and all physical functions were assessed as independent in the original Assessor Report. The ministry acknowledged that restrictions to lifting and sitting were noted in the Medical Report but argued that a severe impairment was not shown because the reason for the restrictions was not stated, and the appellant did not require any assistive devices or prostheses.

Ministry's position on appeal

Mental impairment

The ministry said that it only received the new evidence "yesterday" but it would have approved the PWD application had the information been received initially. The ministry's new position is that borderline personality disorder is "longstanding and ongoing" and has major impacts including poor communication, social isolation, and paranoia. The ministry was satisfied that a severe impairment is established on the additional evidence because significant impacts due to anxiety, depression, and trauma were outlined in medical history back to 2020.

Physical impairment

The ministry considered the evidence submitted on appeal but did not change its position regarding physical impairment. The ministry argued that a severe physical impairment was not established by the additional medical reports because although physical conditions were identified [shoulder/hip/knee pain] "most of the findings were normal." The ministry also noted that the new Assessor Report rated most physical functions as "independent."

Panel's Decision – severe impairment

Mental impairment

The panel finds that the ministry decision is not reasonable regarding a mental impairment. The information provided with the PWD application, viewed together with the extensive medical documentation submitted on appeal, establishes a severe impairment

of mental functioning for the following reasons:

Medical and Assessor Reports and appellant's self-report

In the Medical Report, the walk-in clinic doctor described the appellant's "constant anxious state" making it hard for her to cope with daily life and connect with people. The appellant has poor organization and is unable to maintain a job. While employability is not a factor for PWD eligibility, the appellant experiences daily anxiety which extends to all areas of her life, not only a job setting. The evidence is that the appellant is no longer employed and spends most of her days anxious and isolated at home when not taking part-time classes.

In the Medical and Assessor Reports, significant deficits and moderate-major impacts were check marked for more than half the cognitive/emotional functions listed on the forms. While the appellant filled in some of the information herself, the doctor signed both reports as containing "their findings and considered opinion." The panel therefore gives the checklist information some weight because although the walk-in clinic doctor met the appellant only once, their assessments are consistent with the appellant's self-reports of severe limitations in her daily functioning.

The appellant described "daily turmoil," a high level of anxiety, unclear thinking, and social isolation. The appellant said that she is "always in a state of fight or flight" with over-eating and picking at her skin as additional symptoms of anxiety.

Medical chart notes and mental health reports – Province B

The chart notes and mental health assessments from Province B are additional evidence of a severe mental impairment because they describe the appellant's continuous struggles in her daily life:

- The appellant has "complex mental health issues" including anxiety since at least 2020, and post-traumatic stress symptoms that make her hyper-vigilant and distrustful of others. The appellant was taken to the hospital in 2022 for symptoms of delusional disorder (persecutory type) and borderline personality disorder. The appellant felt that people had taken over her email and identity to the point where she had to destroy her phone.
- The doctor as well as the psychiatrist in Province B described similar symptoms back to 2021. The appellant is "always on edge and on guard;" and "easily triggered and angry." The appellant "has constant rumination and self-judgment." The appellant's anxiety is also related to her diet with a long history of overeating or binge eating.

- The appellant has an unstable history of employment and housing with periods of homelessness/residing in a shelter after being fired from jobs or unable to work for mental health reasons. While employability is not a criterion for PWD designation, the appellant's work history is further evidence of her struggles with anxiety and difficulty relating to people.
- The appellant has not found relief from medications, other than temporary relief from Ativan and sleeping pills which can only be used sparingly. The appellant has had counselling off and on since adolescence for depression and anxiety, but she had difficulty obtaining the correct diagnosis. The appellant struggles to attend appointments as she is afraid to go out and be around people.

New Assessor Report, June 2024

The Assessor Report, completed by the social worker in British Columbia, is the most recent evidence that establishes a severe mental impairment. The social worker checked similar impacts as those reported by the walk-in clinic doctor. Both assessors agree, for example, that the appellant's mental health conditions have a major impact on emotion, attention/concentration, and motivation. The impact for insight/judgment was also moderate-major across both Assessor Reports.

The social worker reported major impacts for impulse control ("overeats and binge eats") consistent with the appellant's self-reported "eating disorder." The impact for memory was moderate-major across the two Assessor Reports. The social worker in British Columbia also indicated difficulties with communication due to anxiety and paranoia, consistent with the appellant's descriptions of her problems. The appellant is mistrustful of others and misinterprets how they look at her as "always negative."

Summary – severe mental impairment

The submissions in their entirety show widespread functional restrictions which have continued for the past 5 years if not since childhood. In the panel's view, there is enough evidence on the cognitive and emotional impact of chronic mental health conditions and lack of success with treatment to confirm a severe mental impairment.

The appellant has significant restrictions with many cognitive and emotional functions due to her anxiety, personality disorder, and other mental health concerns. Even when the appellant's outlook improved somewhat while attending school, she continued to have difficulty being around people, taking care of herself properly, and engaging in daily life.

The ministry said that the mental impairment is not severe because the walk-in clinic doctor assessed daily living activities as largely independent. The panel gives more weight to the information on functional restrictions because daily living activities are assessed as a separate criterion under section 2(2) the Act. In any event, the evidence on appeal described restrictions to most decision-making activities. In addition, on review of the new evidence the ministry changed its position and accepts that a severe mental impairment has now been shown.

Physical impairment

The panel finds that the ministry was reasonable to conclude that a severe physical impairment was not shown in the PWD application or appeal submissions. Restrictions to walking and sitting were check marked in the Medical Report but the walk-in clinic doctor did not diagnose a physical impairment. Furthermore, in both the Medical and Assessor Reports the appellant was “independent” with all physical abilities.

The medical chart notes/imaging reports from Province B say that the appellant was diagnosed with “tendinopathy and frozen shoulder” in 2022 due to chronic right shoulder pain/impingement and limited rotation. X-ray and ultrasound imaging in 2021/2022 revealed calcific tendinitis and bursitis in the right shoulder with some normal features as well as disease indicators. The appellant also reported right knee and hip pain but imaging results for those areas were unremarkable.

The appellant described difficulty lifting her arms above her head, using her right arm, sitting, and driving, due to “constant aching” but the doctor prescribed conservative management only, including physiotherapy, ice/heat, over-the-counter pain medication, and an injection for the shoulder that was successful. There was no further update on the appellant’s shoulder problem and no recommendation for any assistive devices for the impairment.

The appellant also had audiology and dermatology assessments for hearing symptoms and hair loss, but the findings were normal with no underlying physical condition. The social worker in the new Assessor Report noted difficulties with walking, climbing stairs, and transfers (bed and chair) due to “chronic muscle pain.” The social worker said that these things take the appellant twice as long which suggests a moderate, rather than a severe restriction.

On review of the new evidence, the ministry noted that most physical findings were normal and none of the professionals indicated the need for an assistive device. The information in its entirety shows that the appellant is independent with all physical

functions despite chronic muscle pain. A severe *physical* impairment has not been established on the evidence.

Conclusion – severe impairment

The requirement for a severe impairment is met based on the appellant's mental health conditions. The Act does not require the person to have both a mental and a physical impairment. The information submitted by the appellant (especially the medical chart notes/mental health reports from Province B and the Assessor Report from the social worker in British Columbia) establishes a severe mental impairment. The requirement for a severe impairment in section 2(2) of the Act is therefore met.

Restrictions to daily living activities

Appellant's position

The appellant's position is that her daily living activities are significantly and continuously restricted by her mental health conditions because she is "traumatized – seemingly continuously;" always on "high alert;" anxious "in any task," and unable to properly care for herself financially or hygienically.

The appellant argued that her daily living activities are significantly restricted because she can only manage errands and appointments "when there is no other option." She feels alienated and isolated from other people; is anxious in community and social settings and has difficulty driving due to anxiety.

Ministry's position at the reconsideration

The ministry's position is that there was not enough evidence from the walk-in clinic doctor about restrictions to daily living activities. The ministry acknowledged periodic restrictions with several activities in the Medical Report but said it could not determine that the restrictions were significant for extended periods because the doctor noted "independent living" in the Assessor Report.

Ministry's position on appeal

On review of the additional evidence from prescribed professionals, especially the new Assessor Report, the ministry changed its position and said that it would have approved the PWD application had the information been provided initially.

Panel's Decision - daily living activities

The panel finds that the ministry's decision is not reasonable based on the additional evidence from professionals in Province B and the new Assessor Report from the social worker in British Columbia. Additional details from the appellant support the significant and continuous restrictions to daily living activities that are outlined in the appeal submissions.

Medical and Assessor Reports

The panel acknowledges that the walk-in clinic doctor, in the Medical Report, assessed personal self-care, use of transportation, management of finances, and social functioning as periodically restricted but did not provide enough detail to say whether the periodic restrictions were for extended periods as required by the Act. The doctor provided inconsistent information within the Medical Report. On the one hand, they said that the appellant's anxiety "comes and goes" but at the same time, the appellant experiences a "constant anxious state making it hard to cope."

The Assessor Report from the walk-in clinic doctor did not provide clarification because information about restrictions was largely inconsistent with the Medical Report. In the Assessor Report, personal care, pay rent and bills, and transportation were assessed as independent; whereas, in the Medical Report these activities were periodically restricted.

There was some consistency between the Medical and Assessor Reports for social functioning as periodic restrictions were indicated in both reports. The appellant required periodic support to develop and maintain relationships, but the nature and frequency of the support was not described. The walk-in clinic doctor was also "unsure" whether the appellant needs support with social decisions.

The ministry was therefore reasonable to find, at the time of the reconsideration, that there was not enough evidence from a prescribed professional to confirm that daily living activities were significantly restricted. The doctor did not confirm that periodic restrictions to social functioning and other daily living activities were for extended periods as required by the Act and there was no explanation for the inconsistent assessments between the two reports except the walk-in clinic doctor only met the appellant once and was not familiar with her medical history.

Medical chart notes and mental health reports – Province B

The chart notes describe emotional symptoms that interfere with the appellant's daily living activities. Due to a personality disorder, anxiety/depression, post-traumatic stress symptoms, and delusional disorder (persecutory type) the appellant has a lot of difficulty going out and interacting with people. The appellant angers easily; has gotten into conflicts with shelter staff and is mistrustful of people in general and always on "high alert."

The appellant has not been able to manage her medications because she mistrusts their effectiveness even though the doctor encouraged her repeatedly to keep trying to find one that helps her symptoms. The appellant feels agoraphobic, has difficulty going out, and is anxious when driving. The appellant has a hard time regulating her diet because she overeats or binge eats, which causes her further anxiety.

New Assessor Report, June 2024

The Assessor Report from the social worker in British Columbia provides the most recent and detailed evidence on restrictions to daily living activities. Most activities are restricted continuously or for extended periods by "borderline personality disorder – childhood trauma, depression and anxiety" because the assessments indicate that:

- The appellant does not attend to her personal care "90-95% of the time." This is supported by the appellant's testimony indicating that she stays in bed during the day and doesn't shower or change her clothes.
- The appellant neglects laundry and basic housekeeping until "she runs out of options." The appellant has challenges with emotional regulation which "greatly impacts her ability to complete daily living activities."
- The appellant is too anxious to go to the store "most of the time." Her anxiety interferes with reading prices and making appropriate choices ("impulse buying"). Paying for purchases "is very anxiety-inducing."
- The appellant is "illogical" with her meal planning due to paranoia and anxiety and she is unable to prepare food or cook "50% of the time." She overeats or binge eats at other times. Meal preparation is therefore restricted for extended periods.
- The appellant neglects going to the bank due to anxiety and "lacks impulse control" if she has money. The appellant reported that she neglects errands until absolutely necessary, such as when she has an urgent appointment or needs foods.
- The appellant refuses to fill prescriptions and take medications "due to paranoia."
- The appellant is unable to use public transit due to anxiety. She cannot arrange transportation "50% of the time" because she feels overwhelmed.
- The appellant is very socially isolated with few relationships and the lack of a

support system. The appellant reported a history of conflict and victimization by others including "unfair eviction" by her landlord and estrangement from family and friends.
- The appellant is "anxious and hyper-vigilant in most social situations" and paranoia impacts her ability to understand others. The appellant "shuts down" when faced with unexpected demands, "even over minor stressors."

The panel gives significant weight to the assessments by the social worker in British Columbia. Not only are the assessments very detailed and thorough, but the social worker also met with the appellant twice and communicated with her several times by phone or email.

Summary – restrictions to daily living activities

The additional evidence from the appellant's doctors in Province B and the social worker in British Columbia ("prescribed professionals under the Act) show that activities that involve making decisions about personal activities, care or finances and relating to others are significantly restricted either continuously or periodically for extended periods. The ministry decision is not reasonable because the criteria under the Act for restrictions to daily living activities is now met.

Help with daily living activities

Appellant's position

The appellant's position is that she needs help with daily living activities, but she has no support system because she is completely alone and isolated with no family or friends or partner to help her. She has seen counsellors and psychiatrists over the years but had difficulty maintaining the appointment schedule or qualifying for ongoing service. The appellant argued that the support she has had from doctors and other professionals was often not helpful because they "mis-diagnosed" her condition and "pushed medications" that never worked but left her "walking like a zombie."

Ministry's position at the reconsideration

The ministry's position is that it could not be determined that significant help is required as it had not been established that daily living activities were significantly restricted. The ministry argued that the appellant's information focused on her ability to function in a work environment, but employability is not a factor when determining PWD eligibility.

Ministry's position on appeal

On review of the additional evidence, the ministry accepted that the appellant needs help and support from other people to manage her daily life because the information provided confirmed restrictions to daily living activities.

Panel's decision - help with daily living activities

The panel finds that the ministry's decision was not reasonable because the evidence, viewed in its entirety, confirms that the appellant's daily living activities are significantly restricted to the point where she needs a lot of help from other people to manage her daily life. Significant restrictions to daily living activities are a precondition under the Act for needing help. With continuous restrictions largely established by the additional evidence, the panel can consider the specific help that the appellant requires.

Medical and Assessor Reports

In the PWD application, the walk-in clinic doctor did not detail what help the appellant requires. In the Assessor Report, the doctor said that "welfare" helps the appellant with daily living activities but wrote "unknown" when prompted for further comments. The doctor noted that the appellant is "on her own," and the appellant explained that the doctor's comment regarding "independent living" meant that the appellant lives alone without help, but she does need help nonetheless.

Medical chart notes and mental health reports – Province B

- The chart notes and mental health assessment from the professionals in Province B consistently state that the appellant is alone and isolated without help or support.
- The professionals agreed that the appellant requires counselling, psychotherapy, and/or medication to help manage her daily challenges.

New Assessor Report, June 2024

- The social worker in British Columbia emphasized that the appellant requires a lot of support from medical and mental health professionals to regulate her emotions and control her anxiety so that she can manage her daily living activities.
- The appellant "requires a lot of reminders" over hygiene issues, money management, and impulse shopping.
- The appellant needs psychotherapy and medication to help improve her social functioning because "isolation raises the risk for increased paranoia and

decompensation."
- Daily living activities are neglected due to the appellant's "lack of a support system to provide assistance."

Summary – help with daily living activities

The panel therefore finds that the requirement for help is met under section 2(2)(b) of the Act. Although the appellant is alone and isolated without people to help her, she requires the support of mental health professionals and a new primary care provider (nurse practitioner referral) to control her anxiety symptoms and improve her social and emotional functioning so that she can make sound decisions about personal care, finances, appointments/errands, healthy nutrition, and other daily living activities.

Conclusion

The panel finds that the Reconsideration Decision is not reasonably supported by the evidence. The record with the original medical reports and additional medical evidence, with further details from the appellant, confirms that the appellant meets all 5 requirements for PWD designation under the Act. She is at least 18 years old, and her mental impairment is likely to continue for at least two more years. She has a severe mental impairment that restricts her daily living activities (mostly continuously). She needs significant help from other people to manage her daily life.

The additional submissions on appeal especially show that:

- The appellant has a severe mental impairment due to a personality disorder, anxiety and depression, delusional disorder (persecutory type), and trauma-related factors. These conditions impact the appellant's ability to regulate emotions, relax her mind, communicate and relate to others, organize her daily life, and go out in the community.
- The severe mental impairment significantly restricts daily living activities as confirmed by prescribed professionals. The appellant is socially isolated and spends most of her time at home alone where she neglects her personal care; and either doesn't prepare full meals or binge eats to try and manage her anxiety.
- The appellant lacks a support system but requires significant help from others to manage her daily living activities. She especially needs counselling and psychotherapy as well as regular medical support from a family doctor or nurse practitioner.

The panel rescinds the reconsideration decision and refers the panel decision to the minister for a decision on the amount of disability assistance the appellant may receive. The appellant is successful in her appeal.

Schedule – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

2 (1) In this section:
"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;
"daily living activity" has the prescribed meaning;
"prescribed professional" has the prescribed meaning.
(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person is in a prescribed class of persons or that the person has a severe mental or physical impairment that

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

Employment and Assistance for Persons with Disabilities Regulation

Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

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

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self-care;

(viii) manage personal medication, and

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

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

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

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

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

(i) medical practitioner,

(ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner,

APPEAL NUMBER 2024-0062

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 Margaret Koren	
Signature of Chair	Date (Year/Month/Day) 2024/07/18

Print Name Julie Iuvancigh	
Signature of Member	Date (Year/Month/Day) 2024/07/18
Print Name Joseph Rodgers	
Signature of Member	Date (Year/Month/Day) 2024/07/18