Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction ("Ministry") decision dated May 27, 2024, denying persons with disabilities ("PWD") designation.

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

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

The Ministry found the Appellant was not one of the prescribed classes of persons eligible for PWD 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"), s. 2
Employment and Assistance for Persons with Disabilities Regulation ("Regulation"), s. 2
Employment and Assistance Act, s. 22(4)

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

Part E – Summary of Facts

Evidence Before the Ministry at Reconsideration:

The information the Ministry had at the time of the decision included:
- Medical Report completed by a Doctor
- Assessor Report completed by a Social Worker
- Appellant's Self-Report
- Appellant's written statement in his Request for Reconsideration.

Medical Report:

The Doctor stated that the Appellant has been their patient since February 2023, and they have seen the Appellant between 2 and 10 times in the past 12 months.

Diagnosis:
The Doctor provides diagnoses of chronic obstructive pulmonary disorder (COPD) and anxiety/depression.

Health History:
The Doctor states:
- "COPD affects patient's physical ability and stamina."
- "The patient has difficulties with walking, climbing stairs and all activities required for daily life."
- "The mood disorder affects the patient's ability to communicate with others, his memory and cognition."

They indicate that the Appellant does not require any prostheses or aids for their impairment.

Functional Skills:
The Doctor indicates that the Appellant can:
- Walk 1 to 2 blocks unaided on a flat surface
- Climb 5+ steps unaided
- Lift 2 to 7 kilograms.

The Doctor indicates "unknown" in answer to the question "How long can this person remain seated?" The Doctor indicates that the Appellant has no difficulties with communication.

They indicate that the Appellant has significant deficits with cognitive and emotional function in the areas of executive function, emotional disturbance, motivation and impulse control. The Doctor comments: "The patient has a mood disorder and his mood is sometimes is [sic] severly

[sic] low. When this happens, the patient becomes unmotivated fatigued and lose [sic] his ability to focus, plan and effectively communicating [sic] with others."

Daily Living Activities:
The Doctor indicates that the Appellant's impairment directly restricts his ability to perform daily living activities, with periodic restrictions in:

- Personal self care
- Meal preparation
- Management of medications
- Basic housework
- Daily shopping
- Management of finances.

They indicate no restrictions in mobility inside and outside the home or use of transportation.

The Doctor states: "As explained above. The patient's ability to perform and conduct daily living activities depends on his mood status." In answer to the question about what assistance the Appellant needs with daily living activities, the Doctor states "none."

Assessor Report:

The Social Worker states that, at the time of completing the report they have known the Appellant for one week and this is their first contact with the Appellant.

Mental or Physical Impairment:
The Social Worker states that the Appellant's mental or physical impairments are anxiety and depression, COPD and "dizziness and collapsing – further testing is needed."

Ability to Communicate:
They indicate that the Appellant's ability to communicate is satisfactory, adding that the Appellant's "ability to communicate when he is in pain or out of breath is not good, however he is able to get his needs met."

Mobility and Physical Ability:
The Social Worker indicates that the Appellant takes significantly longer than typical for all listed areas: walking indoors, walking outdoors, climbing stairs, standing, lifting, carrying and holding." They explain, "COPD impacts physical exertion. Climbing stairs takes longer. Back hurts after a while if standing too long."

Cognitive and Emotional Functioning:
The Social Worker indicates that the Appellant's mental impairment has a major impact on:

- Emotion
- Attention/concentration
- Motivation
- Motor activity.

They indicate moderate impact on:

- Bodily functions
- Consciousness
- Impulse control
- Executive function
- Memory.

They indicate minimal impact on:

- Insight and judgement
- Other neurological problems (unspecified)
- Other emotional or mental problems (unspecified).

They comment that the Appellant said that "when he feels extremely depressed he lacks motivation and will not leave his bed at times. Attention/concentration is also impacted, especially his memory (short-term)."

Daily Living Activities:

The Social Worker indicates that the Appellant "takes significantly longer than typical" for:

- Personal Care (all listed activities): "[The Appellant] stated it takes him longer to get up and address his personal care. 30 mins. longer."
- Basic Housekeeping (all listed activities): "Laundry is done 1x week, housekeeping does not get done when depressed."
- Shopping (going to and from stores, carrying purchases home): "Go to and from stores takes significantly longer due to physical exertion."
- Meals (all listed activities): "Cooking and food prep takes around 30 mins. longer due to physical strength & lack of motivation."
- Transportation (getting in and out of a vehicle): "physically takes longer to get in & out of vehicle."

They also state that:

- the Appellant has fainting and dizzy spells, without warning.
- The Appellant "has to walk slower, be aware of his surroundings to avoid injuries if he faints. He also relies on his friend to take him to his medical [appointments]."
- The Appellant's "ability to cook & prepare food is based around his motivation. When depressed [the Appellant] said he doesn't eat much, nor does he feel like cooking."

The Social Worker indicates that the Appellant is independent in Social Functioning, although he has marginal functioning with his immediate and extended social networks.

Assistance Provided for Applicant:
The Social Worker indicates that help required for daily living activities is provided by friends and health authority professionals, stating that the Appellant "relies heavily on the assistance of his landlord/friend." In answer to the question about use of assistive devices, they indicate that the Appellant uses an inhaler and will eventually require a wheelchair when COPD increases.

Additional Information:
The Social Worker states:

- "The first hour of [the Appellant's] morning is spent coughing, he takes some time to get out of bed to do his daily living activities. His dizziness & fainting spells will occur out of the blue, so that produces a lot of anxiety. Prior to getting on antidepressants [the Appellant] was very angry and easily triggered. Now he is somewhat settled. However the unknown future of his dizziness/fainting condition is weighing heavy on him and inhibiting him to live a full life."

Self Report:

The Appellant states:

- His disabilities are fainting spells (passing out for no apparent reason), COPD and chronic back pain.
- When he was 26, he "popped" three lower discs.
- He blacks out three to four times a week without warning.
- Doctors have not been able to figure out what is wrong.
- Most days he has trouble walking 100 feet from his room to the house "due to running out of breath and my heart pounding."
- Some days he spends "the first hour or so coughing like crazy almost non-stop."
- Making his bed is difficult because he runs out of breath.

Request for Reconsideration:

The Appellant provided a written statement with his Request for Reconsideration, stating:

- He cannot drive any more due to dizziness and fainting spells, so his landlord takes him to and from all of his appointments. He needs a ride to appointments 100% of the time.
- The assistance he needs walking indoors, when he is out of breath due to COPD, is to be able to sit down when he needs to, and he often needs to.
- He needs handrails when walking upstairs.
- Walking up a flight of stairs is extremely difficult as he is out of breath, and he needs to take his time because he is out of breath.

- It takes him “much longer”, “at least up to an hour longer”, to walk outdoors because he “cannot breathe as well as a healthy person”.
- He does not walk outside very often because he cannot breathe well most days.
- Lifting, carrying and holding are difficult because he is “not as strong as I once was”. He relies on a friend to help him carry grocery bags and uses a motorized scooter in the grocery store if one is available.
- “If these supports were not there, I would be unable to get food and my basic needs as I struggle to breathe while walking around the grocery store. It would not get done.”
- Depression affects him most days, but some days are worse.
- “When I am feeling at my lowest, I really do not get out of bed. Out of a week, my low days are usually 4 of the 7 days.”
- COPD affects his mental health, as he realizes he will have difficulty breathing all day, every day.
- Anxiety prevents him from engaging with others in a social setting. He has one friend who helps him.
- He stays home most days because he feels anxious and depressed.
- He needs his friend’s help to cook, clean and do laundry, because if he does those things on his own it takes him much longer than a healthy person.
- On the days he is depressed he does not eat well.

Notice of Appeal:

The Appellant provided an additional written statement with his Notice of Appeal, stating:

- He cannot walk to the bathroom without taking breaks.
- He has not been able to walk a block in a few years.
- Walking up more than three steps is almost impossible.
- If not for his landlord he would not get any shopping done, and he needs to use a motorized shopping cart.
- A heart specialist is investigating his fainting spells but has not given him any results.
- He has been referred to a seizure disorder and general neurology specialist, again with no results.

Additional Evidence:

Appellant:

At the hearing, the Appellant said:

- He does not think the Social Worker’s evidence was given enough weight, because he has seen the Social Worker for more time in total than he has seen the Doctor.

- He sees the Doctor for 5 to 10 minutes each visit, but he sees the Social Worker for an hour and a half each time.
- He cannot walk 10 feet without losing his breath.

In answer to questions from the Panel, the Appellant stated:

- The Doctor did not ask him how far he could walk, when the Doctor filled out the Medical Report.
- He saw the heart specialist a year ago and has spoken to the neurologist once on the phone, but it is difficult to see them.
- He has told the Doctor about the fainting spells, which began about eight years ago.
- He has seen the Doctor about six times in the last year.
- When he is having a bad day due to depression, which is four out of seven days a week, he does not want to get out of bed. On a typical "bad day", when he wakes up, he lies in bed for a couple of hours, then may watch television, but doesn't feel like doing much of anything.
- He lives in a shed and has to walk 80 feet to the house to use the bathroom, then another 20 feet inside the house. On a bad day for COPD, which would be 3 to 5 days a week, he has to stop twice, for between 30 seconds and a couple of minutes, to catch his breath because he is huffing and puffing.

Admissibility of Additional Evidence:

The Ministry did not object to the admissibility of the additional written and oral evidence of the Appellant. The additional evidence provides further information about the Appellant's mental and physical impairments and his ability to perform daily living activities. The Panel finds that the additional evidence is reasonably required for the full and fair disclosure of all matters in the appeal. Therefore, the Panel finds that the additional evidence is admissible under the Employment and Assistance Act, s. 22(4).

Part F – Reasons for Panel Decision

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

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

Appellant's Position:

The Appellant says that he meets the criteria for PWD designation. He maintains that he has both severe physical and severe mental impairments. The Appellant says that COPD limits his ability to walk, climb stairs, lift and carry, and severely impairs his ability to perform daily living activities. He says that he cannot carry out most activities without the help of another person.

The Appellant also says that, due to depression and anxiety, his mood is so low that more than half the time he feels like staying in bed all day.

He recognizes that the Medical Report contains contradictions but says that the Ministry has not given enough weight to the Assessor Report. He says that the Social Worker knows his situation better, because he has spent more time with the Social Worker than with the Doctor, in total, because of the different lengths of the appointments.

Ministry Position:

Physical Impairment:
The Ministry maintains that the evidence establishes a mild to moderate physical impairment. They say that the Doctor's statements about the Appellant's ability to walk, climb, lift and carry do not indicate a severe impairment. They also note that the Appellant does not need any assistive devices for a physical impairment. While the Social Worker says, under the heading Mobility and Physical Ability, that the Appellant takes significantly longer than typical, they do not say how much longer the Appellant takes, which is not enough to show a severe impairment. As there is no medical information to explain why the Appellant has fainting and dizzy spells, the Ministry says it cannot determine the severity of the condition.

Mental Impairment:

The Ministry acknowledges that the Appellant has a mood disorder with cognitive and emotional deficits and major impacts to many areas of daily living. However, the Ministry says that, while the Doctor says the Appellant's mood is sometimes severely low, the Doctor does not explain the severity or the frequency of the low mood. Similarly, the Social Worker does not explain the frequency or duration of episodes of low mood, or how it affects daily living activities. The Ministry notes that, according to the Social Worker, the Appellant can independently complete all aspects of Social Functioning. The Ministry also says that, while the Appellant says that he has a severely low mood 4 days out of 7, "without confirmation from the medical practitioner of the frequency and severity of the severely low periods and no details provided on the assistance needed with [daily living activities]", they cannot conclude that the Appellant has a severe mental impairment.

Daily Living Activities:

The Ministry says that, while the Doctor does indicate periodic restrictions in the Appellant's ability to perform daily living activities due to the mood disorder, the Doctor does not explain the frequency and duration of the restrictions, and they indicate that the Appellant does not need any assistance. The Ministry says there are inconsistencies between the Medical and Assessor Reports, and neither the Doctor nor the Social Worker provide enough details about frequency, duration and severity of restrictions in daily living activities. The Ministry also gives greater weight to the information provided by the Doctor because the Doctor has known the Appellant longer and says that the Doctor does not report significant restrictions with daily living activities, or a need for any assistance.

Help Required:

The Ministry says that, according to the Doctor, the Appellant does not require assistive devices, significant help from another person, or the services of an assistance animal. The Ministry argues that, although the Social Worker reports that the Appellant relies significantly on others for help with daily living activities, there is not enough evidence to show that the Appellant needs significant help of another person for daily living activities. The Ministry also says that, as the information provided does not indicate direct and significant restrictions in daily living activities, it also cannot determine that the Appellant needs significant help with restricted activities.

<u>Majority Panel Decision:</u>

PWD Designation – Generally

The legislation provides the Ministry with the discretion to designate someone as a PWD if the requirements are met. In the Panel's view, PWD designation is for persons who have significant difficulty in performing regular self-care activities.

Some requirements for PWD designation must have an opinion from a professional, and it is reasonable to place significant weight on these opinions. The application form includes a Self Report. It is also appropriate to place significant weight on the Self Report and evidence from the Appellant, unless there is a legitimate reason not to do so.

The Panel will review the reasonableness of the Minister's determinations and exercise of discretion.

Medical and Assessor Reports:

Under s. 2(2) of the Act, a medical practitioner or nurse practitioner must provide the opinion that an impairment is likely to continue for at least two years. The Doctor confirmed that both COPD and depression/anxiety were likely to continue for at least two years.

Section 2(2) also requires that a "prescribed professional" must provide evidence that a severe mental or physical impairment directly and significantly restricts the person's ability to perform daily living activities. The definition of "prescribed professional" includes a medical practitioner and a social worker.

At Reconsideration, the Ministry gave greater weight to the information from the Doctor because the Doctor had known the Appellant longer. At the hearing, the Appellant argued that the Ministry should have given greater weight to the information from the Social Worker, because, although he had been a patient of the Doctor for a year, the Appellant had spent more time in total with the Social Worker. He said that he had seen the Doctor about six times, for appointments lasting between 5 and 10 minutes each, whereas he spent an hour and a half with the Social Worker at each appointment.

In light of the additional evidence of the Appellant about the length of time he spent with each prescribed professional, the Majority Panel finds that, in the Appellant's circumstances, it is not reasonable to place more weight on the information provided by the Doctor because of the length of time he has known the Appellant. The Majority Panel notes that PWD designation will be based on the Appellant's current level of impairment and ability to function, and the Majority Panel finds it is not reasonable for the Ministry to prefer the evidence of the Doctor based solely on the length of time the Doctor has known the Appellant. The Majority Panel places significant weight on the evidence of the Social Worker, who spent more time with the Appellant, particularly because the Doctor's Medical Report contains internal contradictions, and leaves out information. Specifically, the Doctor:

- does not mention the Appellant's frequent fainting and dizzy spells, despite having referred the Appellant to a cardiologist and a neurologist for further investigation;

- states that the appellant "has difficulties with walking, climbing stairs and all activities required for daily life" due to COPD, but then ticks boxes indicating that the Appellant is not restricted in mobility inside and outside the home, and indicates periodic restrictions related only to the mood disorder.

Severe Mental or Physical Impairment

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

A prescribed practitioner's description of a condition as "severe" is not determinative. The Minister must make this determination considering the relevant evidence and legal principles.

1. *Physical Impairment:*

The Majority Panel finds that the Ministry was not reasonable in its determination that the Appellant's physical impairment is mild to moderate rather than severe.

At Reconsideration, the Ministry gave greater weight to the evidence of the Doctor in the Medical Report, because the Doctor had known the Appellant longer. In the Ministry's view, the Doctor did not report a severe physical impairment and stated that the Appellant did not require assistance with daily living activities. As stated above, in the Appellant's circumstances, the Majority Panel finds that, given the time spent with each prescribed practitioner, the length of time the Doctor has known the Appellant does not make his evidence more reliable or more informed than that of the Social Worker. Both the Doctor and the Social Worker are prescribed professionals. The Doctor has provided the medical diagnoses, and the impairments set out by the Social Worker are consistent with the Doctor's diagnoses.

At Reconsideration, the Ministry accepted that the Appellant experiences fainting spells and dizziness when it determined a mild to moderate physical impairment. The Ministry stated that it could not "assess the full impact of the fainting spells" because they were not reported by a medical practitioner. At the hearing, the Ministry stated that it could not determine the severity of the fainting spells because there was no medical information to explain why the Appellant was fainting. The Majority Panel notes that it is not necessary to have a diagnosis of the cause of fainting spells, to determine a severe physical or mental impairment. However, the Doctor has not mentioned fainting and dizziness in the Medical Report, and therefore the Majority Panel gives less weight to that medical condition as a symptom of impairment. The Social Worker

cannot diagnose a medical condition, and while the Appellant's evidence can provide more detail about the Doctor's evidence of impairment, the Appellant's evidence on its own cannot establish a symptom of impairment, without confirmation from the Doctor.

The Majority Panel has reviewed the whole of the evidence, including the additional evidence of the Appellant at the hearing. As the Ministry and the Appellant noted, the Medical Report contains inconsistencies. The Doctor states that COPD affects the Appellant's physical ability and stamina, and that the Appellant "has difficulties with walking, climbing stairs and all activities required for daily life." While the Doctor ticked a box to indicate that the Appellant can walk 1 to 2 blocks unaided, the Appellant stated that the Doctor did not ask him how far he could walk. Therefore, the Majority Panel places greater weight on the clear statement of the Doctor about difficulties with mobility, the consistent evidence of the Social Worker, and the additional details provided by the Appellant. The Social Worker reports that COPD impacts the Appellant's ability to walk indoors and outdoors, climb stairs and exert himself, and that it takes the Appellant significantly longer than typical to perform those activities. The Appellant has provided additional details about his difficulties with walking, stating that, for example, he could not walk continuously for 100 feet, from the shed where he lives, to the bathroom in the main house. He said that would have to stop at least twice, from 30 seconds to a couple of minutes, to catch his breath, and he would be "huffing and puffing".

The Social Worker and the Appellant also provide more detail about the effects of COPD. The Appellant explains that on "bad days" he coughs non-stop for an hour in the morning, and he estimated that three to five days a week are "bad days". He has difficulty making his bed because he runs out of breath. He takes longer climbing stairs, using a handrail, walking slowly, avoiding stairs and taking an elevator if possible. He does not walk outside often because he cannot breathe well. He says he needs the help of a friend to do his grocery shopping because he struggles to breathe walking around the store.

In the Medical Report, the Doctor completed the section about daily living activities, indicating periodic restrictions in many areas, but not in mobility inside and outside the home, or use of transportation. The Doctor goes on to explain that the Appellant's ability to perform daily living activities "depends on his mood status." There is no mention in this section of restrictions due to COPD, but in the Health History section of the form, the Doctor has clearly stated that the Appellant has difficulties with daily living activities and mobility due to COPD. There is no obvious reason for this contradiction. If the Doctor had not made a contradictory statement earlier in the Medical Report, the Majority Panel would consider that the Doctor was indicating no functional impairment due to COPD. However, given the inconsistency, the Majority Panel looks to the evidence as a whole to consider the relative weight to give to the differing statements of the Doctor.

The evidence of the Social Worker and the Appellant is consistent with the Doctor's statement that the Appellant has "difficulties with walking, climbing stairs and all activities required for daily life." The Doctor does not describe those difficulties in more detail, but the Majority Panel finds that the evidence of the Social Worker confirms that COPD affects the Appellant's ability to do any activity that involves physical exertion. The Majority Panel finds that being unable to walk 100 feet without stopping twice for a few minutes to catch breath, being unable to walk around a grocery store to shop for food, taking an hour to get out of bed in the morning because of coughing non-stop, indicate a severe physical impairment of function. The evidence of the Social Worker, with additional detail provided by the Appellant, is consistent with the Doctor's general statement about the impairment due to COPD. Therefore, the Majority Panel finds it is not reasonable to give greater weight to the section of the Medical Report where the Doctor indicates restrictions to daily living activities due to mood disorder, and to conclude that negates the statements about restrictions due to COPD. The Majority Panel finds that the evidence as a whole is more consistent with a severe physical impairment of function. The Majority Panel finds that the Ministry's determination that the Appellant has a mild to moderate physical impairment is not reasonably supported by the evidence.

2. *Mental Impairment:*

The Doctor states that the Appellant has a mood disorder, and his mood is sometimes severely low. When the Appellant's mood is severely low, the Doctor says that he becomes unmotivated, fatigued, and loses his ability to focus, plan and effectively communicate with others. The Doctor goes on the indicate that the Appellant's ability to perform almost all of the daily living activities listed on the Medical Report form is restricted "depending on his mood status". The Majority Panel understands the Doctor to be referring to restrictions when the Appellant's mood is severely low.

The Social Worker indicates that the Appellant's mental impairment has a major impact on emotion, attention/concentration, motivation and motor activity. The Social Worker and the Appellant confirm that when the Appellant is extremely depressed, he lacks motivation and often will not get out of bed. While the Doctor and the Social Worker did not specify how often the Appellant is severely depressed, the Appellant stated that, in an average week, on four out of seven days he lacks motivation to get out of bed for most of the day. The Social Worker and the Appellant add that he does not feel like cooking, or eating much, when he is depressed. While the Ministry states that the Appellant "chooses" to do laundry and housekeeping once a week, the Majority Panel finds that the Social Worker states clearly that the Appellant does not do housekeeping when he is depressed. The Majority Panel accepts that the lack of motivation the Social Worker and the Appellant describe is a symptom of depression, not laziness or choice, and it leaves him unable to function for extended periods.

The Ministry acknowledged that the Appellant reported very low mood four out of seven days but indicated that it lacked "confirmation from the medical practitioner about the frequency and severity of the severely low periods", or details about assistance needed for daily living activities. The Ministry does acknowledge that there are "delays" in daily living activities like meal planning, housekeeping, dressing, grooming and feeding himself, due to lack of motivation during periods of severe depression. However, the Ministry stated that, without confirmation from the Doctor of the frequency and severity of low mood, it could not conclude that there is a severe impairment.

The Majority Panel notes that the Doctor answered "yes" to the question "Does the impairment directly restrict the person's ability to perform Daily Living Activities?" The Doctor then went on to indicate periodic restrictions in personal self care, meal preparation, management of medications, basic housework, daily shopping and management of finances, stating that the Appellant's "ability to perform and conduct daily living activities depends on his mood status".

In *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)* 2009 BCSC 1461 *("Hudson")*, the Court stated:

> Section 2 (2) of [the Act] requires evidence from a "prescribed professional" that a severe physical impairment "directly and significantly restricts the person's ability to perform daily living activities." .... The definition of "prescribed professional" includes a medical practitioner and a nurse practitioner. There is nothing indicating whether the medical reports need to be read discreetly or even whether more than one opinion is required. Both the physician and the assessor in this case fall within the definition of prescribed professional in the regulation.

Similarly, in this case, both the Doctor and the Social Worker are prescribed professionals, and they agree that the Appellant suffers from a mood disorder that affects his motivation and ability to perform many activities of daily living. While neither of the prescribed professionals specify how many days in an average week the Appellant is affected by severely low mood, where it is consistent with the evidence of the prescribed professionals, it is appropriate to consider the Appellant's evidence on that point. The Ministry appears to place no weight on the Appellant's evidence of how often he experiences extremely low moods, and little weight on the evidence of the Social Worker about severity, instead requiring that all the evidence of frequency and severity be specifically confirmed by the Doctor.

In *Hudson*, the Court stated:

> Concerning the weight to be given to the Petitioner's evidence, while s. 2(2) of [the Act] makes it clear that certain eligibility criteria for PWD status need to be confirmed by the applicant's physician or assessor, nothing in [the Act] prevents the Ministry or the Tribunal from placing considerable weight on the Petitioner's evidence, provided the

statutory eligibility criteria are met. Indeed it would be illogical for the Application to demand of the Petitioner to describe her disabled condition if the situation were otherwise.

The Doctor and the Social Worker have described a mental impairment that significantly restricts the Appellant's ability to perform daily living activities. The Majority Panel finds that the Appellant's evidence of the nature and effect of these periods of severely low mood is consistent with the reports of the prescribed professionals. The Majority Panel accepts the Appellant's evidence of the frequency of these periods of extremely low mood. The Majority Panel finds that the Appellant suffers from extremely low mood more than half the time, and that, during those periods, the mood disorder is a severe impairment of the Appellant's ability to function. Therefore, the Majority Panel finds that the Ministry was not reasonable in its determination that the information provided does not indicate a severe mental impairment.

Restrictions to Daily Living Activities (Activities):

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

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

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

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

At least two Activities must be restricted in a way that meets the requirements. Not all Activities, or even the majority, need to be restricted. The inability to work and financial need are not listed as Activities and are only relevant to the extent that they impact listed Activities.

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

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

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

The Majority Panel finds that the information provided by the Doctor and the Social Worker confirms direct and significant restrictions to the Appellant's ability to perform Activities. The evidence of the Appellant is consistent with that of the Doctor and the Social Worker and provides additional information about the restricted Activities.

With respect to the physical impairment of COPD, the Doctor confirms that the Appellant has difficulty with "walking, climbing stairs and all activities required for daily life". The Social Worker indicates that the Appellant takes significantly longer than typical for:

- Moving about indoors and outdoors: "COPD impacts physical exertion & climbing stairs takes longer"; Appellant states he has trouble walking 100 feet, he takes an hour longer than others to walk outdoors, he needs a handrail to walk upstairs, and he avoids walking outdoors because he cannot breathe well.
- Shopping for personal needs: "going to and from stores takes significantly longer due to physical exertion"; Appellant states he cannot walk around the store because he struggles to breathe and needs a friend to carry his bags.

The Majority Panel finds that the restrictions the Social Worker and the Doctor describe are continuous, direct and significant restrictions due to the severe physical impairment.

The Doctor indicates that the mood disorder periodically restricts the Appellant's ability to perform the following Activities periodically, for the duration of the period of severely depressed mood:

- Prepare own meals
- Manage personal finances
- Shop for personal needs
- Perform housework
- Perform personal hygiene and self care
- Manage personal medication.

The Doctor states that when the Appellant's mood is severely low, he becomes unmotivated and loses his ability to focus, plan and effectively communicate with others.

The Social Worker states that, when the Appellant is depressed, his ability to perform the following Activities is restricted:

- Perform housework: housework does not get done
- Prepare own meals: Appellant is not motivated to eat much, or to cook.

The Social Worker also states that, when severely depressed, the Appellant is not motivated to get out of bed, which the Majority Panel finds is consistent with the Doctor's more extensive list of Activities that are significantly restricted due to low mood.

As stated above, the Majority Panel accepts the Appellant's evidence that he experiences severely depressed mood four out of seven days. Therefore, the Majority Panel finds that the Appellant's ability to perform two or more Activities is significantly restricted periodically for extended periods.

The Majority Panel also notes that, in assessing the evidence of the restrictions to the Appellant's ability to perform Activities, the Ministry again places greater weight on the evidence of the Doctor because the Doctor has known the Appellant longer. The Ministry does not explain how a longer acquaintance would give the Doctor a better ability to assess the Appellant's current level of functioning. The Ministry also states, incorrectly, that the Doctor "does not report significant restrictions to [Activities]", as the Ministry also acknowledges that the Doctor states that the Appellant has difficulty with all activities of daily life, and when the Appellant's mood is severely low, he loses the ability to focus, plan and effectively communicate with others. While the Majority Panel acknowledges that more specific statements from the prescribed professionals about frequency and duration of restrictions would be helpful, the Majority Panel finds that it is not reasonable to say the restrictions as described are not significant.

Help Required:

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

The Social Worker indicates that the Appellant receives help from family, friends and health authority professionals, adding that the Appellant "depends heavily on the assistance of his landlord/friend". The Appellant provided additional detail of the help his friend provides, driving

him to medical appointments, taking him grocery shopping, carrying bags for him, cooking, cleaning and doing laundry.

The Doctor has indicated that the Appellant needs no assistance to perform the Activities they list as restricted due to mood disorder. The Majority Panel notes that if the Appellant "loses his ability to focus, plan and effectively communicate with others", and lacks the motivation to get out of bed, prepare meals or do housework when he is severely depressed, as the Majority Panel has found based on the evidence of the Doctor and the Social Worker, the only reasonable inference is that the Appellant would need significant help to perform those activities for the duration of those episodes. Therefore, the Majority Panel places no weight on the Doctor's indication that the Appellant needs no assistance to perform restricted Activities.

Considering the whole of the evidence of both prescribed professionals, and the additional detail provided by the Appellant, about the help he receives from his friend, the Majority Panel finds that the Ministry's determination that there is not enough evidence to demonstrate that significant help of another person is needed for restricted Activities is not reasonable.

Dissenting Member's Reasons

Medical and Assessor Reports-dissent:

The Dissenting Member disagrees that the Ministry gave greater weight to the information from the Doctor because the Doctor had known the Appellant longer. Aside, while the length of time is mentioned in a few places, the Ministry also indicates that their overall decision was also based on other factors, and on the whole of the evidence. While the Appellant claims that he spent more time with the Social Worker and knows him better, he confirmed at the hearing that he had six to eight visits before the Medical Report was issued. However, at the time of the assessment, the Social Worker had met the Appellant for the very first time. Therefore, it follows that he would have spent more time with the Doctor in the 6-8 visits, as opposed to the Social Worker in the first assessment visit. In any case the Social Worker's Assessor's Report did not establish severity of the impairment. Primarily, it lacked specific information about duration, frequency of the impairment, yet, when it did include specific information, it did not support severity. For example, the Assessor's Report indicated that it takes the Appellant 30 minutes longer to complete personal care, cooking and food prep, which the Dissenting Member does not interpret to be "significantly longer".

The Majority Panel also indicates that the Doctor's report contained internal contradictions and leaves out information, speculating that he may have paid less attention to completing the form. The Dissenting Member believes that the Doctor did not mention the fainting and dizzy spells, as they are not part of the diagnostic codes to use on the form, but rather, symptoms. The fact

that the Doctor has since referred the Appellant to a Cardiologist and Neurologist is evidence that he was aware of the symptoms but did not indicate them on the assessment because these are still under investigation and cannot yet be directly related to the Appellants' impairment. The Dissenting Member notes that the Ministry has accepted the experiences of fainting and dizzy spells and agrees with the Ministry that the Medical Report did not establish a severe impairment.

Physical Impairment-dissent:

The Doctor noted difficulties with walking and climbing stairs, and with daily living activities depending on his mood, but the Dissenting Member disagrees that it's contradictory to indicate that the Appellant would not be restricted. The information from the Social Worker supports that there are difficulties but neither of the reports provide enough information to indicate the severity of the mobility impairment at the time. The reports support that the Appellant is slower than others, but this does not necessarily mean that he is restricted. While the Appellant's self-report can be given considerable weight, as per *Hudson*, the Dissenting Member is not comfortable relying on this without any similar indication from the other reports. Further, the information provided by the Appellant was contradictory, thereby questioning credibility. Specifically, at the hearing the Appellant indicated that he could not walk 10 feet without losing his breath, yet in the Self-Report the Appellant had indicated that he had trouble walking 100 feet. Also, the information in the Self-Report is vague, indicating that it takes him much longer, at least an hour longer to walk outdoors but does not indicate from where. The Appellant's Self-Report should be taken within the context both the Doctor's report that the mood disorder affects the Appellant's ability to communicate, his memory and cognition.

Mental Impairment and Restrictions to Daily Living Activities-dissent:

While the Appellant reports very low mood four to seven days of the week, he indicated that this is at its worst. There is no information about the severity of the low mood. The Assessor's Report did not explain the impact on daily living activities, and the Medical Report only indicated periodic restrictions depending on the Appellant's mood.

Help Required: dissent:

The Social Worker report indicates that the Appellant receives help from Health Care professionals (for filling out forms) and a friend but the report does not indicate what kind of assistance is provided. The Medical Report indicates that no assistance is required. The Appellant's Self Report indicates that the friend provides transportation and assisting with grocery shopping, and carrying bags. He further indicates that he can cook, clean and do laundry, but requires the help as it would otherwise take him longer. The reports indicate that

he is slower, but there is not enough information to indicate that he is severely impaired and unable to do daily living activities.
Given the submitted documentation at the time of application, the Dissenting Member finds that the Ministry was reasonable in its application of the legislation, and conclusion that the Appellant does not meet the criteria for PWD designation.

Conclusion:

The Majority Panel finds that the Ministry's decision to deny the Appellant PWD designation was not reasonably supported by the evidence and is not a reasonable application of the legislation in the Appellant's circumstances. The Majority Panel finds that the Appellant meets the criteria for PWD designation. The Majority Panel rescinds the Reconsideration Decision. The Appellant is successful in the appeal.

Schedule – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

Persons with disabilities

s. 2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

Employment and Assistance for Persons with Disabilities Regulation

Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

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

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

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

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

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

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

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

(i) medical practitioner,

ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

(i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or

(ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*,

if qualifications in psychology are a condition of such employment.

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

Employment and Assistance Act

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

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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 Susan Ferguson	
Signature of Chair	Date (Year/Month/Day) 2024/07/23

Print Name Bob Fenske	
Signature of Member	Date (Year/Month/Day) 2024/07/23
Print Name Kim Louie - dissenting	
	Date (Year/Month/Day) 2024/07/23