

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) Reconsideration Decision dated June 17, 2024, denying the Appellant the persons with disabilities (“PWD”) designation.

The Ministry found that the Appellant met the age, the duration of impairment requirements, and that the Appellant had a severe physical impairment.

However, the Ministry found:

- The Appellant’s daily living activities aren’t directly and significantly restricted; and,
- The Appellant doesn’t need significant help to do daily living activities because of any significant restrictions.

The Ministry also 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 (the “Act”), section 2

Employment and Assistance for Persons with Disabilities Regulation (the “Regulation”), section 2

The legislation is in the Appendix at the end of this decision.

Part E – Summary of Facts

The hearing was held in person on July 23, 2024, with the Appellant and two panel members in attendance, and one panel member and a representative from the Ministry (the “Ministry Representative”) attending by teleconference.

The information the Ministry had at the time of the Reconsideration Decision included:

- The Medical Report, dated April 8, 2024, completed by the Appellant’s Doctor (the “Doctor”). Information in the Medical Report is summarized in the appropriate sections of the discussion below;
- The Assessor Report, dated April 8, 2024, also completed by the Doctor. Information in the Assessor Report is summarized in the appropriate sections of the discussion below;
- The Self Report section of the PWD Application, dated April 4, 2024, and signed by the Appellant. Information in the Self Report is summarized in the appropriate sections of the discussion below;
- The Request for Reconsideration, dated June 11, 2024, in which the Appellant has written *“I have included pictures so you can clearly see I am disabled. You can clearly see my leg is swollen up like a balloon. I can barely walk how am I going to work no one will hire me. I have worked all my life paying taxes. I am entitled to my disability.”*; and,
- Two undated photographs of the Appellant’s torso and upper legs.

Diagnoses

In the Medical Report, the Doctor says the Appellant has congestive heart failure and atrial fibrillation, both with a date of onset of February 2020.

Physical Impairment

In the Reconsideration Decision, the Ministry has acknowledged that the Appellant has a severe physical impairment, so this criterion is not at issue in this appeal.

Mental Impairment

Neither the Appellant nor the Doctor have indicated that the Appellant has a severe mental impairment, so this criterion is not at issue in this appeal.

Restrictions in the Ability to Perform Daily Living Activities

In the Medical Report, the Doctor says the Appellant has not been prescribed any medications that interfere with his ability to do daily living activities.

In the Medical Report, the Doctor also says the Appellant’s medical illness prevents him from doing “home chores”, and that he is unable to work.

In the Assessor report, the Doctor also says that the Appellant's medical condition prevents him from completing most tasks at work, and that he is "*unable to perform any chores around the house due to profound dyspnea*".

In the Assessor Report, the Doctor also says the Appellant has the following abilities with daily living activities (with comments in *italics*):

- **Perform personal hygiene and self care** – Independent (no assistance required) with respect to all the listed activities;
- **Perform housework to maintain the person's place of residence in acceptable sanitary condition** – Independent with respect to all the listed activities, but requires periodic assistance from another person. No explanation or description of type or amount of assistance required is given in the space provided;
- **Shop for personal needs** – Independent with all listed activities except going to and from stores, where the Doctor has indicated that periodic assistance from another person is required. No explanation or description of type or amount of assistance required is given in the space provided;
- **Prepare own meals** – Independent with respect to all the listed activities;
- **Manage Personal Finances** – Independent with respect to all the listed activities;
- **Use public or personal transportation facilities** – Independent with respect to all the listed activities;
- **Move about indoors and outdoors** – Independent with all but one of the listed activities, but takes significantly longer than typical with climbing stairs (*Uses handrails. Dyspnea and pain in climbing stairs*); and,
- **Manage Personal Medication** - Independent with respect to all the listed activities.

In the Self Report, the Appellant says it is very hard to clean his house and go shopping for groceries. He also says he has trouble doing "*other things like taking a shower doing yard work and other basic normal day to day things*".

Need for Help

In the Medical Report the Doctor says the Appellant does not require any prostheses or aids for his impairment.

In the Assessor Report, the Doctor says the help the Appellant requires for daily living activities is provided by family and friends. The Doctor also says that the Appellant does not require any assistive devices and does not have an assistance animal.

Notice of Appeal

The Appellant does not say why he disagrees with the Ministry's Reconsideration or provide any other information in the Notice of Appeal.

Evidence Presented at the Hearing

No new evidence was presented by the Ministry Representative or the Appellant at the hearing.

At the hearing, the Appellant said that the Ministry had failed to consider all of the evidence. He has explained that he had provided two photographs with his Request for Reconsideration, and said that the photographs clearly show the extent of his physical disability. He explained that he weighs over 400 lbs., and he has a heart condition (a slightly enlarged heart), for which he has to take seven pills a day.

The Appellant also said that he now realizes that the Ministry did not know how disabled he was because the photographs were not included in his original application, and he believes that that affected the Ministry's decision.

In response to a question from the panel, the Appellant said that he had not applied for a Canada Pension Plan (CPP) disability pension because he was not aware of it. He also said he had been working for sixteen years prior to his having to stop working because of his disability. The Ministry Representative suggested that the Appellant apply for a CPP disability pension, because, if he qualified for the CPP disability pension, he would also qualify for the PWD designation.

In answering a question from the panel, the Appellant said the Doctor had not visited him at home to observe the Appellant in his daily living activities, but that at a visit with the Doctor, the Appellant had answered the Doctor's questions as the Doctor completed the Medical Report and the Assessor Report.

In response to another question from the panel about what kind of help he requires in doing his daily living activities, the Appellant said that his low levels of energy and shortness of breath made it difficult for him to clean the house or to take a shower. He explained that he has a railing in the shower, and that he finds it difficult to bend down to do housework. The Appellant also confirmed that he lives in his own. When asked how much longer it takes him to do his daily living activities, the Appellant said he can only walk about 12 feet before he has to stop to catch his breath, and sometimes he also has to sit down for a few minutes before he can continue with his daily living activities.

The Ministry Representative relied on the Ministry's Reconsideration Decision, explaining that there are five criteria that must be satisfied to qualify for the PWD designation. The Ministry said that while the Appellant qualified for three of the criteria, there was not sufficient evidence to show that he was directly and significantly restricted in doing his daily living activities either continuously, or periodically for extended periods, as required in the legislation, nor that he needed help with those activities.

The Ministry Representative explained that it must have enough information from a prescribed professional to assess whether an applicant who has periodic restrictions in their ability to do daily living activities has those restrictions frequently and/or for extended periods. The Ministry Representative said that, while the Doctor had indicated in the Assessor Report that the Appellant has periodic restrictions in his ability to do basic housekeeping and to go to and from stores, the Doctor had not provided any other information or comments in the spaces provided on the form. In addition, with reference to help needed with daily living activities, the Ministry Representative said the Doctor had not completed the section of the Assessor Report where the prescribed professional is asked to explain what help the applicant requires with their daily living activities, or the section that asks the prescribed professional to describe what assistance would be necessary if help is required but none is available.

In response to a question from the panel, the Ministry Representative said that the Assessor Report does not have to be completed by a medical practitioner, as the legislation also allows for that form to be completed by a registered psychologist, a registered nurse or registered psychiatric nurse, an occupational therapist, a physical therapist, a social worker, a chiropractor, or a nurse practitioner. The Ministry Representative also said that there is no limit to the number of times a person could submit an application for the PWD designation if the applicant was found to not have met the required criteria the first time they applied.

Additional Information Submitted after Reconsideration and Admissibility

Section 22(4) of the *Employment and Assistance Act* says that a panel can consider evidence that is not part of the record when the Ministry made the Reconsideration Decision. But first the panel must decide if the new information is relevant. Once a panel has determined if any new evidence can be admitted, it must decide if the Reconsideration Decision was reasonable considering the new evidence.

No new evidence or submission was made by either the Ministry or the Appellant after the Reconsideration Decision was made.

Part F – Reasons for Panel Decision

The issue in the appeal is whether the Reconsideration Decision was reasonable based on all the evidence or whether the legislation was reasonably applied in this case. In other words, was it reasonable for the Ministry to determine that:

- The Appellant’s daily living activities aren’t directly and significantly restricted either continuously or periodically for extended periods due to the severe impairment; and,
- It couldn’t be determined that the Appellant needs help to do daily living activities because of significant restrictions.

ANALYSIS**Restrictions in the Ability to Perform Daily Living Activities***The Appellant’s Position*

The Appellant’s position is that he has great difficulty doing housework, going shopping, or taking a shower because his heart condition and weight mean that it takes him much longer than normal to do those activities and that he must take frequent breaks.

The Ministry’s Position

The Ministry’s position is that the legislation requires that a prescribed professional identify where an applicant has continuous or periodic restrictions in their ability to do daily living activities, and if the restrictions are periodic, the prescribed professional must indicate how frequently and for how long those restrictions occur. In this case, the Ministry says that the Doctor did not provide that information in the Assessor Report, making it impossible for the Ministry to assess the severity of the Appellant’s impairments.

Panel Decision

Regarding daily living activity performance restrictions, the legislation requires that the Ministry must consider how long the severe impairment is likely to last, how much the applicant’s ability to do daily living activities is restricted, and if they need help with those activities.

Section 2(2)(b) of the *Act* says the Ministry must be satisfied that a prescribed professional has said that an applicant’s severe impairment directly and significantly restricts their ability to do daily living activities. The term “daily living activities” appears in the Act in the plural, so at least two of the daily living activities must be significantly restricted.

“Directly” means that a severe impairment must itself be the cause of any restrictions to daily living activities. A direct restriction must also be significant and either continuous or periodic. If periodic, it must be for extended periods. In this case, the Appellant has chosen to have the Doctor, a medical practitioner, serve as the prescribed professional.

The panel notes that the Doctor has indicated that the Appellant is independent in all daily living activities except for basic housekeeping and going to and from stores (described in the legislation as "Perform housework to maintain the person's place of residence in acceptable sanitary condition", and "Shop for personal needs", respectively), for which the Doctor has said the Appellant needs periodic assistance. However, the panel notes that the Doctor has not explained or described the amount and type of assistance required in the space provided for that purpose in the Assessor Report form. Nor has the Doctor completed the part of the Assessor Report where the prescribed professional is asked to provide additional comments, including the type and amount of assistance required.

In short, the Doctor provides no information about the frequency and duration of the Appellant's periodic restrictions. Furthermore, there are inconsistencies in the Doctor's assessment of the Appellant's abilities. For example, while in one part of the Assessor Report, the Doctor says the Appellant is independent with most daily living activities, elsewhere (specifically, in the "Additional Comments" section of the Assessor Report) the Doctor says the Appellant is unable to do any chores around the house

After considering all of the evidence, the panel finds that the Ministry reasonably determined that, based on the information provide by the Doctor, there is not enough evidence to confirm that the Appellant is restricted in his ability to perform daily living activities, either continuously or periodically for extended periods, as a direct result of his severe impairment.

Help with Daily Living Activities

The Appellant's Position

The Appellant's position is that he lives on his own and sometimes has to rely on friends and family to help him with his daily living activities.

The Ministry's Position

The Ministry's position is that, as it has not been established that daily living activities are significantly restricted, it cannot be determined that significant help is required from other persons or a device.

Panel Decision

Help is defined in the legislation as the need for:

- An assistive device;
- The significant help or supervision of another person; or,
- The services of an assistance animal

to do one or more daily living activities.

At the hearing, the Appellant said he was able to do his housekeeping and take a shower without help, but it took him significantly longer than typical, as his weight and heart condition

left him short of breath, but he does not say if there are times when he must rely on family or friends to assist him with those activities, or how often that need for help occurs. He also said he uses a cane to walk and a railing in the shower for support.

As mentioned above, the Ministry must rely on the opinion of a prescribed professional in assessing the criteria necessary to qualify as a PWD. The panel notes that the Doctor says that the Appellant does not require any assistive devices, and, other than indicating that he has friends and family help him with daily living activities, has not provided any details as to the type of help provided, which activities he needs help with, or how often he needs help.

Due to the lack of information about the Appellant's need for help provided by the Doctor, the panel finds that the Ministry reasonably determined that it does not have enough information to confirm that significant help is required from other persons, or from an assistive device.

Conclusion

Based on all the evidence, the Panel finds that the Reconsideration Decision was reasonably supported by the evidence and was a reasonable interpretation of the legislation by the Ministry, and therefore confirms the Reconsideration Decision. The panel **confirms the Reconsideration Decision** and the Appellant's appeal, therefore, is **not successful**.

The panel sympathises with the Appellant in this case. The Appellant may want to apply for a CPP disability pension and/or seek out any other Ministry benefits that may be available to people who are unable to work for medical reasons.

APPENDIX
RELEVANT LEGISLATION

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

Persons with disabilities

2 (1) In this section:

"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a

severe mental or physical impairment, the person is unable to perform;

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

The Regulation provides as follows:

Definitions for Act

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

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

activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

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

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

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

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

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

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

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

(i) medical practitioner,

(ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner ...

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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

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2024/07/26

Print Name

Kulwant Bal

Signature of Member

Date (Year/Month/Day)

2024/07/26

Print Name

Mimi Chang

Signature of
Member

Date (Year/Month/Day)

2024/07/26

J