

Part C – Decision Under Appeal

The Appellant appealed a Reconsideration Decision of the Ministry of Social Development and Poverty Reduction (the “Ministry”) dated April 8, 2024, that denied her a Persons with Disabilities (“PWD”) designation.

The Ministry determined that the Appellant met only the first two of five legislated criteria to qualify. She met the age and duration requirements, but the Ministry was not satisfied that the remaining three criteria were met. Specifically:

- She does not have a severe physical or mental impairment.
- Her impairments do not significantly restrict her ability to perform daily living activities (“DLAs”).
- She does not require significant help of another person to perform DLAs restricted by her impairment.

The Ministry found the Appellant was not one of the prescribed classes of persons eligible for PWD on alternative grounds, as set out in Section 2.1 of the Regulation. 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

This decision cites:

Employment and Assistance for Persons with Disabilities Act (the “Act”):

- Section 2

Employment and Assistance for Persons with Disabilities Regulation (the “Regulation”):

- Section 2
- Section 2.1

Text of the above legislation provided at the end of the decision.

Part E – Summary of Facts

The hearing was held in writing on July 26, 2024.

Background

On January 8, 2024, the Ministry received the Appellant's PWD application.

On February 5, 2024, the Ministry completed its decision and denied the Appellant's application for PWD designation.

On March 5, 2024, the Appellant submitted a Request for Reconsideration including a request for an extension. The deadline for the decision was extended to April 4, 2024.

On April 4, 2024, the Appellant's advocate submitted additional information.

On April 5, 2024, the Ministry reviewed the request and left a voicemail for the advocate to say that the Appellant's general practitioner's (the "Doctor") letter they had reported was included in the Request for Reconsideration was missing.

On April 8, 2024, the advocate contacted the Ministry to report that they were unable to obtain the Doctor's letter by the deadline, despite having called the Doctor. The Ministry advised the advocate that it would proceed with the review, noting that the Appellant can submit new information at Appeal.

Evidence Before the Ministry at Reconsideration

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

- November 15, 2023, PWD Application including the Medical Report and Assessor Report completed by the Appellant's Doctor, as well as her Self Report.
- March 28, 2024, Request for Reconsideration including a cover memo from the Appellant's advocate, Disability Alliance BC, and Self Report from the Appellant dated March 7, 2024. The April 12, 2024, supporting letter from the Appellant's Doctor, referenced in the cover memo, was not included.

PWD Application Medical Report:

Note, the PWD application Medical Report, Assessor Report and April 12, 2024, letter of support were completed by the Doctor.

Diagnosis

Chronic shoulder pain (onset May 2023); Depression (onset December 2022).

Health History

The Doctor says the Appellant has chronic disabling right shoulder pain that impairs DLAs. It does not respond to any treatment such as physiotherapy and steroid injections. She has chronic depression and does not respond to medicine. The Doctor indicates the Appellant does not require aids or prosthesis. The Doctor says the Appellant's condition is not improving with treatment and will likely continue for two or more years.

Functional Skills

The Doctor indicates the Appellant, can walk 4+ blocks unaided, climb 5+ steps, lift 2 – 7 kg with her left hand, has no limitations on being seated and has no difficulty with communication. For Cognitive and Emotional Function, she has evident deficits with emotional disturbance and motivation. The Doctor comments the Appellant has depression, poor motivation and sleep disorder.

The Doctor says due to the Appellant's shoulder pain the following DLAs are continuously restricted: Personal Care, Meal Preparation, Basic Housework, and Daily Shopping. As a result, she needs family help with these activities. The Appellant's Social Functioning is periodically restricted due to low mood and getting angry.

Frequency of Contact

The Doctor says the Appellant has been their patient since 2016 and they have seen her between two and ten times in the last year.

PWD Application Assessor Report

Mental or Physical Impairment restricting Daily Living Activities

Nothing is indicated.

Ability to Communicate

All aspects are said to be good.

Mobility and Physical Ability

Periodic assistance is required for carrying and holding "needs some help due to shoulder pain." Otherwise, the Appellant is said to be independent for all aspects.

Cognitive and Emotional Functioning

The Doctor comments “poorly controlled mood disorder”. They state there is a moderate impact on Emotion, Motivation and Other Emotional and Mental Problems (e.g., hostility). There is minimal impact on bodily functions (e.g., eating problems; toileting problems poor hygiene; sleep disturbance).

Daily Living Activities

The Doctor indicates that Personal Care takes significantly longer than typical for dressing, grooming and bathing due to chronic shoulder pain. The Appellant is said to be independent for all other aspects of personal care. For Basic Housekeeping, continuous assistance is required for laundry and basic housekeeping, again due to chronic shoulder pain. For Meals the Appellant requires periodic assistance for food preparation and cooking but is otherwise independent. For all aspects of Pay Rent and Bills, Medications Transportation and Shopping, the Appellant is independent. For Social Functioning the Appellant is said to be independent, with good functioning with her immediate social network and extended social networks.

Assistance provided for the Applicant

Help with DLAs is provided by the Appellant’s family. No equipment or devices are used nor is an assistance animal.

PWD Application Self Report

The Appellant states she:

- suffers from chronic shoulder pain and leg pain;
- feels down, has trouble concentrating, poor memory; low motivation/energy caused by depression;
- has sleeping problems and as a result gets headaches;
- relies on family members to help her with shopping, cooking, cleaning;
- struggles with bathing, dressing, grooming and hygiene;
- feels like her life is not worth living anymore.

March 28, 2024, Request for Reconsideration

The Appellant’s advocate put forward a submission on her behalf requesting a reconsideration of the Ministry’s decision. The Submission included a cover memo from the advocate with the following new content:

- The Appellant was unable to talk about significant trauma that she suffered in her home country, she is significantly restricted in her communication and social functioning due to her severe trauma, anxiety and depression symptoms; and,
- The Appellant has left leg pain which causes deficits to her physical mobility.

March 7, 2024, Self Report

The March 28, 2024, Request for Reconsideration included the March 7, Self Report. This reiterates content found in the Self Report section of the PWD application, but adds details about the Appellant's impairment as set out below:

- Severe impairment in her right shoulder - it is frozen shoulder. Cortisone injections help only temporarily. She can lift less than five pounds with her left hand and cannot lift more than a pound with her right hand. She has severe pain lifting and lowering her arm. She takes Ibuprofen for pain;
- Pain in left thighs - this restricts (her ability to climb) stairs. She has pain when lying on her side;
- Depression - including severe insomnia, hyper-aroused, hyper-vigilant. She has hopelessness and anhedonia, poor decisions, difficulty managing stress, and avoidance. She has past trauma from her home country. She takes mirtazapine 45 mg, bupropion 300 mg, Quetiapine 25 mg;
- Social anxiety - difficulty being in public, avoids other people, feels judged by others; and,
- Type 2 Diabetes – severe exhaustion and weakness. Takes Invokana 300 mg, Ozempic insulin injections once a week.

Additional details regarding how these conditions restrict her daily life include:

- Stairs – she can do less than five stairs 75% of the time, otherwise she has considerable pain in the left leg. It takes at least four times longer due to the need for breaks and feels considerably worse after;
- Lifting – as stated above, she has very little strength on either side;
- Seated – can stay seated less than an hour, this exacerbates lower back pain and thoracic pain with pain shooting down either side;
- Communication – writing with dominant hand limited due to pain. Difficulty expressing thoughts. She has brain-fog which makes concentration on reading and listening difficult; and,
- Cognitive and emotional function – as stated above. She has poor working memory, difficulty learning new things and poor short-term memory. She has overthinking, disorganized thoughts, is easily stressed by normal everyday events especially if unanticipated, is impulsive, agitated, and severe emotional dysregulation. She has impaired decision making, organization and planning.

Additional details regarding what are said to be continuous restrictions on DLAs that stem from her impairments include:

- Self Care – in addition to what is set out above, showering takes five times longer;
- Meal preparation – cannot lift pans, chopping and stirring with non dominant hand is very difficult;
- Housework – washing dishes is difficult, cannot scrub, using non dominant hand makes her back hurt;
- Mobility inside – moves four times as slow as normal;
- Mobility outside – pain in thigh will increase, takes five to seven times longer, need to rest for hours afterwards due to chronic fatigue and pain;
- Shopping – pushing a shopping cart is very difficult. Takes longer, or needs to make several trips, difficulty waiting in line due to pain and anxiety;
- Transportation – does not take transportation alone, dislikes being in unfamiliar areas alone, cannot remember directions, gets easily confused;
- Finance management – difficulty prioritizing keeping track; and;
- Social functioning – irritability has led to social isolation, difficulty maintaining relationship.

Submissions to the Tribunal at Appeal

April 12, 2024, Doctor's Letter of Support.

This is a series of questions posed to the Appellant's doctor (to provide more detail to determine if the Appellant meets the eligibility criteria for PWD designation) and their reply.

The Doctor responds "yes" to the question "Do you agree with the patient's self report dated March 7, 2024?" (set out above).

The Doctor responds "yes" to the question "Do you agree (the Appellant's) impairments are severe? Does she have a loss or abnormality of physical and mental functioning which causes a restriction to the ability for her to function independently, effectively and appropriately for a reasonable duration?"

The Doctor responds "yes" to the question "Do you agree that (the Appellant's) shoulder pain restricts her in areas of lifting, carrying significantly and continuously whenever she is expected to do this?"

When asked which areas of cognitive and emotional functioning you agree (the Appellant) has significant deficits and major impact, the Doctor responds:

“Major impact and restrictions in areas of bodily functions, memory, emotional disturbance, motivation and attention/concentration and executive functioning.”

When asked if (the Appellant’s) severe cognitive and emotional deficits significantly restrict her communication, the Doctor responds:”

“Yes, she has difficulty expressing herself due to her irritability and lack of patience due to pain and depression. She also has significant difficulty comprehending and retaining both written and verbal communication.”

When asked which areas of social functioning does (the Appellant) require continuous assistance with, and have significant restrictions with, the Doctor responds:

- Dealing appropriately with unexpected demands – overwhelmed;
- Securing assistance and relating to others-needs family to assist;
- Developing and maintaining relationships-very little interactions;
- Making appropriate decisions in a timely manner; and,
- Interacting appropriately with others – anger and irritability.

The Doctor responds “yes” to the question “Due to significant cognitive and emotional deficits and difficulties with communication as a direct result of her severe depression, insomnia and fatigue do you believe that there is a significant major impact on (the Appellant’s) daily social functioning?”

When asked how often the Appellant is restricted in her ability to perform DLAs by one of more of her recurring symptoms the Doctor responds “Daily/continuously/ when (the Appellant) is expected to perform them.”

When asked if overall, the Appellant’s health limitations significantly restrict her ability to perform a range of DLAs on an ongoing basis, the Doctor replies “yes” and provided the following specifics:

- Personal self-care – difficulty sleeping contributes to exhaustion – cannot lift arms over head without significant pain – cannot wash or brush her hair properly without help dressing is restricted and takes significantly longer than normal;
- Meal preparation – cannot chop or open cans due to limitations with right arm – pain and fatigue very restricting. Lack of motivation due to depression;
- Housework – exhaustion, fatigue and pain bending, lifting, dusting, pushing broom/vacuum all very restricted due to shoulder injury and lack of motivation;

- Shopping – difficulty making decisions, unable to reach, push cart without pain;
- Financial management – difficulties budgeting – keeping track and calculating; and,
- Social functioning – very worried and preoccupied about the judgement of others – withdrawn and isolated/poor comprehension and difficulties with communication. Irritability and quick anger make interactions difficult and unpleasant – difficulty maintaining relationships and asking for help outside of immediate family.

When asked to confirm if, because of (the Appellant's) significant restrictions in performing her DLAs, she needs significant ongoing help with them, the Doctor responds "yes" with the following comment:

"Needs significant ongoing help from others with meal preparation, housework, shopping, self care, finance management and communication/social functioning. Needs to use supportive pillow/cushions for sleep."

July 12, 2024, Memo from Appellant's advocate, Disability Alliance BC

The advocate provides a copy of the Appellant's Doctor's letter of support of April 12, 2024, and explains it was not available to the Ministry in time to include it with the Request for Reconsideration. The advocate reiterates much of the content found in the doctor's letter. The advocate submits that the additional evidence provides all the necessary evidence to conclude that the Appellant meets all the eligibility criteria for the PWD designation pursuant to s. 2 of the Act. (The Panel notes a copy of this letter was included in the Appellant's appeal application.)

July 23, 2024, Ministry Submission

The Ministry supplied a late submission which the Panel chair accepted. The submission stated that it had reviewed the submission for the tribunal provided by the Appellant, including the April 12, 2024, letter prepared by the Appellant's Doctor (received by the Ministry July 12, 2024) who had completed the Appellant's PWD application. The Ministry notes it contains additional details needed by the Ministry regarding the severity of physical and mental impairment and the assistance required to complete DLAs. The Ministry acknowledged the supporting letter from the Appellant's advocate and the Appellant's self report of March 7, 2024. The Ministry states that had it received this information at reconsideration, it may have reached a different decision.

Admissibility of New Evidence

Under section 22(4) of the *Employment and Assistance Act*, the Panel may admit evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Evidence that the Panel admits post the Reconsideration Decision is admitted on that basis. This includes:

- April 12, 2024, letter from the Appellant's Doctor;
- July 12, 2024, letter from the Appellant's advocate (including a second copy of the April 12, 2024, Doctor's letter of support for the Appellant); and
- July 23, 2024 Letter from the Ministry.

Neither party objected to the admissibility of the other's evidence.

Part F – Reasons for Panel Decision

In the Reconsideration Decision, the Ministry was not satisfied that three of the five requirements for PWD designation were met. Specifically:

- The Appellant has a severe mental or physical impairment;
- In the opinion of a prescribed professional, that impairment directly and significantly restricts the Appellant's ability to perform the DLAs set out in the legislation; and
- The Appellant requires help from a device, service animal, or significant help from other persons, to perform the DLAs.

As stated above, the Ministry found the Appellant met the age and duration requirements for PWD designation. The Panel does not address these issues.

The purpose of the Panel is to decide whether the Ministry did, or did not, reasonably come to the decision it made. The standard applied is whether the applicable laws were reasonably applied and whether the evidence was also reasonably applied in the circumstances of the Appellant. Having said this, any new or updated evidence the Panel admits is considered as if the Ministry knew it at the time. This means this decision assesses the reasonableness of the Reconsideration Decision based upon all the evidence available to the Panel, not just what was available to the Ministry at the time of reconsideration.

Appellant Position

The Appellant says that she meets all the criteria for designation as PWD. With her supplementary submissions, including the self report and the letter from the Doctor she has provided the necessary detail to establish that she has a severe impairment and, because of the impairment, she is significantly and continuously restricted in performing DLAs. As a result, she requires significant assistance from another person to complete DLAs.

Ministry Position

At reconsideration, the Ministry's position was that the Appellant has a moderate physical impairment, but not a severe impairment given that she has no difficulties with mobility, can lift 5 to 15 pounds with her left arm and her ability to communicate is good. The Ministry acknowledged the additional detail provided in the Appellant's March 7, 2024, Self Report, but noted it is unconfirmed by the Appellant's Doctor. Absent this, the Ministry was not able to give it significant weight. The Ministry found the Appellant to have a mild

mental impairment, noting she has a diagnosis of depression with deficits including emotional disturbance, poor motivation and sleep disturbance.

The Ministry was not satisfied that, in the opinion of a prescribed professional, the Appellant's impairment directly and significantly restricts her ability to perform DLAs. Although the Doctor reports several areas have continuous restrictions, they do not report the Appellant takes significantly longer with the large majority of DLAs. Rather they report only housekeeping and laundry require continuous help and periodic help is needed with food preparation and cooking. It is reasonable that the Appellant requires help with shopping given her restrictions on lifting. Although impact to sleep is noted, it is not referenced in the assessments about DLAs. The Ministry concludes the assessments indicate a person with moderate restrictions versus significant restrictions of DLAs.

The Doctor reported some help from another person is required to perform DLAs, although not from an assistance animal or an assistive device. To meet this requirement, the help needed from another person must be significant. The Ministry found that as it has not been established that DLAs are significantly restricted, it cannot be determined that significant help is required.

Although the Ministry set out the reasoning above in its Reconsideration Decision, the Ministry's July 23, 2024, letter to the Tribunal states that had the Ministry received the enclosed information at reconsideration, a different decision may have been reached. This letter referenced the following documents:

- The April 12, doctor's letter of support.
- The July 12, 2024, supporting letter from the Appellant's advocate.
- The March 7, 2024, self-report.

Panel Decision

The Panel must consider whether the Ministry made a reasonable decision based on all the available evidence. Said differently, the Panel must consider each of the requirements for PWD designation and determine what it finds to be a reasonable determination in light of all of the evidence.

Severe Impairment

In the Reconsideration Decision, the Ministry found that the Appellant had a moderate physical impairment and a mild mental impairment. It did not find either type of impairment to be significant as is required by Section 2(2) of the Act. The Panel notes that

in the PWD application the Doctor said the Appellant has chronic disabling right shoulder pain that impairs DLAs. The Appellant's self-report says she has severe impairment in her right shoulder, it is frozen shoulder, she cannot lift more than a pound with her right hand, and less than five pounds with her left hand. Her pain is severe when lifting her arm. She also has pain in her left thigh, which she says she can do less than five stairs 75% of the time, otherwise she has considerable pain in her left leg. It takes four times longer to climb stairs due to the need for breaks. She can only stay seated for less than an hour. This information is confirmed by the Appellant's Doctor who stated they agree that the Appellant's impairments are severe and have caused a loss or abnormality of physical functioning restricting her ability to function. The Appellant's Doctor also confirms that the Appellant's shoulder pain significantly restricts her in areas of lifting and carrying. The Panel finds the significant loss of mobility in her right shoulder and severe pain, as well as loss of mobility and pain in her left leg to be a severe impairment. In particular, the Panel notes the significant challenges presented by loss of use of one's dominant hand as is the case for this Appellant. Considering the additional evidence submitted by the Appellant after the Reconsideration Decision, the Panel finds the Ministry was not reasonable in determining the Appellant's did not have a significant physical impairment. In other words, the evidence supports a finding of a significant physical impairment as required by the legislation.

In the Reconsideration Decision, the Ministry found the Appellant to have a mild mental impairment. That is, it did not find the Appellant had a significant mental impairment. The evidence available to the Ministry at reconsideration was the Appellant has deficits in cognitive and emotional function and emotional disturbance. The Appellant was said to have depression, poor motivation and sleep disorder. Her social functioning is periodically restricted due to low mood and getting angry. The Appellant's March 7, 2024, self report, confirmed by her Doctor, is that she has significant past trauma from her home country, anxiety and depression. Her condition includes, severe insomnia, hyper arousal, hyper vigilance, hopelessness anhedonia, poor decisions, difficulty managing stress and avoidance. The Panel notes the Appellant takes three mental health related medications as set out above. The Panel finds that the impact on the Appellant's ability to function set out in the above-mentioned medical evidence is indicative of a severe mental impairment rather than a mild or moderate impairment as found by the ministry. The Appellant's doctor confirmed that numerous mental health issues affect the Appellant such that her ability to function is significantly compromised. Given the significant detail added by the Appellant's submission at reconsideration and confirmed by her Doctor after reconsideration, the Panel finds the Ministry was not reasonable in determining her mental impairment was not significant. The Panel notes it has already found the Appellant

meets the criteria of significant physical impairment, and there need only be a finding of either a mental or physical impairment to meet the requirements of the legislation.

Daily Living Activities

In the Reconsideration Decision, the Ministry was not satisfied that, in the opinion of a prescribed professional, the Appellant's impairment directly and significantly restricts her ability to perform DLAs. The Panel notes that, as provided by the authority *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal), 2009 BCSC 1461*, at least two activities must be restricted in a way that meets the requirements. The Panel considered whether, in the Doctor's opinion, the Appellant's severe physical impairment directly and significantly restricts her ability to perform DLAs, continuously or periodically for extended periods. The Panel notes that when asked how often the Appellant is restricted in her ability to perform DLAs, the Doctor responded daily or continuously (the Appellant has stated these restrictions are continuous). The Panel considered the DLAs found in Section 2(1)(a) and (b) of the Regulation relative to this requirement (significant restriction that is continuous or periodic for extended periods).

- *Prepare own meals* – The Doctor reports the Appellant cannot chop or open cans due to limitations with right arm, pain and fatigue are very restricting. Lack of motivation due to depression. The Panel finds this DLA to be so restricted.
- *Manage personal finances* - The Doctor reports the Appellant has difficulties budgeting, keeping track and calculating.
- *Shop for personal needs* – The Doctor reports the Appellant has difficulty making decisions, unable to reach, lift or push the cart without pain. The Panel finds this DLA to be so restricted.
- *Perform housework to maintain person's place of residence* – The Doctor reports the Appellant suffers from exhaustion, fatigue and pain bending, lifting, dusting, pushing broom/vacuum are all very restricted because of her shoulder injury and lack of motivation. The Panel finds this DLA to be so restricted.
- *Move indoors and outdoors* – the Appellant reports she moves four times as slow as normal. Moving outdoors increases the pain in the Appellant's thigh and may take five to seven times longer. The Appellant says she needs to rest for hours afterwards due to chronic fatigue and pain. The Doctor confirms the Appellant's self-report. The Panel finds this DLA to be so restricted.
- *Perform personal hygiene and self care* – The Doctor reports that the Appellant cannot lift her arms over her head without significant pain, cannot wash or brush her hair, needs help with dressing and this takes significantly longer than normal. The Panel finds this DLA to be so restricted.

For those with a severe mental impairment the following DLA may be considered:

- *Relate to, communicate or interact with others effectively* – the Doctor reports that the Appellant is very worried and preoccupied about the judgement of others and is withdrawn and isolated with poor comprehension and difficulties with communication. She is irritable and quick to anger making her interactions difficult and unpleasant. The Doctor notes difficulty maintaining relationships and asking for help outside of immediate family. The Panel finds this DLA to be so restricted.

The Panel finds the evidence shows the Appellant, in the opinion of the Doctor, has significant restrictions on several DLAs due to her impairment which are continuous or periodic for extended periods. This more than meets the criterion set out in *Hudson* of two DLAs being affected. The Panel therefore finds the Ministry's determination regarding this requirement to be not reasonable.

Need for assistance

In its Reconsideration Decision, the Ministry did not find the Appellant needed significant help from another person. By contrast, the Panel found the Appellant to have a severe physical impairment that in the opinion of her Doctor significantly restricts her ability to perform several DLAs. The Panel must consider whether, because of these restrictions, the Appellant requires help to perform these activities. The Panel notes the following quote from the Appellant's Doctor:

"Needs significant ongoing help from others with meal preparation, housework, shopping, self care, finance management and communication/social functioning. Needs to use supportive pillow/cushions for sleep."

Given that the Appellant is unable to do DLAs like prepare her own meals, shop, do housework, move indoors and outdoors as well as do self care, she relies on the help of family to meet her needs. The Panel finds that Appellant does require the significant help of another person. The Panel finds the Ministry was not reasonable in its determination that the Appellant did not meet this requirement.

Conclusion:

In the Panel's view, with the new evidence it was not reasonable for the Ministry to have found that the Appellant did not meet the three outstanding requirements for designation as PWD under section 2(2) and (3) of the *Act*. Instead, the Panel finds the Appellant meets these requirements. Specifically:

- the Appellant has a severe mental or physical impairment;
- in the opinion of a prescribed professional, the impairment directly and significantly restricts the Appellant's ability to perform the DLAs set out in the legislation, and
- as a result of those restrictions the Appellant requires help to perform DLAs.

The Appellant is successful on appeal, the Panel having found that the Reconsideration Decision is not reasonably supported by the evidence.

Accordingly, the Panel rescinds the Reconsideration Decision.

Appendix – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

Section 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

Section 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.

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2 (2) [*persons with disabilities*] of the Act:

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

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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
Corrie Campbell

Signature of Chair

Date (Year/Month/Day)
2024/07/31

Print Name
Richard Franklin

Signature of Member

Date (Year/Month/Day)
2024/08/01

Print Name
Katherine Wellburn

Signature of Member

Date (Year/Month/Day)
2024/07/31