

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated June 5, 2024. The ministry denied the appellant designation as a person with disabilities (PWD). They determined that the appellant meets the age requirement (18 years or older), the duration requirement (impairment is likely to continue for at least 2 years), and the severity requirement (severe physical impairment). However, the ministry was not satisfied that:

- the appellant has a severe mental impairment;
- the appellant's impairment significantly restricts his ability to perform daily living activities; and
- the appellant requires significant help or supervision to perform daily living activities.

The ministry also found the appellant was not one of the prescribed classes of persons eligible for PWD on the alternative grounds. As there was no information that the appellant is one of these prescribed classes, 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 full text of these sections of legislation is set out at the end of the decision.

Part E – Summary of Facts

The hearing took place on July 25, 2024, as a written hearing.

Evidence before the ministry at reconsideration

On March 7, 2024, the appellant submitted a PWD application.

1) The appellant's PWD application:

- The Medical Report (February 2, 2024) completed by a general practitioner (the doctor) who has been the appellant's doctor for 8 months and has seen the appellant 2-10 times in the past 12 months.
- The Assessor Report, completed by the same doctor.
 - To complete this form, the doctor used an office interview and information from the appellant's brother.
- The appellant did not complete the Applicant Information (Self Report) section.

2) The appellant's request for reconsideration (May 3, 2024). No information was provided.

3) A checklist and note prepared by the advocate, signed and dated by the doctor on May 15, 2024.

- There were no checkmarks in any of the checkboxes.

4) A letter from the advocate (June 4, 2024)

New evidence provided on appeal

The appellant submitted a Notice of Appeal (received by the ministry on June 18, 2024), stating that he will submit more evidence from his doctor.

A checklist and note prepared by the advocate (same as item 3 listed above but signed and dated by the doctor on July 3, 2024)

- This time the doctor checked all the boxes.

A letter from the advocate (July 4, 2024)

A submission from the ministry (July 18, 2024)

Summary of Relevant Evidence

Medical Report

Diagnoses:

- Deafness since birth (onset August 1994); and
- Mute, communicates by sign language (onset August 1994)

Health History:

- Deaf since birth;
- No speech, communicates by sign language;
- The appellant has not been prescribed any medications and/or treatments that interfere with his ability to perform daily living activities; and
- The appellant does not require any prostheses or aids for their impairment.

Assessor Report

The appellant lives with family.

The appellant's impairments that impact his ability to manage daily living activities are:

- Deaf since birth; and
- No speech, communicates by sign language

Ability to Communicate:

- Speaking: unable;
- Reading: satisfactory ("does not understand English");
- Writing: satisfactory; and
- Hearing: unable

Mobility and Physical Ability:

- The appellant is independent with walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding.

Cognitive and Emotional Functioning (impact on daily functioning)

- Major impact: language; and
- No impact: all remaining listed areas

Daily Living Activities:

- Personal Care: All tasks are managed independently.
- Basic Housekeeping: All tasks are managed independently.
- Shopping:
 - Independently managed: Going to and from stores, making appropriate choices, carrying purchases home.
 - Takes significantly longer than typical: reading prices and labels, paying for purchases.
- Meals: All tasks are managed independently.
- Pay Rent and Bills:
 - Independently managed: budgeting and paying rent and bills.
 - Takes significantly longer than typical: banking
- Medications: All tasks are managed independently.
- Transportation: All tasks are managed independently.
- Social Functioning:
 - Independent in all areas.
 - Good functioning with immediate social network.
 - Marginal functioning with extended social networks.

Assistance Provided:

- The help required for daily living activities is provided by family.
- The appellant does not have an assistance animal.

Checklist and note prepared by the advocate, signed and dated by the doctor on May 15, 2024.

- There were no checkmarks in any of the checkboxes.
- The panel notes that on appeal, the doctor checked all boxes of the identical July 3, 2024 checklist.

Advocate's Letter (June 4, 2024)

The advocate writes that

- The additional medical information supports the appellant's PWD eligibility, and the minister should be satisfied.
- The doctor has agreed with all daily living activity restrictions included in their May 15, 2024 document.

Checklist and note prepared by the advocate, signed and dated by the doctor on July 3, 2024).

The doctor indicated, in part, that:

- In addition to deafness, the appellant suffers from severe memory issues, H.Pylori, and chronic back pain.
- He experiences ongoing cognitive issues including lack of motivation, memory issues, poor executive function, and poor concentration and focus ability. He gets overwhelmed with small issues.
- He experiences restrictions with walking and leaving the home most days due to chronic fatigues, back pain, lack of motivation, and stomach issues from H. Pylori including burning pain and nausea.
- He is directly restricted from lifting or carrying more than 5kgs due to chronic back pain and stomach issues and needs continuous assistance.
- He can't stand longer than 5 minutes or sit longer than 15 minutes at a time due to chronic pain. He needs to frequently change positions or get up to stretch.
- He has restrictions with personal care due to chronic back pain, stomach issues, and lack of motivation. Without reminders and encouragement from his wife, he will neglect bathing, brushing his teeth, and changing his clothes for up to 1 week.
- The appellant experiences lack of appetite due to nausea, stomach pain, and acid reflux. He has difficulty following diet restrictions due to lack of motivation and poor memory. His family provides continuous assistance.
- He takes 30 minutes to get out of bed in the mornings due to chronic fatigue, lack of motivation, and drowsiness.
- He has restrictions doing laundry and cleaning duties due to lack of motivation, fatigue, and pain.
- He has communications restrictions when shopping. He is unable to go to stores alone and requires continuous assistance from his family. He cannot make appropriate choices or pay for purchases. He is unable to use the self-check-out or communicate with the cashier.
- He has restrictions with food preparation and cooking due to lack of motivation and fatigue. His family provides continuous assistance with all meals.
- He has restrictions with accessing the bank without assistance from family. He is unable to use online banking, ATM, or communicate with bank tellers.
- He has direct restrictions with accessing the pharmacy and medical appointments due to communication issues, poor memory, and lack of motivation. He requires continuous assistance and reminders from family to take his medications on time and to refill prescriptions before running out.
- He requires continuous assistance from family with transportation to access the community. He is only able to take public transit to access his language school and is accompanied by his siblings.

- He requires ongoing support from his family in social situations. Due to deafness and inability to communicate, he is at potential risk of safety issues and needs assistance from family members when accessing the community. He is unable to develop and maintain relationships or interact appropriately with others due to communication barriers.

Advocate's letter (July 4, 2024)

- The advocate writes that the doctor amended their May 15, 2024, document.

In their submission (July 18, 2024) the ministry writes:

- At reconsideration, the ministry was unable to consider the information from the doctor's checklist dated July 3, 2024, because the doctor had not checked the boxes, and as a result the information could not be used at reconsideration. Consequently, a decision was made based on the information available in the original application.
- Had the ministry been able to establish at reconsideration that, based on the doctor's opinion, the appellant was significantly restricted continuously or for extended periods, a different decision might have been reached.

Admissibility of new evidence

The ministry did not object to the admission of the doctor's note and checklist (July 3, 2024) and the advocate's letter (July 4, 2024). The panel finds that the information provided on appeal by the doctor, the ministry is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, as it provides additional information on the appellant's impairment and contributes to the panel's understanding of the circumstances surrounding his PWD application. The panel admits this information as evidence pursuant to section 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision that the appellant was ineligible for PWD designation was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. That is, was the ministry reasonable when it determined that:

- the appellant does not have a severe mental impairment;
- the appellant's impairment does not significantly restrict his ability to perform daily living activities; and
- the appellant does not require significant help or supervision to perform daily living activities.

PANEL DECISION**Severity of Impairment – Physical or Mental**

Section 2 of the Act requires the Minister to be satisfied that the appellant has a severe impairment. "Severe" and "impairment" are not defined. The panel finds that an assessment of severity based on daily physical and mental functioning including any restrictions is a reasonable interpretation of the legislation. However, the panel notes that frequency and/or duration of impairment is not required in the assessment of severity by the legislation at this stage of the legislative test.

Physical Impairment

The panel notes that at reconsideration the ministry determined that the appellant has a severe physical impairment because his inability to communicate causes a significant restriction in his ability to function effectively and independently. On appeal, the doctor added that the appellant also has severe H.Pylori and severe back pain and is restricted with walking and leaving the home most days, in part due to chronic fatigue, back pain and stomach issues from H. Pylori including burning pain and nausea. The appellant cannot lift or carry more than 5kgs due to chronic back pain and stomach issues. He cannot stand longer than 5 minutes or sit longer than 15 minutes at a time due to chronic pain and needs to frequently change position or get up to stretch. The panel finds that, in addition to the appellant's inability to communicate as a result of deafness, there is now evidence of additional restrictions caused by the newly added conditions (H.Pylori and severe back pain). The panel notes that these newly added restrictions, on their own, do not add up to a severe impairment.

Mental Impairment

The ministry determined that, based on the information provided in the original application and request for reconsideration, the appellant does not have a severe mental impairment.

The panel finds that, based on all the evidence, the ministry reasonably determined that the appellant does not have a severe mental impairment. The panel notes that the legislation requires one or the other to exist, not both, and the panel already found the ministry reasonable in their determination that the appellant has a severe physical impairment. However, as the appellant has contributed evidence related to a mental impairment, the panel is going to examine it.

In the July checklist the doctor indicates the appellant experiences one “severe condition”, which is memory issues. The doctor also indicates the appellant experiences lack of motivation, poor executive function, poor concentration and focus ability, and that he gets overwhelmed with small issues. The doctor indicates further that lack of motivation is one of several reasons the appellant is restricted with mobility and aspects of self-care, and poor memory and lack of motivation cause “difficulty following diet restrictions”. While the doctor indicates that the appellant has restrictions with accessing his medications due to his inability to communicate, they also indicate that he has restrictions in this area due poor memory and lack of motivation. It is not clear to what extent poor memory or lack of motivation share in the cause of this restriction. The panel finds that as a result of the above-mentioned restrictions there is evidence of a mental impairment. However, the panel finds that, in their totality, these restrictions do not amount to a severe mental impairment, and that the ministry was reasonable in their determination that the appellant does not have a severe mental impairment.

Restrictions in the ability to perform daily living activities

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

Section 2(2)(b) of the Act requires that the ministry be satisfied that in the opinion of a prescribed professional, a severe physical or mental impairment directly and significantly restricts the appellant's ability to perform daily living activities either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether it is satisfied, is dependent upon the evidence from prescribed professionals. The term

“directly” means that there must be a causal link between the severe impairment and restriction. The direct restriction must also be significant. In this case, the prescribed professional is the appellant’s doctor.

The panel finds that, based on the new information from the July 2024 checklist, the ministry was not reasonable when it determined that there is not enough evidence to confirm that the appellant is directly and significantly restricted in his ability to perform daily living activities continuously or periodically for extended periods. On the contrary, the panel finds that, there is sufficient evidence that the appellant is significantly restricted with several legislated daily living activities as follows:

Shopping

The panel finds the appellant is significantly restricted with shopping because of his inability to communicate with store clerks. In addition, the appellant is limited with lifting or carrying to less than 5kgs, which makes shopping even more challenging. As a result of these restrictions, the appellant requires continuous assistance from his family. The panel finds that the ministry was unreasonable when they determined there was not enough evidence that the appellant was significantly restricted with this daily living activity.

Finances

The panel finds the appellant is also significantly restricted with managing his finances because of his inability to communicate with bank tellers. He requires continuous assistance from his family to deal with managing his finances. The panel finds the ministry was unreasonable when they determined there was not enough evidence that the appellant is significantly restricted with this daily living activity.

Medications

The panel finds the appellant is significantly restricted with managing his medications because of his inability to communicate with the pharmacy and the doctor’s office. He requires continuous assistance from his family with managing his medications. Specifically, he requires continuous assistance with refilling prescriptions. The panel finds the ministry was unreasonable when they determined there was not enough evidence the appellant was significantly restricted with this daily living activity.

Housework

The panel finds the appellant is significantly restricted with housecleaning and doing laundry because of his severe back pain. In the July 2024 checklist the doctor indicates the appellant requires continuous assistance from his family with this daily living activity. The panel finds the ministry was unreasonable when it determined that there

was not enough evidence the appellant was significantly restricted with this daily living activity.

Remaining daily living activities

The panel finds that the ministry reasonably determined that there is not enough evidence that the appellant's remaining legislated daily living activities (mobility, self-care, meal preparation, and use of transportation) are not significantly restricted as follows:

Mobility

While the doctor indicates in the July checklist that the appellant is restricted with mobility due to chronic fatigue, back pain, lack of motivation and stomach issues, they have not indicated the appellant needs the help of an assistive device that would help compensate the restriction (for example a cane or a wheelchair). In addition, the panel finds that as a severe mental impairment has not been established, lack of motivation cannot be considered in this case. While the doctor has stated that lack of motivation plays a part, there is no explanation from the doctor how the physical impairment causes this lack of motivation absent a mental impairment. Consequently, the panel finds the ministry reasonably determined that there is not enough evidence that the appellant's mobility is significantly restricted continuously or periodically for extended periods.

Personal hygiene and self-care

In the July 2024 checklist the doctor indicates that the appellant is restricted with personal care due to chronic back pain, stomach issues, and lack of motivation. The panel finds that as a severe mental impairment has not been established, lack of motivation cannot be considered in this case. While the doctor has stated that lack of motivation plays a part, there is no explanation from the doctor how the physical impairment causes this lack of motivation absent a mental impairment. While the doctor indicates that without continuous reminders the appellant neglects his hygiene, the panel finds that as no severe mental impairment has been established, memory issues cannot be considered in this case. While the doctor has stated that memory issues play a part, there is no explanation from the doctor how the physical impairment causes memory issues absent a mental impairment. The panel finds further that the doctor did not provide any information on the frequency and/or duration of the appellant's restriction with hygiene and self-care. Consequently, the panel finds that the ministry reasonably concluded there is not enough evidence that that the appellant is

significantly restricted continuously or periodically for extended periods with personal hygiene and self-care.

Meal preparation

In the July 2024 checklist the doctor indicates that the appellant has restrictions with food preparation or cooking due to lack of motivation and fatigue. The panel finds that, as a severe mental impairment has not been established, lack of motivation cannot be considered as a restriction in this case. While the doctor has stated that lack of motivation plays a part, there is no explanation from the doctor how the physical impairment causes this lack of motivation absent a mental impairment. Further, the panel finds that while the doctor indicates that fatigue is one of the reasons the appellant is restricted with preparing his meals, they do not provide any information to what extent fatigue contributes to the appellant's restriction. As a result, the panel is not able to determine whether the appellant is continuously or periodically restricted for extended periods of time by fatigue. Lastly, the doctor does not explain if or how the family's continuous assistance with meal preparation is directly related to the appellant's severe physical impairment. Consequently, the panel finds the ministry reasonably determined that there is not enough evidence that the appellant's meal preparation is significantly restricted continuously or periodically for extended periods.

Transportation

In the July 2024 checklist the doctor indicates that the appellant has restrictions with transportation and requires continuous assistance from his family with transportation to access the community. However, the doctor does not explain if or how the noted assistance is directly related to the appellant's severe physical impairment. Consequently, the panel finds the ministry reasonably determined that there is not enough evidence that the appellant's use of transportation is significantly restricted continuously or periodically for extended periods.

While the doctor speaks to the appellant's social functioning, the panel notes that social functioning is not considered a legislated daily living activity in the context of a physical impairment. The appellant's established severe impairment is of a physical nature.

In conclusion, the panel finds that, based on the evidence, the appellant is significantly restricted with the legislated daily living activities of shopping, housework, managing medications, and managing finances. The panel notes that there is no indication in the legislation that every one of the daily living activities listed must be affected. As stated in *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2009, the ordinary meaning of the plural "activities" dictates that there must be evidence that at least two

daily living activities are directly and significantly restricted. Consequently, the ministry was not reasonable in their determination that there is insufficient evidence that the appellant's daily living activities are not significantly restricted.

Help to perform daily living activities

The ministry determined that as it has not been established that the appellant's daily living activities are significantly restricted it cannot be determined that significant help is required from other persons or a device. Also, it was the ministry's view that, although the appellant's advocate indicated the appellant receives significant help from his family, the doctor has not confirmed this.

The panel finds that the ministry was not reasonable in their determination that the appellant does not require significant help from other persons or a device. The panel finds that the doctor's information in the July checklist confirms that the appellant requires continuous help with shopping, housework, managing medications, and managing finances. For example, the appellant needs continuous assistance with banking because he is not able to communicate with bank tellers; he also needs continuous assistance with accessing the pharmacy and medical appointments because of his communication issues.

Conclusion

The panel finds that, based on the evidence, the appellant's severe impairment significantly restricts the appellant's ability to perform daily living activities, and he requires significant help or supervision to perform his daily living activities. The panel rescinds the ministry's reconsideration decision that the appellant is not eligible for PWD designation. The appellant is successful on appeal.

Appendix - Relevant Legislation***Employment and Assistance for Persons with Disabilities Act*****Persons with disabilities**

2 (1) In this section:

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

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

Employment and Assistance for Persons with Disabilities Regulation

Definitions for Act

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

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

activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

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

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

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

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

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

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

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

(i) medical practitioner,

(ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner

APPEAL NUMBER 2024-0228

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

Legislative Authority for the Decision:

Employment and Assistance Act

Section 24(1)(a) and Section 24(1)(b)

Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name

Inge Morrissey

Signature of Chair

Date (Year/Month/Day)

2024/08/01

Print Name

Carmen Pickering

Signature of Member

Date (Year/Month/Day)

2024/08/02

Print Name

Margarita Papenbrock

Signature of Member

Date (Year/Month/Day)

2024/08/02