

### **Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) Reconsideration Decision dated April 10, 2024, which determined the appellant was not eligible for the Persons with Disabilities designation because she did not meet two of the legislated five criteria. The ministry was satisfied that she met the age, duration and severity of impairment criteria but not satisfied, based on the evidence presented, that she met the following criteria.

- The severe impairment directly and significantly restricts daily living activities.
- Assistance is required with daily living activities as a result of significant restriction.

The ministry found the appellant was not one of the prescribed classes of persons eligible for Persons with Disabilities designation on alternative grounds. As there was no 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), section 2*

Employment and Assistance for Persons with Disabilities Regulation (Regulation), sections 2 and 2.1

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

**Part E – Summary of Facts**

The hearing took place via teleconference on July 30, 2024.

Relevant Evidence Before the Minister at Reconsideration**Persons with Disabilities Application (November 27, 2023)*****Self-Report***

The appellant states she has had an eating disorder for over 10 years - anorexia and bulimia. As well, she has fatty liver, pancreatitis, major depressive disorder, ADHD, neurotic tendencies and nervous preoccupation, panic attacks, PTSD and borderline personality disorder.

The difficulty she has feeding herself impacts her mood and low energy. Extreme worry and panic attacks prevent normal functioning, insomnia and night sweats. PTSD dreams impact her energy. Emotion prevents her from working in normal jobs. Irritability, social withdrawal and low stress management create challenges.

***Medical Report (December 27, 2023) – signed by the Appellant’s doctor***

The doctor (general practitioner) provided the following information.

<b>Diagnosis</b>	<b>Date of onset</b>
Mood disorder, ADHD/depression	2008 (ADHD 2016)
Anxiety disorder	2008
Eating disorder	2013
Digestive disorder	2017

**Health History**

The doctor writes that most of the treatment was received in another province. The appellant also received disability assistance in the other province.

Her health history consists of general anxiety disorder, anorexia and major depressive disorder (2008). Then the appellant developed digestive disorders including pancreatitis. She also has ADHD and border line personality disorder. The biggest concern is feeding herself, which impacts mood, energy and concentration. Emotional dysregulation, irritability, withdrawal and low stress management makes it hard to work at a job for hours.

The doctor states the appellant has not been prescribed any medication or treatment that interfere with her ability to perform daily living activities, and she doesn't require any prostheses or aids for her impairment.

The impairment is likely to continue for two years or more; the appellant will have mental health disorders and ongoing struggles. She needs support/preventative treatment therapies.

### **Functional Skills**

The doctor indicates the appellant can walk 4+blocks and climb 5+ stairs unaided. There are no lifting or seating limitations and no difficulties with communication.

Significant deficits with cognitive and emotional function indicated are:

- Executive (planning, organizing, sequencing, calculations, judgement)
- Emotional disturbance (e.g. depression, anxiety)
- Attention or sustained concentration

### **Daily Living Activities**

The doctor states the impairment directly restricts the appellant's ability to perform daily living activities as follows:

Activities restricted

- Personal self-care (continuous)
- Meal preparation (continuous)
- Basic housework (periodic)
- Mobility outside the home (periodic)
- Management of finances (periodic)
- Social functioning (periodic)

Activities not restricted

- Management of medications
- Daily shopping
- Mobility inside the home
- Use of transportation

Due to complex and multiple mental health disorders social functioning is dependent on mood. Functions can be restricted in society, workforce and daily living.

The appellant needs assistance, mostly from friends and the community.

The appellant had multiple admissions in 2017/2018 in another province for her eating disorder and pancreatitis. The last hospital admission was for abdominal pain in June 2021.

The doctor states the appellant has been their patient since January 2023. They have seen her 11 or more times.

***Assessor Report (January 10, 2024) – signed by the Appellant’s doctor***

The doctor provided the following information.

The appellant lives alone – renter in another room.

**Mental or Physical Impairment**

The appellant’s mental or physical impairments that impact her ability to manage daily living activities are memory and poor concentration, nervous preoccupation and neurotic tendency.

**Ability to Communicate**

The doctor indicates the appellant’s speaking is good, and reading (concentration), writing and hearing are satisfactory.

**Mobility and Physical Ability**

The doctor states the appellant is independent walking indoors/outdoors, climbing stairs and standing. She requires periodic assistance from another person lifting and carrying and holding.

**Cognitive and Emotional Functioning**

The doctor indicates there is minimal impact with:

- insight and judgement
- motor activity
- language
- psychotic symptoms
- other neuropsychological problems
- other emotional problems (irritability)

The doctor indicates there is moderate impact with:

- bodily functions (e.g. eating problem)
- consciousness
- impulse control
- executive

- memory
- motivation

The doctor indicates there is major impact with:

- emotion
- attention/concentration

### **Daily Living Activities**

The doctor indicates the appellant is independent with:

- Personal care (dressing, grooming, bathing, toileting, transfers in/out of bed and on/off chairs)
- Basic housekeeping (laundry, basic housekeeping)
- Shopping (going to/from stores, reading prices and labels, making appropriate choices, carrying purchases home)
- Meals (meal planning, safe storage of food)
- Pay rent and bills (banking, budgeting)
- Medications (filling/refilling prescriptions, taking as directed, safe handling and storage)
- Transportation (getting in/out of a vehicle)

The doctor states the appellant needs periodic assistance with;

- Personal Care (feeding self, regulation diet) - needs reminders
- Meals (food preparation, cooking)

### **Social Functioning**

The doctor indicates the appellant is independent with:

- Appropriate social decisions
- Interacting appropriately with others
- Able to secure assistance from others

The doctor indicates the appellant needs periodic assistance with developing and maintaining relationships and continuous support dealing appropriately with unexpected demands.

The doctor describes the appellant's relationship with her immediate social network as, "marginal functioning – little significant participation. Communication: relationships often minimal and fluctuate in quality" and her relationship with her extended social network as, "marginal functioning – little more than minimal acts to fulfill basic needs".

Assistance is provided from family and friends. The appellant does not have an assistance animal.

**Letter from the Ministry to the Appellant (February 9, 2024)**

The ministry denied the appellant's application for Persons with Disabilities designation and included the reasons for the denial.

**Request for Reconsideration (March 8, 2024)**

The appellant states that for 15 years, she's battled the silent killers of anorexia and eating disorders alongside treatment-resistant depression, severe anxiety, ADHD, borderline personality disorder, and trauma. Substance abuse further ravaged her body, leading to chronic pancreatitis and fatty liver.

She adds that she has made a lot of progress. However, these are chronic conditions that impact her ability to live a "normal" life. Her body's ability to process and uptake nutrients is severely compromised.

Although the assessments done in 2013 state prognosis is expected to improve, even with interventions, it has only marginally improved. As a result, she is constantly dealing with a variety of health issues including, chronic abdominal pain, diarrhea and or constipation, inability to exert physically for extended periods of time without pain, insomnia/severe exhaustion, night sweats, waking up in a panic, disassociation, freeze states, chronic procrastination, memory problems, difficulty concentrating, cognitive impairment, emotional dysregulation, extreme emotional reactions to small changes, emotional outbursts, mood swings and trouble managing finances. She has had a hard time keeping jobs throughout her life and maintaining finances on her own.

Although she has engaged in numerous interventions since 2011, her ability to maintain her weight above 95 pounds is extremely challenging. Because she experiences fatty liver disease and chronic pancreatitis, she is limited in the amounts and types of fats she can eat and properly digest. As a result, daily living activities including cooking and feeding herself prove to be difficult. She needs to spend a lot of time and energy in the day to feed herself and often is not successful. She cannot exert herself for a long period of time without experiencing severe pain in her abdomen. She is constantly fatigued and overstimulated making daily tasks challenging.

In addition, her mental faculties are compromised. Her memory is very poor. She often forgets daily tasks like brushing her teeth or taking a shower. Making decisions about her day is crippling and can cause intense anxiety and panic. She finds it hard to maintain healthy, long-term relationships as her ability to be emotionally regulated fluctuates and is heavily impacted by her blood sugar.

The appellant states she was confused to receive the denial for disability benefits when she had previously been approved for disability in another province and has been approved for a Federal Disability Tax Credit.

She has attached medical documentation from a few years ago, is waiting to meet with a psychiatrist and can produce further documents later.

**Medical Imaging Report – CT of the Abdomen (March 1, 2022).**

The report shows a finding of chronic pancreatitis with innumerable calcifications throughout the pancreas but no evidence of mass.

**Screenshot - Visit history to Hospitals/Emergency Departments/Lab (June 2020 - January 2022)**

Fourteen visits are listed during this period.

**Disability Tax Credit Certificate – completed by a medical doctor at a clinic (June 4, 2021)**

The doctor states they have been the appellant's doctor since 2020. Even with appropriate therapy, medication and devices, the appellant has significant restrictions of feeding and mental functions necessary for everyday life.

The doctor writes the appellant has progressive impairment – anxiety and difficulty feeding herself. Her eating disorder history leads to poor nutrition. She needs aid from her partner to trigger meals frequently.

**Decision from another Provincial Government re: Disability Support (August 18, 2017)**

The adjudicator writes that the appellant presents with a number of health issues including anorexia nervosa, major depression and alcohol abuse. Various programs have failed to produce sustained improvement in the appellant's ability to function in the community and workplace.

It is recommended she be granted disability support.

**Health Status Report Summary completed by a Psychiatrist (July 19, 2017)**

The psychiatrist indicates the appellant has lung cancer, anorexia nervosa, major depression, anxiety and alcohol abuse.

She was hospitalized in 2016 and 2017 for her eating disorder, depression and alcohol abuse. Some safety concerns were indicated. The appellant has difficulty with attention

and concentration, feels tired due to poor eating habits and purging and alcohol abuse. She has a long history of eating disorder and substance abuse. She is weak and exhausted, but she should be able to return to work in 2018 and make a full recovery.

**Psychiatrist Assessment Report (July 17, 2017)**

The psychiatrist writes that the appellant was admitted to an eating disorder program. She has been trying to make some improvements but finds it quite difficult as her meals are quite restricted throughout the day. She usually feels too thin but sometimes is scared of gaining too much weight and going out of control. She currently vomits three or four times a week whenever she feels nervous guilty or upset. The psychiatrist discussed the appellant's medications and said she will be observed for symptoms and signs of withdrawal.

**Psychiatrist Assessment Report (July 6, 2017)**

The psychiatrist writes the appellant has been off work since February of 2017. She quit her job because it was too stressful, and she wanted to focus on her health. They will recommend a stay in their inpatient program to get the appellant's eating on track.

**Consultation Report – completed by a doctor with an Eating Disorder Clinic (November 14, 2013)**

The doctor provides diagnoses of eating disorder (anorexia nervosa), alcohol abuse, cannabis abuse, dysthymia and generalized anxiety disorder. Recommendations include referral to a family physician for a physical exam and to monitor progress and, blood work.

Relevant Evidence Received After Reconsideration

**Notice of Appeal (April 18, 2024)**

The appellant states she doesn't believe the severity or chronic nature of her conditions are fully understood by the ministry.

The appellant provided four submissions.

**Submission I (May 9, 2024)**

*Letter from the Appellant's Social Worker (May 8, 2024)*

The social worker states this letter is to clarify how the appellant's impairments impact her ability to perform daily living activities. The appellant provided the following information to her social worker.



The appellant states her impairments vary in severity and as a result her ability to perform daily living activities also vary. Depression, pancreatic attacks, eating disorder and borderline personality disorder have the most dramatic impact on her functioning. She has bad days approximately 75% of the time where she is unable to leave the house, is unable to go shopping, do banking or use transportation. This is primarily due to the combination of physical pain and depression.

The appellant states her eating disorder is constantly impacted (an ongoing problem) and she requires continuous support to regulate her diet, plan meals, make appropriate choices and prepare and cook food. Her roommates provide a lot of support in managing her eating disorder and she also uses apps on her phone for meal planning. She requires support approximately 75% of the time in all areas of social functioning due to issues such as lashing out, isolating and struggling to regulate her emotions. As a result, her closest relationships dramatically fluctuate in quality and she is very isolated from the larger community. The appellant adds that her mom and her roommates provide assistance in helping her to navigate interpersonal relationships.

As well, she requires continuous assistance managing finances and medication. Her parents help her budget and she has all her bills set up to be paid automatically. She requires daily reminders to take her medication and regular reminders to refill prescriptions.

The appellant adds that she has very bad days two to three days per week and is unable to get out of bed, except to use the toilet. On these days, she is unable to get dressed, groom bath or do basic housekeeping primarily due to the degree of physical pain she experiences, and depression.

### **Submission II (July 24, 2024)**

*Letter from a program manager and counsellor at a Women's Centre in another province (September 19, 2018).*

The writer states, the appellant is a victim of domestic abuse and has lived with the abusive person within the past six months but intends to live permanently apart from them. Indicators of abuse include physical injury, words, actions and gestures that threatened and terrorized her, and undue or unwarranted control over her daily personal and financial activities.

**Submission III (July 25, 2024)**

**Email from the Appellant (July 25, 2024)**

The appellant provides a description of her day on July 21, 2024.

woke up at 4:30 am

- food hadn't digested from the day before
- nauseous and vomiting, constipation still, no bowel movement in 3 days

slept until 6:00 am

- woke up to nausea and severe pancreatic pain
- exhaustion and pain fill her body
- can't eat or drink anything
- wildfire smoke has become thicker
- body has a hard time processing it, leading to more pain

12:00 pm

- still constipated, nausea has gone
- able to drink water and eat some oatmeal

3:00 pm

- still in pain
- too exhausted to make food or do chores
- trying to manage constipation with psyllium husk
- anxiety and depression are severe as she can't manage to feed herself

5:00 pm

- able to get some food down

6:00 pm

- stool passed with major diarrhea- on toilet for over an hour

8:00 pm

- in and out of bathroom for the last 2 hours
- pain is down to a level 2

10:00 pm

- try to sleep - using heat pack in a heat wave to manage pancreatic pain

"These types of challenges/issues are daily - this is how this situation impacts my life daily"

**Submission IV (July 25, 2024)**

The submission contains a list of test results from the provincial health authority from July 19, 2024 – June 20, 2020) along with medical reports previously submitted.

### **At Hearing**

At the hearing the appellant stated that her whole life she wanted to die because of the disease she has, which she is constantly trying to prove.

She explained that she provided a diary of her daily life to add more specific information in addition to the letter written by her social worker. The appellant added that she needs support 70 – 90% of the time (e.g. when her pancreatitis flares up and for social functioning due to depression). Her physical impairment is mostly caused by pancreatitis.

Since 2018, she has worked but is no longer working due to health reasons. After COVID her mental health became severely impaired. She has now been sober for eight or nine months but definitely still has challenges.

The appellant stated she lives in a house with a roommate. Her roommate helps her and will ask her if she's eaten or reminds her to eat. She doesn't get hunger cues and so 90% of the time she forgets to eat. The appellant also stated that her emotional capacity is impaired when things change quickly (e.g., wildfires). Her counsellor and her mother provide her with mental support.

At the hearing, the ministry relied on its record. In addition, the ministry stated it considered the additional information provided by the appellant's social worker (submission (I), as a "self-report". Although the social worker is a prescribed professional, they do not confirm the information as their opinion.

### **Admissibility of New Evidence**

The ministry did not object to admitting the appellant's submissions. The panel finds all the evidence in the appellant's submissions is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and admits it under section 22(4) of the *Employment and Assistance Act*.

The panel finds the information provided by the ministry at the hearing, is considered argument.

**Part F – Reasons for Panel Decision****Issue**

The issue on appeal is whether the ministry's Reconsideration Decision was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Did the ministry reasonably determine the appellant was not eligible for Persons with Disabilities designation, because the minister was not satisfied the following criteria were met?

- A severe impairment directly and significantly restricts daily living activities.
- Assistance is required with daily living activities as a result of significant restriction.

**Appellant Position**

The appellant submits that for 15 years, she's battled anorexia and eating disorders depression, severe anxiety, ADHD, borderline personality disorder, and trauma. Substance abuse further ravaged her body, leading to chronic pancreatitis and fatty liver.

As a result, she is constantly dealing with a variety of issues including chronic procrastination and memory problems, difficulty concentrating and cognitive impairment, emotional dysregulation, extreme emotional reactions to small changes, emotional outbursts and mood swings.

She has trouble managing finances. Cooking and feeding herself are difficult as she needs to spend a lot of time and energy in the day to feed herself and often is not successful. She is constantly fatigued and overstimulated making daily tasks challenging. As her memory is very poor, she often forgets daily tasks like brushing her teeth or taking a shower. Making decisions about her day is crippling and can cause intense anxiety and panic. She finds it hard to maintain healthy, long-term relationships as her ability to be emotionally regulated fluctuates and is heavily impacted by her blood sugar.

She needs support, has had it in another province, and finds it difficult to have to keep proving her disability. She believes the ministry has not fully understood the severity or chronic nature of her impairments.

**Ministry Position**

The ministry is satisfied that the criteria for age, duration and severe mental or physical impairment was met. The appellant is over 18 years of age, her impairment will last more

than two years, and the ministry is satisfied the evidence supports a severe mental impairment. The ministry finds the medical information from another province helpful but relies on the medical information in the Persons with Disabilities application as more recent. The ministry also notes that the information such as laboratory and imaging reports, history of visits to a BC hospital, consultation and assessment reports, and the disability credit certificate do not speak to limitations/restrictions in the appellant's ability to perform daily living activities, or the help required for daily living activities.

#### *Daily Living Activities*

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

In the Medical Report, the doctor indicates the appellant has not been prescribed medication/treatment that interferes with her ability to perform daily living activities. The doctor indicates the appellant's impairment continuously restricts her from being able to perform the following daily living activities of personal self-care and meal preparation. The doctor indicates the appellant is periodically restricted from being able to perform daily living activities such as basic housework, mobility outside the home and social functioning.

The doctor adds that assistance is provided, mostly from friends and community members. However, the doctor also notes the appellant can independently manage all aspects of her daily living activities, except for requiring periodic reminders for feeding and periodic assistance from another person regulating diet, food preparation, and cooking. They do not describe how often the appellant requires this assistance to determine if it represents a significant restriction to her overall level of functioning. (e.g., once a month or several times a week).

As well, the doctor indicates the appellant requires continuous support/supervision dealing with unexpected demands, periodic support/supervision developing and maintaining relationships and has marginal functioning with both her immediate and extended social networks. However, they do not indicate that the appellant requires any help to maintain in the community.

#### *Help Required with Daily Living Activities*

The ministry submits that as it has not been established that daily living activities are significantly restricted either continuously or periodically for extended periods, it cannot

be determined that significant help is required from other persons or an assistive device or assistance animal.

### **Panel Analysis**

The panel gives little weight to the medical evidence from another province, as it is several years old. The ministry was reasonable when not giving weight to this evidence. As well, the panel gives little weight to the decision for disability benefits in another province, as this decision was made in another jurisdiction, and the panel is not privy to the details or requirements of the designation. The ministry was reasonable when it said that this information is dated. However, the panel finds that information in the Disability Tax Credit certificate provides information about restrictions and the ministry was unreasonable when it determined it did not.

Section 2(2) of the *Act* sets out the requirements that must be met for the minister to designate a person as a Person with Disabilities. One requirement is that the minister is satisfied that the person has a severe mental or physical impairment. The panel notes, “severe” and “impairment” are not defined in the legislation. The ministry considers the extent of any impact on daily functioning as shown by restrictions on mental or physical abilities. The panel finds that an assessment of severity based on physical and mental functioning, including any restrictions, is a reasonable application of the legislation.

The panel notes a Medical Report shows a finding of chronic pancreatitis and the appellant stated her physical impairment was mostly due to her pancreatitis. However, as her doctor does not indicate severe restrictions on the appellant’s functionality due to pancreatitis, the panel finds the ministry reasonably determined a severe physical impairment was not confirmed.

As the ministry is satisfied that the criteria for a severe mental impairment was met, the panel will focus on the two remaining criteria, restrictions in the ability to perform daily living activities and assistance required.

### **Restrictions in Ability to Perform Daily Living Activities**

Section 2(2) of the *Act* states the minister must be satisfied that in the opinion of a prescribed professional, a severe physical or mental impairment directly and significantly restricts the person's ability to perform daily living activities continuously, or periodically for extended periods. Daily living activities are defined in section 2 of the Regulation. At least two activities must be restricted in a way that meet the requirements, as provided by the case *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal), 2009*

*BCSC 1461*. To be significant, the restriction must be to a great extent, such as not being able to do the activities without a lot of support. Continuous means the activity is generally restricted all the time and periodic for extended periods means frequently or for longer periods of time.

— Prepare own Meals

In the Medical Report, the doctor (a medical professional) indicates meal preparation is continuously restricted and in the Assessor Report indicates the appellant needs periodic assistance preparing and cooking meals. In the submission (I), the appellant states her eating disorder is constantly impacted (an ongoing problem) and she requires continuous support to plan meals, make appropriate choices and prepare and cook food. Her roommate provides a lot of support in managing her eating disorder and she also uses apps on her phone for meal planning.

— Perform personal hygiene and self-care

In the Medical Report, the doctor states the appellant needs continuous assistance with personal self-care and in the Assessor Report, the doctor states the appellant needs periodic assistance with personal care (feeding self, regulating diet) - she needs reminders. In the Disability Tax Credit form, the doctor states that even with appropriate therapy, medication and devices, the appellant has significant restrictions of feeding and mental functions necessary for everyday life and that her eating disorder leads to poor nutrition. She needs aid from her partner to trigger meals frequently. As mentioned above, the panel finds the ministry was not reasonable when it said, "disability credit certificate provided does not speak to limitations/restrictions in your ability to perform daily living activities, or the help you require with daily living activities."

In the Request for Reconsideration, the appellant states she needs to spend a lot of time and energy in the day to feed herself and often is not successful. In the appellant's submission (I), she states she requires continuous support to regulate her diet. Her roommates provide a lot of support in managing her eating disorder. As well, in the appellant's submission (III) (example of daily struggles) she describes the challenges she faces with feeding herself.

— Relate to, Communicate or Interact with Others Effectively.

In the Medical Report, the doctor states social functioning is periodically restricted and in the Assessor Report, the doctor indicates the appellant needs periodic assistance with developing and maintaining relationships and continuous support dealing appropriately with unexpected demands. In her submission (I), the appellant states she requires support approximately 75% of the time in all areas of social functioning due to issues such as

lashing out, isolating and struggling to regulate her emotions. As a result, her closest relationships dramatically fluctuate in quality and she is very isolated from the larger community. The appellant adds that her mother and her roommates provide assistance in helping her to navigate interpersonal relationships.

The panel finds the evidence above confirms that in the opinion of a prescribed professional a severe mental impairment directly and significantly restricts the appellant's ability to perform the daily living activities of preparing own meals, performing personal hygiene and self-care and relate to, communicate or interact with others effectively continuously, or periodically for extended periods. A prescribed professional indicated the appellant needs periodic and continuous assistance with all these daily living activities. The ministry views the letter from the social worker as a "self-report", and not from a prescribed professional. Although the panel does not dispute this, the information provided in submissions (I), (II) and (III) assist the panel in understanding the severity of restrictions the appellant faces and the assistance required. The appellant needs continuous support to prepare meals, regulate her food intake, deal with unexpected demands and navigate personal relationships.

Given the evidence provided by the prescribed professional through the Assessor Report, Medical Report and Disability Tax Credit form, it is clear that there are more than two areas of daily living activities where the appellant is restricted from performing. The panel finds the ministry was not reasonable in its determination that this section of the legislation was not met.

### **Help to Perform Daily Living Activities**

The panel notes section 2(2) of the Act also requires that as a result of these restrictions, the person requires help to perform these activities and in order to perform them, the person requires an assistive device or the significant help or supervision of another person.

The panel notes the doctor states the appellant needs support/preventative treatment therapies and assistance, mostly from friends and the community. She also needs assistance from her partner to trigger meals frequently. The appellant states she requires continuous support to regulate her diet. Her roommates provide a lot of support in managing her eating disorder and her mother and her roommates provide assistance in helping her to navigate interpersonal relationships. Her counsellor and her mother provide her with mental support.



The panel finds the above evidence supports the requirement for significant help from other people, and finds the ministry determination that assistance is not required to perform the daily living activities, unreasonable.

**Conclusion**

In conclusion, the panel finds the ministry's decision that determined the appellant was not eligible for Persons with Disabilities designation was not reasonably supported by the evidence.

The panel rescinds the ministry's decision. The appellant is successful on appeal.

## Schedule of 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....

### 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...

## **Part 1.1 — Persons with Disabilities**

### **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

Connie Simonsen

Signature of Chair

Date (Year/Month/Day)

2024/07/31

Print Name

Richard Franklin

Signature of Member

Date (Year/Month/Day)

2024/07/31

Print Name

Margarita Papenbrock

Signature of Member

Date (Year/Month/Day)

2024/08/06