

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) Reconsideration Decision dated May 30, 2024, denying persons with disabilities (“PWD”) designation.

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

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

The Ministry found the Appellant was not one of the prescribed classes of persons eligible for PWD on alternative grounds. As there was no information or argument on this point, the Panel considers it not to be an issue in this appeal.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (“Act”), s. 2

Employment and Assistance for Persons with Disabilities Regulation (“Regulation”), s. 2

Employment and Assistance Act, s. 22(4)

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

Part E – Summary of Facts

The hearing took place by teleconference on August 16, 2024. In attendance at the hearing were the Appellant and a representative of the Ministry.

Evidence Before the Ministry at Reconsideration:

The information the Ministry had at the time of the decision included:

- “PWD Designation Application - Medical Report” completed by a Psychiatrist
- “Medical Report – Employability” completed by the Psychiatrist
- Medical Letter from the Psychiatrist
- Assessor Report completed by a Social Worker
- Letter from the Social Worker
- Appellant’s Statements:
 - Self Report in the Application
 - Written statement in the Request for Reconsideration;
- Article titled “Serious Toll of Chronic Constipation Overlooked”, published by the Canadian Society of Intestinal Research.

PWD Designation Application - Medical Report:

The Psychiatrist stated that the Appellant has been their patient since June 21, 2023, and they have seen the Appellant between two and ten times in the past year.

Diagnosis:

The Psychiatrist provides the following diagnoses:

- Psychotic depression with somatic delusional beliefs (onset 2022);
- Somatic symptoms disorder with gastro-intestinal somatic delusional beliefs, with predominant pain (onset 2022); and
- Dependent personality traits.

Health History:

The Psychiatrist states that the Appellant “has been experiencing treatment-resistant delusional belief that any oral food intake has been causing severe generalized sense of pressure with predominant abdominal pain. He has been functioning very poorly [secondary] to pain related limitations. His delusional somatic beliefs have been associated with increasingly sad mood, generalized anxiety and impairment of cognitive functioning likely [secondary] to depressed mood, anxiety and medications related side effect.”

The Psychiatrist states that the Appellant takes four medications (Mirtazapine, Clonazepam, Olanzapine and Quetiapine) that interfere with his ability to perform daily living activities, causing “sedation, mildly impaired attention span, short term memory, contributing to [increased] somatic [symptoms disorder]-induced cognitive limitations.

Functional Skills:

The Psychiatrist indicates that the Appellant’s functional skills are “unknown” for walking, climbing stairs, lifting and remaining seated.

They indicate that the Appellant has no difficulties with communication, but has significant deficits with cognitive and emotional functioning in the following areas:

- executive function;
- memory;
- psychotic symptoms;
- motivation; and
- attention or sustained concentration.

They comment that the Appellant has:

- Low motivation to perform appropriate self-care;
- Anhedonia;
- Apathy; and
- Unspecified anxiety.

They state that the Appellant is:

- Ruminating consistently about fear of eating secondary to delusional somatic beliefs;
- Feeling helpless and occasionally hopeless about his future;
- Feeling emotionally detached from others;
- Socially isolated; and
- Unable to work secondary to ongoing sense of pressure/persistent predominant pain [decreased] attention.

They also state that the Appellant has “decreased ability to register new information and short term memory.” [sic]

Daily Living Activities:

The Psychiatrist indicates that the impairment directly and continuously restricts the Appellant’s ability to perform the following daily living activities:

- Personal self care;
- Meal preparation;
- Management of medications;

- Basic housework;
- Mobility outside the home; and
- Social functioning.

They indicate that mobility inside the home is not restricted, and restrictions on daily shopping are “unknown”.

In the section for explanation of the impact on social functioning, the Psychiatrist explains that social isolation is secondary to ongoing somatic sensations and pain, poor nutrition, apathy, anhedonia, low motivation, and anxiety.

In the section for additional comments regarding the degree of restriction, the Psychiatrist explains that “[secondary] to persistent pain, [the Appellant] has limited ability to register new information, poor attention, poor short term memory.”

In answer to the question “What assistance does your patient need with Daily Living Activities?”, the Psychiatrist states “presently not relevant”.

Additional Comments:

The Psychiatrist states:

“Somatic symptoms disorder, severe distress [secondary to] disproportional and persistent thoughts about his condition; Persistently high level of anxiety about health symptoms; causing significant disruption of daily life. This suffering is authentic, health related concerns. Cognitive features include attention focused on somatic [symptoms], with catastrophic interpretations, precipitating Depressive [disorder] and anxiety.”

Medical Report – Employability:

The Psychiatrist provided a Ministry form titled “Medical Report – Employability”, in which they provided the primary diagnosis of psychotic depression with gastrointestinal somatic complaints. They provide secondary diagnoses of somatic symptom disorder and depressive personality disorder traits. The Psychiatrist describes the Appellant’s overall medical condition as “severe.”

In the section of the report that asks for a description of the nature of restrictions specific to the medical conditions, the Psychiatrist states: “somatic symptoms has [sic] been restricting motions, ability to ambulate, restrict [sic] all aspect of self-care, ADLs, IADLs, cognitive, social and occupational functioning.”

Medical Letter:

The Psychiatrist reviews the admission notes from the Appellant's inpatient treatment for psychotic depression with gastrointestinal somatic symptoms at two hospitals, first in January 2023 and then from March 2 to May 10, 2023. They note that during the most recent hospital stay, the Appellant "was clearly still not functioning well. Almost anything could trigger abdominal complaints. He claimed that even eating grapes or 2 [sic] will cause severe constipation, resulting in subjective 'sense of pressure' on his back and his neck among other pleomorphic symptoms."

The Psychiatrist states that since the Appellant came under their care, there has been no improvement in his experience of somatic symptoms. They state that the Appellant experiences "sense of pressure" in his neck, back, extremities and joints, and "musculoskeletal and visceral pain, causing his severe functional impairment and severe occupational [and] cognitive impairment." The Psychiatrist states:

"When he experiences pain and sense of pressure, [the Appellant] is not able to ambulate freely, he is not able to carry on with any cognitive tasks, with any occupational tasks, IADL S and ADLS. His apartment was seen by our during [sic] outreach and it was very unkept, with messy kitchen and unwashed dishes and pots. His refrigerator and kitchen had many expired foods, [the Appellant] was attempting to eat tomato...paste for dinner. He has been feeling overwhelmed with sense of pain and pressure and unable to do anything while experiencing at [sic] these somatic symptoms."

The Psychiatrist adds: "health related quality of his life is severely impaired, both physically and mentally. His disorder has been progressing into marked functional impairment, and without adequate support, the disorder can lead to invalidism."

Assessor Report:

The Social Worker states that they have known the Appellant for "6+" months and have seen him between two and ten times in the past twelve months. They state that they provide "ongoing mental health services for stabilization and re-integration into the community."

Mental or Physical Impairment:

The Social Worker states that the Appellant's mental or physical impairment that impacts his ability to manage daily living activities is "delusional beliefs about food causing physical pain."

Ability to Communicate:

They indicate that the Appellant's ability to communicate is good.

Mobility and Physical Ability:

They indicate that the Appellant is independent in all listed aspects of mobility and physical ability.

Cognitive and Emotional Functioning:

They indicate that the Appellant's mental impairment has a major impact on:

- bodily functions and
- emotion.

They indicate moderate impact on:

- executive function,
- motivation and
- psychotic symptoms.

Daily Living Activities:

The Social Worker indicates that the Appellant is independent in all listed daily living activities, including social functioning, with good functioning with immediate and extended social networks.

Assistance Provided for Applicant:

The Social Worker indicates that help required for daily living activities is provided by health authority professionals. They do not describe the help provided.

Letter from the Social Worker:

The Social Worker provided a letter in support of the Request for Reconsideration. The Social Worker states:

- The Appellant was an inpatient at two hospitals continuously between February 2, 2023 and May 5, 2023.
- The Appellant was discharged with a diagnosis of Depressive Disorder with Somatic Delusions.
- The Appellant's lack of insight into his illness makes it difficult to treat.
- The Social Worker has been the Appellant's Case Manager since August 2023 and has visited the Appellant's home once.
- The Appellant has a friendly relationship with one neighbour but otherwise has been unable to engage in social activities.
- The Appellant has been independent in managing his activities of daily living, but "in the accompany [sic] of depression and the symptoms he experiences....his somatic

delusions presents as gastrointestinal pain which he feels is debilitating to the point of not leaving his home and not eating food.”

- “Without the benefits one receives under the Persons with Disabilities designation, [the Appellant] may very well end up homeless and his life could potentially continue to deteriorate to the point where he could put a large burden on the medical system.”

Self Report:

The Appellant states:

- He suffers from severe clinical anxiety and depression which has affected his digestion and overall health.
- His body does not process food properly and severe constipation has crippled him to the point that he can hardly walk from one place to another.
- He does not get any energy from the food he eats.
- Eating causes pain in his neck and lower back.
- Doctors have administered many tests but have not been able to diagnose and treat the problem.
- He is unable to work.

Request for Reconsideration:

In the Request for Reconsideration, the Appellant repeats some of the information in his self report, and states:

- The severity of his physical condition has been “undermined” by the Psychiatrist, the Social Worker and the Ministry.
- He suffers from severe indigestion.
- His body cannot process food properly, which has “a huge impact” on his physical ability.
- After he eats, he feels “pain and crippling pressure” on his back, neck and abdomen.
- He is limited to moving around his apartment and going with difficulty to the mental health clinic once a month.
- He does not need assistance with basic daily living activities yet “but all I can manage is to walk around with great difficulty (immense pressure on my hips and knees).”
- He cannot manage all aspects of social functioning and daily activities because of his condition.
- It is frustrating and difficult for him to explain his suffering to others, because his is such a rare condition.
- He has seen many doctors and had many tests but they have not found anything.

Canadian Society of Intestinal Research Article

The Appellant provided a printout of an article titled "Serious Toll of Chronic Constipation Overlooked", explaining the debilitating nature of chronic idiopathic constipation, and their advocacy for people suffering from the condition.

Additional Evidence:Appellant:

On Appeal, the Appellant provided an additional written submission, consisting of the first two pages of the Canadian Society of Intestinal Research article, and a one-page typed statement, some of which repeats the information he wrote in the Request for Reconsideration. The Appellant adds:

- He suffers from "severe idiopathic chronic indigestion and constipation".
- He cannot walk or stand for extended periods of time.

At the hearing, the Appellant also said:

- The Reconsideration Decision is based on the Psychiatrist's report, but his problem is not psychological, it is physical, because his body cannot process food properly.
- He is applying for PWD designation based on a purely physical impairment.
- The Psychiatrist's report does not address the physical issues, including crippling pain.
- He has been seen by many doctors, who cannot diagnose his condition.

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

- After he eats, he has pain and crippling pressure in his abdomen and back and cannot walk normally.
- This condition is present all day but gets worse after he eats.
- All he can eat is one banana in the morning, and then he cannot move.
- He shops for his bananas, but he does not cook because there is no point.
- Sometimes he gives in and eats but gets no good result.
- He does not do much housekeeping, there is not much to do, but he does his own laundry.
- If he has to go to the doctor's once a month, he does that with "extreme difficulty" because of heaviness in his abdomen and back and difficulty walking.
- He has seen two gastroenterologists. The first sent him for a colonoscopy, stool test, radiography and CT scan, and "found nothing". His symptoms persisted, and he tried to get a second opinion, but that doctor found nothing either.
- He receives meal tickets and liquid supplements from the health clinic, and psychological help to deal with his condition.

- It is not true that the frequency and duration of his pain is unknown, it is permanent.
- Contrary to the statement in the Assessor Report, he cannot manage daily living activities independently.
 - He says hello to his neighbour and talks to them once in a while, and that is all he can do.
 - Physically he cannot get out and do things.

Ministry:

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

- The Ministry could have phoned the Psychiatrist to ask for clarification of apparently conflicting statements, but on review of the appeal file notes it does not appear that the Ministry did so.
- There is no reference to the “Medical Report-Employability” in the Reconsideration Decision, and the Ministry may not have considered that report at reconsideration.

Admissibility of Additional Evidence:

Neither party objected to the additional evidence of the other party. The Appellant’s additional oral and written evidence provides further information about the Appellant’s experience and understanding of his condition. The Ministry’s additional oral evidence provides further information about the Ministry’s consideration of the Appellant’s evidence. The Panel finds that the additional evidence is reasonably required for the full and fair disclosure of all matters in the appeal. Therefore, the Panel finds that the additional evidence is admissible under the *Employment and Assistance Act*, s. 22(4).

Part F – Reasons for Panel Decision

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

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

Appellant's Position:

The Appellant maintains that his impairment is physical, not mental, and that the reports of the Psychiatrist and the Social Worker do not accurately identify his debilitating condition. He does not deny that he suffers from psychotic depression but says that his physical impairment is due to chronic idiopathic constipation and inability to digest food properly. He describes constant crippling pain that doctors have failed to diagnose, but which makes him unable to walk.

Ministry Position:*Physical Impairment:*

The Ministry maintains that, while they acknowledge that the Appellant has some degree of restriction due to impairments, the evidence does not establish a severe impairment. The Ministry points to the Assessor Report, which indicates that the Appellant can independently walk indoors and outdoors, climb stairs, stand, lift, carry and hold. While the Ministry acknowledges that the Appellant feels "some pain after eating", the Ministry says that the frequency of food intake and the frequency and duration of the pain is not provided, and therefore the Ministry cannot determine that the Appellant has a severe physical impairment.

Mental Impairment:

The Ministry says that the Appellant does not have a severe mental impairment. They note the significant deficits in cognitive and emotional functioning identified by the Psychiatrist. However, they point out that the Assessor indicates that there is a major impact on only two areas of cognitive and emotional functioning, with the majority not impacted at all. The Ministry also says that the Appellant has no difficulties with communication and is independent in decision-making and social functioning.

Daily Living Activities:

The Ministry says that there is not enough evidence to confirm that, in the opinion of a prescribed professional, the Appellant is directly and significantly restricted in his ability to perform daily living activities.

The Ministry acknowledges the Psychiatrist's statement in the Medical Letter that, when the Appellant experiences pain, he is not able to ambulate freely, perform cognitive tasks or activities of daily living. However, the Ministry says that the frequency and duration of episodes of pain has not been provided, and therefore it cannot determine that the Appellant is significantly restricted periodically or for extended periods of time. The Ministry also notes that the Social Worker reports that the Appellant is independent in performing daily living activities, and that the Appellant stated in his Self Report that he does not need assistance yet. With respect to social functioning, the Ministry says that the information provided does not describe support and supervision needed, and the Social Worker reports that the Appellant is independent in managing daily living activities. Therefore, the Ministry says it cannot confirm a significant restriction in social functioning.

Help with Daily Living Activities:

The Ministry also says that the information provided does not indicate direct and significant restrictions in daily living activities. Therefore, although the Social Worker indicates the Appellant requires help from health authority professionals, the Ministry says it also cannot determine that the Appellant needs significant help with restricted activities.

Panel Decision:

PWD Designation – Generally

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

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

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

Severe Mental or Physical Impairment

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

A medical practitioner’s description of a condition as “severe” is not determinative. The Minister must make this determination considering the relevant evidence and legal principles.

The Appellant insists that his application for PWD designation is based on his physical impairment, not his psychiatric condition. He maintains that he suffers from severe idiopathic chronic indigestion and constipation. He says that he has consulted two gastroenterologists, and has undergone a battery of tests, but the specialists have not been able to diagnose the cause of his inability to process food.

While the Panel can consider the Appellant’s evidence of his experience of pain and impairment, the Panel cannot rely on the Appellant’s self-diagnosis, particularly when it conflicts with the medical evidence of the Psychiatrist. The Panel also notes the comment from the Social Worker, that the Appellant lacks insight into his illness.

The Appellant’s condition is a complex combination of physical and psychiatric symptoms. The Appellant is being treated by a psychiatrist, and was hospitalized for several months in 2023, due to diagnoses of psychotic depression with somatic delusional beliefs, and somatic symptoms disorder with gastro-intestinal somatic delusional beliefs, with predominant pain. According to these diagnoses, the Appellant’s psychiatric illness causes symptoms of crippling gastrointestinal pain. The Psychiatrist confirms that, although the Appellant’s pain appears to originate from his psychiatric condition rather than an organic cause, his suffering is real.

The Appellant’s condition does not fit neatly into the “mental or physical impairment” categories. The Appellant suffers from psychiatric conditions that cause severe physical pain symptoms, in turn causing functional impairment. Without a report supporting a physical cause of the Appellant’s impairment, the Panel finds that the Appellant’s impairment, including physical symptoms, is a severe mental impairment due to somatic symptoms of psychotic depression, and somatic symptoms disorder.

The difficulty in separating the Appellant's physical and mental impairments is reflected in the evidence of the Psychiatrist and the Social Worker, which is, as the Ministry pointed out, contradictory in places. So, for example, the Psychiatrist says that the Appellant's ability to walk and climb stairs is "unknown", but also says that the Appellant's mobility outside the home is continuously restricted. The Psychiatrist says that the Appellant's ability to perform almost all daily living activities is directly and continuously restricted, while the Social Worker says that the Appellant is "independent" in all daily living activities. The Panel acknowledges the contradictions within, and between, the evidence of the Psychiatrist and the Social Worker. However, considering the evidence as a whole, the Panel finds that there is clear picture of a severe mental impairment affecting physical and cognitive functioning.

In determining severity of impairment, the Panel gives greater weight to the evidence of the Psychiatrist, as the medical professional, providing a more detailed description of complex psychiatric conditions. The Psychiatrist consistently describes mental impairments that significantly disrupt the Appellant's ability to function. In the Medical Report – Employability, the Psychiatrist states that the Appellant's somatic symptoms restrict his ability to ambulate, and all aspects of self-care, activities of daily living, cognitive and social functioning. In the narrative medical letter, the Psychiatrist states that, when the Appellant experiences pain, he is not able to perform any cognitive tasks or activities of daily living. The Appellant explained that his pain is constant and intensifies after he eats. When the Appellant experiences the somatic symptoms he is not able to do anything.

The Psychiatrist describes the Appellant's overall medical condition as "severe", with "severe functional impairment". While the Psychiatrist's description is not determinative, it is reasonable for the Panel to take that assessment into consideration, when it is consistent with the evidence as a whole. The Panel finds that the description of the debilitating effects of the Appellant's somatic symptoms is consistent with severe impairment.

The Panel finds that the Ministry was not reasonable in its determination that the information provided does not indicate a severe mental impairment. The Ministry lists the significant deficits in cognitive and emotional functioning, with the narrative explanation of the impaired functioning provided by the Psychiatrist in the Medical Report. However, the Ministry does not explain its reasons for not giving weight to that evidence.

At the hearing, the Ministry noted contradictions between the Social Worker's Assessor Report indicating the Appellant's ability to function independently, with good social functioning, and their letter, indicating that the psychiatric disorder has had a major impact, leaving the Appellant only able to do "the bare minimum tasks needed to survive". They also noted contradictions between the Assessor Report and the Psychiatrist's evidence of a severe psychiatric condition that prevents the Appellant from performing almost all daily living activities due to somatic symptoms. The Ministry suggested that it was hard to know which evidence to put more weight on. However, the Panel finds that, it is most reasonable to place greater weight on the consistent and more detailed evidence of the Psychiatrist, as the prescribed professional with greater expertise in assessing the effects of the psychiatric condition.

Further, the Ministry appears to have placed greater weight on the Social Worker's indications of "no impact" or "moderate impact" on "most aspects" of cognitive and emotional functioning listed on the Assessor report, rather than the indications of "major impact" on bodily functions and emotion. The Ministry has not explained its reasons for giving greater weight to those ticked boxes, or why a major impact on bodily functions and emotions would not be sufficient to establish a severe impairment, particularly in light of the whole of the evidence from the Psychiatrist.

Notwithstanding that the mental impairment manifests in physical, or somatic, symptoms, the panel finds that the Ministry was reasonable in its determination that the Appellant does not have a severe physical impairment. The Panel considers that, as the medical evidence is that the physical impairments come from the psychiatric condition rather than an organic cause, the impairment is more appropriately described as a mental impairment. Therefore, considering the evidence in its entirety, the Panel finds that the Appellant has a severe mental impairment. The Panel finds that the Ministry was not reasonable in its determination that the Appellant does not have a severe mental impairment.

Restrictions to Daily Living Activities ("Activities"):

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

- Prepare own meals;
- Manage personal finances;
- Shop for personal needs;
- Use public or personal transportation facilities;

- Perform housework to maintain the person's place of residence in acceptable sanitary condition;
- Move about indoors and outdoors;
- Perform personal hygiene and self care; and
- Manage personal medication.

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

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

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

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

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

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

Again, the information provided by the Social Worker in the Assessor Report is not consistent with the evidence of the Psychiatrist in the Medical Report and the Medical Letter. The Panel places greater weight on the more detailed narrative evidence of the Psychiatrist, who states that, when the Appellant is experiencing pain due to the somatic disorders, he is unable to perform any activities of daily living.

The Panel finds that the Appellant's severe mental impairment, which results in somatic symptoms of crippling physical pain, directly and significantly restricts his ability to perform the following Activities:

- Prepare own meals/perform self care:
 - The Appellant does not cook meals because he perceives that he cannot digest food, and that eating causes severe pain.
 - He eats a single banana for sustenance, and the Psychiatrist reports that on one occasion, he was eating tomato paste for dinner.
 - The Social Worker reports that the Appellant does not eat food because of his somatic symptoms presenting as gastrointestinal pain.
- Perform housework to maintain the person's place of residence in acceptable sanitary condition:
 - The Psychiatrist reports that, when an outreach worker visited the Appellant's apartment, it was "unkept, with messy kitchen and unwashed dishes and pots", with many expired foods.
- Move about indoors and outdoors:
 - The Social Worker reports that the Appellant feels that his gastrointestinal pain is debilitating to the point of not leaving his home
 - The Appellant stays in his apartment except for a monthly visit to the Psychiatrist, and minimum necessary visits to the store to buy bananas.
- Relate to, communicate, or interact with others effectively:
 - The Appellant speaks to one neighbour, but otherwise does not engage socially, apparently due to severe depression, overwhelming sense of pain, and obsessive rumination about his perceived deteriorating health.
- Make decisions about personal activities, care or finances:
 - There is overlap between this Activity, and the Appellant's choices in the previously listed Activities, as his decisions are impacted by the somatic symptoms disorder and psychotic depression with somatic delusional beliefs. The Appellant's ability to make decisions about the personal activities and self care noted above is significantly and continuously restricted by those beliefs, as, for example, he avoids eating food, and rarely leaves his home.

The Panel acknowledges that the Social Worker indicates that the Appellant is independent in the daily living activities listed on the Assessor Report. However, the Panel gives greater weight to the evidence of the Psychiatrist, including the more detailed and specific examples of restricted ability to perform Activities. That evidence is also consistent with the Appellant's evidence of his daily functioning. Further, the Social Worker gives a more fulsome explanation of the Appellant's functioning, in the letter submitted at reconsideration. The Social Worker reports that the Appellant's somatic delusions present

as debilitating pain to the point where the Appellant believes he cannot leave his home or eat food, completing only “the bare minimum tasks needed to survive”. That explanation is also consistent with the Psychiatrist’s evidence. So, while there are contradictions within the evidence, the Panel finds that, taken as a whole, the evidence confirms direct, significant and continuous restrictions in the Appellant’s ability to perform Activities.

Therefore, the Panel finds that the Ministry was not reasonable in its determination that there was not enough evidence to confirm that, in the opinion of a prescribed professional, the Appellant is directly and significantly restricted in his ability to perform Activities.

Help Required:

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

The Ministry acknowledged that the Social Worker indicated the Appellant requires help from health authority professionals to perform Activities. The Ministry determined that, as it had not been established that Activities were significantly restricted, it could not be determined that the Appellant needed significant help from other persons or a device.

The Panel has found that the Ministry was not reasonable in determining that the Appellant was not directly and significantly restricted in his ability to perform Activities. The Panel also finds that the Ministry was not reasonable in determining that it could not find that the Appellant needs help to perform those Activities.

The Social Worker indicates in the Assessor Report and their letter that the Appellant is independent in performing Activities. The Psychiatrist indicates “presently not relevant” when asked about the assistance the Appellant needs, for the Activities the Psychiatrist say he is not able to perform. However, the Panel finds that these statements are not conclusive on the question of whether the Appellant needs significant help from another person to perform Activities.

The Social Worker also indicates in the Assessor Report that the Appellant receives help for Activities from health authority professionals. In their letters submitted at reconsideration, the Social Worker and the Psychiatrist also state that the Appellant needs significant

support to perform Activities. The Psychiatrist states: “His disorder has been progressing into marked functional impairment, and without adequate support, the disorder can lead to invalidism.” [emphasis added] The Social Worker states that the Appellant “does the bare minimum to survive” and “may well end up homeless.” It would have been helpful if the Psychiatrist and the Social Worker had described the supports the Appellant needs, and the help he receives from the health authority professionals. However, the Panel finds that these statements indicate that, although they do not describe specific help needed, the prescribed professionals are indicating their opinion that the Appellant needs significant help from other people to perform usual Activities required for daily living. The fact that the Appellant “does the bare minimum to survive” does not negate the need for support to do Activities, to do more than merely survive. Further, if the Appellant is unable to perform any Activities when he is overwhelmed with perceived gastrointestinal pain, the only reasonable inference is that he would require help from another person to perform any Activity during that time. If he is not able to perform the Activity at all, then the help required would be significant.

The Panel finds that the statements from the Social Worker and the Psychiatrist about the need for support, considered in light of the whole of the evidence about the severity of impairment and restrictions in the ability to perform Activities, confirm that the Appellant requires significant help to perform the restricted Activities.

Conclusion:

The Panel finds that the Ministry’s decision to deny the Appellant PWD designation was not reasonably supported by the evidence. The Panel finds that the Appellant meets the requirements for:

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

The Panel rescinds the Reconsideration Decision. The Appellant is successful in the appeal.

Schedule – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

Persons with disabilities

s. 2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

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

Employment and Assistance for Persons with Disabilities Regulation

Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

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

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

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

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

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

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

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

(i) medical practitioner,

ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner, or

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

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

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

if qualifications in psychology are a condition of such employment.

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

Employment and Assistance Act

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

APPEAL NUMBER 2024-0284

Part G – Order

The panel decision is: (Check one) Unanimous By Majority

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

Legislative Authority for the Decision:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

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

Part H – Signatures

Print Name
Susan Ferguson

Signature of Chair

Date (Year/Month/Day)
2024/08/23

Print Name
Susanne Dahlin

Signature of Member

Date (Year/Month/Day)
2024/08/20

Print Name
Adam Shee

Signature of Member

Date (Year/Month/Day)
2024-08-26