

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated July 2, 2024, in which the ministry found the appellant was not eligible for designation as a Person with Disabilities ("PWD") under section 2 of the *Employment and Assistance for Persons with Disabilities Act*. The ministry found that the appellant met the age requirement and the requirement for the impairment to continue for at least two years. The ministry was not satisfied that:

- the appellant has a severe physical or mental impairment,
- the severe impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform daily living activities either continuously or periodically for extended periods; and
- as a result of restrictions caused by the severe impairment, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform daily living activities.

The ministry found that the appellant is not one of the prescribed classes of persons eligible for PWD designation on the alternative grounds set out in section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation*. As there was no information or argument on this point, the panel considers it not to be at 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

Employment and Assistance Act - section 22(4)

The full text is available in the Schedule after the decision.

Part E – Summary of Facts

The information the ministry had at the reconsideration included:

1. A Record of Decision said the PWD application was submitted on May 31, 2024, and denied by the ministry on June 12, 2024. The original decision dated June 12, 2024, explained that three criteria were not met.

On June 17, 2024, the appellant submitted a Request for Reconsideration with additional information. On July 2, 2024, the ministry completed its review and found that the criteria for *severe* impairment, restrictions to daily living activities and needing help with daily living activities were still not met.

2. The PWD application with three parts:

- The Applicant Information ("self-report"), signed by the appellant on April 5, 2024, which included a hand-written submission from the appellant.
- A Medical Report dated May 14, 2024, signed by a general practitioner ("doctor") who has known the appellant for 7 years, and saw her 2-10 times in the past 12 months, and
- An Assessor Report dated May 21, 2024, also completed by the doctor who based the assessment on an office interview with the appellant and file/chart information ("Psycho-Educational Report, 2010").

Summary of relevant evidence from the application

Diagnoses*Medical Report*

In Section B, the appellant was diagnosed with:

- anxiety disorder (onset 2012),
- developmental disability – learning disability (onset 2010),
- Musculo-skeletal – sciatica (onset 2015); and
- sleep apnea (onset 2021).

Functional skills

Self-report – mental impairment

The appellant reported difficulty with learning and understanding new things, due to her learning disability which was diagnosed in childhood. The appellant said she needs written directions and can only manage one task at a time; otherwise, she gets overwhelmed or confused.

Self-report – physical impairment

The appellant described a lot of difficulty picking up her infant child, due to chronic low back pain that won't go away. The appellant also reported a shoulder injury (torn muscles because of a car accident several years ago) that affects movement in her right shoulder.

The appellant noted that chiropractic treatment and physiotherapy for her shoulder and back did not help. The appellant said that while she is finally starting to raise her right arm above her head, she cannot lift or hold anything higher with that arm without dropping it. For example, she is unable to lift anything heavy or put it on a shelf.

Medical Report – mental impairment

Under Health History, the doctor reported "limited comprehension and expression" due to the learning disability. The appellant needs "frequent explanations, reminders" and had difficulty in school. The learning disability was reported to be lifelong.

In Section E – Functional Skills, the doctor reported difficulties with communication (the cause was "cognitive"). The doctor checked "significant deficits" for language, memory, and emotional disturbance (comment, "significant struggles with memory, anxiety, comprehension"). The doctor described anxiety as chronic.

No significant deficits were indicated for the remaining functions listed in the Medical Report:

- consciousness,
- executive,
- perceptual psychomotor,
- psychotic symptoms,
- motivation,
- impulse control,
- motor activity,
- attention or sustained concentration; and
- other.

Medical Report – physical impairment

In Section C - Health History, the doctor reported "longstanding back pain – daily pain limits movement, pain with prolonged standing, reaching, bending." Under Degree and Course of

Impairment, the doctor said the appellant's back pain is "chronic, flares with improvements in between."

In Section E - Functional Skills, the appellant was able to walk 4+ blocks unaided on a flat surface and climb 5+ steps unaided. The appellant was able to lift 15-35 pounds and had no limitations with sitting.

Under Additional Comments, the doctor wrote, "back pain causes significant pain limiting many activities...Due to significant daily back pain, [the appellant] is limited in her ability to move much outside the most basic needs of walking to or from her car."

Assessor Report – physical impairment

In Section C-3, the doctor assessed walking indoors, climbing stairs, standing, lifting, and carrying and holding as "independent." For carrying and holding, the doctor commented, "limited by pain." For walking outdoors, the doctor indicated the appellant uses an assistive device (comment, "stroller/shopping cart").

Assessor Report – mental impairment

In section C-2, Ability to Communicate, the doctor checked:

- "good" ability for speaking and writing,
- "satisfactory" ability for hearing; and
- "poor" ability for reading (comment, "limited understanding").

In section C-4, Cognitive and Emotional Functioning, the assessor was asked to indicate the impact of a mental impairment on various functions. For the fourteen areas listed, the doctor checked the following impacts:

- **minimal impact** for language. The doctor circled "expression and comprehension problems."
- **moderate impact** for bodily functions ("sleep disturbance"), attention/concentration ("memory"), and motivation.
- **major impact** for emotion ("anxiety, depression"), memory, and other neuropsychological problems ("learning disabilities").

The doctor checked "no impact" for the remaining functions:

- consciousness,
- impulse control,
- insight and judgment,
- executive,

- motor activity,
- psychotic symptoms; and
- other emotional or mental problems.

Daily living activities

The doctor provided the following information:

Medical Report

In Section C-4, the doctor checked “no” the appellant has not been prescribed medications or treatments that interfere with the ability to perform daily living activities.

Assessor Report

In section C-1, the doctor wrote that daily living activities are impacted by “learning disabilities that impair cognitive function, anxiety that limits social interaction, and back pain the impedes physical movement.”

Restricted daily living activities

In Section D, the doctor indicated that the appellant requires assistance or support for five of the eight daily living activities listed on the form:

Personal Care

- The appellant needs periodic assistance from another person with transfers – bed and chair (comments, “help out of bed when pain flares, help out of chair”).

The doctor did not provide information for dressing, grooming, bathing, toileting, feeding self, or regulating diet.

Basic Housekeeping

- The appellant needs continuous assistance with laundry (comment, “pain limits, unable to lift laundry”).
- The appellant needs periodic assistance with housekeeping.

Shopping

- The appellant needs continuous assistance with going to and from stores and carrying purchases home.

The doctor checked “independent” for reading prices and labels, making appropriate choices, and paying for purchases.

Under Additional Comments for these daily living activities including the type and amount of assistance required, the doctor wrote, "due to severe back pain, always requires assistance with any lifting, bending, or distances."

Meals

- The appellant needs periodic assistance with food preparation (comment, "can't stand too long").

The doctor checked "independent" for meal planning, and safe storage of food. No information was provided for cooking.

No information was provided for pay rent and bills, medications, and transportation.

Social Functioning

- The doctor indicated a need for continuous support/supervision to interact appropriately with others (comments, "struggles to understand social cues, won't pick up on nuances or jokes, frustrates easily, requires repetition").

The doctor checked "independent" for the other areas of Social Functioning:

- appropriate social decisions,
- able to develop and maintain relationships,
- able to deal appropriately with unexpected demands; and
- able to secure assistance from others.

The doctor checked that the appellant had "good functioning" with her immediate social networks, and "marginal functioning" with extended social networks (comment, "anxiety limits interactions, she will avoid if possible"). The spaces for describing support/supervision in the community and any safety issues were left blank.

Additional information from the appellant – daily living activities

In the self-report, the appellant said she needs help from others when she is "having a bad back day." Specifically, she needs help to pick up her infant child, and bathe (herself and her children) due to chronic pain. Some days, it "doesn't happen" because "it is too difficult to "get off the couch without the assistance of my roommate."

Need for help

Medical Report

The doctor checked "no" when asked if the applicant requires any prostheses or aids for the impairment.

Assessor Report

The doctor indicated that the appellant lives with family and friends. In Section E - Assistance provided by other people, the doctor checked "family and friends" (comment, "needs help with housework, carrying, emotional support").

When asked about assistance provided through assistive devices the doctor checked "breathing device" (comment, "sleep apnea machine – CPAP). The doctor checked "no" the appellant does not have an assistance animal.

3. A Request for Reconsideration signed by the appellant on June 13, 2024, which included a typed submission. In addition to argument for the reconsideration, the appellant provided further evidence about her impairment:

- The doctor signed her application for a disabled parking permit because the appellant "cannot walk far distances from the car to the door of a shopping place with pain going through my back."
- She suffers "constant back pain" that sends numbness to her fingers, back, and legs, "to the point it hurts so bad I can't walk or move." The back pain makes her dizzy and weak, so she needs help to sit or move safely and avoid falling over.
- She needs to take pain medication to manage simple tasks such as standing at the counter to make lunch. Even when the medication took effect, it was very painful to drive her child to school.
- She takes medications (listed) for anxiety, and depression as well as for pain and muscle spasms. The appellant reported needing "6-8 pain pills in a day...to function somewhat normal." She also takes a muscle relaxant 4 times a day along with the pain medication "just to have some sort of normal time if I can."

Additional submissions

Appellant

With the consent of both parties the hearing format was a written hearing. The appellant included a handwritten submission with her Notice of Appeal, received at the Tribunal on July 24, 2024.

In addition to argument for her appeal the appellant said that:

- she has applied for PWD 8 times and every time the application is denied, her physical and mental health declines.
- she was recently told she has multiple sclerosis in her body which is why she has numbness throughout her body sometimes and cannot feel her fingers and legs.
- she suffers seizures daily due to her body not being able to regulate properly with stress or lights, etc.

Admissibility of additional information

The ministry did not express any objections to the appeal submission. While multiple sclerosis and seizures were not diagnosed in the medical reports from the doctor, the panel finds that the information is helpful in understanding the overall struggles the appellant reports. The panel finds that the information in the appeal submission is admissible under the *Employment and Assistance Act* as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Ministry

The ministry did not submit any new evidence. In an email to the Tribunal the ministry said that its submission on appeal would be the reconsideration Record of Decision.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision that the appellant is ineligible for PWD designation was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. The panel's role is to determine whether the ministry was reasonable in finding that the following eligibility criteria in section 2 of the Act were not met:

- The appellant has a severe physical or mental impairment.
- The impairment, in the opinion of a prescribed professional, directly and significantly restricts the ability to perform daily living activities either continuously or periodically for extended periods; and
- as a result of restrictions caused by the severe impairment, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform daily living activities.

Analysis*PWD designation - generally*

The legislation provides the Minister with the discretion to designate someone as a *Person with Disabilities* if all the requirements are met. In the ministry's view, PWD designation is for persons who have significant difficulty performing regular self-care activities including social interaction and making decisions about personal activities, where a severe impairment is shown.

Some requirements must have an opinion from a professional, so it is reasonable to place significant weight on those opinions. The ministry found that only two of the five requirements were met: the appellant is at least 18 years of age, and a doctor has given the opinion that the impairment is likely to continue for at least 2 years.

The application form includes a self-report, so it is appropriate to place significant weight on evidence from the appellant unless there is a legitimate reason not to do so, such as the requirement under the Act for restrictions to daily living activities to be in the opinion of a prescribed profession. The panel will review the reasonableness of the ministry's determinations and exercise of discretion.

Severe 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 interpretation of the legislation. A medical practitioner’s description of a condition as “severe” is not determinative on its own. The ministry must make this determination considering the relevant evidence and legal principles.

Restrictions to Daily living activities

A prescribed professional must provide an opinion that the applicant’s impairment restricts the ability to perform daily living activities. The BC Supreme Court decision in *Hudson v. Employment and Assistance Appeal Tribunal* [2009 BCSC 1461] determined that at least two daily living activities must be restricted in a way that meets the requirements of the Act, and that **not all activities need to be restricted.**

The restrictions to daily living 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 daily activities without a lot of help or support will have a large impact on the person’s life.

The restrictions must also 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 determine if a periodic restriction is for extended periods, it is reasonable to look for information on the duration or frequency of the restriction.

The requirements for restrictions to daily living activities are set out in subsection 2(2)(b)(i) of the Act. Specific activities are listed in section 2(1) of the Regulation. The Medical Report and Assessor Report also list activities, and though they do not match the daily living activities in the Regulation exactly, they generally cover the same activities.

The Medical Report and Assessor Report give the prescribed professional the opportunity to provide additional details on the applicant’s restrictions. **The inability to work and financial need are not listed as daily living activities and are only relevant to the extent they contribute to a severe impairment that impacts daily living activities.**

Help Required

A prescribed professional must provide an opinion that the person needs help to perform the restricted daily living activities. This requirement is set out in subsection 2(2)(b)(ii) of the Act.

Under subsection 2(3)(b) of the Act, "help" means needing an assistive device, the significant help or supervision of another person, or an assistance animal to perform daily living activities. An assistance device, defined in section 2(1) of the Act, is something designed to let the person perform restricted daily living activities.

Submissions on appeal

Severe impairment

Appellant's position

The appellant's position is that her impairment is severe because she lives with a lot of pain and restricted movement every day. The people she lives with know her limits and understand that she won't be able to find and keep a job due to pain and seizures. The appellant submits that she is trying to better her life "and push myself to do stuff I can't do." The appellant said that being denied PWD each time is making it harder for her to get better.

Ministry's position

The ministry's position is that the information in the Medical Report and Assessor Report did not establish a severe physical impairment because the doctor provided inconsistent information regarding the degree of restriction. The ministry noted that the appellant can walk several blocks unaided and lift up to 35 pounds despite back pain that restricts her mobility and ability to lift and bend.

The ministry also submits that there was no information in the application on how often the back pain flares or how frequently the appellant needs help with lifting and mobility. The ministry specifically referred to the appellant needing more assistance "some days." The ministry said it considered the appellant's information (self-report) but found that the appellant focused on her ability to work which is not a consideration for PWD eligibility.

The ministry argued that the application did not show a severe mental impairment despite the cognitive and emotional deficits and impacts that were indicated in the Medical and Assessor Reports. The ministry submits that "the physician reports the majority of your functioning is moderately and minimally impacted or not impacted at all."

Panel's decision - severe impairment

Physical impairment

The panel finds that the ministry's decision that the appellant's impairments are not severe, was not reasonably supported by the evidence. The appellant's evidence is that she suffers "constant back pain" and was approved for a disabled parking permit because she cannot walk from her car to a store entrance without pain going through her back.

The appellant acknowledged that she is able to walk 5 steps with the help of a handrail, but it is painful to go up and down multiple steps and also to bend down. The appellant needs a family member to pick things up for her including her infant child.

The appellant described pain and numbness that "goes through her body" and makes her dizzy and weak so that she needs help sitting down. The appellant said she must take a lot of pain medication to function including 6-8 pills in a day, and a muscle relaxant 4 times daily as well.

The appellant's evidence indicates a severe impairment due to significant pain with physical movement that limits the ability to walk, bend down, and care for her infant on an ongoing basis, and especially during pain flare ups. The appellant's reliance on large doses of medication which she requires daily "to function somewhat normally" also shows that her physical impairment is severe.

The panel acknowledges that the doctor's check marks for mobility and lifting indicated a lower degree of restriction (able to walk 4+ blocks unaided, climb 5+ steps, and lift a maximum 35 pounds independently). However, the doctor's narrative described "significant pain limiting many activities" including the ability "to move much outside the most basic needs of walking to and from her car." The totality of evidence indicates that the appellant would experience severe pain if she walked more than a block. She also needed help lifting her 20-23 pound infant.

The doctor said the appellant relies on a shopping cart or stroller as an "assistive device" for walking outdoors. The doctor said that bending and carrying/holding are also limited by daily pain. The appellant "always requires assistance" with lifting, bending, or distances.

The panel finds that the doctor's comments support the restrictions the appellant reported. The appellant's physical functions are significantly impacted by pain which limits her mobility to very short distances and makes bending down, carrying and holding very difficult.

The ministry acknowledged the doctor's comments but determined that a severe impairment was not established on the evidence because the check marks portrayed a much lower degree of restriction in physical function. The panel finds that it is not reasonable to rely largely on what boxes are checked on the prescribed form to determine the severity of the appellant's physical impairment. It is reasonable to assess severity by considering all the information from the doctor in their assessment together with the appellant's information.

In the panel's view, the ministry did not give enough weight to the more detailed narrative which establishes a significant degree of physical impairment. The doctor's comments and appellant's submission indicate a significant degree of restriction due to pain and movement difficulties caused by the appellant's chronic back pain and Musculo-skeletal problems.

The ministry said it could not reconcile the different assessments within the Medical Report, and between the Medical and Assessor Reports. However, with more weight reasonably given to the more detailed and fulsome comments in the Medical and Assessor Reports, read together with the information from the appellant, a severe physical impairment was established on the evidence.

The ministry said there was not enough evidence regarding the frequency of "flare ups" of back pain that limit the appellant's physical functions so that she needs help from others. However, throughout the reports (self-report, Medical Report, and Assessor Report) the appellant's back problem was described as a chronic condition characterized by "daily" or "constant" pain.

A chronic condition is commonly understood as one that is ongoing or constantly recurring. Despite some improvement between flare ups, the doctor has confirmed "significant daily back pain" that limits the appellant's mobility and physical movement.

A global assessment of the evidence shows that the ministry's decision was not reasonable because the appellant experiences a lot of daily pain and limitations to basic movements such as walking to the store entrance and picking up her infant. Physical therapies have not brought the appellant relief, and she must take large doses of medication daily. The requirement in the Act for a severe impairment is therefore met based on a physical impairment.

Mental impairment

The panel also finds that the ministry's decision was not reasonably supported by the evidence regarding the severity of the appellant's learning disability and anxiety disorder. The ministry argued that the doctor indicated no impact or a moderate impact to most cognitive and emotional functions, but in the Medical Report the doctor described "limited comprehension and expression." The doctor said the appellant "requires significant supports and strategies to function."

Specifically, the appellant needs "frequent explanations and reminders" and has "significant struggles" with memory and anxiety due to her lifelong learning disability. In the Medical Report, the doctor checked "significant deficits" for language, memory, and emotional disturbance. In

the Assessor Report, the doctor indicated moderate to major impacts for almost half the functions listed on the form including emotion, memory, motivation, and learning.

While no deficits or impacts were listed for other areas (as noted by the ministry), the functions that were check marked, combined with the doctor's and appellant's written information, show a severe impairment due to the learning disability and anxiety disorder.

As a further example, the appellant described her difficulties with learning and understanding new things. The appellant reported getting overwhelmed and confused if she does not receive written directions, or when she tries to do more than one task at a time.

The ministry's decision is not reasonable because the totality of the evidence on cognitive and emotional functioning establishes a severe mental impairment. The requirement for a severe impairment under the Act is also therefore met based on a mental impairment.

Restrictions to daily living activities

Appellant's position

The appellant's position is that her physical and mental conditions significantly limit her daily tasks. The appellant submits that the pain through her lower back restricts showering/bathing, going to the store, and shopping. The appellant submits that she sometimes needs help to get off the couch and that it hurts to prepare lunch or drive a short distance to her child's school. The appellant also argued that her learning disability has made it difficult to find and keep a job.

Ministry's position

The ministry's position is that there was not enough evidence from a prescribed professional (the doctor) to confirm that a severe impairment significantly restricts daily living activities continuously or periodically for extended periods as required by the Act. The ministry argued that it was unclear why the doctor reported continuous restrictions with some activities when the check marks indicated the appellant can walk 4 or more blocks, climb 5 or more stairs, and lift 15 to 35 pounds.

The ministry further argued that the doctor did not explain the nature, frequency, and duration of the periodic help required for transfers (bed and chair), housekeeping, and food preparation. The ministry said it could therefore not determine that periodic restrictions are for extended periods as required by the Act.

Regarding the appellant's mental impairment, the ministry argued that the doctor "has not indicated you are unable to make decisions about personal activities, care, or finances, or that you are unable to relate to, communicate or interact with others effectively."

Panel's decision - daily living activities

The panel finds that the reconsideration decision was not reasonably supported by the evidence because the doctor's comments in the Medical and Assessor Reports, viewed together with the check marks in the Assessor Report, show that daily living activities are significantly restricted by a severe physical impairment. In addition, the appellant provided specific details about her difficulties with daily tasks such as laundry, shopping, and food preparation, that support the doctor's comments.

The evidence that establishes significant restrictions to daily living activities includes the following information from the Medical and Assessor Reports:

Personal Care

- When pain flares, the appellant needs help with transfers (getting out of bed and getting up from a chair). The ministry said that the doctor did not confirm that periodic assistance was for extended periods. However, due to "daily pain" and the need for pain medication and muscle relaxants several times per day, the record indicates that pain flares are frequent.

Shopping

- Shopping for basic needs is significantly restricted continuously because of "daily back pain" that limits the appellant's ability to walk to and from her car. The appellant submitted a copy of her parking permit which shows that she qualifies for disabled parking near store entrances.
- While the doctor checked that the appellant can walk 2-5 blocks unaided, she requires "continuous assistance" with going to and from stores because walking even a short distance in the parking lot causes "severe back pain."
- Shopping is also significantly restricted by the appellant's inability to carry purchases home without continuous assistance from others. Despite checkmarks in the Medical Report that indicate the appellant can lift moderate weight, she experiences severe back pain with **any** lifting or bending and **always** requires assistance.

Basic Housekeeping

- Basic housekeeping is significantly restricted continuously by pain ("unable to lift laundry...requires assistance with any lifting or bending"). The appellant detailed her struggles with carrying laundry up and down stairs.

Meals

- The appellant requires periodic assistance with food preparation. The evidence indicates that the restriction is for extended periods because the “appellant can’t stand too long...daily pain limits prolonged standing.” The appellant explained that she “can’t even stand long enough to make my [child] their lunch for school in the morning.”

Summary - daily living activities

The panel finds that the information from the doctor provides sufficient evidence of significant restrictions to daily living activities as required by the Act, based on the appellant’s physical impairment. The appellant provided greater detail about her challenges with shopping and food preparation, which supports the restrictions that were identified by the doctor.

The restrictions are directly caused by the appellant’s severe physical impairment, specifically chronic back pain, sciatica, and Musculo-skeletal problems. The restrictions are continuous, or periodic for extended periods due to “daily pain” and movement difficulties which also occur daily. Even between “flare ups” the appellant’s daily living activities are restricted to the degree that she always needs help, in the opinion of the doctor.

The ministry’s decision is not reasonable because the evidence from the prescribed professional showed that at least two daily living activities are significantly restricted by the severe physical impairment. The evidence in the Medical and Assessor Reports especially supports restrictions with shopping and housekeeping. The restrictions reported include, “shopping for personal needs, perform housework...and move about indoors and outdoors” as set out in the Regulation.

The ministry’s decision was not reasonably supported by the doctor’s evidence on limitations with physical functioning. The appellant therefore meets the criteria for daily living activities under section 2(2)(b) of the Act.

Mental impairment

While a severe mental impairment was also established by the evidence, the ministry reasonably found that daily living activities were not directly and significantly restricted by the learning disability and anxiety disorder because:

- The doctor did not indicate restrictions with cognitive tasks such as managing finances and medications, reading labels, or following cooking instructions.
- The appellant reported difficulties with showering and bathing, but that restriction was not confirmed by the doctor.

- The evidence for social functioning was mixed. The appellant has good or independent functioning with others despite struggling to understand social cues and needing frequent repetition and support strategies. The appellant will avoid interactions due to anxiety, but the doctor did not provide further details, and the psycho-educational report did not indicate any social difficulties.

However, under the Act, daily living activities can be significantly restricted by either a mental impairment **or** physical impairment. As noted above, the criteria for daily living activities are met on the basis of the appellant's physical impairment.

Help with daily living activities

Appellant's position

The appellant's position is that she needs help from her family, roommate, and friends to manage laundry, shopping, and any activities that require bending or reaching. While she needs more help when her back pain flares, she struggles daily due to "constant pain."

Ministry's position

The ministry acknowledged that the doctor confirmed help from family and friends for housework and carrying items but found that the criterion for significant help from other people was not met. The ministry's position was that it could not be determined that significant help was required from other persons or a device as it had not been established that daily living activities were significantly restricted.

Panel's decision - help with daily living activities

The panel finds that the reconsideration decision was not reasonable because the doctor, indicated that the appellant needs significant help and support to manage her daily life. The appellant provided additional details about the help she receives from her family and roommate, in support of the doctor's information.

In the Assessor Report, the doctor did not indicate any medical devices for the physical impairment (other than a CPAP machine for sleep apnea) but said that the appellant relies on a stroller or shopping cart as an “assistive device” for walking outdoors. The panel accepts that the appellant requires an assistive device for shopping and errands but at this time, she only has her child’s stroller or a shopping cart to lean on at the store.

The doctor confirmed that the appellant relies on help from family and friends to get out of bed or up from a chair (during pain flares), and she needs help all the time to do laundry/housework and carry heavier grocery items. The doctor’s evidence was that the help from other persons is significant because “due to severe back pain, [the appellant] always requires assistance with any lifting, bending or distances.”

The Act requires confirmation of direct and significant restrictions to daily living activities, directly related to a diagnosed mental or physical impairment, as a precondition for needing help to perform those activities. In the panel’s view, the evidence establishes that daily living activities are significantly restricted continuously or periodically for extended periods, by the appellant’s severe physical impairment. The ministry’s decision was not reasonable because the doctor has confirmed that the appellant cannot manage her daily life independently. The requirement for help under the Act is therefore met.

Conclusion

The panel finds that the reconsideration decision was not reasonably supported by the evidence. The appellant meets all five requirements for PWD designation under the Act because the Medical report and Assessor Report, and additional submissions when considered together, establish that:

- The appellant is at least 18 years old
- The impairment is expected to continue for at least two more years.
- The appellant has severe physical and mental impairments.
- The severe physical impairment significantly restricts daily living activities as confirmed by a prescribed professional, and
- The appellant requires significant help from other people to manage her daily living activities.

The panel **rescinds** the ministry’s decision and refers the decision back to the Minister for determination on the amount of disability assistance. The appellant is successful with her appeal.

Schedule – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

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 2024-0282

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

Margaret Koren

Signature of Chair

Date (Year/Month/Day)

2024/08/28

Print Name

Mary Chell

Signature of Member

Date (Year/Month/Day)

2024/08/28

Print Name

Cecilia Low

Signature of Member

Date (Year/Month/Day)

2024/08/28