

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

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“Ministry”) decision dated July 15, 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. The Ministry also found that the Appellant has a severe mental impairment. However, the Ministry found the Appellant did not have a severe physical impairment, and did not meet the requirements for:

- 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 in person on August 21, 2024. The Panel, the Appellant, the Appellant's legal advocate, and the Appellant's mother (as witness and support person) attended the hearing in person. A representative of the Ministry joined the hearing by telephone.

### Background:

The Appellant is over 18 years of age and has applied for PWD designation. In the original decision, the Ministry determined:

- the Appellant did not have a severe mental or physical disability;
- her impairment did not directly and significantly restrict her ability to perform daily living activities; and
- she did not require help with restricted daily living activities.

At reconsideration, the Ministry was not satisfied that the Appellant has a severe physical impairment because the Appellant's family doctor did not report any limitations to the Appellant's physical functioning. However, the Ministry was satisfied that the Appellant has a severe mental impairment. The Ministry noted the doctor's diagnoses of anxiety disorder, major depression, obsessive compulsive disorder, dysgraphia, ADHD and mild autism spectrum disorder with learning disabilities. In determining mental impairment, the Ministry accepted the diagnoses provided by the doctor that the Appellant has anxiety and depression, with major impacts on cognitive and emotional functioning in the areas of bodily function, emotions, impulse control, memory, motivation and motor activity, and moderate impacts on attention and executive function. They also accepted the diagnosis of obsessive-compulsive disorder, which causes the Appellant to wash her hands excessively, resulting in contact dermatitis.

At reconsideration, the Ministry was not satisfied that:

- the Appellant's mental impairment directly and significantly restricts her ability to perform daily living activities; and
- she requires help with restricted daily living activities.

### Evidence Before the Ministry at Reconsideration:

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

- Medical Report and Assessor Report completed by the Appellant's family doctor ("Doctor")

- Letter from the legal advocacy organization, completed and signed by the Doctor, dated June 27, 2024
- Two typewritten statements, unsigned and undated
- School Records:
  - Individual Education Plan for the Appellant from her secondary school, dated October 20, 2023
  - Psychoeducational assessment dated November 2023
  - Learning Update for the Appellant, dated February 5, 2024
  - Rating Scales Summary for the Appellant, dated February 22, 2024
- Psychiatric consult reports dated July 31, 2014, and December 8, 2013
- ADHD clinic report dated November 28, 2013
- Clinical Diagnostic Assessment Summary from Provincial Autism Resource Centre, dated August 8, 2014
- Intake interview email to the Appellant’s mother from a Child and Youth Mental Health Clinician, dated March 2, 2016
- Report from a Behavior Consultant with a Pediatric Therapy Organization, dated May 2022
- Plan for initial supports and services from Child and Youth Mental Health dated January 15, 2024.

The evidence in those documents that addresses the Appellant’s ability to perform daily living activities, and the need for help to perform those activities, is summarized below.

*Medical Report:*

The Doctor indicates that the Appellant has been their patient for fourteen years, and they have seen her eleven or more times in the past twelve months.

*Daily Living Activities:*

The Doctor indicates that the impairment directly and continuously restricts the Appellant’s ability to perform daily living activities around social functioning. The Doctor indicates no restrictions in any other daily living activity listed on the Medical Report. They add the following comments:

- Severe anxiety/fears/insecurities.
- Severely restricted in social functioning, relating and communicating and fearful.

In answer to the question of what assistance the Appellant needs with daily living activities, the Doctor states that the Appellant’s mother “helps her a lot with multiple situations.”

*Additional Comments:*

The Doctor states: "Patient fears a lot of situations. Struggling with concentration and scholastic performance. Learning disabilities since early childhood due to ADHD and autism spectrum disorder."

*Assessor Report:*

The Doctor also completed the Assessor Report. They repeat the diagnoses set out in the Medical Report.

*Ability to Communicate:*

The Doctor indicates that the Appellant's ability to communicate is good for speaking, reading, writing and hearing.

*Mobility and Physical Ability:*

The Doctor indicates that the Appellant is independent in all listed areas of mobility and physical ability.

*Daily Living Activities:*

The Doctor indicates that the Appellant is independent in all daily living activities listed on the Assessor Report, except social functioning. They indicate that she is independent for:

- personal care;
- basic housekeeping;
- shopping;
- meals;
- pay rent and bills;
- medications; and
- transportation.

Under Social Functioning, the Doctor indicates that the Appellant needs periodic support or supervision for:

- developing and maintaining relationships; and
- dealing appropriately with unexpected demands.

They indicate that the Appellant has marginal functioning with her immediate social network, and both marginal and very disrupted functioning with her extended social networks. They comment "severe anxiety/OCD"

*Assistance Provided for Applicant:*

The Doctor states that help required for daily living activities is provided by the Appellant's family. In the section of the report where the Assessor is asked to indicate what assistance would be necessary, if help is required but there is none available, the Doctor states "unsure".

Letter from Legal Advocacy Centre, completed and signed by the Doctor, dated June 26, 2024:

The legal advocate prepared a letter to the Doctor, setting out a series of statements, and asking the Doctor to indicate if they agree or disagree. The Doctor indicated agreement or disagreement and signed the letter.

The Doctor agreed that:

- The Appellant must read things over and over to comprehend what she is reading.
- The Appellant must use speech to text to write things because she would not be able to read her own writing.
- The Appellant has difficulty writing words properly.

The Doctor agreed that the Appellant needs continuous assistance or is unable to do the following daily living activities due to a combination of her health conditions:

- Filling/refilling prescriptions and taking medications as directed: "[Mother] have to remind and refill [the Appellant's] prescription for...birth control. [The Appellant] is afraid of taking medication she has previously been prescribed due to a fear of the side effects."

The Doctor disagreed that the Appellant needs continuous assistance or is unable to do the following daily living activities:

- Going to and from stores;
- Banking;
- Budgeting; and
- Paying rent/bills.

Typewritten statement #1:

The unsigned statement is written in the third person and states:

- The Appellant needs help setting up doctor and dentist appointments, doing banking and other paperwork
- The Appellant washes her hands excessively, using 1.9 litres of liquid soap every two weeks and washing her hands after touching everything, even after taking a shower.

- The Appellant has developed an issue with someone coming close to her or touching her.
- The Appellant refuses to take medication for anxiety and depression.
- The Appellant attends counseling for a while and then gives up.

Typewritten statement #2:

The statement is written in the first person, and states:

- The Appellant is “absolutely terrified” of having to have lung surgery again because of the pain and recovery; she was only willing to have another surgery if it could be done at a children’s hospital while she was a minor. Now that she is no longer a minor, she is no longer willing to have another surgery because she does not like going to hospitals, and a lot of hospitals are run down.
- She struggles to fall asleep at night and wake up in the morning, especially when she must wake up at a certain time.
- She gets extremely exhausted after coming home from school to the point where she must have a nap or else she will feel sick and weak.
- She constantly feels emotionally and physically drained.
- She struggles with writing and refuses to write in front of anyone because she feels they judge her, and her school did not care about it. School felt like “a place of humiliation” for her because of her struggle with writing.
- She gets anxiety and feels sick to her stomach when she thinks about having to go back to school, because she would have to see people she does not want to see, and school reminds her of her struggle with writing.
- School is also “disgusting” and she wants to take a shower when she comes home. She knows that her boundaries and personal space will be disrespected.
- She prefers not to take medication because she does not feel she needs it, and she does not want too much medication.

School Records:

School records confirm that the Appellant was diagnosed with learning disabilities and ADHD since 2013, with learning disorders showing impairment in mathematics, reading and writing. She received accommodations for learning disabilities in school, with the recommendation that she continue to receive accommodations if she pursued further education after high school.

The Psychoeducational Assessment dated November 2023, gives some additional information about the Appellant’s ability to perform daily living activities, provided by the Appellant’s mother. She states that the Appellant:

- Does not eat unless someone tells her to eat;

- Occasionally grabs a small snack, but she usually only eats one meal a day;
- Tends to isolate in her room;
- Struggles to connect socially with peers; and
- Is reluctant to ask for help, struggles to stay engaged and can perseverate if she feels something is wrong.

The school psychologist who completed the assessment concluded:

“There are concerns for how [the Appellant] is managing her emotions, for her physical symptoms, for how she is connecting with others socially, and with her adaptive skills. [The Appellant] will need support to continue to learn skills and strategies to support her social skills development and her emotional regulation.”

They go on to state:

“While [the Appellant] did not meet [Community Living BC] criteria, she is still demonstrating difficulty with many adaptive skills, in both the home and school environment. She may need explicit teaching and support to develop some of these skills, as she works toward independence.”

The Psychoeducational Assessment states that adaptive skills include communication, social and leisure skills and community use (such as shopping and “getting around independently”), school/home living, health and safety and self-care skills.

#### Additional Evidence:

#### Appellant:

#### Letter from Legal Advocacy Centre, completed and signed by the Doctor, dated August 2, 2024:

On appeal, the Appellant provided a further letter prepared by the legal advocate, setting out a series of statements, and asking the doctor to indicate if they agree or disagree. Again, the Doctor indicated agreement or disagreement and signed the letter.

With respect to daily living activities, the Doctor agrees that:

- The Appellant had another episode of spontaneous pneumothorax on July 18, 2024.
- As of right now, the Appellant needs continuous assistance or is unable to do the following daily living activities because of her health conditions:
  - Going to and from stores: the Appellant has never “done a grocery shop” on her own before.
  - Banking
  - Budgeting

- Paying rent/bills: The Appellant gets assistance from her mother with banking and budgeting. The Appellant does not have to pay bills or rent yet, but when it comes times for this, she will need assistance from her mother.
- Filling/refilling prescriptions
- Taking medications as directed: Mother must remind her and refill the Appellant's prescription for birth control. The Appellant is afraid of taking medication she has previously been prescribed due to a fear of side effects.

The Doctor adds that the Appellant will be referred to adult psychiatry for further treatment.

*Appellant's Mother:*

At the hearing, the Appellant's mother gave the following evidence about daily living activities:

- The Appellant is "delayed" and "not ready to be an adult".
- The Appellant forgets her keys and then just waits outside for the mother to get home, because she is too scared to ask neighbours for help, even though the mother has explained that they are "safe people".
- The Appellant mostly stays in her room and sleeps a lot.
- The Doctor is not supportive.
- The Appellant cleans her bedroom and bathroom, and can put her clothes through the laundry, but otherwise the mother "does everything".
- The mother makes doctor's appointments for her and takes her wherever she needs to go.
- The mother helped the Appellant get a bank account and is trying to teach the Appellant how to use the self-checkout at a store, but the Appellant gets confused between debit and credit card functions.
- The Appellant can make basic food, like breakfast, hard boiled eggs or a side dish, but she could not make a full meal.
- The Appellant could not pay rent or bills without the mother's help.
- For grocery shopping, the mother would have to drive the Appellant to the store and tell her what to buy.
- The mother could not leave the Appellant home alone if she went away on vacation, because the Appellant is afraid of being alone, and the mother would be afraid that something might happen.
- For example, the mother had day surgery, and when the mother got home, the Appellant was crying, and had not eaten all day, because her chest hurt and she did



not know what to do. The mother had to make food for the Appellant rather than go to bed and rest after her surgery.

- During rehearsal for her graduation ceremony, a woman who was directing students where to stand grabbed the Appellant's arm even though the Appellant asked the woman not to touch her. The Appellant came home crying and was refusing to go to her graduation ceremony. The mother knew the Appellant would regret not going, so she persuaded the Appellant to take lorazepam, and managed to convince her to take part in the ceremony, but that incident was all due to an interaction with one person.

In answer to a question from the Panel, the mother said that, if the mother did not remind her to take medications, the Appellant would not take them, and she forgets, even if the mother reminds her.

At the hearing, the Appellant said:

- She cannot sleep, or wakes up and has to wash her hands, most nights.
- She wakes up feeling drained, and she gets scared.
- She wrote Typewritten Statement #2, and her mother wrote Typewritten Statement #1.

At the legal advocate's request, the Appellant showed the Panel her hands, which were cracked and inflamed with severe eczema, from frequent hand-washing due to OCD. The legal advocate described the Appellant's hands for the Ministry, attending by telephone, and the Ministry representative advised they were satisfied that they understood the condition of the Appellant's hands.

Legal Advocate:

At the hearing, the legal advocate explained that, in their experience, it has been difficult to get information from the Doctor for the PWD application, because the Doctor "does not want to give up on people." They said that the Doctor provided different answers to questions about daily living activities in the letter dated August 2, 2024, because the legal advocate changed the wording to present tense, to clarify that it is an assessment of the Appellant's abilities now.

Admissibility of Additional Evidence:

The Ministry did not object to the additional written and oral evidence of the Appellant, her mother and the legal advocate. The additional evidence provides further information

about the Appellant's ability to perform daily living activities, and the help she receives from her mother. 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. The Ministry also found that the Appellant has a severe mental impairment. However, the Ministry found the Appellant did not have a severe physical impairment, and did not meet the requirements for:

- 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 she does meet the criteria for PWD designation. She says that, because of a severe mental impairment, she cannot perform the following daily living activities:

- going to and from stores;
- banking;
- budgeting;
- paying rent and bills; and
- taking medications as directed.

She says that she needs significant help from her mother to perform those activities.

Ministry Position:*At Reconsideration:*

At reconsideration, the Ministry found that there was not enough evidence to confirm that, in the opinion of a prescribed professional, the Appellant's severe mental impairment directly and significantly restricted her ability to perform daily living activities. The Ministry relied upon the information provided in the Medical Report, in which the Doctor indicated that the Appellant was only restricted in social functioning, due to severe anxiety. The Ministry also referred to the information in the Assessor Report, in which the Doctor indicated that the Appellant only needed periodic support to develop and maintain relationships, and to deal appropriately with unexpected demands. They noted that the Doctor said the Appellant was independent, and had no restrictions, in all other daily living activities listed on the Medical and Assessor Reports. They also noted that, while the

Doctor said that the Appellant's mother "helps a lot with multiple situations", the Doctor did not provide any details of the help provided.

The Ministry acknowledged that, in the June 26, 2024, letter, the Doctor stated that the Appellant's mother refills her prescriptions and reminds her to take the medication. However, the Ministry said that this assistance did not show "an overall significant restriction" in the Appellant's ability to manage medications. Similarly, while the Doctor said that the Appellant's mother helps with budgeting and banking, the Doctor did not provide the nature and frequency of that help, and the Doctor had also indicated the Appellant was independent in that area. Therefore, the Ministry said it could not determine that the Appellant was significantly restricted continuously or periodically for extended periods.

With respect to social functioning, the Ministry acknowledged that the Doctor said the Appellant is significantly and continuously restricted in social functioning due to severe anxiety. However, the Ministry said the Doctor only indicates that the Appellant needs assistance with developing and maintaining relationships and dealing appropriately with unexpected demands. The Ministry said that, without a description of why or how often such assistance is needed, it could not confirm that the Appellant needs assistance periodically for extended periods. The Ministry also said that the Appellant is independent in most social functioning and was maintaining marginal functioning with her social networks. Therefore, the Ministry maintained that the Appellant did not have a significant restriction in her overall social functioning.

The Ministry acknowledged the Doctor's indication in the Assessor Report that the Appellant receives help from her family. However, the Ministry said that, as the information provided did not indicate direct and significant restrictions in daily living activities, the Ministry also cannot determine that the Appellant needs significant help with restricted activities.

*At the Hearing:*

At the hearing, the Ministry representative said that, in their opinion, based on the additional written and oral evidence provided by the Appellant on appeal, the Appellant meets the criteria for PWD designation. They stated that the Doctor's August 2, 2024, letter and the oral evidence of the Appellant and her mother at the hearing confirm that the Appellant's ability to perform daily living activities is directly and significantly restricted by a severe mental impairment, and the Appellant needs significant help to perform daily living 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.

*Severe Impairment:*

The Ministry determined on reconsideration that the Appellant has a severe mental impairment. Accordingly, this criterion has been satisfied. However, the Ministry also found that the Appellant does not have a severe physical impairment. The Panel finds that the Ministry was reasonable in its determination that, based on the information in the Doctor's reports, the Appellant does not have a severe physical impairment. The Doctor does not report any limitations to physical functioning, or restrictions to activities requiring mobility and physical ability.

*Restrictions to Daily Living 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; and
- Relate to, communicate, or interact with others effectively.

Not all Activities, or even the majority, need to be restricted. In *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2009 BCSC 1461, the court stated that "there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two daily living activities." 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.

In addition, in this Appeal the Doctor provided two letters addressing the Appellant's ability to perform Activities. The Panel finds that the information provided by the Doctor in the August 2, 2024, letter confirms direct and significant restrictions to the Appellant's ability to perform Activities. The legal advocate explained that the Doctor revised his responses to the same questions about Activities that appeared in the June 24, 2024, letter, because the August 2, 2024, letter is framed specifically as an assessment of the Appellant's current abilities. The Panel accepts the legal advocate's reasonable explanation that this Doctor had been reluctant to state that the Appellant might never be able to perform those Activities independently in future. However, there is no indication that there will be any change in the Appellant's ability to perform Activities in the near or foreseeable future.

Based on the Doctor's evidence in the August 2, 2024, letter, and the written and oral evidence of the Appellant and her mother, the Panel finds that the Appellant is directly and significantly restricted in her ability to perform the following Activities:

- Prepare own meals:
  - The Appellant has to be reminded to eat, and only eats one meal a day.
  - When the Appellant's mother was in day surgery, the Appellant did not make food for herself all day.
  - The Appellant's mother says the Appellant can make breakfast or boil an egg, but she could not make a full meal for herself.
- Manage personal finances:
  - The Appellant would not be able to pay rent or bills by herself.
  - Her mother helps her with banking and budgeting.
- Shop for personal needs:
  - The Appellant's mother has to drive her to the store because the Appellant has too much anxiety being on a bus near other people;
  - The Appellant has never shopped for groceries by herself; if she went grocery shopping, her mother would have to tell her what to buy.
  - She is confused when her mother tries to teach her how to use a self-checkout.
- Use public or personal transportation facilities:
  - As previously stated, the Appellant cannot take public transportation because she is too anxious being on a bus with other people.
- Manage personal medications:

- The Appellant's mother must refill the Appellant's prescriptions and remind her to take her birth control medication.
- The Appellant is afraid of taking medication and is not taking medication that the Doctor would want to prescribe for her.
- Perform personal hygiene and self care:
  - Due to obsessive-compulsive disorder, the Appellant washes her hands excessively, to the point of damaging her skin.
  - The Appellant washes her hands even after she has showered.
  - She finds locations like school and hospital to be "disgusting"; she showers as soon as possible after she has been at school.
- Make decisions about personal activities, care or finances:
  - The Appellant refuses to take medication for anxiety and depression.
  - The Appellant is not taking medication that the Doctor would otherwise prescribe, because of fear of side effects.
  - She would not have further lung surgery because she says the hospitals, other than a children's hospital, are "run down".
  - The Appellant needs her mother to set up doctor and dentist appointments for her.
- Related to, communicate or interact with others effectively:
  - The Appellant is afraid to talk to other people and spends most of her time alone in her room or sleeping.
  - When she forgets her housekey, she is afraid to talk to neighbours to be let into the house, choosing instead to wait on the doorstep for her mother to get home.
  - The Appellant became distraught and was going to refuse to go to her graduation ceremony because a woman grabbed her arm at the rehearsal.

The Panel finds that, particularly in light of the August 2, 2024, letter from the Doctor, the Ministry's determination that the Appellant is not directly and significantly restricted in her ability to perform Activities, is not reasonably supported by the evidence.

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.



In the Psychoeducational Assessment, the school psychologist states that the Appellant would need support to manage social functioning and might need “explicit teaching and support” to develop adaptive skills such as community use and self-care. In the August 2, 2024, letter, the Doctor states that the Appellant’s mother helps with banking and budgeting, filling and refilling prescriptions, and taking medications as directed. In the Medical Report, under the heading Social Functioning, the Doctor also stated that the Appellant is severely restricted in social functioning, relating and communicating, and is fearful. The Doctor stated that her mother “helps her a lot with multiple situations.” The Appellant’s mother provided further information about the help she provides, such as helping the Appellant to deal with unexpected social situations, as the Appellant is fearful of interacting with others. The mother provides assistance every day. Therefore, the Panel finds that the Appellant requires significant help from another person to perform Activities.

As a result, the Panel finds that the Ministry’s determination that the Appellant did not meet the criterion of needing significant help from another person to perform Activities is not reasonable.

Conclusion:

The Panel finds that the Ministry’s Reconsideration Decision to deny the Appellant PWD designation is not reasonably supported by the evidence. 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 "mother" 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 2024-0289

**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)  
2024/08/24

Print Name  
Kulwant Bal

Signature of Member

Date (Year/Month/Day)  
2024/08/24

Print Name  
Kenneth Smith

Signature of Member

Date (Year/Month/Day)  
2024/08/24