

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) Reconsideration Decision dated August 2, 2024, which determined the appellant was not eligible for the Persons with Disabilities designation because he did not meet three of the five criteria. The ministry was satisfied he met the age and duration criteria but was not satisfied, based with the evidence presented, that he met the following criteria:

- Severe mental or physical impairment
- Severe impairment directly and significantly restricts daily living activities
- Assistance required with daily living activities as a result of significant restriction

The ministry also found the appellant was not one of the prescribed classes of persons eligible for Persons with Disabilities designation on alternative grounds. As there was no argument on this point, the panel considers it not to be an issue in this appeal.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (Act), section 2

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

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

Part E – Summary of Facts

The hearing was held as a teleconference hearing on August 23, 2024.

Evidence Before the Minister at Reconsideration**Persons with Disabilities Application (May 10, 2024)**

The appellant chose not to provide a Self-Report.

Medical Report (June 4, 2024) – signed by the appellant’s doctor

The doctor (general practitioner) provided the information below.

Diagnosis	Date of onset
Depression	2012
Anxiety	2012

Health History

The doctor writes that the appellant has significant difficulty going into public spaces as he develops significant irritability. As well, he lacks motivation to complete daily chores.

The appellant has not been prescribed any medications and/or treatments that interfere with his ability to perform daily living activities. In addition, he does not require any prostheses or aids for his impairment.

Degree and Course of Impairment

The doctor indicates the impairment is likely to continue for two years or more - previous intolerance to standard Selective Serotonin Reuptake Inhibitors treatment.

Functional Skills

The appellant can walk 4+ blocks and climb 5+ steps unaided. There is no limitation with lifting and no limitation remaining seated. As well, there are no difficulties with communication.

The appellant has significant deficits with cognitive and emotional functioning in the areas of emotional disturbance, motivation and impulse control.

He has been their patient since November 2019 and they have seen him 2-10 times in the past 12 months.

Assessor Report (June 4, 2024) – signed by the appellant’s doctor

The doctor provided the information below.

The appellant lives with family, friends or caregiver.

Mental or Physical Impairment

The appellant lacks motivation to start tasks and struggles to go into public spaces impacting his ability to manage daily living activities.

His speaking, reading and hearing are good, and his writing is satisfactory.

Mobility and Physical Ability

The appellant is independent with:

- Walking indoors/outdoors
- Climbing stairs
- Standing
- Lifting
- Carrying and holding

Cognitive and Emotional Functioning

The doctor indicates:

No impact with

- Memory
- Language
- Psychotic symptoms
- Other neuropsychological problems
- Other emotional or mental problems

Minimal impact with:

- Bodily functions
- Consciousness
- Insight and judgement
- Attention/concentration
- Executive
- Motor activity

Moderate impact with:

- Impulse control

Major impact with:

- Emotion (e.g., excessive or inappropriate anxiety, depression, etc.)
- Motivation (e.g., lack of initiative, loss of interest)

Daily Living Activities

The doctor indicates the applicant is independent with:

- Personal care (dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers – in/out of bed and on/off chair)
- Basic housekeeping (laundry)
- Shopping (going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, carrying purchases home)
- Meals (meal planning, food preparation, cooking, safe storage of food)
- Paying rent and bills (banking, budgeting)
- Medications (filling/refilling prescriptions, taking as directed, safe handling and storage)
- Transportation (getting in/out of a vehicle, using public transit, using transit schedules and arranging transportation)

Social Functioning

The doctor indicates the appellant is independent:

- making appropriate social decisions, developing and maintaining relationships
- interacting appropriately with others
- dealing appropriately with unexpected demands
- securing assistance from others

The appellant has good functioning with his immediate social network, "positive relationships: assertively contributes to these relationships", but very disruptive functioning with his extended social networks, "overly disruptive behavior; major social isolation "and "significant difficulty entering public spaces"

Assistance

The appellant does not have an assistance animal. No information was provided by the doctor under the section "Assistance provided by other people".

Letter from the Ministry to the Appellant (July 12, 2024)

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

Request for Reconsideration (July 16, 2024)

The appellant states he feels that his application was not looked at carefully. He refers to eligibility quoted from the ministry's website, "Show that you meet financial eligibility to receive assistance;... "Have a severe physical or mental impairment that is expected to continue for more than two years. Be significantly restricted in your ability to perform daily living activities".

The appellant states his disabilities have been ongoing for years and restrict his daily living activities. His social phobia (social anxiety disorder) holds him back from leaving his home. He prefers to shop for himself or his children's needs when less people are out (for example, in the evening - an hour before store closing times). He avoids social gatherings such as parties, concerts, parades etc. Medical services are restricted. He would only go to walk-in clinics during evenings

when no one is there as he cannot be in a room full of people. He suffers from fear and anxiety in social situations and depression as well. He experiences negative self-talk, poor social skills, and low academic and employment achievement etc.

Ministry workers have suggested that he apply for Persons with Disabilities designation. The extra funding would go towards a special counsellor/therapist etc.

Information Received After Reconsideration

Notice of Appeal (August 7, 2024)

The appellant questions if the ministry even considered the doctor's notes. He spoke to colleagues who encouraged him to apply for disability. In addition, a legal advocate told him he was eligible and helped him fill out the forms.

The appellant states he wants to break down these walls, which he didn't have when he was younger. The extra funds are needed because he's not working as the social phobia affects his work performance. He had to quit his job and he's a single father. He is interested in counseling but can't afford it. The appellant states he doesn't feel comfortable with counselors offering free services but has found someone he's comfortable with who will do a sliding scale. Funding will go towards this counseling.

At Hearing

At the hearing, the appellant stated he used to live in another province but moved to British Columbia in 2017 to be closer to family. His physical health is not an issue. He can walk, has all his limbs, etc. However, over the last few years he has developed a fear of going out in public and it has worsened, which has been leading to a depression. When he does go out in public, he experiences symptoms such as a fast heartbeat, upset stomach, sweat, and sometimes his mind will go blank. When he attends his children's school concerts, he sits at the back of the room. And, when he gets back into his car, he breathes a sigh of relief. As well, he doesn't want anyone in his house. When his children ask if they can have friends over, he procrastinates as he doesn't want them there.

He asks people to pick things up for him, so he doesn't have to go out. The appellant added that his children are his motivation. The only reason he goes out is because of his children.

The appellant indicated he would like to participate in cognitive behavior therapy, but requires the funding.

He added that he thought there should have been more of an explanation from his doctor and that the questions on the application form are too restrictive. For example, he has no difficulty indoors, but a lot of difficulty outdoors. With the general public he has difficulty interacting with some people but not others. He has no difficulty speaking with anyone on the phone.

When asked if the appellant has applied for disability benefits under the Canada Pension Plan, he said he has not.

At the hearing, the ministry relied on its record and stated that it had not received any additional submissions. In response to a question regarding the steps used by the ministry in determining eligibility for Persons with Disabilities designation, the ministry explained that the first assessment is financial (that is to ensure the appellant's income is not above the Persons with Disabilities benefit rate).

Admissibility

The panel determined all the additional information from the appellant and the ministry is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible as evidence under section 22(4) of the *Employment and Assistance Act*.

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

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

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

- Severe mental or physical impairment
- Severe impairment directly and significantly restricts daily living activities
- Assistance required with daily living activities as a result of significant restriction

Appellant Position

The appellant submits that his application was not looked at carefully. He refers to eligibility quoted from the ministry's website, "Show that you meet financial eligibility to receive assistance;... "Have a severe physical or mental impairment that is expected to continue for more than two years. Be significantly restricted in your ability to perform daily living activities"

He argues his disabilities have been ongoing for years and restrict his daily living activities. His social phobia (social anxiety disorder) holds him back from leaving his home.

He suffers from fear, anxiety and depression in social situations and experiences negative self-talk, poor social skills, and low academic and employment achievement. When he does go out in public, he experiences symptoms such as a fast heartbeat, upset stomach, sweat, and sometimes his mind will go blank. When he gets back into his car, he breathes a sigh of relief.

Funds for a counsellor/therapist are needed because he's not working.

Ministry Position*Mental Functioning*

Based on the information provided, the ministry is not satisfied the appellant has a severe mental impairment. The ministry acknowledges that the appellant experiences restrictions due to his depression and anxiety. However, these restrictions do not appear to severely impact his overall mental functioning. Most cognitive and emotional functions are only moderately, minimally, or not impacted, with only two major impacts indicated. Additionally, he is reported to be independent in all activities related to making decisions regarding personal activities, care, and finances, as well as social functioning, and has good communication abilities.

Physical Functioning

Based on the information provided, the ministry is not satisfied that the appellant has a severe physical impairment. The appellant's doctor does not provide a diagnosis of a physical health condition. The appellant has no reported limitations to his physical functioning (walk four blocks, climb five stairs...) and can independently complete activities requiring mobility and physical ability (walk indoors/outdoors, etc.)

Restrictions to Performing Daily Living Activities

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

The ministry acknowledges that the appellant reports his anxiety and depression restrict his daily living activities. However, the appellant's doctor reports that he is independent in all daily living activities. The primary source of information for this requirement, as set out by legislation, is the appellant's doctor, and this must be confirmed in their report.

Regarding social functioning, the appellant's doctor notes, very disrupted functioning in the appellant's extended social network due to significant difficulty entering public spaces. However, the ministry is unable to determine if this disruption causes a significant restriction in the appellant's overall social functioning, as he is reported as being independent in all activities related to social functioning. Additionally, the doctor has not indicated any inability to make decisions about personal activities, care, or finances, nor has it been reported that the appellant is unable to effectively relate to, communicate with, or interact with others.

Help Required with Daily Living Activities

The ministry states the doctor does not indicate the appellant requires assistance or help from another person or device

Panel Analysis

Section 2(2) of the Act sets out the requirements that must be met for the minister to designate a person as a Person with Disabilities. One requirement is that the minister is satisfied the person has a severe mental or physical impairment.

The panel notes, "severe" and "impairment" are not defined in the legislation. The ministry considers the extent of any impact on daily functioning as shown by restrictions on mental or physical abilities. The panel finds that an assessment of severity based on physical and mental functioning, including any restrictions, is a reasonable application of the legislation.

Mental Impairment

In the Medical Report, the doctor shows diagnoses of depression and anxiety, both with onset dates of 2012. They state that the appellant has significant difficulty going into public spaces as he develops significant irritability. He also lacks motivation to complete daily chores. The doctor also indicates the appellant has significant deficits with cognitive and emotional functioning in the areas of emotional disturbance, motivation and impulse control.

In the Assessor Report, the doctor states there is major impact with emotion and motivation. As well, the doctor indicates the appellant has very disruptive functioning with his extended social networks, "overly disruptive behavior; major social isolation" and "significant difficulty entering public spaces".

The appellant argues that his social phobia holds him back from leaving his home as he suffers from fear, anxiety and depression in social situations. He prefers to shop when less people are out and avoids social gatherings such as parties, concerts, parades etc. Medical services are restricted as he would only go to walk-in clinics during evenings.

The panel acknowledges that the appellant has difficulty in public spaces due to his social phobia. However, the panel finds the evidence is insufficient to conclude that the appellant is "severely" restricted (for example, not being able to leave his house at all). The doctor states the appellant is independent shopping (going to and from stores). The appellant states he "prefers" to shop when less people are around. The panel finds a preference cannot be considered the same as a severe restriction. Although the appellant may have to modify his schedule, he is still able to leave his house to shop, go to medical appointments and attend his children's concerts.

As well, although the doctor states there is major impact with motivation, they do not provide further details. The appellant stated his children are his motivation.

Although the doctor states the appellant has very disruptive functioning with his extended social network, they also state he is independent making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance. Despite the contradicting evidence, the panel finds that while the appellant may be experiencing some impact on mental functioning, the impairment is not severe.

Therefore, the panel finds the ministry decision that it was not satisfied the appellant has a "severe" mental impairment, reasonable.

Physical Impairment

In the Medial Report, the doctor states the appellant can walk four plus blocks and climb five plus steps unaided. There is no limitation with lifting and no limitation remaining seated. In the Assessor Report, the doctor states the appellant is independent walking indoors/outdoors, climbing stairs, standing, lifting and carrying and holding.

The appellant indicated his physical health is good. There is no dispute on this issue.

Upon review of the evidence, the panel finds the ministry decision that it was not satisfied the appellant has a severe physical impairment, reasonable.

Restrictions in Ability to Perform Daily Living Activities

Section 2(2)(b)(i) of the Act also states the minister must be satisfied that in the opinion of a prescribed professional, a severe physical or mental impairment directly and significantly restricts the person's ability to perform daily living activities continuously, or periodically for extended periods. Daily living activities are defined in section 2 of the Regulation. As provided in the case of *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal), 2009 BCSC 1461*, at least two activities must be restricted in a way that meet the requirements. To be significant, the restriction must be to a great extent, such as not being able to do the activities without a lot of support. Continuous means the activity is generally restricted all the time and periodic for extended periods means frequently or for longer periods of time.

The panel notes the doctor (a prescribed professional) states the appellant is independent preparing his meals, managing personal finances (paying rent and bills, banking, budgeting),

basic housekeeping, performing personal hygiene and self care and managing personal medication.

- shop for personal needs

Although the appellant states he prefers to shop when less people are out and his doctor states the appellant has significant difficulty going into public spaces, the panel notes the doctor also indicated the appellant is independent shopping.

- use public or personal transportation facilities

Although the doctor states the appellant has significant difficulty going into public spaces and the appellant states his social phobia holds him back from leaving his home, the panel notes the doctor also indicated the appellant is independent using public transportation.

- move about indoors and outdoors

The panel notes the doctor states the appellant is independent walking indoors/outdoors climbing stairs and standing.

- make decisions about personal activities, care or finances

The panel notes the doctor indicates the appellant is independent making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, securing assistance from others and managing personal finances.

- relate to, communicate or interact with others effectively

The panel notes the doctor indicates in the Assessor Report that the appellant is independent developing and maintaining relationships and interacting appropriately with others, and has good functioning with his immediate social network. The doctor also states he has very disrupted functioning with his extended social networks, "overly disruptive behavior; major social isolation and "significant difficulty entering public spaces".

Considering that the doctor states the appellant interacts with others effectively, the panel finds the challenge is with being in public spaces and not the appellant's ability to communicate overall.

With the above evidence, the panel finds there is insufficient evidence to determine that in the opinion of a prescribed professional, a severe physical or mental impairment directly and significantly restricts the appellant's ability to perform at least two daily living activities continuously, or periodically for extended periods.

In addition, as the panel determined a severe mental or physical impairment was not demonstrated, the panel finds it cannot be determined that a severe physical or mental impairment directly and significantly impacts the appellant's ability to perform daily living activities.

Therefore, the panel finds the ministry decision that it was not satisfied that this section of the legislation was met, to be reasonable.

Help to Perform Daily Living Activities

The panel notes section 2(2)(b)(ii) of the Act requires that as a result of significant restrictions with daily living activities, the person requires help to perform these activities which is defined as an assistive device, assistance animal, or the significant help or supervision of another person.

The panel finds neither the doctor nor the appellant indicated any assistance is required to perform daily living activities.

As well, as the panel found the evidence is insufficient to conclude that the appellant has a severe impairment that affects his ability to perform daily living activities, it cannot be determined that assistance is required because of a severe impairment.

Therefore, the panel finds the ministry decision that it was not satisfied that help is required, reasonable.

Conclusion

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

The panel confirms the ministry's Reconsideration Decision.

The appellant is not successful on appeal.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Act

Persons with Disabilities

2 (1)In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b)in the opinion of a prescribed professional

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

(A)continuously, or

(B)periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal....

Employment and Assistance for Persons with Disabilities Regulation

Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

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

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

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

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

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

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

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

(i) medical practitioner,

(ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner...

Part 1.1 — Persons with Disabilities

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2

(2) [*Persons with Disabilities*] of the Act:

(a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;

(b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;

(c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act*;

(d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act* to assist that family in caring for the person;

(e) a person who is considered to be disabled under section 42 (2) of the *Canada Pension Plan* (Canada).

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Part G – Order

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

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

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

Legislative Authority for the Decision:

Employment and Assistance Act

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

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

Part H – Signatures

Print Name
Connie Simonsen

Signature of Chair

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

Print Name
Corrie Campbell

Signature of Member

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

Print Name
Gordon Thompson

Signature of Member

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