

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“Ministry”) decision dated July 5, 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, and therefore met the requirement for severe mental or severe physical impairment. However, the Ministry found that the Appellant 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 by teleconference on August 28, 2024. The Ministry did not attend the hearing.

Background:

The Appellant is over 18 years of age and has applied for PWD designation.

At reconsideration, the Ministry was satisfied that the Appellant has a severe mental impairment. The Ministry was not satisfied that the Appellant has a severe physical impairment because the Appellant's psychiatrist did not report any limitations to the Appellant's physical functioning. As the criterion for PWD designation is that the applicant must have either a severe mental or a severe physical impairment, the Ministry found that the Appellant met that requirement.

In determining mental impairment, the Ministry accepted the diagnoses provided by the doctor that the Appellant has unspecified depressive disorder and unspecified trauma and stressor disorder, with significant deficits in cognitive and emotional functioning in the areas of executive function, emotional disturbance, motivation, impulse control and attention/concentration. The Ministry noted that the Appellant has had multiple psychiatric hospitalizations and multiple suicide attempts, most recently in October 2023.

However, 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:

In support of the application, the Appellant submitted a PWD application that included the Medical Report completed by a Psychiatrist and the Assessor Report completed by a Registered Nurse. The Appellant did not complete the Self-Report section of the application.

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 Psychiatrist states that the Appellant has been their patient since January 5, 2024, and they have seen the Appellant between two and ten times in the past twelve months.

Functional Skills:

The Psychiatrist states that the Appellant “reports having significant difficulty focusing and feeling motivated. Patient has demonstrated that anxiety can interfere significantly with emotional functioning.”

Daily Living Activities:

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

- Meal preparation;
- Management of medications;
- Basic housework; and
- Social functioning.

They explain that “when anxiety is heightened, patient avoids others/isolates, lacks motivations [sic] and has greater difficulty with daily living activities.” They state that “[the Appellant’s] mother assists with getting patient out of bed; taking morning medication; preparing meals; ensuring that patient eats [and] keeps room tidy.”

Additional Comments:

The Psychiatrist states: “Patient has had several relatively recent presentations to ER/hospital and has required much support from her mental health treatment team. She is prescribed multiple psychiatric medications.”

Assessor Report:

The Nurse indicates that they have known the Appellant since December 5, 2023, and have seen her eleven or more times in the past twelve months. They state that they are the Appellant’s care coordinator Registered Nurse and have regular contact with the Appellant, varying from weekly to several times a week.

Daily Living Activities:

The Nurse indicates that the Appellant needs periodic assistance from another person for the following daily living activities:

- Personal care: regulating diet;
- Basic housekeeping and laundry;
- Medications: filling/refilling prescriptions; taking as directed; safe handling and storage.

They indicate that the Appellant needs continuous assistance from another person or is unable to do food preparation and cooking.

The Nurse also indicates that the Appellant needs periodic support or supervision for making appropriate decisions and dealing appropriately with unexpected demands. They comment:

- “Poor judgement at times in social situations. She tends to isolate and avoid same.”
- “Poor coping related to severe anxiety. Easily dysregulated [with] life stressors.”

The Nurse indicates that the Appellant has good functioning with her immediate social network, which consists of only her immediate family members. They indicate marginal functioning with extended social networks, commenting “avoidant of social connections.”

The Nurse states that the Appellant is supported by her parents. She depends on her mother to prompt her to do daily living activities such as eating and keeping her room tidy. They state that the Appellant’s mother usually prepares food and ensures that the Appellant eats twice a day. They also state that the Appellant “requires periodic support in the form of encouragement, anxiety management & care team.”

Assistance Provided for Applicant:

The Nurse indicates that the Appellant receives help for daily living activities from her family.

Additional Evidence:

Appellant:

On appeal, the Appellant provided a written statement, stating:

- She has a new diagnosis of borderline personality disorder.
- She is in treatment for substance abuse.
- Both factors significantly affect her ability to work a full time job.

At the hearing, the Appellant said:

- Her mother comes to her residence every day to help with medications and meals, and her mother takes her to all her appointments, because the Appellant has no vehicle.

In answer to questions from the Panel about her ability to perform daily living activities, the Appellant said:

- Borderline personality disorder makes her more impulsive, and she struggles with substance abuse.
- Her anxiety is paralyzing.
- She has been severely depressed, to the point of harming herself.
- She cannot even get out of bed for weeks on end due to depression.
- When she has abused substances she is completely unable to perform daily living activities, she does not even shower.
- The Appellant is not functional, her mother takes care of her and oversees everything she does.
- Her mother takes care of her, coming over every day.
- Her mother cleans her house, makes sure she takes her medications, does her laundry and makes sure she showers.
- If her mother was not making sure the Appellant took her medications, the Appellant would not take them.
- Her mother prepares the Appellant's meals because the Appellant is so depressed that she just stays in bed and does nothing.
- Sometimes her mother heats up her meals and brings them to the Appellant in bed because the Appellant is too depressed to get out of bed.
- The Appellant's mother does her grocery shopping for her, or the Appellant orders groceries online because she does not like to go out much.
- The Appellant is not living with her parents any more. She rents a room elsewhere, because she did not want to be a 24-hour burden on her parents.
- The Appellant is in residential treatment for substance abuse now and will be there for another four weeks.
- The Appellant feels very badly that her mother has to help her constantly, every day.

Admissibility of Additional Evidence:

The Ministry did not attend the hearing and did not object to the additional written evidence the Appellant submitted before the hearing.

The Panel finds that the additional written and oral 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), duration (likely to last more than two years) and severe impairment requirements. However, the Ministry found the Appellant did not meet the requirements for:

- significant restriction on the ability to perform daily living activities
- needing significant help to perform daily living activities.

Appellant's Position:

The Appellant says that she meets the criteria for PWD designation. She says that she is not able to do daily living activities because of severe depression that leaves her unable to get out of bed for weeks at a time, and anxiety that makes her self-isolate. She says that she needs significant help from her mother, to perform daily living activities. Her mother comes over every day to make meals for her and ensure that she eats, takes her medications and showers. Her mother also does grocery shopping for her.

Ministry Position:

The Ministry agrees that the Appellant has a severe mental impairment but submits that there is not enough evidence to confirm that, in the opinion of a prescribed professional, the Appellant is directly and significantly restricted in performing daily living activities continuously or periodically for extended periods. The Ministry acknowledges that the Appellant depends on her mother "to some degree" and the Appellant may be more restricted in performing daily living activities depending on the degree of her depression. However, the Ministry says that the frequency and duration of episodes of depression and the nature, frequency and duration of assistance has not been described, and therefore they cannot confirm that the Appellant is significantly restricted continuously or periodically for extended periods of time. With respect to social functioning, the Ministry also says that, as the Psychiatrist has not indicated the Appellant is not able to make decisions about personal activities, care or finances, or is unable to communicate or interact with others effectively, and indicates no safety issues, there is not a significant restriction in overall social functioning.

The Ministry acknowledges that the Psychiatrist reports the Appellant receives help from her mother, and the Nurse indicates the Appellant receives help from her family. However, the Ministry says that, as it has not been established that the Appellant is significantly

restricted in performing daily living activities, it cannot determine that the Appellant needs significant help with restricted activities.

Panel Decision:

PWD Designation – Generally

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

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

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

Restrictions to Daily Living Activities (Activities):

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

- Prepare own meals;
- Manage personal finances;
- Shop for personal needs;
- Use public or personal transportation facilities;
- Perform housework to maintain the person’s place of residence in acceptable sanitary condition;
- Move about indoors and outdoors;
- Perform personal hygiene and self care; and
- Manage personal medication.

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

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

Not all Activities, or even the majority, need to be restricted. As decided in *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2009 BCSC 1461, at least two Activities must be restricted in a way that meets the requirements. 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.

Both the Psychiatrist and the Nurse identify Activities that are significantly restricted by the Appellant's mental impairment. The Appellant has provided additional information about the help she needs for those Activities. The Panel finds that the Appellant is significantly restricted in her ability to perform the following Activities, as severe depression and anxiety impact her motivation and focus, and cause her to self-isolate:

- Prepare own meals:
 - The Appellant's mother prepares meals for her every day and makes sure the Appellant eats at least twice a day. If her mother was not preparing meals for her, the Appellant would not eat, as severe depression means she does not want to get out of bed, for weeks on end.
- Perform housework to maintain her place of residence in acceptable sanitary condition:
 - The Appellant's mother comes to her home and cleans for her, as the Appellant is unable to motivate herself.
- Manage personal medication:
 - The Appellant would not take her medication if her mother did not come over every day to make sure that the Appellant has taken it as prescribed.

- Make decisions about personal activities, care, or finances:
 - The Appellant suffers from severe depression for weeks on end, and during that time she does not get out of bed, even to shower.
 - The Appellant would not take her prescribed medication on her own, if her mother does not prompt her.
- Relate to, communicate, or interact with others effectively:
 - Due to severe anxiety, the Appellant self-isolates, and has only marginal functioning with social networks beyond her immediate family.

With respect to social functioning, the Ministry based its decision in part on its determination that the Psychiatrist did not indicate that the Appellant is unable to make decisions about personal activities, care, or finances, or that the Appellant is unable to relate to, communicate or interact with others effectively. However, the Panel finds that, in fact, the Psychiatrist did indicate that the Appellant is periodically restricted in social functioning, which is defined in the Medical Report as “daily decision making; interacting, relating and communicating with others.”

The Panel finds that the information in the Medical and Assessor Reports establishes that the Appellant is directly and significantly restricted in performing two or more Activities, due to severe mental impairment. At the hearing, the Appellant provided additional evidence about the extent of the help her mother provides, and her day-to-day struggle to perform basic self care.

Therefore, considering the evidence of the prescribed professionals, along with the additional details provided by the Appellant, the Panel finds that the Ministry’s decision that the Appellant’s impairment did not directly and significantly restrict her ability to perform Activities, either continuously or periodically for extended periods, 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.

Both the Psychiatrist and the Nurse confirm that the Appellant receives significant help from her mother every day, to perform Activities such as eating regular meals and taking

medication. Therefore, the Panel finds that the Ministry's decision that the Appellant did not meet this criterion is not reasonably supported by the evidence.

Conclusion:

The Panel finds that the Ministry's 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 "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

Employment and Assistance Act

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

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)
2024/09/03

Print Name
David Handelman

Signature of Member

Date (Year/Month/Day)
2024/09/03

Print Name
Melissa McLean

Signature of Member

Date (Year/Month/Day)
2024/09/03