

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) Reconsideration Decision dated June 24, 2024, which determined the appellant was not eligible for the Persons with Disabilities designation because she did not meet three of the five criteria. The ministry was satisfied that she met the age and duration criteria but not satisfied, based on the evidence presented, that she 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 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 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), 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 written hearing on August 22, 2024.

Relevant Evidence Before the Minister at Reconsideration**Person with Disabilities Application (application) (February 26, 2024)*****Self-Report***

The appellant writes that she has chronic pain in her upper body (back, wrists, hands, arms, shoulders, chest and neck). She's been diagnosed with thoracic outlet syndrome. Her nerves are compressed between the collar bones and first ribs and she has constant nerve pain that affects every aspect of her life. She also suffers from depression and anxiety and feels isolated from friends and family, and spends most of her time alone.

After trying several conventional and non-conventional medical treatments and therapies, which had no effect on her pain, her last resort was to have two surgeries. In April 2011, she had bilateral first rib resection. Her surgeon said her thoracic outlet syndrome was a congenital medical condition and that she has it on both sides.

The surgeries didn't work and actually made the pain worse. This debilitating pain is constant, and she has contemplated suicide because her quality of life is very low. She takes several drugs for the pain, but they only help a little - although, without them the pain would be intolerable. She spends most of her time in bed sleeping or watching television.

The appellant states everyday tasks and her ability to perform basic daily hygiene is very difficult. She can't do hobbies or things that make life enjoyable.

Her disability makes it difficult to perform the following activities:

Personal care

- getting in and out of bathtub
- standing in shower
- reaching up and down to wash her body or hair
- brushing teeth and hair, and washing face
- remembering or having motivation to do basic hygiene daily
- getting in and out of bed
- dressing

Preparing and eating meals

- standing at the sink counter or stove

- moving food from shelves, to counters, to stove and oven
- chopping, peeling, mixing and stirring food
- opening cans, jars, bags and packaging
- lifting liquids like milk jugs, juice etc.
- having motivation to eat regular meals and healthy foods

Keeping home clean

- doing dishes, putting them away, cleaning the counter, sink and floors
- cleaning the bathtub, toilet, sink and stove
- vacuuming, dusting, window cleaning
- carrying, doing and folding laundry and putting it away
- having motivation to keep home clean

Shopping for personal needs

- walking around stores, standing long enough to make good choices, managing cash register and lineups
- taking items from shelves, loading them in a basket, put the basket on the cashier's desk
- taking groceries home and carrying them to a bus and onto bus

The appellant adds that she doesn't have a car anymore because it's difficult to drive with her disability. Since 2012, after her husband left, she has had her groceries and prescriptions delivered.

Moving about indoors and outdoors

indoors

- going up and down stairs or ramps
- getting in and out of furniture, including bed
- opening and closing doors and drawers
- bending to pick things off floor
- kneeling and getting up from a kneeling position

outdoors

- walking on flat ground and uneven ground
- going up and down stairs and ramps
- going out without being anxious

Using public transportation

- walking and standing at bus stops

Due to her disability she:

- experiences a lot of anxiety, stress and depression

- experiences sensitivity to light, sound and motion
- has difficulty establishing and maintaining relationships with people
- has difficulty asking for help when she needs it
- experiences difficulty dealing with unexpected situations

She receives or needs help from:

- community agencies
- family members
- friends
- health professionals
- volunteers
- grocery and prescription shopping and deliveries

She needs help from:

- bathing aids
- hospital bed
- scooter
- reaching device (grabber)

Medical Report (February 27, 2024) - completed by the appellant's doctor

The doctor (general practitioner) provided the information below.

Diagnosis	Date of onset
Chronic pain syndrome	2008
Major depressive disorder	2011

Health History

The appellant suffers from severe nerve/neuropathic pain affecting bilateral upper extremities and torso. Thoracic outlet syndrome was diagnosed in 2011 and subsequent surgery made the symptoms worse. She developed complex regional pain syndrome and underlying central sensitization. There is underlying major depressive disorder stemming from pain and social isolation.

The doctor states the appellant has been prescribed medication that interferes with her ability to perform daily living activities, but which allows her to drive safely. The anticipated duration of the medications is unknown as they will try tapering these medications as other non-medical treatments are optimized. The appellant does not require any prostheses or aids for her impairment.

Degree and Course of Impairment

The impairment is likely to continue for two years or more. The duration is unknown. A referral for pain management has been made.

Functional Skills

The doctor indicates the appellant can walk 4+ blocks on a flat surface and climb 5+ stairs, unaided. She can lift 2-7 kgs. She can remain seated for 1-2 hours. There are no communication difficulties.

There are significant deficits with cognitive and emotional function in the area of emotional disturbance. Severe pain and major depressive disorder limit the appellant's ability with walking, sitting and regulating emotion.

The appellant will need a multidisciplinary team to help facilitate pain coping strategies. She has been on opioids for long periods, which has significantly affected her pain sensitization. There is a plan in place to further help her manage her chronic pain and improve her mood.

The doctor states they have known the appellant for nine months and have seen her 2-10 times.

Assessor Report (February 27, 2024) – completed by a registered nurse

The nurse provided the information below.

The appellant lives with family.

Mental or Physical Impairment

The appellant is unable to physically sit or stand for prolonged periods and is unable to perform daily activities.

Ability to Communicate

The nurse indicates the appellant's speaking and hearing is good, but she is unable to read or write.

Mobility and Physical Ability

The appellant is independent walking indoors/outdoors, climbing stairs, standing, lifting, and carrying and holding.

Cognitive and Emotional Functioning

The nurse provided the following assessment for cognitive and emotional functioning.

no impact

- Consciousness
- Impulse control
- Insight and judgement
- Memory
- Motor activity
- Language
- Psychotic symptoms
- Other neuropsychological problems
- Other emotional or mental problems

minimal impact

- Attention/concentration
- Executive

moderate impact

- Emotion

major impact

- Bodily functions (e.g. eating problems, toileting problems, poor hygiene, sleep)
- Motivation (e.g. lack of initiative, loss of interest)

Daily Living Activities

The nurse provided the following assessment for daily living activities.

The applicant is independent with:

- Personal care (dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers (in/out bed and on-off chairs)
- Paying rent and bills (banking, budgeting)
- Medications (prescriptions, taking as directed, safe handling and storage)

The appellant takes significantly longer than typical with:

- Basic housekeeping (laundry) - takes 4 x the regular amount of time

She needs periodic assistance with transportation (getting in and out of a vehicle).

She needs continuous assistance with:

- 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)
- Transportation (using public transit, using transit schedules and arranging transportation).

The appellant relies on her family for help with all shopping and outings.

Social Functioning

The nurse provided the following assessment for social functioning.

The appellant is independent:

- making social decisions
- interacting appropriately with others

She needs periodic support dealing appropriately with unexpected demands.

She needs continuous support/supervision with:

- developing and maintain relationships “has lost interest and motivation to go out.”
- securing assistance from others.

The appellant has marginal functioning with her immediate social network – “little significant participation/communication: relationships often minimal and fluctuate in quality” and marginal functioning with her extended social network – “little more than minimal acts to fulfill basic needs”.

Assistance

Help required for daily living activities is provided by family. The appellant does not have an assistance animal.

Additional Information

Neurological pain affects all aspects of the appellant’s life.

An office interview was used to complete this form. The nurse indicates this is the first contact with the appellant. They have known her for 30 minutes and have not seen her prior. They add they are the primary care nurse completing the application.

Letter from the Ministry to the Appellant (April 19, 2024)

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

Request for Reconsideration (May 27, 2024)

The appellant feels she is eligible for Persons with Disabilities designation. Unfortunately, her general practitioner, nurse and she had trouble interpreting some of the questions on the Persons with Disabilities application. The appellant states that every individual, including the ministry worker who denied her Persons with Disabilities designation, will interpret these questions according to their own ideas, beliefs and biases. She has read over the application and can see that mistakes were made. The nurse had never filled out a Persons with Disabilities application before. They met for the first time and were under a tight time constraint of 40 minutes to fill it out. In the Assessor Report

the nurse states that the appellant's communication for reading and writing is impaired, not because she can't read or write but because when she reads for long periods or write or types, it creates more pain as she has to use her upper body for these tasks. In her Self-Report the appellant thought the form was asking if she could use help from devices such as bathing gates and a hospital bed. These devices would be helpful, but she does not have or use them.

As well, the appellant states her general practitioner had only had her as a patient for nine months when he filled out the form and doesn't know the extent of her medical background. Her previous general practitioner that she had for over 25 years retired and her medical file was not recorded digitally. She was diagnosed with life-threatening melanoma in early 2017.

She desperately wants to prove that she needs help in her daily life and that she lives in extreme pain, cannot work and needs to pay rent, buy food, hygiene products, medication, and everyday basic needs.

Her stress levels are very high and although she can walk, climb stairs and lift, a limited amount, while doing these things she's in extreme pain, has great difficulty doing them and suffers considerably afterwards. Disabilities come in all shapes, sizes and forms. The appellant adds that because she doesn't fit into the Persons with Disabilities severity of impairment doesn't mean her disability isn't severely impairing her daily functioning and daily life.

She adds that her current general practitioner wants her to go to a pain clinic to see if there are any treatments that she can try. From 2008 to 2013 neither of the surgeries nor the lidocaine injections had any effect on her chronic pain. The surgeries actually made her pain worse. At that time, she was told there aren't any more treatments that can help her and not to return.

With her Request for Reconsideration, the appellant provided the following information regarding her medical history.

Report by the appellant's previous doctor (general practitioner) (no date)

The report provides notes on the appellant's medical history from 1998 to 2020, including a "problem list" of malignant melanoma, type 2 diabetes, hypo thyroid and depression.

Consultations

A list of medical consultations including the service provided, was included.

September 2016 – psychiatry

May 2014 – otolaryngology – head and neck surgery

April 2014 – family medicine

March 2014 – general surgeon

December 2013 – anesthesiologist

April 2013 – ophthalmology

October 2012 - dermatology

September 2012 – neurology

June 2011 – internal medicine (rheumatology)

August 2008 – thoracic surgery – pain clinic

August 2008- neurology

February 2008 - otolaryngology – head and neck surgery

May 2007 – otolaryngology – head and neck surgery

Laboratory Reports

Laboratory reports for the following months, showing the results of various tests including blood work and urine analysis were provided as follows.

- February, June and September 2020
- January, February, March, April, May, June, July and September 2019
- June 2018
- January, February, March, April, May and December 2017
- April and August 2015
- February, July, August, October and November 2013
- April, May, June and July 2011
- November 2009
- April 2008
- December 2004

2024

Complex Pain Intake Questionnaire (April 25, 2024)

In the questionnaire the appellant provides information on her health history, previous treatments, medications, a detailed description of her pain, and her health goals.

2022 List of Medications (December 22, 2022)

Twelve medications are listed.

2020

Surgical Pathology Consultation – completed by a doctor (general pathology) (June 26, 2020)

Final Diagnosis

Skin biopsy, left forearm

1. Central acute, chronic and histiocytic inflammation, with hair shafts and degenerating inflammatory cells.
2. No microorganisms identified on conventional stains, histochemical stains pending.
3. Negative for malignant melanoma and other malignancy.

Report from BC Cancer Agency – completed by a doctor (medical oncology) (October 19, 2020)

Diagnosis

Metastatic melanoma with BRAF variant

Present treatment - post 4 cycles of combination immunotherapy, last given on April 17, 2019

Electrocardiogram Report (September 30, 2020) – completed by a doctor

ECG Severity - otherwise normal ECG

ECG Impression – sinus rhythm

2019

Report from BC Cancer Agency – completed by a doctor (surgical oncology) (January 8, 2019)

Follow-up after a diagnostic and therapeutic excision of a right abdominal wall mass. As expected, this came back with evidence of metastatic melanoma with areas of satellitosis.

Report from BC Cancer Agency - completed by a doctor (surgical oncology) (January 16, 2019)

Findings

There is normal accumulation within the visualized brain. There is concern regarding brain metastasis, MRI is more sensitive.

Report from BC Cancer Agency - completed by a doctor (medical oncology) (January 24, 2019)

Diagnosis

Multiple recurrences of melanoma, now with metastatic disease.

Diabetes Consultation Report (May 3, 2019) – completed by a medical doctor

The doctor writes that the appellant is on immune therapy for a stage 4 melanoma.
Impression: new diagnosis of diabetes type to be confirmed.

Recommendation for Diabetes Management Plan (May 3, 2019)

Client taught how to use meter
Reviewed insulin

Report from BC Cancer Agency - completed by a doctor (medical oncology) (May 3, 2019)

Diagnoses

1. 1/12 diagnosed March 2018 - groin lymph nodes positive, originally diagnosed January 2017
2. In-transit metastases to left thigh – diagnoses in March 2018
3. Distant skin metastases of the right abdominal wall – diagnosed December 2018

Transthoracic Echocardiography Report – completed by a doctor (May 7, 2019)

Summary

Sinus tachycardia
Normal biventricular size and systolic function
No hemodynamically significant valvular disease

Letter completed by a doctor (otolaryngology - head and neck surgery) (May 29, 2019)

Assessment: acute on chronic sinusitis
Management: prednisone taper, continue saline irrigation indefinitely

Electrocardiogram Report – completed by a doctor (July 5, 2019)

ECG severity - normal ECG
ECG impression sinus rhythm

Letter written by a doctor (otolaryngology - head and neck surgery) (July 19, 2019)

Assessment: resolving rhinitis medicamentosa
Management: nasal saline irrigation

2018

Surgical Pathology Consultations – completed by a doctor

February 20, 2018

Final diagnosis - left lateral thigh: metastatic invasive melanoma, invading the fascia

April 24, 2018

Final diagnosis - skin punch biopsy, benign

December 19, 2018

Final diagnosis - skin lesion, right abdominal wall, excisional biopsy

Positive for metastatic malignant melanoma

**Report from BC Cancer Agency - completed by a doctor (medical oncology)
(December 4, 2018)**

Diagnosis

3 left leg melanoma

April 2018 – in-transit met resected from leg

November 5 – shave excision from abdominal wall

2015

Letter written by a surgeon (thoracic surgery) (August 19, 2015)

The doctor writes that they do not have any interventional options that they can offer at this time. The appellant has failed all other previous interventional treatment. They support the program of reducing the appellant's narcotic over time and would also support maintaining her on cymbalta until her narcotic has been completely discontinued.

2014

Letter written by a general surgeon (March 27, 2014)

The appellant presents with a multinodular goitre and some hoarseness and trouble clearing her throat. She is on thyroid hormone now for an elevated thyroid stimulating hormone.

Letter written by a general surgeon (thoracic surgery) (July 4, 2014)

The doctor writes that the appellant continues under major disability relating to her upper body pain. They appreciate that she is on long-term disability.

Letter written by a doctor (otolaryngology - head and neck surgery) (August 14, 2014)

The doctor writes the appellant is troubled with a sense of hoarseness and pressure in her throat and was found to have a goitre, which was biopsied. The doctor thinks a lot of her throat symptoms are actually based on the laryngopharyngeal reflux.

2013

Pain Clinic Report – completed by a general surgeon (thoracic surgery) (May 14, 2013)

The appellant presents with a longstanding history of chronic pain. In 2008 she was diagnosed with thoracic outlet syndrome and had bilateral thoracic outlet surgery in 2011.

Unfortunately, her pain has increased. She is currently on long-term disability and has been unable to work since the surgery.

Letter written by a general surgeon (thoracic surgery) (September 9, 2013)

The doctor states the appellant gets 20-30% relief with pain medication. She can do her housework in a paced rate and other activities of daily living even though it increases pain.

Consult – completed by an ophthalmologist (September 12, 2013)

The appellant was diagnosed with epithelial basement membrane dystrophy.

Letter to appellants doctor from a case manager at an insurance company (October 4, 2013)

The case manager writes that they are reviewing the appellant's long-term disability claim and require updated medical details.

2012

Letter by a general surgeon (thoracic surgery) (June 26, 2012)

The doctor writes that the appellant had a diagnostic stellate ganglion block on the right side recently. However, the outcome was uncertain. Her pain did not abate either

Outpatient Consultation Report – written by a consultant (August 24, 2012)

The appellant reports increased stress and depression over the last couple of weeks.

Letter written by a dermatologist (November 2, 2012)

Assessment

The doctor writes that the appellant had yellow annular micro papules of her face most consistent with sebaceous hyperplasia. Nothing looked precancerous or cancerous at this time. She did have inflammatory acne, which looked non-scarring and mild.

2010

Letter from an insurance company to the appellant (April 13, 2010)

The letter refers to the appellant's claim for long-term disability benefits. Based on their review, the claim has been declined and the reasons provided.

2008

Letter written by a neurologist (November 7, 2008)

The appellant's symptoms are in keeping with thoracic outlet syndrome. Botox injections are recommended.

2001

Letter written by a doctor (otolaryngology - head and neck surgery) (October 11, 2001)

The doctor states that both ears are scarred but there is no active problem. They think the appellant should continue to treat her rhinitis with topical steroid sprays and saline.

2000

Pathology Report - written by a doctor (otolaryngology - head and neck surgery) (November 28, 2000)

Date of Operation – November 24, 2000

Opinion

1. fragments of hyperplastic, chronically inflamed respiratory mucosa, left maxillary sinus area.
2. fragments of hyperplastic, chronically inflamed respiratory mucosa, left ethmoid area.

1998

Consultation Report – from an allergy and respiratory health clinic – completed by a doctor (October 20, 1998)

The appellant presents with predominantly upper respiratory symptoms. She describes a 12-year history of chronic plugged ears, a perennial symptom of runny nose, rhinorrhea, paroxysmal nocturnal dyspnea and a decrease sense of smell. The appellant is presenting with chronic active sinusitis and rhinitis.

Information Received After Reconsideration

Notice of Appeal (July 26, 2024)

The appellant states she has a severe physical impairment. Her impairment restricts her ability to perform daily living activities and she requires help with daily living activities as per her submissions.

The appellant did not provide an additional submission.

Ministry Submission (August 14, 2024)

The ministry's submission in this matter is the reconsideration summary provided in the Record of Ministry Decision.

No new evidence was submitted by either the appellant or the ministry.

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 was 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 states she has a severe physical impairment. Her impairment restricts her ability to perform daily living activities and she requires help with daily living activities as per her submissions.

Her doctor, nurse and she all had trouble interpreting the questions on the application. Every individual, including the ministry worker will interpret these questions differently. The nurse had never filled out a Persons with Disabilities application before and they met for the first time, under a tight time constraint of 40 minutes to fill it out. As well, her general practitioner had only had her as a patient for nine months when they filled out the form, and they don't know the extent of her medical background.

The appellant states her disability makes it difficult to perform personal care, prepare and eat meals, keep her home clean, shop for personal needs, move about indoors and outdoors and use public transportation. Due to her disability she experiences a lot of anxiety, stress and depression and sensitivity to light, sound and motion. She has difficulty establishing and maintaining relationships, asking for help and has difficulty dealing with unexpected situations.

She receives or needs help from community agencies, family and friends, health professionals, volunteers and deliveries. She needs assistance with bathing aids, a hospital bed, scooter and a reaching device.

Ministry Position

The ministry submits that the application is problematic as the Assessor Report was completed by a nurse who met the appellant for the first time when completing the Report. The Assessor Report is intended to be completed by a prescribed professional having a history of contact and recent experience with the appellant and is to be based on knowledge of the appellant, observations, clinical data and experience. The nurse indicated the only resource they used in making their assessment is an office interview. Therefore, the ministry considers the information to be like a Self-Report.

While the ministry finds the more than 500 pages of medical records provided with the Request for Reconsideration are helpful to better understand the appellant's health history, these reports do not demonstrate her current impairment or the restrictions she has performing daily living activities.

Mental Impairment

Based on the information provided, the ministry is not satisfied the appellant has a severe mental impairment. The ministry notes the nurse has not explained how motivation and bodily function have a major impact on the appellant's daily function. Also, it is unclear why the appellant would have major impact with motivation given her doctor has not identified a deficit in this area. As well, while the appellant has a deficit with emotion, it appears to have only a moderate impact on her daily functioning.

The ministry acknowledges the appellant is experiencing limitation to her cognitive and emotional functioning due to chronic pain. However, this does not appear to severely impair her mental function. Few major impacts to her daily cognitive and emotional functioning were established. She can communicate with others, and is independent in all activities related to personal care, finances, and medication management.

Physical impairment

The ministry acknowledges that the appellant experiences chronic pain that likely worsens upon exertion. However, with few reported restrictions in her functional skills, mobility and physical abilities, the ministry cannot confirm the appellant experiences a severe impairment of physical functioning.

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 her ability to perform the daily living activities set out in the legislation.

In the Assessor Report, the nurse states the appellant takes significantly longer for basic housekeeping and laundry, "takes four times the regular amount of time."

The ministry finds this does not establish a significant restriction in the appellant's ability given the assessment of her physical functioning. It is not clear how the nurse made his determination given that they knew the appellant for only 30 minutes and did not review any medical charts or reports. Also, the nurse previously determined the appellant was independently able to complete all activities requiring mobility and physical ability without taking extra time.

The ministry is unable to determine the level of assistance indicated because the appellant can independently walk four or more blocks, climb five or more stairs and lift five-fifteen pounds. Also, based on the assessment of the appellant's physical and mental functioning, the ministry is unable to determine why she would be unable to read prices and labels, make appropriate choices while shopping, paying for purchases, and plan meals.

The ministry also states there is no information to describe the support needed to be maintained in the community or that there are any safety issues.

The legislative criteria have not been met.

Assistance

The ministry states the doctor has not indicated that the appellant needs help from another person or an assistive device. The nurse indicated she requires help from family. However, as it has not been established that daily living activities are significantly restricted it cannot be determined that significant help is required from other persons or a device.

Panel Analysis

The panel gives more weight to the most recent information in the application (Self-Report, Medical Report and Assessor Report) than the documents submitted with the Request for Reconsideration. Although the documents provide a history of the appellant's health challenges, they do not speak to her current mental and physical functionality related to daily living activities and the assistance needed, which the legislation requires.

As well, the panel notes the ministry found the Assessor Report problematic as it was completed by a nurse who met the appellant for the first time and the only resource used in making their assessment was the office interview. Therefore, the ministry considered

the information in the Assessor Report “like a self-report”. The panel finds this determination reasonable. The panel acknowledges that the nurse is a prescribed professional. However, it is the panel’s view that to provide an accurate assessment, the nurse would generally require a deeper understanding of the appellant’s health issues and functionality than can reasonably be acquired in only a 40-minute interview, with someone they have never met before.

The panel therefore prefers the evidence of the doctor to that of the nurse as the doctor has seen the appellant more times and therefore gives more weight to the information from the doctor.

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

The panel notes the doctor has provided a diagnosis of major depressive disorder, with an onset date of 2011. The doctor indicates there are significant deficits with cognitive and emotional function in the area of emotional disturbance and that severe pain and major depressive disorder limits the appellant’s ability with walking, sitting and regulating emotion. However, the doctor also indicates the appellant can walk four plus blocks and remain seated for one to two hours.

For cognitive and emotional functioning, the nurse indicates there is no impact in most areas and minimal impact with attention/concentration and executive. There is moderate impact with emotion and major impact with bodily functions and motivation. In her Self-Report, the appellant states she has depression and anxiety and feels isolated from friends and family and spends most of her time alone.

The panel finds the evidence above does not demonstrate a severe mental impairment. Although the appellant’s doctor indicates the appellant has significant deficits with cognitive and emotional function in the area of emotional disturbance, and severe pain and major depressive disorder limits her ability with walking and sitting, they also indicate

her physical mobility is not restricted. As well, the doctor doesn't explain how the appellant's limitation in regulating her emotion restricts her mental functioning. While the nurse indicates that there is major impact with bodily functions, the nurse then assesses the appellant to be independent in the areas of personal care (dressing, grooming, bathing and toileting), in contradiction to their assessment that there has been major impact on bodily functions (e.g. toileting, poor hygiene).

The information from the appellant does not provide clarity or further details on the doctor's assessment, to support a severe mental impairment.

Therefore, the panel finds there is insufficient information to conclude the appellant has a severe mental impairment, and finds the ministry reasonably determined that it was not satisfied the appellant has a severe mental impairment.

Physical Impairment

The doctor has provided a diagnosis of chronic pain syndrome in the Medical Report, with an onset date of 2008 and states the appellant suffers from severe nerve/neuropathic pain affecting bilateral upper extremities and torso. The doctor indicates the appellant can walk four plus blocks on a flat surface and climb five plus stairs unaided, lift two to seven kilograms and can remain seated for one to two hours.

The nurse indicates the appellant is unable to physically sit or stand for prolonged periods and is unable to perform daily activities, including reading and writing. However, the nurse also states the appellant is independent walking indoors/outdoors, climbing stairs, standing, lifting, and carrying and holding. In the Self-Report, the appellant states everyday tasks and performing basic daily hygiene is very difficult.

As previously stated, the panel prefer the evidence of the doctor to that of the nurse as the doctor has seen the appellant more times and therefore gives more weight to the information from the doctor. The panel finds although the doctor states the appellant suffers from severe nerve/neuropathic pain, they also indicate the appellant does not appear to have issues with her physical functioning (e.g. can walk four plus blocks and climb five plus stairs). In addition, the doctor indicates that there are no difficulties with communication, contrary to the nurse's indication that the appellant is unable to read and write.

The panel finds the evidence above is insufficient to establish a severe physical impairment and finds the ministry reasonably determined that it was not satisfied the appellant has a severe physical impairment.

Restrictions in Ability to Perform Daily Living Activities

Section 2(2) 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 impacts 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 146, 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 states the appellant has been prescribed medication that interferes with her ability to perform daily living activities. However, no details on specific daily living activities are provided.

The panel notes the nurse indicates the appellant takes significantly longer than typical with basic housekeeping, needs periodic assistance with transportation, and needs continuous assistance with shopping, meals and transportation. In her Self-Report, the appellant states her disability makes it difficult to perform personal care, prepare and eat meals, keep her home clean, shop for personal needs, move about indoors and outdoors and use public transportation. As well, she states due to her disability she experiences a lot of anxiety, stress and depression, sensitivity to light and sound and motion, has difficulty establishing and maintaining relationships and asking for help, and has difficulty dealing with unexpected situations.

The panel finds there is insufficient evidence to establish that in the opinion of a prescribed professional, a severe physical or mental impairment directly and significantly the person's ability to perform daily living activities continuously, or periodically for extended periods. Although the appellant provided a detailed explanation of her struggles with daily living activities, the legislation states that this evidence must be in the opinion of a prescribed professional. Although the nurse indicated the appellant is unable to physically sit or stand for prolonged periods and is unable to perform daily activities, they do not provide specific details (e.g. how long are prolonged periods, which daily living activities are affected?).

As well, although the doctor states severe pain and major depressive disorder limit the appellant's ability with walking, sitting and regulating emotion, they do not provide

sufficient information on the appellant's ability with the specific daily living activities as outlined in the legislation (e.g. how does pain and depressive disorder restrict walking and sitting, is the restriction continuous?).

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

As well, as the panel found the ministry reasonable in its determination that the evidence is insufficient to establish a severe mental or physical impairment, it cannot be established that a severe physical or mental impairment directly and significantly impacts the appellant's ability to perform daily living activities continuously, or periodically for extended periods.

Help to Perform Daily Living Activities

The panel notes section 2(2) 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 notes the appellant states she receives or needs help from community agencies, family and friends, health professionals, volunteers and deliveries and needs help with devices such as bathing aids and a scooter. She states she relies on her family for help with all shopping and outings.

However, as the panel found the ministry was reasonable in determining that the evidence is insufficient to establish that a severe impairment directly and significantly impacts the appellant's ability to perform daily living activities, it follows that it cannot be established that assistance is required.

Conclusion

In conclusion, the panel finds the ministry's decision that 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)

2024/08/23

Print Name

Daniel Chow

Signature of Member

Date (Year/Month/Day)

2024/08/23

Print Name

Julie Iuvancigh

Signature of Member

Date (Year/Month/Day)

2024/08/23