

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) Reconsideration Decision dated July 22, 2024, in which the ministry found the appellant was not eligible for designation as a Person with Disabilities (“PWD”) under section 2 of the *Employment and Assistance for Persons with Disabilities Act*. The ministry found that the appellant met the age requirement and the requirement for the impairment to continue for at least two years, but was not satisfied that:

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

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

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (“Act”) - section 2

Employment and Assistance for Persons with Disabilities Regulation (“Regulation”) - sections 2 and 2.1

Employment and Assistance Act - section 22(4)

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

Part E – Summary of Facts**Evidence Before the Ministry at Reconsideration**

The information the ministry had at the reconsideration included:

1. A Decision Record that said the PWD application was submitted on April 15, 2024, and denied by the ministry on May 27, 2024. The ministry's original decision dated April 29, 2024, explained the criteria that were not met.

On June 21, 2024, the appellant sent a Request for Reconsideration, and the ministry approved his request for an extension until July 22, 2024, to provide more information. On July 21, 2024, the appellant sent a hand-written submission and several medical documents including receipts for prescription medications, a chart note from a physiotherapist, an x-ray report (spine), and hospital records from the appellant's last country of residence, describing his back surgeries.

On July 22, 2024, the ministry completed its reconsideration and found that the requirements for severe impairment, restrictions to daily living activities, and needing help with daily living activities were still not met.

2. The PWD application with three parts:

- The Applicant Information ("self-report") dated April 9, 2024, with a hand-written submission from the appellant.
- A Medical Report dated April 4, 2024, signed by a general practitioner ("doctor") who has known the appellant since January 2024, and
- An Assessor Report dated April 3, 2024, also completed by the doctor who saw the appellant for 2-3 sessions and based the assessment on an office interview with the appellant. Under File-chart information the doctor wrote, "as patient is new to Canada very limited documents are available."

Summary of relevant evidence from the application

Diagnoses

In Section B of the Medical Report, the doctor said that the appellant had an L1 to S1 spinal fusion with rods and screws due to a motor vehicle accident in the appellant's last

country of residence. The doctor also reported a moderate to severe compression fracture of the L4 body that happened about 20 years ago. In Section C – Health History, the doctor added that the L1 to S1 fusion required multiple surgeries.

Additional information from the appellant – medical condition

In the self-report portion of the PWD application, the appellant said that the car accident happened 22 years ago. He suffered a fracture in his spine and crushed vertebrae. He has platinum hardware in his back due to four surgeries (seven hours each time). The last surgery was about two years ago.

Functional skills

Self-report

The appellant said that he is unable to bend due to spinal fusion surgery. His spine is “inflamed” and he feels “very severe pain” in his back and other parts of his body. The appellant said that when he feels severe pain, he loses the power to use his hands and legs and can’t even take a few steps. He must take painkillers and anti-inflammatory medication to relieve the pain.

Medical Report

In Section C – Health History, the doctor said that “lumbar range of motion is limited, specifically on flexion and lateral rotation.” The appellant also “has difficulty walking long distances due to radiating pain in both legs.”

In Section E - Functional Skills, the appellant was able to walk 1-2 blocks unaided on a flat surface and climb 2-5 steps unaided. The appellant had limitations with lifting (maximum 5-15 pounds) and was able to remain seated for less than one hour. The doctor checked “no” when asked if the appellant has difficulties with communication. When asked if there are any significant deficits with cognitive and emotional function, the doctor checked “no,” and did not check any of the functions listed on the form.

Assessor Report

In Section C-2, the doctor checked “good” for all areas of communication (speaking, hearing, writing, and reading).

In Section C-3 - Mobility and Physical Ability, the doctor did not check any restrictions (comment, “see page 11 for detailed explanation”).

[Panel note: page 11 is the Medical Report – Functional Skills, as summarized above].

In section C-4, Cognitive and Emotional Functioning, the assessor is asked about the impact of a mental impairment on various functions. The doctor checked “no impact” for the 14 areas listed (comment, “no cognitive or emotional issue”).

Daily living activities

The doctor provided the following information:

Medical Report

In Section C-3, the doctor checked “no” the appellant has not been prescribed medications or treatments that interfere with the ability to perform daily living activities. In Section G – Additional Comments, the doctor wrote, “any labour-intensive job would be an issue for him. However, he is able to do his daily routines and office job or less physical job.”

Assessor Report

In Section C-1, when asked what mental or physical impairments impact daily living activities the doctor wrote, “not applicable for mental. Due to lumbar spine fusion, not able to do a labour-intensive job.”

In Section D, which lists specific daily living activities, the doctor checked “independent” for all areas of each activity. The appellant was independent with:

- **Personal Care:** dressing, grooming, bathing, toileting, feeding self, transfers (in/out of bed), and transfers (on/off chair).
- **Basic Housekeeping:** laundry and housework.
- **Shopping:** going to/from stores, reading prices/labels, making appropriate choices, paying for purchases, and carrying purchases home.
- **Meals:** meal planning, food preparation, cooking, and safe storage of food.
- **Pay Rent and Bills:** banking, budgeting, and paying rent/bills.
- **Medications:** filling prescriptions, taking as directed, and safe handling and storage.
- **Transportation:** getting in/out of a vehicle, using public transit, and using transit schedules/arranging transportation.
- **Social Functioning:** appropriate social decisions, developing/maintaining relationships, interacting appropriately, dealing with unexpected demands, and securing assistance from others. The doctor did not complete the sections regarding social networks, support required in the community, or safety issues.

In Part F – Additional Information (for understanding the nature of the impairment and its effect on daily living activities) the doctor wrote, “previously described.”

Additional information from the appellant – daily living activities

In the self-report, the appellant said that “due to immobility and the weakening of my muscles and severe pain, I am not able to do my personal things, such as manage clothes and shoes, and bathing.” The appellant said he is not able to work and that a family member does everything for him.

Need for Help

Medical Report

In Section C-4, the doctor checked “no” when asked if the applicant requires any prostheses or aids for the impairment.

Assessor Report

The doctor checked that the appellant lives with family. In Section E, when asked to describe any assistance provided for the applicant including assistive devices or an assistance animal, the doctor wrote “N/A.”

Additional information from the appellant – help with daily living activities

In the self-report, the appellant said that he needs help from a family member for “everything.” The family member “takes me to the bathroom, feeds me, covers my socks, shoes and clothes...picks up the shopping and moves the shopping. Takes care of everything.”

Request for Reconsideration

In the Request for Reconsideration, the appellant wrote that:

- He has not succeeded in seeing a specialist doctor.
- He had a total 28 hours of spinal surgery due to a fracture and narrowing of the spinal cord. He has “severe pain in all parts.”
- He takes medications for hypothyroidism, high blood pressure, and fat around the heart.
- He has fatty liver according to an ultrasound, and his body does not produce testosterone according to a test in his medical file.
- In case of “pressure and excessive use of physical strength” his spinal canal will narrow again, and he will require a fifth surgery.
- He cannot do any work outside of home, and he needs support and support plans for his physical disabilities.

The appellant submitted the following documents with the Request for Reconsideration:

- A letter from a physiotherapist dated July 15, 2024, describing “constant pain for years” as the result of a motor vehicle accident 22 years ago. Sitting for more than 10 minutes can cause pain. The appellant experiences “heavy pain” with lower spine movement. The appellant’s 4 surgeries included internal fixation. He is under a lot of stress and his other muscles are getting weaker.

The appellant was not able to demonstrate any range of motion because it could cause him pain afterward. The appellant had a mid-range of motion in his lower spine. Education was provided for pain management and stress management to improve function, and low impact exercise to improve circulation.

- A lower spine x-ray report dated January 29, 2024, and signed by a doctor. The patient has a history of low back pain and lumbar fusion and was referred to rule out hardware complications. The x-ray showed a moderate to severe compression fracture of the L4 vertebral body. There was no other fracture or misalignment, and the remaining vertebral body heights were well-maintained. There were no concerning bone lesions.

The appellant has mild degenerative disc disease at L4-L5, and no significant disc disease throughout the remainder of the lumbar spine. The x-ray showed bony fusion of the facet joints throughout the lumbar spine. The bilateral SI joints were unremarkable.

- Prescription receipts from 2023-2024 for several medications as well as compression stockings for varicose veins, and a lumbar belt for chronic low back pain.
- Hospital records from 2000-2001 including nurse observation notes and physician orders regarding the appellant’s surgeries. The records are from the appellant’s last country of residence and include entries in another language.

Additional evidence provided after the Reconsideration

The appellant filed a Notice of Appeal, received by the Tribunal on July 31, 2024. The appellant included a hand-written statement which the panel accepts as argument in support of the appeal. The appellant also submitted additional copies of the medical records that he had provided at reconsideration.

Testimony at the hearing

The hearing format was a videoconference which the appellant attended by phone due to technical issues. An interpreter and a witness for the appellant were present at the hearing.

Witness testimony

The witness (a family member who lives with the appellant) testified first and gave the following evidence:

- The appellant's physical impairment resulted from an accident 23 years ago. The appellant has always needed help for daily tasks since his injury and surgeries.
- The appellant developed other conditions as he aged, and takes medications for thyroid, high blood pressure, anxiety and depression, and sleeping which is difficult for him due to pain.
- Due to severe pain, the appellant "is not really capable of personal tasks and care." He has metal in his body and cannot bend or be very flexible.
- Due to the metal hardware, the appellant suffers "very severe pain" in his spine and muscles and must use a physiotherapy machine on a daily basis which the witness assists with. The witness also assists with exercises that the physiotherapist recommended.
- The doctor emphasized that the appellant cannot bend or move comfortably. The appellant's muscles are getting weaker as a result.
- The doctor prescribed strong pain killers (oral and cream) which have not proved effective.
- The appellant gets muscle spasms quite frequently when lying in bed or sitting. The witness "has to move him to help him change position."
- The witness does the shopping because the appellant "gets severe pain or spasms if he lifts anything."
- The appellant has problems walking. Even when he walks one block, he must rest a few times. They always carry a portable chair to stop and rest.
- The appellant's spine is too narrow. The surgeries did not fix the problem, and the appellant must sit and rest after a few steps.
- The appellant cannot remember to take his medications, so he needs someone to oversee that.
- The appellant likes to work but is not capable of doing so. "He tries hard to do tasks, but he cannot put on his own shoes" (the witness must put them on his feet).

- The appellant “needs supervision to help with his care and medications.” The witness is unable to work because they are “like a nurse, always helping [the appellant].”

In response to questions from the panel, the witness explained that:

- The appellant needs help with bathing, getting out of bed, and moving around. He has difficulty moving his hands or arm to eat. The witness has experienced their own health problems due to the physical effort needed to help the appellant.
- The appellant has a new family doctor whom he asked for a report. The new doctor said that they had “no time to give a report.”
- The PWD application (Medical and Assessor Reports) was completed by a walk-in clinic doctor whom the appellant saw for a lot of pain. The walk-in clinic doctor did not have enough information to fill out the forms.
- The appellant discussed depression and anxiety with his new doctor who prescribed a medication to help with sleep and another medication for depression.

Appellant testimony

In response to questions from the panel, the appellant added the following details:

- He used to go to physiotherapy but no longer goes regularly because it required him to travel some distance and the sessions were expensive. The appellant purchased a physiotherapy machine to use at home and he also has a massage device for muscle pain.
- The appellant moved to Canada a year and a half ago.
- The walk-in clinic doctor said the physical impairment is permanent and would require another surgery if the appellant works or moves too much and puts pressure on his body. The doctor told him not to lift more than two kilograms or sit for more than an hour because pressure and pain can affect the appellant’s spine. The doctor told the appellant that walking more than a block or two could be dangerous but did not discuss daily living activities or the help the appellant gets from the witness.
- The walk-in clinic doctor was surprised by the negative decision on the PWD application and asked for a copy. However, they did not give the appellant any more information.

Admissibility - witness and appellant testimony

The ministry had no objections to admitting the statements as evidence. The panel finds that the statements provide detailed information about the nature and extent of the appellant’s physical impairment and how it impacts his daily life. The statements also

detailed the appellant's interactions with his health care providers. The panel therefore admits the testimony under section 22(4) of the *Employment and Assistance Act* as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Ministry testimony

The ministry summarized the Reconsideration Decision and commented on the additional evidence. The ministry said that if a doctor had confirmed the information presented by the appellant and witness, the ministry would have approved the PWD application.

The ministry emphasized that it does not consider the ability to work when deciding PWD eligibility. The ministry suggested that the appellant apply for another ministry program (Persons with Persistent Multiple Barriers – PPMB) to address his barriers to employment. The ministry said that the appellant can apply for this alternative program while waiting to get more medical information to support his application for PWD.

The ministry explained that PPMB is a shorter application which focuses on the ability to work or look for work, and the application is processed in one to two days. The ministry explained that if approved for the program, the appellant would receive an increase of \$50 per month in the assistance rate. The ministry explained that the witness can also apply for PPMB as a new immigrant to Canada who has barriers to employment.

The ministry said that the program can also help fund mobility aids such as a walker or scooter. The program can provide dental coverage as well. The ministry also said that the appellant can reapply for PWD designation if his appeal to the Tribunal is not successful. The ministry said that the appellant could use a negative Tribunal decision, as well as the Reconsideration Decision, "as a road map for what was missing from the original doctor's reports."

Admissibility – ministry testimony

The panel finds that the ministry's testimony highlights what information they look for when assessing PWD eligibility and it provides details about ministry programs. The panel admits the testimony under section 22(4) of the *Employment and Assistance Act* as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

At the hearing, both parties also provided argument for the appeal. The panel will address these arguments in the next section below.

Part F – Reasons for Panel Decision

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

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

Analysis*PWD designation - generally*

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

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

The application form includes a self-report, so it is appropriate to place significant weight on evidence from the appellant unless there is a legitimate reason not to do so. The panel reviewed the reasonableness of the ministry's determinations and exercise of discretion.

Severe mental or physical impairment

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

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

Restrictions to Daily living activities

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

The restrictions to daily living activities must be significant and caused by the impairment. "Significant" means that not being able to do daily activities (without a lot of help or support) will have a large impact on the person's life.

The restrictions 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 determine if a periodic restriction is for extended periods, it is reasonable to look for information on how often the restriction occurs and the nature and frequency of the help that is required.

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

The Medical Report and Assessor Report give the professional the opportunity to provide additional details on the applicant's restrictions. **The inability to work and the applicant's financial need are not covered by section 2 of the Act and are only relevant to the extent they contribute to a severe impairment that impacts daily living activities.**

Help Required

A prescribed professional must provide an opinion that the person needs help to perform the restricted daily living activities. This requirement is set out in subsection 2(2)(b)(ii) of the Act. Under subsection 2(3)(b) of the Act, "help" means needing an assistive device, the

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

Submissions of the parties

Severe impairment - Appellant's position

The appellant's position is that his impairments are severe because he experiences a lot of daily back pain and muscle spasms that significantly limit his physical functions. The appellant argued that the radiology report and confirmation from his doctor show that his ability to move is limited due to the fracture in his spine.

The appellant said that he is not well physically, psychologically, and financially due to his physical limitations and inability to work. The appellant submits that if he puts too much pressure on his body he will "for sure need a fifth surgery." However, he has no other way to support himself and may need to return to work, at great risk to his health.

The appellant expressed frustration with the PWD application and said that he does not want to apply for any programs because it causes him a lot of stress and makes him feel "looked at as a person who is not honest."

Severe impairment - Ministry's position

The ministry's position is that the assessments from the doctor indicate a moderate rather than severe degree of impairment in physical function. The ministry clarified that the application was assessed solely on a physical impairment because the doctor did not diagnose a mental health condition or indicate any problems with emotion or cognitive and social functioning.

The ministry acknowledged the appellant's moderate to severe spine fracture and said it considered the self-reports. The ministry argued that a severe physical impairment was not established on the evidence because the appellant "can function independently for a reasonable duration." The ministry acknowledged the appellant's multiple surgeries but said it does not give much weight to the hospital records because the information was more than 20 years old and partially written in another language.

Panel's Decision – severe impairment

The panel finds that the ministry decision was not reasonable regarding the severity of the physical impairment. The panel finds that the evidence in its entirety shows a severe physical impairment, especially with additional details from the witness and appellant at the hearing.

The appellant confirmed that he is in a lot of pain every day, and struggles to walk a short distance, bend down to lift any weight, and remain seated, due to extreme discomfort in his lower back. The appellant's evidence is that pressure on his body causes frequent muscle spasms. He must take strong medication and use a physiotherapy machine daily to deal with the pain.

The panel finds that the appellant's testimony supports the information in the PWD Medical Report and letter from the physiotherapist. The doctor described, in the Medical report, a limited range of motion specifically when flexing and rotating the body. The appellant was not able to demonstrate any range of motion for the physiotherapist because it could cause him pain afterward.

The doctor said the appellant has radiating pain in both legs if he walks a longer distance. The recent letter from the physiotherapist (July 2024) said that the appellant experiences "heavy pain" with lower spine movement and his muscles are getting weaker.

While the x-ray report from January 2024, indicated several normal or minimally affected features in the spine, the moderate to severe compression fracture of the L4 vertebral body was confirmed, as well as the fusion of joints throughout the length of the spine. The fusion of the joints, especially, reasonably supports the discomfort reported by the appellant whenever he bends or puts any pressure on his spine.

In the Medical Report - Functional Skills, the appellant was able to walk 1-2 blocks unaided on a flat surface and climb 2-5 steps unaided. The appellant had limitations with lifting (maximum 5-15 pounds) and was able to remain seated for less than one hour.

While the ministry said these assessments show a moderate (rather than severe) degree of impairment, the assessments for walking and sitting are at the low end of the rating scales indicating a significant degree of restriction. The physiotherapist said that "sitting for more than 10 minutes can cause pain." The witness (who lives with the appellant) said he needs help to reposition himself as sitting is too painful. In the panel's view, the ministry's conclusion that the impairment is only moderate, was not reasonably supported by the evidence.

The assessment for walking was in the middle range of the rating scale but the witness, who accompanies the appellant on outings, explained that they must bring a folding chair so that the appellant can stop and rest frequently. The appellant experiences pain and needs rest stops even in walking one block. The ministry said that the appellant did not require any assistance devices, but one of the prescription receipts shows that the appellant does require a “lumbar belt for chronic lower back pain.”

Overall, the evidence shows a severe physical impairment because the appellant suffers a lot of pain and discomfort with any bending or sitting, and even when walking one block. The witness helps the appellant with most of his physical functions as he struggles to move independently. The appellant has not found relief from medications and must use home therapy devices daily to deal with the pain.

The panel finds that the Reconsideration Decision, which said that the physical impairment is not severe, is not reasonably supported by the evidence. Therefore, the requirement for a severe impairment under section 2(2) of the Act has been met.

Restrictions to daily living activities - Appellant's position

The appellant's position is that he meets the criteria for restrictions to daily living activities because he is unable to do daily tasks due to the fracture and metal hardware in his spine. The appellant worries that if he does anything too heavy, he will require a further surgery. The appellant said that even light activities such as putting on his shoes and socks are not possible because of difficulty bending as well as daily pain and muscle weakness.

Restrictions to daily living activities - Ministry's position

The ministry's position is that there was not enough evidence from the doctor or another prescribed professional to confirm that daily living activities are significantly restricted either continuously or for longer periods as required by the Act. The ministry acknowledged the restrictions reported by the appellant but said that the level of restriction the appellant described was not supported by the doctor's information.

Panel's Decision – Restrictions to daily living activities

The panel finds that the ministry reasonably determined that restrictions to daily living activities were not confirmed by a doctor or other professional as required by the legislation. The panel does not discount the appellant's evidence regarding his daily struggles with personal care, shopping, cooking, etc. In the self-report, the appellant

submits that he is unable to dress or bathe or feed himself or shop without the witness assisting him. The appellant and witness gave clear examples of restrictions that impact the appellant's daily life.

However, the Act requires a prescribed professional to confirm the appellant's information. The panel finds that the ministry reasonably found that the information from prescribed professionals, in particular, the Medical Report and Assessor Report do not support the restrictions reported by the appellant.

In the Assessor Report, the walk-in clinic doctor assessed the appellant as "independent" with all daily living activities despite the appellant's difficulties with range of motion (bending, walking, lifting, etc.). In the Medical Report, the doctor said that the appellant "is able to do his daily routines."

The appellant submits that the information from the doctor is not accurate and while he tried to get a new assessment from the walk-in clinic doctor and his new family doctor, he was unsuccessful in doing so. While that is unfortunate, the Act makes it clear that restrictions to daily living activities must be in the opinion of a prescribed professional. Neither the ministry nor the panel has the authority to base the decision about daily living activities on the appellant's opinion.

Under the legislation, a "prescribed professional" who completes the Assessor Report does not have to be the applicant's doctor. If the appellant could see one of the following practitioners, he could ask them to fill out an Assessor Report or provide a letter or other report about daily living activities that he believes reflects the reality of his situation:

- registered psychologist,
- registered nurse or registered psychiatric nurse,
- occupational therapist,
- physical therapist,
- social worker,
- chiropractor, or
- nurse practitioner.

The panel is sympathetic to the appellant's circumstances and acknowledges his struggles with everyday tasks. However, to meet the criteria under the Act, the appellant needs a prescribed professional (from the list above, for example) to confirm restrictions in his ability to manage daily living activities.

The panel must find that the ministry's conclusion was reasonable because there was not enough evidence in the medical documents to confirm restrictions to daily living activities

such as putting on clothes and shoes, bathing, feeding self, transferring to a bed or chair, shopping, etc. The requirements under section 2(2)(b) of the Act were therefore not met.

Help with daily living activities - Appellant's position

The appellant's position is that he needs help from his family because the fracture and fusion in his spine prevents him from managing daily activities without assistance. The appellant submits that he cannot manage on his own and must rely on the witness to help him with everything, to the detriment of the witness's own health.

Help with daily living activities - Ministry's position

The ministry's position is that it could not be determined that significant help is required as it had not been established that daily living activities were significantly restricted. The ministry noted that the doctor who completed the Medical Report and Assessor Report did not confirm that the appellant receives help from family.

Panel's decision - help with daily living activities

The panel finds that the ministry reasonably determined that the requirement for help was not met. The panel acknowledges that the appellant receives help from the witness, and his new family doctor wrote the prescription for a lumbar belt. However, in the Assessor Report, the walk-in clinic doctor wrote "N/A" on the page that asks about help with daily living activities.

Significant restrictions to daily living activities are a precondition for needing help, and the information from the doctor did not show that daily living activities are significantly restricted continuously or periodically for extended periods by a severe impairment. The panel therefore finds that the ministry reasonably concluded that the requirement for help was not met under section 2(3)(b) of the Act.

Conclusion

The panel finds that the Reconsideration Decision is reasonably supported by the evidence. The appellant does not meet all five requirements for PWD designation under the Act.

The ministry found that the appellant meets the requirements for age and duration of impairment. The appellant also meets the requirement for a severe impairment because the panel found that the ministry's decision regarding the severity of the spine injury was

not reasonable. The evidence showed a severe impairment that limits the appellant's physical functions. The appellant requires help with most physical movement and has difficulty walking even one block, without a lot of pain and discomfort.

While the appellant meets three of the criteria for PWD designation, the ministry reasonably found that the requirements for restrictions to daily living activities and needing help with daily living activities were not met because those criteria were not confirmed by the doctor.

The panel therefore **confirms** the Reconsideration Decision. The appellant is not successful in his appeal.

Schedule – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

2 (1) In this section:

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

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

person requires

- (i) an assistive device,
- (ii) the significant help or supervision of another person, or
- (iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

Employment and Assistance for Persons with Disabilities Regulation

Definitions for Act

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

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

- (i) prepare own meals;
- (ii) manage personal finances;
- (iii) shop for personal needs;
- (iv) use public or personal transportation facilities;
- (v) perform housework to maintain the person's place of residence in acceptable

sanitary condition;

- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self-care;
- (viii) manage personal medication, and

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

- (i) make decisions about personal activities, care or finances;
- (ii) relate to, communicate or interact with others effectively.

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

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

- (i) medical practitioner,
- (ii) registered psychologist,
- (iii) registered nurse or registered psychiatric nurse,
- (iv) occupational therapist,
- (v) physical therapist,
- (vi) social worker,
- (vii) chiropractor, or
- (viii) nurse practitioner,

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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

Margaret Koren

Date (Year/Month/Day)

2024/08/28

Print Name

Jan Broocke

Signature of Member

Date (Year/Month/Day)

2024/08/28

Print Name

Richard Franklin

Signature of Member

Date (Year/Month/Day)

2024/08/28