

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) Reconsideration Decision dated August 2, 2024, which determined the appellant was not eligible for the Persons with Disabilities designation because 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 teleconference hearing on September 6, 2024.

Relevant Evidence Before the Minister at Reconsideration

Persons with Disabilities Application

Self-Report

The appellant writes that difficulty with vision affects her life because she is unable to read fine print making education and work difficult.

Medical Report (April 15, 2024) – completed by the appellant’s doctor

The doctor (general practitioner) provided the information below.

Diagnosis
Ischemic retinopathy
Diabetic retinopathy
Type 1 diabetes mellitus

Health History

- severe vision loss to right eye secondary to ischemic retinopathy
- mild vision reduction to left eye secondary to diabetic retinopathy
- does not drive due to vision limitations
- ability to read/write reduced and amount of time increased due to vision loss

The appellant has not been prescribed any medications and/or treatments that interfere with her ability to perform daily living activities. She requires reading glasses.

Degree and Course of Impairment

The impairment is likely to continue for two years or more. It is permanent and there is no treatment available. The prognosis for visual return on the right eye is poor.

Functional Skills

The doctor indicates the appellant can walk 4+ blocks on a flat surface and climb 5+ stairs, unaided. She can lift 7–16 kgs. There is no limitation remaining seated. There are difficulties with communication - the cause is sensory. The appellant has some difficulty with reading and writing. There are no significant deficits with cognitive and emotional function.

They have known the appellant for one year and have seen her 2-10 times.

Assessor Report (April 15, 2024) – completed by the appellant’s doctor

The doctor provided the information below.

The appellant lives with family, friends or caregiver.

Mental or Physical Impairment

The appellant’s mental or physical impairment impacting her ability to manage daily living activities is severe vision loss to her right eye.

Ability to Communicate

Her speaking and hearing are good. Her reading and writing are poor – ability slowed due to vision loss.

Mobility and Physical Ability

The appellant is independent

- walking indoors/outdoors
- climbing stairs
- standing

The appellant needs periodic assistance lifting and carrying and holding – for heavy objects

Daily Living Activities

The appellant is independent with:

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

She needs periodic assistance with

- Shopping (going to and from stores – requires transportation)

The appellant does not drive due to vision issues.

Social Functioning

The appellant is independent:

- Making appropriate social decisions

- Developing and maintaining relationships
- Interacting appropriately with others
- Dealing appropriately with unexpected demands
- Securing assistance from others

The appellant has good functioning with her immediate and extended social networks, “positive relationships: assertively contributes to these relationships”... “positively interacts with the community; often participates in activities with others”.

Assistance

Help required for daily living activities is provided by family, health authority professionals and friends. To compensate for her impairment, she uses glasses. The appellant does not have an assistance animal.

To complete the form, the doctor used an office interview, file/chart and information from an ophthalmologist.

Letter from the Ministry to the Appellant (May 28, 2024)

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

Request for Reconsideration (July 16, 2024)

– information provided in the ministry’s Reconsideration Decision

The appellant states she requires injections in her left eye on a monthly basis due to a ruptured blood vessel. Because of this she is unable to complete any training either virtually or in class. Doing any kind of work is difficult on computers because her eyes get sore and there is always a black spot in her vision. Due to her limited vision, she is unable to obtain a driver’s license and without a driver’s license, she is not able to get to a job in a consistent or timely manner.

The appellant adds that with her diabetic condition, she finds it difficult to climb stairs and always gets pain in her legs. She has to force herself to go up and down the stairs as her laundry is in the basement. . As well, she has a previous injury to her right shoulder, which limits her ability to lift and move heavy objects.

Information Received After Reconsideration

Notice of Appeal (August 19, 2024)

The appellant states she is having a hard time with her vision.

Testimony at the Hearing (September 6, 2024)

The Appellant

At the hearing, the appellant stated she doesn't understand why she doesn't qualify for Persons with Disabilities designation. Although there is missing information in the application, the information that is there is "good". The appellant confirmed she doesn't use any assistive devices besides reading glasses - which don't help much.

The Ministry

At the hearing, the ministry relied on its record. As well, the ministry corrected and clarified the dates in the record. The Persons with Disabilities application was received on May 14, 2024 and not May 28, 2024 as shown in the Reconsideration Decision. As well, the ministry was unsure as to why the date on the application, shows as July 2, 2024 and stated that possibly this page was sent out at a later date because the signature was missing.

The ministry provided a phone number for the appellant to contact Disabilities Alliance of BC, to inquire about Canada Pension Plan disability benefits. As well, the ministry advised the appellant she could inquire with the ministry about Persons with Persistent Multiple Barriers (PPMB) benefits.

Admissibility

The panel determined the above information from the appellant to be argument.

The panel determined the information from the ministry regarding dates, as clarification and not new information. The information from the ministry provided to the appellant regarding additional resources is not reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is not admissible as evidence under section 22(4) of the *Employment and Assistance Act*.

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

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

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

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

Appellant Position

The appellant submits that difficulty with vision affects her life because she is unable to read fine print making education and work difficult. Also, she is unable to complete any training because of monthly injections in her left eye. And, doing any kind of work is difficult on computers because her eyes get sore and there is always a black spot in her vision. Due to her limited vision, she is unable to obtain a driver's license and without a driver's license, she is not able to get to a job.

The appellant adds that with her diabetic condition, she finds it difficult to climb stairs. In addition, she has a previous injury to her right shoulder, which limits her ability to lift and move heavy objects.

Ministry Position

Mental Functioning

Based on the information provided, the ministry is not satisfied the appellant has a severe mental impairment.

Her doctor does not provide a diagnosis of a mental health condition or brain injury and does not note significant deficits to her cognitive and emotion function. As well, the doctor does not report any impacts to the appellant's daily cognitive and emotional functioning.

There are no difficulties with communication aside from reading and writing or with social functioning.

Physical Functioning

The ministry determines that based on the information provided the appellant does not have a severe physical impairment. The ministry notes the appellant had a previous injury to her right shoulder, which limits her ability to lift and move heavy objects. However, the

evidence does not sufficiently describe or portray a severe impairment. While the ministry recognizes that the appellant experiences some degree of restriction, it is not satisfied that the combination of her functional skills, mobility, and physical abilities exhibits a severe impairment. Further, according to the appellant's medical practitioner, the appellant can complete all aspects of her mobility and physical abilities independently, climb more than five stairs, and lift up to 35 pounds.

Daily Living Activities

The ministry is not satisfied 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.

The ministry acknowledges that due to vision issues, the appellant requires periodic assistance going to and from stores as she is unable to drive. However, the frequency and duration of the assistance is not described making it difficult to confirm the appellant is significantly restricted periodically for extended periods as required by legislation. Further, the narrative does not provide enough information to establish that the inability to drive significantly impacts the appellant's ability to perform the daily living activities overall and the appellant is reported as being independent in all other daily living activities.

In regard to social functioning, the doctor indicates the appellant is independent in all areas of social functioning, and has good functioning with both her immediate and extended social networks.

Help Required with Daily Living Activities

The doctor reports the appellant receives help from family, friends, and health authority professionals. However, as it has not been established that daily living activities are significantly restricted, it cannot be determined that significant help is required.

Panel Analysis

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

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

Mental Impairment

In the Medical Report, the doctor states the appellant's speaking and hearing is good. However, her reading and writing is poor as her ability is slowed due to vision loss. There

are no significant deficits with cognitive and emotional function. The doctor also states in the Assessor Report that the appellant is independent making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance. They add that the appellant has good functioning with her immediate and extended social networks.

Although the panel acknowledges that the appellant's reading and writing is slowed due to vision loss, it finds this alone does not support a severe mental impairment as the appellant is able to function independently. The doctor indicates there are no significant deficits with cognitive and emotional function and the appellant is independent making appropriate social decisions such as developing and maintaining relationships and dealing appropriately with unexpected demands.

Therefore, the panel finds the ministry decision that the appellant does not have a severe mental impairment, to be reasonable.

Physical Impairment

In the Medical Report, the doctor states the appellant does not drive due to vision limitations. Her ability to read/write is reduced and the amount of time is increased due to vision loss. The

appellant adds that due to limited vision, she's unable to participate in education, work or obtain a driver's license.

The doctor also indicates the appellant can walk four plus blocks on a flat surface and climb five plus stairs, unaided. She can lift seven to sixteen kilograms. There is no limitation remaining seated. The appellant is independent walking indoors/outdoors, climbing stairs and standing. She is also independent with daily living activities such as shopping (reading prices and labels), paying rent and bills and managing medication. She needs periodic assistance lifting and carrying and holding. The appellant adds that she finds it difficult to climb stairs and a previous right shoulder injury limits her ability to lift and move heavy objects.

Based on the impact of daily functioning (as shown by restrictions), the panel finds the evidence is insufficient to conclude a severe physical impairment. Although the panel

acknowledges that the appellant has severe vision loss, a severe diagnosis does not necessarily mean someone is severely restricted. Although the doctor indicates the appellant needs periodic assistance lifting heavy objects, they also state the appellant can lift seven to sixteen kilograms. The panel considers this amount of weight to be reasonably heavy as it was the heaviest amount available for the doctor to choose from (other than "no limitation").

As well, even with limited vision, the doctor states the appellant is independent walking, climbing stairs and standing. She is also independent with shopping, paying rent and bills and managing medication (activities that would generally require reading).

In summary, the evidence suggests that the appellant experiences some restrictions through her reduced vision. However, the panel finds the impairments suffered to be less than severe and as such, the panel finds the ministry decision that the appellant does not have a severe physical impairment to be reasonable.

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.

In the Medical Report, the doctor states the appellant has not been prescribed any medications and/or treatments that interfere with her ability to perform daily living activities. The doctor also states the appellant is independent with personal care, basic housekeeping, shopping (reading prices and labels, making appropriate choices, paying for purchases, carrying purchases home), meals, paying rent and bills, managing medications and transportation (e.g. getting in/out of a vehicle and arranging transportation). She needs periodic assistance with shopping (going to and from stores), as she requires transportation as she does not drive due to vision issues.

The doctor also states the appellant is independent making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance.

The panel finds that although the doctor states the appellant's severe vision loss to her right eye impacts her ability to manage daily living activities, they also indicate the appellant is independent with all daily living activities except that she needs periodic

assistance shopping as she requires transportation. The panel does not view the inability to drive as a severe restriction for shopping as the doctor indicates the appellant is independent with transportation (getting in/out of a vehicle, using public transit, using transit schedules and arranging transportation).

Therefore, the panel finds the ministry decision that the appellant does not have 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, to be reasonable.

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.

Although the doctor states that help required for daily living activities is provided by family, health authority professionals and friends, and the appellant wears glasses, as the panel determined the ministry reasonably determined the evidence did not support severe restrictions to daily living activities, it follows that it cannot be determined assistance is needed.

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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APPEAL NUMBER 2024-0317

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) 2024/09/07
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Print Name
Julie Iuvancigh

Signature of Member	Date (Year/Month/Day) 2024/09/07
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Print Name
Robert Kelly

Signature of Member	Date (Year/Month/Day) 2024/09/07
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