

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "Ministry") Reconsideration Decision of August 13, 2024. In the Reconsideration Decision the Ministry determined that the Appellant was not eligible for the Person with Disabilities ("PWD") designation.

The Ministry determined the Appellant:

- Met the age requirement.
- Had a severe impairment.
- Was directly and significantly restricted in daily living activities.
- Required assistance with daily living activities as a result of significant restrictions.

The Ministry determined the Appellant did not meet the criterion that, in the opinion of a medical practitioner or nurse practitioner, the impairment would continue for two years or more.

Part D – Relevant Legislation

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

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

Part E – Summary of Facts

A hearing was held via videoconference on September 17, 2024. The Appellant was accompanied by the social worker who completed the initial Assessor Report. During the videoconference, it was discovered that a doctor's letter had not been submitted. The Appellant was able to scan the document and email it to the Tribunal for distribution to the Ministry Representative and the Panel members.

Background

- The Appellant is 51 years old.
- She originally injured her arm in a fall in 2014. The injury was aggravated in January 2024.
- On May 2, 2024, the Appellant applied for PWD.
- The Ministry denied her request on June 6, 2024, finding that the Appellant had not met any of the requirements other than age.
- Additional information was provided with the Request for Reconsideration and, based on the information available, the Ministry found that the combined effects of the Appellant's mental and physical impairments resulted in a severe impairment being established. The Ministry also found that a severe mental impairment restricted the Appellant's ability to perform her daily living activities continuously or periodically for extended periods of time and, because of these restrictions, the Appellant required significant help. They found the duration requirement was still not met.

Information before the Ministry at the time of reconsideration

- PWD Application, Section 2 – Medical Report completed by the Appellant's doctor (the "Doctor")
 - In response to the question, "Is the impairment expected to continue for two years or more from today", the Doctor checked "No".
- A supporting letter from an Orthopedic Surgeon, an Ultrasound report and an X-ray report from two other doctors. The Doctor provided additional information about the Appellant's physical condition. None of these speak to the expected duration of the impairment.

Information submitted after the Reconsideration Decision

- A letter from a second social worker dated August 30, 2024, that states:

- The Appellant has experienced mental health concerns since her early years and reports that she received her initial diagnosis in 2015. As of late, her depression and PTSD symptom (and general poor mental health) have been acutely exacerbated.
- The Appellant is unable to function in the community at this point in her life. She has significant behavioral outbursts as a result of pain and poorly managed mental health diagnosis. She experiences ruptures in relationships (including personal, intimate, and professional) which leave her isolated and without supports necessary to meet her needs.
- A copy of the PWD Application section 3 attached to the above letter and annotated with following additional comments:
 - *Ability to Communicate*
 - Speaking: When triggered, emotional inability impacts Appellant's ability to communicate and speak respectfully and appropriately.
 - Hearing: Under duress, Appellant is unable to receive feedback/requests/information – again due to emotional inability.
 - *Cognitive and Emotional Functioning*
 - Indicates mental impact on daily functioning is:
 - Minimal for *Consciousness and Memory*
 - Moderate for *Attention/concentration, Executive Planning, Motivation*
 - Major for *Impulse control, Insight and judgment, Language, and Other emotional or mental problems.*
 - Social Functioning
 - Periodic support / supervision required for *Appropriate social decisions* and for *Able to develop and maintain relationships*. Comments “(Appellant's) social function is so limited due to her exacerbated mental health concerns. She is unable to maintain employment, unable to maintain relationships, personally, intimately, or professionally.”
 - Periodic support / supervision required for *Interacts appropriately with others*.
 - Continuous support / supervision required for *Able to deal appropriately with unexpected demands* and *Able to secure assistance from others*. Comments “Due to (the Appellant's) labile and explosive behavior, she is unable to meet her own needs or receive support from others.
 - Indicates that the Appellant's relationship with her immediate social network is marginally functioning, and her relationship with extended social networks is very disrupted resulting in social isolation.

- The Appellant relies on her daughter.
- Additional Comment: "Has received multiple service bars at clinic and is unable to work with multiple professionals in this office as a result."

Testimony at the hearing

- The Appellant
 - The Appellant reviewed her personal history with mental and physical issues. During the discussion it was discovered that a letter from the Doctor had not been submitted and was therefore not part of the appeal record. The letter was accepted at the hearing.
- The Doctor via letter of September 9, 2024
 - The Doctor is the same physician who completed Section 2 of the PWD Application.
 - The Appellant has been banned from seeing some providers at the clinic for her outbursts of aggression. She threw a box at a family physician who was trying to help her regarding a cold pack device for her shoulder. She has raised her voice before including when accompanying her adult daughter to the ER.
 - She has a reactive, aggressive, and triggered behavior pattern.
 - In the past, she was fired because of her emotional lability and inability to hold back outbursts of extreme anger, yelling and violence.
 - She is pending to see a psychiatrist because her outbursts are extreme even for a PTSD patient.
 - This patient is dangerous to be in public relations. She requires psychiatric care.
 - This behavior has been the case since 2015 according to patient report.
 - There is no expectation of improvement in her condition for the next two years. Her mental health condition is not likely to be treatable with medication.
- Ministry
 - The Ministry representative reviewed the decision-making process during the Reconsideration Decision and indicated that, in his opinion, the letter filled in the missing requirement regarding duration.

Admissibility of New Evidence

Neither party objected to the new evidence the other party provided at the hearing.

The Panel finds that the oral testimony of the Appellant and the letter from the Doctor submitted at the hearing clarify issues related to this appeal. The Panel admits this information as evidence pursuant to section 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's Reconsideration Decision that the Appellant was not eligible for the PWD designation because a medical professional or nurse practitioner had not specified that the impairment was likely to last at least two years was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

The relevant legislation is Section 2(2) of the *Act*, which defines the conditions under which the Ministry can designate a person as a PWD.

Ministry Position

The Ministry finds the only information provided by a medical practitioner or nurse practitioner that speaks to the expected duration of the Appellant's impairment is the Doctor's assessment in Section 2-D of the PWD application. The Doctor indicates the Appellant's physical impairment is not likely to continue for two years or more. The ministry notes the Doctor's statement, "Maybe non-operative (chronic), however are usually operated on [with] a total shoulder replacement but the patient is pending to see [the Orthopedic Surgeon]," expresses uncertainty which cannot be interpreted as confirmation of a likelihood the impairment will last two years or more.

As noted above, the Ministry stated that the new information from the Doctor regarding the Appellant's mental impairment would satisfy the duration requirement.

Appellant Position

The Appellant has a significant shoulder injury as well as long-standing mental health issues. She requires psychiatric care and there is no expectation of improvement in her condition for the next two years.

Panel's Findings

Section 2(2) of the *Act* says,

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. (emphasis added)

The Doctor, in the Medical Report section of the PWD application, primarily addressed the Appellant's physical challenges and indicated the impairment would not continue for at least two years, although there was some uncertainty about when or if surgery would be an option. In the letter of September 9, 2024, the Doctor discussed the Appellant's mental challenges in more detail and stated that no change in the condition is expected within two years.

The panel finds that the evidence in the reconsideration package, plus the Appellant's submission of September 9, 2024, including the revised assessor report, and the September 9, 2024 letter from the Doctor, which were submitted subsequent to the Reconsideration Decision, establish that the Appellant has a severe mental impairment that directly and significantly affects the Appellant's ability to perform daily living activities to such an extent that she requires help to perform them.

In the letter of September 9, 2024, the Doctor states, "There is no expectation of improvement in her condition for the next two years." The Panel finds that this statement satisfies the requirement that the Appellant has an impairment that, in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least two years.

Summary

The Panel found that the duration requirement for a physical or mental impairment was not satisfied in either the original PWD application or in the evidence provided for reconsideration. There is now a medical practitioner's statement that this impairment will last for more than two years.

Conclusion

Based on the additional evidence made available, the Panel finds that the Ministry decision to deny the Appellant the designation of PWD was not supported by the evidence.

The Panel rescinds the Reconsideration Decision, and the Appellant is successful on appeal.

SCHEDULE OF LEGISLATION

Employment Assistance for Persons with Disability Act **Persons with disabilities**

2 (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.

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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

Wes Nelson

Signature of Chair

Date (Year/Month/Day)

2024/09/23

Print Name

Jan Broocke

Signature of Member

Date (Year/Month/Day)

2024/09/19

Print Name

Kulwant Bal

Signature of Member

Date (Year/Month/Day)

2024/09/18