

# AISH Adjudication Guide

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The Assured Income for the Severely Handicapped Program



# THE AISH PROGRAM

The Assured Income for Severely Handicapped (AISH) program provides financial and health benefits to eligible adult Albertans with a permanent medical condition that prevents them from earning a living.

If you are eligible for AISH you may receive:

- a monthly living allowance – money to pay for your living costs such as food, rent and utilities
- a monthly child benefit – money to assist you with raising your dependent children
- health benefits – assistance to cover health needs for you, your spouse or partner and your dependent children
- personal benefits – money over and above your monthly living allowance for specific needs such as a special diet or assistance in an emergency.

More information is available on the AISH website at [alberta.ca/aish.aspx](http://alberta.ca/aish.aspx), including the *Your Guide to AISH* and *Your Guide to Completing the AISH Application* and access to the AISH Policy Manual at [humanservices.alberta.ca/AWonline/AISH/7180.html](http://humanservices.alberta.ca/AWonline/AISH/7180.html).

# AISH ELIGIBILITY CRITERIA

AISH considers an applicant's age, where they live, and their financial and medical situations to decide whether they qualify for the program. They must meet age, residency, financial and medical eligibility criteria to be approved for AISH, and while they are receiving a monthly living allowance and benefits.

## Age and residency criteria

To be eligible for AISH, applicants must be at least 18 years old and not eligible to receive an Old Age Security pension. They must live in Alberta and be a Canadian citizen or permanent resident. They cannot live in a correctional facility or a mental health facility, such as Alberta Hospital Edmonton.

## Financial criteria

When considering financial eligibility, AISH looks at the application Part A – Applicant Information and supporting documents to understand the income and assets an applicant and their spouse or partner have. When applicants apply for or receive AISH:

- they and their spouse or partner must apply for all other income they may be eligible for, such as Canada Pension Plan Disability (CPP-D), employment insurance (EI) or Workers' Compensation Board (WCB) benefits
- they and their spouse or partner cannot have income or assets that are higher than the AISH program allows
- they can work and be eligible for AISH – AISH clients are encouraged to work as much as to the extent they are able.

## Medical criteria

To be medically eligible for the program, the AISH Application and supporting documents must show the applicant has a severe handicap.

The *Assured Income for the Severely Handicapped Act (AISH Act)* defines "severe handicap" as:

"an **impairment of mental or physical functioning or both** that, in a director's opinion after considering any relevant medical or psychological reports, **causes substantial limitation in the person's ability to earn a livelihood** and **is likely to continue to affect that person permanently** because no remedial therapy is available that would materially improve the person's ability to earn a livelihood."

Based on the *AISH Act*, section 1(i), this definition identifies three eligibility criteria the applicant must meet to show they have a severe handicap:

1. their mental and/or physical functioning is impaired
2. this impairment substantially limits their ability to earn a living and
3. this impairment is likely permanent because there is no medical treatment and/or therapy available to improve their ability to earn a living.

The applicant must also meet two criteria in the *AISH Regulation* (section 5), which says they are expected to:

1. look for, accept or maintain reasonable employment and
2. make use of suitable training or rehabilitation.

# ELIGIBILITY DETERMINATION

AISH has sole responsibility for determining whether an applicant meets medical, financial, age and residency eligibility criteria for the program. These criteria are adjudicated as the application is processed by AISH staff with specific training and expertise:

**AISH Intake Workers** are trained to conduct an initial review of the AISH Application to ensure all necessary information and supporting documentation is included. They will contact applicants and/or physicians to coordinate and collect anything that is missing.

**AISH Generalists** determine an applicant's age, residency and financial eligibility by considering information and supporting documents that are provided with the AISH Application Part A – Applicant Information. With background and training in AISH legislation and policy, they also have expertise to review the Part B – Medical Report for straightforward medical adjudication.

**AISH Adjudicators** consider both the Part A – Applicant Information and Part B – Medical Report and supporting documentation for complex medical adjudication. They have extensive training in AISH legislation, case law and policies, as well as health sciences knowledge and access to medical information and expertise. Adjudicators assess an applicant's situation holistically and make a medical eligibility determination that is guided by facts and bound by legislation. If needed, they will request medical opinions from contracted medical experts.

## Medical eligibility adjudication

This AISH Adjudication Guide outlines the approach AISH staff follow to determine an applicant's medical eligibility for the AISH program and benefits. To be medically eligible, the applicant must have a medical condition that meets the criteria for a severe handicap defined in the *AISH Act*.

Depending on the applicant's medical situation, AISH categorizes an application for either straightforward medical adjudication or complex medical adjudication.

### Straightforward medical adjudication

Straightforward medical adjudication streamlines the application process when the applicant's medical situation may not require extensive analysis. Some examples include:

- palliative or terminal prognosis
- awaiting organ transplant
- quadriplegia or
- severe brain injury.

In these cases, the application is prioritized for immediate review. The applicant is considered medically eligible for the program as soon as AISH receives documentation validating their medical situation. This information can be provided by the applicant or their physician as a letter or other documentation submitted in lieu of the AISH Application Part B – Medical Report.

## Complex medical adjudication

When an AISH application contains medical information and supporting documentation that needs expert analysis to determine an applicant's medical eligibility, it is routed for complex medical adjudication following the medical adjudication process described later in this guide.

## AISH application process

There are multiple steps to process an application and determine whether an applicant is eligible for the AISH program and benefits. The steps will vary depending on whether an application is routed for straightforward or complex medical adjudication:

1. The applicant submits an AISH Application.
2. An AISH Intake Worker conducts an initial review to ensure all sections of the application are complete (Part A – Application Information and Part B – Medical Report) and that all mandatory documents and signatures are included. If information or documents are missing, the applicant and/or physician is contacted. Further direction and support is provided to the applicant and/or physician on how to submit the information.
3. Once the application is considered complete, an AISH Generalist reviews the application for age, residency and financial eligibility by considering information and supporting documents that are provided in Part A – Applicant Information. If the application and supporting documents indicate straightforward medical adjudication, it will occur at this point. The AISH Generalist will determine medical eligibility and approve benefits for eligible applicants.
4. When the application contains complex medical information and supporting documentation, the AISH Generalist will forward it to an AISH Adjudicator for complex medical adjudication after determining the applicant meets age, residency and financial eligibility.
5. The AISH Adjudicator will follow the complex medical adjudication process to determine the applicant's eligibility for the program and benefits. The AISH Adjudicator considers information contained in Part A – Applicant Information, Part B – Medical Report and other supporting documentation. If the Adjudicator needs more information, or there is an indication the applicant's disability affected the way they completed the application, steps will be taken to followup with the applicant, their advocate and/or physician.
6. Once the AISH Adjudicator has the required information, they complete the complex medication adjudication process and approve benefits for eligible applicants.
7. The applicant receives a decision letter notifying them whether or not they are approved.

# COMPLEX MEDICAL ADJUDICATION

AISH Adjudicators complete an Adjudication Summary to support an organized approach and critical thinking to assess all the information in the AISH application and supporting documents for relevance in completing the three-part adjudication process. A complete Adjudication Summary includes:

- A synopsis of the AISH Application Part B – Medical Report content provided by the physician and/or specialist(s). It may include involvement with the physician, diagnosis(es), medical history, specialist involvement, hospitalization(s), degree of impairment (physical, mental, cognitive, cumulative effect), medication(s), treatment, and prognosis.
- A review of additional medical documentation that was included such as specialist assessments/consultations, hospitalization reports and/or discharge summaries, additional psychological testing (e.g. MOCA, MME), diagnostic reports (e.g. CT, X-ray, ultrasound, MRI, EEG, ECG, holter monitoring, stress tests, sleep study, pulmonary function tests, colonoscopy, endoscopy, bone scan), laboratory tests (e.g. blood, biopsy), rehabilitation reports (physiotherapy, occupational therapy, recreational therapy), and specialty clinic and/or program reports (e.g. chronic pain clinic, infectious disease clinic).
- A review of the applicant's responses in the AISH Application Part A – Applicant Information sections on medical information, employment history and education/training history.
- The rationale for the Adjudicator's eligibility decisions.

## Part 1 – severe handicap adjudication

For complex medical adjudications, AISH decides if an applicant has a severe handicap based on the definition in the *AISH Act*, section 1(i). Three components must be satisfied to confirm the applicant meets the severe handicap definition:

1. Does the applicant have an impairment of mental and/or physical functioning?
2. Does the impairment cause a substantial limitation in the applicant's ability to earn a livelihood?
3. Is the impairment likely to continue to affect the applicant permanently because no remedial therapy is available that would materially improve the applicant's ability to earn a livelihood?

## Component 1 – Does the applicant have an impairment of mental and/or physical functioning?

Determining whether or not an applicant has an impairment of mental, cognitive<sup>1</sup> and/or physical functioning is based on the Adjudicator’s assessment of the medical information and supporting documentation provided by the physician and/or specialist and the applicant.

### **Analysis of medical information and supporting documentation**

Each application is assessed holistically and on a case-by-case basis to consider the applicant in the context of their own circumstances. Adjudicators conduct a thorough analysis of all medical information and supporting documentation to make a determination of impairment. An applicant may have multiple diagnoses that present varying degrees of impairment. Identifying all impairments is crucial to adjudicate the application.

Medical opinions that include statements such as “the applicant has a disability” or “the applicant has substantial impairments,” do not determine whether or not an applicant has an “impairment of mental and/or physical functioning.”

### **Analysis of impairment of mental or physical functioning**

Diagnosis(es) may be an indicator that an impairment is present; however, the applicant must submit sufficient medical evidence to demonstrate that the impairment is of mental, cognitive and/or physical functioning. When assessing impairment, Adjudicators review the AISH Application Part B – Medical Report and supporting medical documentation to consider:

- diagnosis(es) (primary, secondary, tertiary) and supporting medical information
- duration and prognosis of the diagnosis(es) (date of onset, progression of the diagnosis, stability of the diagnosis with ongoing management)
- relevant medical history and hospitalizations related to the diagnosis(es)
- degree of impairment (physical, mental, cognitive) and effect on the level of functioning
- relevant medical history and hospitalizations related to the diagnosis(es)
- referral/involvement with specialists (consult, regular monitoring/follow up, as needed)
- other reports/consults/assessments that confirm the diagnosis(es), diagnostic results, and recommendations (e.g. specialty clinic/programming, diagnostic reports, laboratory tests, hospital discharge summaries, psychological assessments, progress notes, etc.).

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<sup>1</sup> While the *AISH Act* definition of “severe handicap” refers to mental and/or physical functioning, AISH Adjudicators also examine cognitive functioning as a distinct subset of mental functioning. Cognitive functioning is pertinent in determining if the applicant has the capacity to process, respond, and apply prescribed therapeutic interventions provided by physicians/specialists and/or psychiatrists, or if therapy will only be supportive in nature due to the cognitive functioning of the applicant.

Adjudicators conduct a formal review of the application documents and supporting medical information to determine if an impairment is present relative to the diagnosis(es). They also consider if there are any aspects of comorbidity. Understanding comorbidity is important, as there may be more than one diagnosis present that may interact with, and affect the course and prognosis of both diagnoses. It may also impact the severity of the resulting impairment(s).

### **Case Scenarios<sup>2</sup> – diagnoses, resulting impairments and comorbidity**

#### *Case Scenario 1: two or more diagnoses may cause the same impairment*

The symptom of shortness of breath (dyspnea) may be caused by both chronic obstructive pulmonary disease (COPD) and congestive heart failure (CHF), and could amount to a substantial impairment because of the amplifying effect between the two diagnoses. With treatment, shortness of breath associated with COPD may typically be controlled; however, this treatment may not result in resolving symptoms associated with CHF.

ANALYSIS: There is a physical impairment resulting from two diagnoses.

#### *Case Scenario 2: one diagnosis may result in multiple impairments to different body systems*

Diabetes mellitus may produce multiple impairments such as vision changes due to diabetic retinopathy, sensory issues in the legs due to diabetic neuropathy, skin ulcerations and poor wound healing, renal insufficiency and fatigue. In this case, the diagnosis has progressed resulting in a severe impairment involving multisystem changes.

ANALYSIS: There is a physical impairment involving different body systems.

#### *Case Scenario 3: two diagnoses within the same body system or body part could interact to cause impairment to that body system or body part*

Moderate osteoarthritis of the left ankle after a poorly healed fracture and peripheral vascular disease that results in claudication of the legs could interact, causing an amplification of pain and impairment in ambulation.

ANALYSIS: There is a physical impairment within the same body system.

#### *Case Scenario 4: impairment of multiple diagnoses may interrelate and compound*

Morbid obesity, depression, osteoarthritis of the right hip and knee, and chronic kidney disease may result in a compounding interrelationship between the impairment, symptoms and corresponding treatment for each of the diagnoses such as functional limitation resulting from pain of the right hip and knee, restrictions in pain control due to medications that interact with chronic kidney disease, lack of motivation and fatigue from depressive symptoms compounded by restrictions in ambulation reflective of obesity.

ANALYSIS: There is a mental and physical impairment.

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<sup>2</sup> This document contains examples and case studies to assist the Adjudicator. The examples are based on actual cases or combinations thereof, with personal identifiers changed to protect the applicant's anonymity. The case studies are hypothetical, do not depict an actual applicant experience and are provided to illustrate various medical conditions. An individual applicant's experience may vary based on his or her individual circumstances.

## **Examples – assessing the type of impairment**

### *Example 1: assessing an impairment of mental functioning*

An applicant is diagnosed with schizophrenia. The applicant is prescribed injectable antipsychotic medication, is monitored by a psychiatrist, has a psychiatric history of hospitalizations, continues to exhibit negative symptoms despite medication, has limited self-care, and a sporadic work history. The psychiatrist has noted a significant impairment and a guarded prognosis.

ASSESSMENT: The applicant has an impairment of mental functioning.

### *Example 2: assessing an impairment of cognitive functioning*

An applicant's psychological assessment confirms a mild developmental disability. The applicant's full scale IQ (FSIQ) is 75 and there are difficulties with attention deficit hyperactivity disorder (ADHD) symptoms. Academic information indicates a wide variability in the applicant's skills. An emotional assessment identifies issues with depression, anxiety, anger, impulsivity and ongoing issues with relationships. There are significant issues with working memory and low education achieved in modified programming. Based on the applicant's history and multiple barriers including ADHD, depression, anxiety, limited social skills and learning disability, compounded by the low FSIQ, the applicant would not materially benefit from psychological treatment and remedial therapy options. Supportive treatment focused on adaptive functioning and life skills is appropriate.

ASSESSMENT: The applicant has an impairment of cognitive functioning.

### *Example 3: assessing an impairment of physical functioning*

An applicant is diagnosed with degenerative disc disease and chronic back pain, and there is an X-ray showing mild degenerative disc disease. The applicant is reported to no longer be able to participate in physical labour. The physician has not referred them for further treatment and they are taking over the counter pain medication. The physician reports that the impairment is moderate as the applicant can no longer continue with current employment.

ASSESSMENT: There are functional limitations; therefore, the applicant has an impairment of physical functioning.

### *Example 4: assessing an impairment of both mental and physical functioning*

An applicant is diagnosed with hypertension, asthma, diabetes, depression and generalized anxiety disorder. Hypertension and asthma are managed with treatment. There is progression of diabetes with neuropathy of the feet, leg ulcers that are not healing, and retinopathy. The applicant has been previously hospitalized and involved with psychiatric care for five years and the symptoms are treatment refractory. There is an impairment of physical restrictions related to the progression of diabetes and the symptoms of depression and anxiety are not resolved despite remedial therapy.

ASSESSMENT: The applicant has an impairment of mental and physical functioning.

## Component 2 – Does the impairment cause a substantial limitation in the applicant’s ability to earn a livelihood?

Once an impairment of mental, cognitive and/or physical functioning has been established, the Adjudicator examines the applicant’s current situation to determine if, at this point in time, the impairment causes a substantial limitation in the applicant’s ability to earn a livelihood.

### **Direct relationship between impairment and limitation**

The application must demonstrate a direct causal relationship between the impairment and the substantial limitation in the applicant’s ability to earn a livelihood. If an applicant is unable to work due to reasons unrelated to their impairment, this will not fulfill the causal relationship requirement. Applicants must have mental, cognitive and/or physical limitations that affect their ability to earn a livelihood to be AISH eligible.

### **Examples – relationships between the impairment and the limitation**

#### *Example 1: indirect relationship between the impairment and the limitation*

An applicant is diagnosed with sciatica (back pain) resulting in periodic pain that causes an inability to bend and remain seated for long periods of time. Additional limitations reported a lack of work experience and difficulty reading.

ASSESSMENT: Additional limitations are not a direct effect of the impairment resulting from sciatica.

#### *Example 2: direct relationship between the impairment and the limitation*

An applicant is diagnosed with osteoarthritis of the shoulders, degenerative disc disease and moderate spinal stenosis with a history of decompression spine surgery. The resulting impairment includes functional limitations with a limited range of motion of the spine and both shoulders, pain with ambulation, an inability to lift, trouble sitting, issues with personal care, as well as difficulty with walking.

ASSESSMENT: The resulting limitations in the applicant’s ability to earn a livelihood are directly related to the impairments associated with the diagnoses.

### **Ability to earn a livelihood**

The *AISH Act* does not define “earn a livelihood.” Adjudicators consider both the ordinary meaning and common law interpretation of the phrase<sup>3</sup> when analyzing whether an applicant’s impairment is substantially limiting the applicant’s ability to earn a livelihood.

“Earn a livelihood” refers to an applicant’s ability to independently provide for the necessities of life. It means earning enough income to support oneself and, if applicable, dependent family members. Courts have provided guidance on “earn a livelihood”, which can be applied in the AISH context<sup>4</sup>:

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<sup>3</sup> For example, *Petrowski v. Petrowski Estate*, 2009 ABQB 196, *Soule v. Johansen Estate*, 2011 ABQB 403, *Soto v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 768.

<sup>4</sup> *Petrowski v. Petrowski Estate*, 2009 ABQB 196, at paras. 501 and 502.

- “Earning a livelihood” means achieving a threshold income adequate for proper maintenance and support. The means by which that threshold is met are irrelevant.
- The phrase “earn a livelihood” is broad language. It does not state that an applicant must be gainfully employed and it does not refer to an applicant’s trade or occupation. The language is broad enough to encompass any means by which an applicant can earn a livelihood.
- The meaning of “earn a livelihood” is not to be viewed in the context of any given point in time, but as a reflection of an applicant’s lifelong economic activity and status.

### **Analysis of a substantial limitation in ability to earn a livelihood**

The Adjudicator determines whether the diagnosis(es) and resulting impairment is causing a substantial limitation in the applicant’s ability to earn a livelihood. They will also determine a baseline regarding the applicant’s ability to earn a living by considering the applicant’s:

- highest level of education completed (e.g. high school, special/modified programming, post-secondary, trade school, etc.). The Adjudicator may also indicate the reason why the applicant did not complete the education program, if relevant
- training opportunities pursued and/or involvement in employment training
- reported employment, dates of employment, part-time/full-time, type of work, and reason for leaving
- current work situation. If the applicant is still working, the Adjudicator will determine whether the current work arrangement should be considered “earning a livelihood”.

The Adjudicator will then consider if and how the mental, cognitive and/or physical impairment impacts the applicant’s ability to earn a living. This can include factors such as medical limitations or medical requirements that limit the time available to earn a livelihood, such as treatment and associated programming or medication(s) use that may affect functioning.

### **Pattern of work**

An applicant’s pattern of work, such as gaps in their employment history is requested in the employment sections of the AISH Application Part A – Applicant Information. It can be a useful indicator of an applicant’s capacity to work. When this information is examined with the medical information, it may show a pattern of work that is consistent with their mental, cognitive and/or physical limitation.

The type of work an applicant has done previously reflects the physical and mental capacities required in those jobs. This includes the degree of physical work (heavy to sedentary work) and mental aptitudes. Previous job experiences may inform the employment options for applicants. Generally, there are more physical barriers to returning to heavy work than to sedentary occupations. Skills acquired in a previous job or jobs may enable an applicant to find other work that is suitable to their limitations.

When there is no current work or other work-related activity indicated in the application, the Adjudicator must rely on past work activity to make a decision. When there is current work activity, it must be considered in the earning a livelihood determination.

Part-time employment may not be indicative of an applicant's work capability, but rather may be a matter of personal choice.

If an applicant has worked regular periods of time in the past, followed by periods of limited or no work activity, this may indicate a progressive, episodic and/or cyclical medical condition. Medical reports related to dates and reasons for the applicant's visits to their physician(s) may be pertinent. When an applicant's previous employment is seasonal, unemployment periods during the "off season" may not be indicative of their capability to earn a livelihood.

By considering the applicant's type of employment and the pattern of work activity, the Adjudicator determines whether the applicant's past work experience is relevant to their capacity to earn a livelihood.

### **Other considerations**

Applicants may have had an inclusive employment arrangement, such as extensive work accommodations that allowed them to perform a job within the regular workforce. This type of position should not be indicative of the applicant's ability to earning a livelihood. Determining if the applicant has capacity for earning a livelihood requires assessing the relationship between their medical condition(s), their current and past work positions, and their personal situation.

Volunteer positions are often referred to as "volunteer work." The fact that an applicant participates in volunteer work may not, in itself, indicate a capacity to earn a living. The Adjudicator must determine if the nature and degree of volunteer activity indicates capacity for paid employment. When determining initial eligibility for AISH, individuals who engage in volunteer activity are considered to be applicants who are not working.

An applicant can stop work for many reasons, which may or may not relate to their disability. The determination of eligibility for AISH benefits is based on an applicant's capacity to work relative to whether there is a substantial impairment caused by mental, cognitive and/or physical limitation(s). An applicant's limitation must regularly prevent them from working, or limit the amount they can work at an occupation that they could normally pursue.

#### *Example – substantial limitation in ability to earn a livelihood*

An applicant has been diagnosed with autism and the impairment is described as mild by the physician. A psychological assessment has noted that while their full scale IQ is 95, there are significant social and communication issues and poor adaptive skills functioning. The applicant has required modified school programming and received supports since early childhood. Compounding this, they developed generalized anxiety disorder in early adolescence. The applicant has a limited work history stocking shelves at a grocery store and it is reported they were let go due to work performance. The applicant had difficulty following directions, social interaction with the supervisor and staff, and would leave the worksite without notice due to anxiety related symptoms.

**ASSESSMENT:** The impairment causes a substantial limitation in their ability to earn a livelihood.

Component 3 – Is the impairment likely to continue to affect the applicant permanently because no remedial therapy is available that would materially improve the applicant’s ability to earn a livelihood?

This component looks to the future to understand if any remedial therapy options exist that would materially improve an applicant’s ability to earn a livelihood.

#### **Analysis of permanence**

The Adjudicator must review all relevant information reported by the applicant and the physician/specialist(s) to assess the likelihood the applicant’s impairment will continue into the future and impact their ability to earn a livelihood. A determination of permanence is made by identifying the diagnosis(es), examining the severity of the impairment, the limitation(s) caused by that impairment and reviewing remedial therapy options available that may lessen the impairment.

#### **Episodic, cyclical and/or recurring medical conditions**

Episodic and/or cyclical medical conditions may recur given their nature. These medical conditions may have greater complications, which could have an impact on an individual’s ability to work. Each recurrence impacts the applicant’s treatment and recovery, and may result in decreased functioning over time. There may also be shorter intervals between relapses, more invasive treatment and/or longer work absences. The cumulative effect of episodic and/or cyclical conditions may result in a “permanent” disability that will continue to affect the applicant’s ability to earn a livelihood.

#### **Progressive medical conditions**

Progressive medical conditions are diagnoses that advance in scope and worsen in severity over time. There is often no cure and they affect older adults, when characteristic signs and symptoms become more prominent. A progressive disease may be considered rapidly progressive (days to weeks) or slowly progressive (months to years). Numerous progressive diseases and related symptoms may be managed or delayed with treatment and remedial therapy options. As the medical condition or symptoms progress, there may be treatment and remedial therapy options available that will delay progression and/or address symptom control. These types of disabilities resulting from progressive diseases may require modifications over time as the need for support changes. This may include modifications to medical treatment, health-related supports, workplace accommodations and/or equipment and aids. Being diagnosed with a progressive medical condition may not result in an applicant’s inability to earn a livelihood. The Adjudicator must assess whether the medical condition is progressing rapidly or slowly, any treatments available to slow progression and address symptoms, and modifications to support activities associated with daily living and the work environment.

## **Examples – progressive medical conditions and ability to earn a livelihood**

### *Example 1: progressive medical condition managed*

An applicant is diagnosed with arthritis that resulted in considerable functional physical limitations causing a severe impairment. The treating physician initially treated them with nonsteroidal anti-inflammatory drugs; however, the applicant was not responding to treatment and functional limitations continued to progress. The applicant was formally re-assessed and diagnosed with rheumatoid arthritis (RA) by a rheumatologist. Since the applicant was experiencing an acute flare up and not responding to previous treatment, the specialist prescribed a non-biologic Disease-modifying Antirheumatic Drug (DMARD). This medication improved physical functioning and decreased pain. The applicant was able to return to their position as an Administrative Assistant.

ASSESSMENT: New medication resulted in improved functioning and lessened the severity of the impairment so the applicant no longer had a substantial limitation in earning a livelihood.

### *Example 2: progressive medical condition ongoing*

Another applicant diagnosed with RA used the same treatments but the medical condition continued to progress, resulting in ongoing swelling due to inflammation in the hands. The applicant required an additional biologic response modifier (newer class of DMARDs) and surgery to address severe joint damage in their knees. This treatment and remedial therapy did not result in improved functioning that support daily activities.

ASSESSMENT: The applicant has a substantial limitation in their ability to earn a livelihood.

## **Analysis of remedial therapy**

Remedial therapy includes any therapeutic options that are prescribed or recommended by a physician or specialist and may include medical treatments such as prescription medication, surgery, physical and occupational therapy, psychotherapy and the use of medical devices such as a wheelchair, Continuous Positive Airway Pressure [CPAP] machine, pacemaker, insulin pump, cochlear implants, etc.

It also includes non-medical therapy and remedies such as art therapy, psychoeducational materials and tools, self-help resources, meditation/mindfulness and other mind-body practices, yoga, natural products, lifestyle changes, the use of therapy animals and job supportive measures to achieve a more satisfactory function and skill level.

Remedial therapy and therapeutic options vary depending on the nature and severity of the diagnosis(es) and the applicant's response to treatment. In some cases, the intent is to cure or remove the cause of the medical condition. In other cases, the intent is to control the medical condition from progressing, relieve symptoms, improve functional capabilities, and/or provide the applicant with insight and necessary coping mechanisms to adapt to their limitations.

The Adjudicator must review information in the application to assess an applicant's involvement in, and response to, remedial therapy or therapeutic options. They consider how an applicant's current therapies impact their ability to earn a living. They also use their knowledge of the health care sector and available supports to determine whether there are other therapies available to help improve the applicant's medical condition and their ability to earn a livelihood.

The Adjudicator considers remedial therapy, which is inclusive of medical and/or psychological information and the applicant's self-reported information, and includes the following:

- duration and prognosis of the diagnosis(es) (date of onset, progression of the diagnosis, stability of the diagnosis with ongoing management)
- pending referrals
- involvement in treatment and therapy (previous, current and future treatment and therapy)
- modality of therapy/treatment
- availability of therapy/treatment
- duration of therapy/treatment (short- or long-term, indefinite)
- stage of treatment (recent diagnosis, referrals pending, recommendations recently initiated, full engagement in treatment, and if an appropriate time has lapsed to determine the response to treatment)
- response to therapy/treatment
- factors that may be impacting response to therapy/treatment (e.g. compliance, comorbidity, psychiatric, social issues such as medication coverage, etc.)
- other potential medical and non-medical treatment and remedial therapy options that may not be listed but are often associated with the diagnosis(es)
- Use of medical devices and/or assistive devices
- Whether treatment is used for stabilization, ongoing management to maintain current level of functioning, to improve functioning, or being used as a palliative measure
- Individual effort made to correct, control or lessen the severity of the impairment caused by the diagnosis(es)
- Ability to follow therapy/treatment recommendations
- Medical limitations to earning a livelihood, such as medical requirements which limit the time available to earn a livelihood (treatment and associated programming) or use of medication(s) that may affect functioning.

Remedial therapies timing is also important. What stage an applicant is in their treatments will assist an Adjudicator to determine if all remedial therapy and treatments have been exhausted, leading to a permanence determination. Completion of treatment and ongoing management of a diagnosis may result in the resolution of, or lessening of, the impairment which may support the applicant in earning a livelihood. The stage of treatment is pertinent in determining AISH eligibility. The applicant's symptomology may evolve with the use of various medications that support recovery. It may take time to establish rapport with health professionals and achieve an optimal level of engagement in treatment and participation by the applicant as they process their diagnosis. These factors can affect the impact the identified treatment plan will have on their prognosis and their ability to earn a livelihood.

Job supportive measures may also be inclusive of assistive devices that complement remedial therapy approaches. These assistive devices may support independence and inclusion in work settings which may not necessarily require involvement with a medical professional. Assistive devices may support a number of medical conditions including:

- mobility (e.g. cane, brace)
- vision (e.g. magnification devices, task lighting)
- mental health and cognition (e.g. technology such as handheld personal devices/adaptive computer technology/apps available online, or built in accessibility software to provide schedules/reminders to support memory and executive functioning, provide distraction from anxiety and agitation, monitoring of fitness, breathing, and sleeping)
- dexterity (e.g. hands free wireless communication tools, adaptive helping tools, electrical appliances) and
- hearing loss (e.g. hearing aids, alerting device, teleprinter/teletypewriters).

These treatments, therapies and assistive devices may positively impact the applicant's level of impairment related to mental, cognitive and/or physical functioning.

### **Example of an assistive device that would materially improve an applicant's ability to earn a livelihood**

*Example: assistive device*

An applicant is considered legally blind and requires accommodations at work. The applicant works as an office assistant, which requires them to interact with clients, answer phone calls, provide scheduling for staff, book appointments, and complete data entry. Assistive devices that support their success at work include the following; assistive technology such as computer screen magnification software that changes the font size, shape, enlarges icons, enhances the mouse pointer and changes the screen colours, screen reading software to support them in reviewing electronic file materials to complete data entry, a handheld portable note-taker that can electronically receive, store and retrieve data to support meeting minutes, an anti-glare guard to reduce glare from the computer screen, task lighting, and a large print telephone that has colour labels to identify keys and lines. It is also noted that the applicant uses a cane to support getting to work and when required an electronic aid (e.g. personal smart phone) that provides auditory mapping locations as required.

### **Examples of whether or not remedial therapy is available that would materially improve the applicant's ability to earn a livelihood**

*Example 1: treatment and remedial therapy*

An applicant has been diagnosed with depression and stopped their previous employment as a server and reports that they left this position due to stress. The applicant had recently initiated medication and was provided with a note to be off work for three months. Permanency as it applies to the applicant's ability to earn a livelihood has not been confirmed.

The applicant has recently initiated treatment for depression and did not require a referral to a psychiatrist and/or further counseling and the medical note indicates a three-month duration for treatment. Treatment and remedial therapy may materially improve the applicant's ability to earn a livelihood.

*Example 2: treatment and remedial therapy*

An applicant has been diagnosed with Chronic Pain Syndrome and has stopped their previous employment as a heavy equipment operator due to pain. It is noted that the applicant has been off work for two years, has been involved with regular follow ups with their physician, has participated in active rehabilitation through a pain clinic and treatment is regarded as maintenance only. The Physical Medicine and Rehabilitation Physician has confirmed the applicant's condition is chronic and the resulting impairment will not improve. There is no treatment or remedial therapy that will materially improve their ability to earn a livelihood.

*Example 3: stage of treatment*

An applicant has been diagnosed with Major Depressive Disorder. The applicant was initially diagnosed by the physician and prescribed an antidepressant medication. No further treatment was pursued for a period of four months. The treating physician then referred the applicant to a psychiatrist due to a lack of response from the antidepressant. The psychiatrist completed a formal assessment and diagnosed the applicant with Dysthymia, Generalized Anxiety Disorder, and Borderline Personality Traits. The psychiatrist changed the medication to another antidepressant, added an anxiolytic, and a small dose of an antipsychotic medication. The psychiatrist referred the applicant to a mental health therapist to participate in Cognitive Behaviour Therapy (CBT), mindfulness to address stress, and recommended attending group therapy at the day program offered at the local hospital. The applicant has an impairment of mental functioning; however, there is remedial therapy available and the applicant recently initiated psychiatric treatment. The treatment outlined may materially improve the applicant's ability to earn a livelihood and as they are in the early stages of treatment, neither their prognosis nor their response to treatment can be confirmed.

## Part 2 – approval of benefits

After determining an applicant has a severe handicap, AISH Adjudicators review the application to decide whether the applicant will be approved for benefits based on employment/employability criteria under sections 5(1)(b)(i) and 5(1)(b)(iii) of the AISH General Regulation. Benefits may not be approved if the applicant has:

- refused to seek or accept, or has terminated reasonable employment or
- failed to make use of appropriate training or rehabilitative measures.

Even if an applicant's mental, cognitive and/or physical limitations are considered permanent because there is no remedial therapy available to materially improve their ability to earn a livelihood, there may be alternative employment, training or rehabilitative opportunities that would allow them to work despite the permanence of their limitations.

Adjudicators have authority to exercise discretion under these AISH Regulation sections when deciding whether to approve or not approve benefits. They consider all relevant information and circumstances including:

- highest level of education completed, such as high school, special/modified programming, post-secondary, trade school, etc. (the Adjudicator may also note the reason why the applicant did not complete the education program, if relevant)
- all reported employment, dates of employment, part-time/full-time, type of work, and reason for leaving
- other steps taken to seek employment suitable to the medical condition including other types of employment/training that have been considered and/or explored if the medical condition prevents the applicant from returning to their previous employment
- additional rehabilitation/training opportunities pursued and/or involvement in employment training
- whether the applicant is currently involved with school or training and the tentative completion date.

## Analysis of Reasonable Employment

“Reasonable employment” refers to an occupation in which an applicant might reasonably be expected to be employed because of their work experience, skills, education and training. It may also refer to the capacity to acquire the necessary skills, education or training, on the job or otherwise, given the applicant’s limitations. In some instances, an individual may have worked at a highly skilled position, such as an engineer out in the field, and can no longer continue in that position due to physical limitations. However, the individual has the capacity to work as an engineer at a desk job.

### **Examples – refused to seek, accept or terminated reasonable employment**

#### *Example 1: applicant not exploring opportunities*

An applicant is a hairdresser by trade and can no longer complete their job duties due to spinal stenosis. The impairment includes functional limitations in standing for long periods. The applicant has not explored other employment opportunities that reflect their current physical restrictions.

**ASSESSMENT:** The applicant has refused to seek reasonable employment.

#### *Example 2: applicant not exploring opportunities*

An applicant worked as a cashier for the past two years and quit their job six months ago. The applicant has a diagnosis of irritable bowel syndrome and dysthymia. The applicant has been prescribed medication and is receiving no other treatment. Both medical conditions have been longstanding and the applicant maintained employment for the past four years. Since quitting, the applicant has not taken any steps to look for employment.

**ASSESSMENT:** The applicant has terminated employment and refused to seek reasonable employment.

### *Example 3: applicant considering training*

An applicant has recently completed high school. While attending school, they worked part-time at a fast food restaurant, then quit after graduation. The applicant may pursue culinary arts post-secondary education next year. The applicant has a diagnosis of attention deficit hyperactivity disorder (ADHD), generalized anxiety disorder (GAD), a mathematics learning disorder and a full scale IQ of 89. They use a variety of substances including alcohol and marijuana. The applicant is actively involved with psychiatric followup, using medication to address symptoms, and has been referred for substance abuse treatment and rehabilitation to support ongoing abstinence. During high school, the applicant used learning accommodations to support their graduation. Based on their age, involvement with treatment, additional substance abuse treatment recommendations, and their previous ability to participate in work/school, the applicant's capacity to earn a livelihood cannot be confirmed as there is not a substantial limitation identified. The medical condition is considered stable with the current treatment plan and additional treatment recommendations for substance use are being addressed.

ASSESSMENT: The applicant has not sought reasonable training and/or employment reflective of their current abilities, skills and limitations.

### **Analysis of appropriate training or rehabilitative measures**

Appropriate training or rehabilitative measures include potential education, training, and/or other activities that would increase an applicant's ability to earn a livelihood.

Retraining or going back to school are two options that may enable an applicant to acquire the necessary skills and education to rejoin the workforce. The Adjudicator must assess the applicant's demonstrated suitability and aptitude for a different occupation in conjunction with the diagnosed medical condition(s) and resulting impairment. While education or training options may be available, they may not be suitable for the applicant. If this is the situation, the Adjudicator would not conclude the applicant has not made use of appropriate training.

### **Example – appropriate use of training or rehabilitative measures**

An applicant has a history of a crush injury to the right foot. After a period of treatment and rehabilitation, it was determined they could not return to their previous employment as a server. The physician confirmed an ongoing impairment with ambulation issues related to the right foot, and that the applicant would continue to have a lifelong physical restriction. The physician recommended the applicant look for sedentary employment to accommodate their physical limitation and consider employment training to connect with this type of work. The applicant has grade 12 education and no indication there are any issues with learning. At the time of the application, the applicant had not pursued the physician's recommendations.

ASSESSMENT: The applicant failed to make use of appropriate training and rehabilitative measures that would be reflective of their current impairment.

## Part 3 – other considerations

### Internal Referrals and Medical Consults

#### Internal referral for specialized assessments

Information related to physical and psychiatric assessments is often provided through the medical documentation. Occasionally, the Adjudicator may authorize a referral for a specialized assessment to support the decision-making process and to clarify provided medical information. Specialized assessments may also be authorized when medical information is not available or accessible by an applicant, or when medical complexities are described in the application. Specialized assessments may comprise a combination of one or more assessment types including:

- Vocational Assessment – identifies the potential for competitive employment by:
  - evaluating intellectual functioning, academic potential, vocational aptitudes and career interests – tests vary and are dependent on the applicant
  - identifying specific barriers to competitive employment which are perceived by the applicant and presented in medical documentation and other information that is available
  - considering employment-related rehabilitation and retraining that may be appropriate
  - providing recommendations for overcoming barriers to employment.
- Psychological/Disability Assessment – identifies the current disability and the effect that it is having on the applicant's life by:
  - looking at the limitations they experience due to their medical condition and/or impairment and determining how they are coping or dealing with the limitations
  - examining the individual's psychological and emotional functioning.
- Neuropsychological Assessment – is used with applicants who have sustained a traumatic brain injury or have a brain injury of non-traumatic origin. Tests may vary and are dependent on the applicant. The assessment identifies the nature and extent of any neuropsychological problems, impairments and disabilities. It also provides a prognosis and recommendations for improving function by:
  - identifying past and present intellectual functioning, attention and working memory, verbal memory, memory for visual material and prospective remembering, problem solving, executive functioning, and visual, spatial and perceptual skills, expressive and receptive language abilities, and somatosensory and motor function
  - assessing personality, behavioural abilities and emotional factors, if needed
  - evaluating cognition and behaviour by examining the effects of a brain injury or neuropathological process the applicant may have experienced.

- Functional Capacity Evaluation – examines physical capability for work by:
  - completing a manual examination, physical examination and assessing overall strength capabilities
  - reviewing the applicant’s ability to tolerate the physical demands of work.
- Chronic Pain Assessment – it determines how pain affects the applicant through tests that vary and are dependent on the applicant, and by:
  - providing a detailed analysis of the applicant’s history of pain and pain-related treatment, use of opioid medications, current perception of pain, pain-related disability, coping with pain, and personality/psychological functioning
  - using psychometric measures to determine whether maximum medical improvement has been attained and future prognosis.
- Cognitive Assessments – it uses tests that vary and are dependent on the applicant to assess current cognitive functioning, intelligence quotient (IQ), academic achievement level and psychometric assessment of adaptive functioning.

Once the completed assessment is returned to the Adjudicator, the assessment is captured in the Adjudication Summary and incorporated into the eligibility decision.

**Medical consult**

For particularly complex applications, the Adjudicator may ask a contracted AISH Medical Consultant to review the medical information provided and give an analysis and opinion. This review may be requested when:

- an applicant is not responding to typical treatment
- there are multiple letters from physicians or specialists with discrepancies or conflicting information
- specialist information does not support the diagnosis and the treating physician is contradicting the information provided by the specialist
- there are multiple submissions of medical information
- medical reports or diagnostic imaging require interpretation
- there are chronic and concurrent conditions with potential multisystem issues occurring.

Once the consultation report is received, the response is captured in the Adjudication Summary and incorporated into the eligibility decision.

## Medical Condition Self-reporting Section

The applicant may describe the medical condition and the impact it has on them and their ability to work in the AISH Application Part A – Applicant Information, Section 5 – Medical Information. This self-reporting section contributes to the Adjudicator’s holistic analysis by providing the applicant’s personal context about their medical condition and experiences. For example, an applicant may identify additional medical diagnoses that are not substantiated in the medical information provided. Or, they may describe additional treatment involvement or responses to treatment, and give details about the impairment and their understanding of its effects on them in day to day activities and work environments. This section may also offer additional information not captured in other sections of the application, such as successes and challenges gaining and/or maintaining employment.

# CONCLUSION

An Adjudicator can make a medical eligibility decision when they have determined whether an applicant:

- has an impairment of mental, cognitive and/or physical functioning and
- the impairment currently causes a substantial limitation in the person's ability to earn a livelihood and
- there are medical remedial therapy options available that would materially improve the person's ability to earn a livelihood.

When these medical eligibility criteria are met, the Adjudicator then determines whether the applicant will be approved for AISH benefits by examining if they:

- refused to seek, accept or terminated reasonable employment or
- failed to make use of appropriate training or rehabilitative measures.

Applicants who meet all the medical eligibility and employment/employability criteria will be approved for AISH benefits.