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PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated December 21, 2011 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the Employment and Assistance for Persons with Disabilities Act for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that her impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that she has a severe physical or mental impairment. The ministry was also not satisfied that the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. As the ministry found that the appellant is not significantly restricted with DLA, it could not be determined that she requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 2

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

1) Discharge Summary dated March 29, 2001 from adolescent treatment centre which states in part that the appellant has been diagnosed with chronic Post Traumatic Stress Disorder (PTSD);
2) Consultation Report dated March 20, 2003 by a psychiatrist which states in part that the appellant was the victim of physical and questionable sexual abuse, that she comes from a family background of schizophrenia on her mother's side and depression on her father's side in fourth degree relatives, and has witnessed physical abuse by her father with whom she was close, who was eventually killed by her mother as an act of retaliation to prevent the entire family from being continuously hurt; the appellant had displayed some auditory hallucinations under the influence of stress and features of PTSD and chronic dysthymia with intermittent explosive disorder and she has some borderline traits;
3) Person With Disabilities (PWD) Application: applicant information dated October 7, 2011, physician report dated August 20, 2011, and assessor report dated August 20, 2011;
4) Letter from the ministry to the appellant dated November 7, 2011 denying person with disabilities designation and enclosing a copy of the decision summary;
5) Letter from the coordinator of a community based victim services program dated December 1, 2011 stating in part that the appellant has been receiving ongoing emotional and practical support from the program since April 8, 2011; the appellant had been working early this year but was unable to continue due to complex post traumatic stress symptoms which relate back to childhood abuse issues and she is currently unable to work due to the ongoing mental health issues;
6) Letter from the appellant's mother dated December 2, 2011 which states in part that she and her mother prepare a few meals each week for the appellant and make sure she has appropriate meal choices at her apartment and the appellant cooks with her roommate a couple times a week and that works well for both of them. For personal hygiene, the appellant has a tendency to only shower when absolutely necessary unless reminded and forgets to brush her teeth. The appellant takes significantly longer to get ready to go out than anyone else she knows and requires extra notice to go out or she has anxiety issues. The appellant and her roommate have devised a schedule for housekeeping as their apartment had a tendency to get cluttered and messy, dishes not done, bathroom not clean. She phones the appellant each morning to remind her to take her medications and to do her personal hygiene, this works well for the appellant and it still gives her independence. In March, she had to get the appellant because she had fallen into a very deep depression, not answering the phone, staying in bed and not caring about anything. It is in the appellant's best interest to live at her apartment because her self esteem is better, moods are better and she is more motivated to get the help she requires to stay there;
7) Letter from the appellant dated December 2, 2011 in which she states in part that most of her daily living activities (DLA) take three times longer, she can prepare healthy meals when her roommate is involved but when on her own she has a tendency to make simple meals and her mother and grandmother often supply ready-made meals; she gets overwhelmed and procrastinates in paying bills, puts off regular housework sometimes for two weeks, has a tendency to stay indoors until she is pushed to go out and socialize, it takes three times longer to do personal care, her mother reminds her daily to take medications or she forgets, and,
8) Request for Reconsideration- Reasons.

At the hearing, the appellant provided several additional documents, namely:

1) Written submission on behalf of the appellant, including applicable legislation and excerpts from the decision in Hudson v EAAT, 2009 BCSC 1461;
2) Printout of information on dysthymia from a website for the U.S. National Library of Medicine;
3) Printout of information on ADHD from a website;
4) Printout of information on depression from a website;
5) Information on PTSD/ checklist;
6) Letter dated February 17, 2012 from a clinical counselor at a transition house stating in part that the appellant has been attending counseling diligently since September 15, 2011; the appellant has indicated

experiencing symptoms which are in line with the diagnoses of depression and PTSD and which impair her ability to function, particularly in stressful circumstances.

The ministry did not object to the admissibility of these documents. The panel reviewed the documents and admitted them as being a further description of the appellant's diagnosed impairments and being in support of the information and records before the ministry on its reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act. The written submission on behalf of the appellant including excerpts of the legislation and of the Hudson decision were accepted as argument.

The appellant stated that whereas some people might be perky in the morning, she procrastinates and puts off getting up or doing things. The appellant stated that it is hard for her to get started with grooming or to go about her errands, like getting groceries, because it is difficult to take those steps. The appellant stated that she will think about how the task does not have to get done right away and put it off sometimes and then not bother with it. The appellant stated that both her mother and her grandmother help her on a regular basis, by sending meals home with her when she has meals with them or by helping her with shopping, and pushing her to do extra errands outside her home. The appellant stated her mother will either call or text every day to remind her to take her medications. The appellant stated that she stopped taking medication for ADHD many years ago, but still takes medications for depression and mood stabilizers, and although she still has depressive thoughts, they are easier to control with the medications. The appellant stated that she still has ADHD and she does not have the best concentration and tends to jump around between many things at one time. The appellant explained that last year she became very depressed because she stopped taking the medications, was laid off from her employment, and she broke up with a long-time boyfriend that she had been seeing for 2 years. The appellant stated that some issues from the past have come up that have not previously been treated because it was felt it would be like opening Pandora's box but have now started interfering with her work and personal life, since she became distant with her friends and family members. The appellant stated that her family doctor has referred her to a psychiatrist to address these past issues, to find out what is going on and how to understand it better, and the appellant stated she is ready now to undertake this challenge and understands that these issues will not go away and that she needs help. The appellant stated that she has not yet met with the psychiatrist but is hoping to get an appointment in the next month or so. The appellant stated that she was violent when she was younger but now she takes things out on herself, by not doing anything, by sleeping too little or too much, or by verbally snapping at others.

The appellant stated that she gets severely depressed a bit more than half the time, or 50-60% of the time, and she described a feeling of heaviness on her shoulders, weighing her down physically, that she gets lethargic with no energy to do things that need to be done. The appellant stated that she will stay in her PJ's, not take a bath or brush her teeth and will not clean up after herself. The appellant stated that she will not miss doctor's appointments, however, as she knows how important they are. The appellant stated that she is vulnerable to extreme mood swings and when she gets any bad news it takes longer for her to pull herself together, hard to find the positive in a situation. The appellant stated that when she is not severely depressed she feels energetic and she can clean the house and do most things, and that she is more likely to help with chores and take reminders well. The appellant stated that she is currently seeing 3 counselors, including the coordinator of a community based victim services program who provided a letter, and the clinical counselor at a transition house that also provided a letter, and a third counselor who her mother recommended and she has seen a couple of times, so that she is seeing a counselor once a week.

In her self-report, the appellant adds that her disability is depression that is taken care of with the help of medication and therapy. The appellant states that depression affects her whole life when she is off of medication. The appellant explains that in the best case scenario day-to-day chores like housework or errands (bank, groceries) are not a problem. The appellant explains that although she needs to be reminded to take her medication, and she might feel down once in a while but no more than a regular person would. The appellant states that her worst case scenario is going out of the house once or twice a month to do the very bare minimum, and not caring how she is financially or physically.

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The physician who completed the physician report has confirmed that the appellant has been her patient for about 10 years and that she has seen the appellant 2 to 10 times in the past 12 months. In the physician report, the physician confirms a diagnosis of depression (mood disorders) since 1998. The physician adds comments that the appellant has been in counseling since 1998 and that anger/irritability, ADHD, and depression are all an issue, "....she does function well when on regular medication but now that is an adult without someone around to remind her to take it, medication use can be erratic and she had a serious decline in winter 2011 with anxiety attacks, isolation, inability to meet work demands, suicidal thoughts but no actions. " The physician report indicates that the appellant has not been prescribed medication that may interfere with her ability to perform DLA, and she does not require an aid for her impairment. The physician reports that the appellant can walk 4 or more blocks unaided on a flat surface, she can climb 5 or more stairs unaided, she has no limitations with lifting or with remaining seated. The physician reports that the appellant has no difficulties with communication. The physician indicates that there are significant deficits with cognitive and emotional function in the areas of executive, emotional disturbance, motivation, impulse control, and attention or sustained concentration. The physician reports that the appellant is restricted on a continuous basis with management of medications and with social functioning, and that she is periodically restricted with personal self care, meal preparation, basic housework, daily shopping, and management of finances, with the explanation that the appellant is "...isolated, lacking motivation, didn't care about consequences of actions, but if took meds or reminded could do activities at bare minimum." The physician reports that the appellant is not restricted in the areas of mobility inside the home, mobility outside the home, and with use of transportation. The physician adds comments regarding the significance of the appellant's medical condition that "...she has been severely restricted but there is the hope that she can improve with time and regular medications."

The physician has also completed the assessor report and indicates that the appellant is independent with walking indoors and walking outdoors, as well as with climbing stairs and standing, with lifting and carrying and holding. The physician indicates that the appellant takes significantly longer than typical with 6 out of 8 tasks of personal care including dressing, grooming, bathing, toileting, feeding self, and regulating diet, but is independent with transfers in/out of bed and transfers on/off chair, with the note that the appellant "...stay in PJ's as long as possible, do bare minimum personal hygiene". The physician reports that the appellant also takes significantly longer than typical with doing laundry and basic housekeeping and 2 out of 5 tasks of shopping (going to and from stores and making appropriate choices) and makes the comment "bare minimum if at all", while assessing the appellant as being independent with the remaining tasks of shopping. Further, the physician reports that the appellant takes significantly longer than typical with 3 out of 4 tasks of managing meals, including meal planning, food preparation, and cooking ("lack of motivation to do"). The physician indicates that the appellant also takes significantly longer than typical with all tasks of paying rent and bills (including banking and budgeting), with the comment "...lack of motivation to do, not worried about consequences."

The physician reports the need for continuous assistance from another person with managing medications (filling/refilling prescriptions, taking as directed) while being independent with safe handling and storage. The physician indicates that the appellant is independent with all tasks of managing transportation (getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation). In the assessor report, the physician has reported major impacts to daily cognitive and emotional functioning in the areas of emotion, executive and motivation, with moderate impacts to bodily functions, insight and judgment, attention/concentration, motor activity, and other emotional or mental problems, with the comment that "...hostility has been a major issue, though in past year more depression/ lack of action than previous hostile/aggressive responses. The physician has reported the need for periodic support or supervision with all areas of social functioning, making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance with others, with the explanation that "...mother has intervened frequently." The physician indicates that the appellant has marginal functioning in both her immediate and extended social networks.

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PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant is not eligible for designation as a person with disabilities (PWD) as she does not have a severe mental or physical impairment and that her daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a person with disabilities (PWD) are set out in Section 2 of the EAPWDA. The minister may designate a person as a PWD when the following requirements are met. Pursuant to Section 2(2), the person must have reached the age of 18 and the minister must be satisfied that the person has a severe mental or physical impairment. Under Section 2(2)(a) the impairment must be likely, in the opinion of a medical practitioner, to continue for at least 2 years. The impairment must also, in the opinion of a prescribed professional, directly and significantly restrict the person's ability to perform DLA either continuously or periodically for extended periods, as set out in Section 2(2)(b)(i). As a result of those restrictions, the person must require help to perform DLA, pursuant to Section 2(2)(b)(ii). Section 2(3)(b) sets out that a person requires help in relation to DLA if, in order to perform it, the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as: prepare own meals, manage personal finances, shop for personal needs, use public or personal transportation facilities, perform housework to maintain the person's place of residence in acceptable sanitary condition, move about indoors and outdoors, perform personal hygiene and self care, and manage personal medication. In relation to a person who has a severe mental impairment, there are two additional activities, namely: making decisions about personal activities, care or finances, and relating to, communicating or interacting with others effectively.

The ministry argues that the evidence does not show that the appellant has a severe physical impairment. The ministry argues that functional skills are within normal limits and all aspects of mobility and physical abilities are performed independently. The appellant does not argue that the evidence establishes that she suffers from a severe physical impairment. The panel finds that the evidence of a medical practitioner does not confirm a diagnosis of a physical impairment. The physician report indicates that the appellant can walk 4 or more blocks unaided on a flat surface, she can climb 5 or more stairs unaided, and she has no limitations with lifting or with remaining seated. In the assessor report, the physician indicates that the appellant is independent with walking indoors, with walking outdoors, with climbing stairs, and with lifting and carrying and holding. Therefore, the panel finds that the ministry's determination that the evidence does not establish a severe physical impairment, was reasonable.

The ministry also argues that the evidence does not show that the appellant has a severe mental impairment. The ministry argues that although the physician has confirmed a diagnosis of depression, good functioning is reported when medication is taken regularly and as the appellant is living separate from the family, medication use can be erratic. The ministry points out that there is no information to suggest that exacerbations of mood occur with regularity or for extended periods. The ministry also argues that the Discharge Summary from 2001 and the Consultation Report from 2003 are 8 to 10 years old and do not represent the current severity of medical conditions or restrictions. The ministry argues that although the physician reports several deficits to cognitive and emotional functioning, the impacts on daily functioning are reported as mostly moderate to minimal with three major impacts on emotion, executive and motivation. The ministry points out that while the appellant experienced a serious decline about a year ago, this was likely related to a time when medication was not taken at a therapeutic level. The appellant argues, through her advocate, that the evidence establishes that she suffers from a severe mental impairment as a result of depression, dysthymia, PTSD,

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intermittent explosive disorder, physical and probably sexual abuse and traumatic death of father. The advocate argues that the Consultation Report from 2003 should be considered since the conditions described are ongoing and some are lifelong, eg. ADHD. The advocate points out that the appellant has had extended problems since she was 9 years old causing serious emotional disturbance requiring psychiatric treatment and medication. The advocate highlights the physician's report that indicates the appellant has several deficits to cognitive and emotional functioning, in executive, emotional disturbance, motivation, impulse control and attention/concentration. The advocate argues that the appellant needs support and supervision on a daily basis in order to take her medications and her physician has indicated that without someone to supervise her, medication use can be erratic. The advocate points out that the physician has noted that the appellant "has been severely restricted", indicating that the appellant's current impairment is severe.

The panel finds that the evidence of a medical practitioner in the PWD application confirms a current diagnosis of depression. Although the Consultation Report dated March 20, 2003 by the psychiatrist indicates diagnoses of dysthymia, PTSD, and intermittent explosive disorder, the panel finds that this information is dated by 10 years and there was no further information provided by a psychiatrist to confirm a current diagnosis and that these conditions are likely to continue for two years or more. The physician comments in the PWD application that the appellant has been in counseling since 1998, that anger/irritability, ADHD and depression are all an issue. The physician adds comments regarding the significance of the appellant's medical condition that "...she has been severely restricted." However, the panel finds that this narrative is not supported in the physician's assessment of specific, daily impacts as, in the assessor report, the physician has reported major impacts to daily cognitive and emotional functioning in 3 out of 14 areas, namely emotion, executive and motivation, with a majority of the impacts in the moderate to minimal range. The physician also indicates that the appellant has no difficulties with communication. The physician has reported the need for periodic support or supervision with all areas of social functioning, making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance with others, with the explanation that "...mother has intervened frequently," however no further description is provided of the degree of the support/supervision required in these areas.

The panel finds that the evidence of both the physician and the appellant demonstrates that the appellant functions well when she takes her medications. The physician noted in the physician report that the appellant "....does function well when on regular medication but now that is an adult without someone around to remind her to take it, medication use can be erratic and she had a serious decline in winter 2011 with anxiety attacks, isolation, inability to meet work demands, suicidal thoughts but no actions." The appellant stated that she takes medications for depression and mood stabilizers, and although she still has depressive thoughts, they are easier to control with the medications. The appellant stated that when she is not severely depressed she feels energetic and she can clean the house and do most things, and that she is more likely to help with chores. In her self-report, the appellant stated that in the best case scenario day-to-day chores like housework or errands (bank, groceries) are not a problem but depression affects her whole life when she is off of medication. The appellant stated that her mother either calls or texts her each day to remind her to take her medications and that during the appellant's period of decline last year, she was laid off from her employment, and had gone through a break-up of a long-term relationship and, with these additional stressors, she had stopped taking her medications. The appellant stated that she takes her medications when she is reminded. The appellant also stated that she gets severely depressed a bit more than half the time, or 50-60% of the time, and she described a feeling of heaviness on her shoulders, weighing her down physically, that she gets lethargic with no energy to do things that need to be done. The panel finds that the evidence from the physician regarding daily impacts to cognitive and emotional functioning indicates a moderate mental impairment and that it is not clear whether this assessment reflects the appellant's condition with or without medications, for which the appellant describes very different levels of functioning. Without further information from the physician regarding the frequency of the exacerbation of her condition as a result of the lack of medications at a therapeutic level, the panel finds that the ministry's decision, which concluded that the evidence does not establish a severe mental impairment, was reasonable.

The ministry argues that the evidence does not establish that the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. The ministry points out that the physician indicates in the assessor report that the appellant is mostly independent in her ability to manage all areas of DLA, i.e. 26 out of 28, with continuous help to fill and take prescriptions as directed, described as "...was off meds, frequent forgetting." The ministry argues that while periodic support/supervision is noted with all aspects of social functioning with marginal functioning in relationships, there is no description of the degree and duration of this support although it is reported that the appellant's mother has intervened frequently. The appellant's advocate argues that the evidence of the physician indicates that the appellant takes significantly longer to do her DLA, with getting out of bed, dressing, bathing, grooming, personal hygiene, taking medications, shopping, eating (especially healthy foods) and basic housekeeping. The advocate argues that the decision in Hudson v EAAT, 2009 BCSC 1461is authority for the position that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least 2 DLA and that significant weight must be placed on the evidence of the appellant unless there is a legitimate reason not to do so. The advocate points out that the appellant cannot fill or refill prescriptions without continuous assistance or take medications as directed on a daily basis without assistance.

The panel finds that the legislation requires that the opinion of a prescribed professional confirms that the appellant's ability to perform DLA is directly and significantly restricted either continuously or periodically for extended periods. In terms of preparing her own meals, the physician has indicated in the physician report that the appellant is periodically restricted with a comment that if the appellant took her medications or she was reminded she could do activities at a bare minimum. In the assessor report, the physician indicates that the appellant takes significantly longer than typical with most tasks, including meal planning, food preparation, and cooking with a note that there is "...lack of motivation to do." The appellant stated that she and her roommate will cook together a couple of times each week but the appellant will often choose simple, easy-to-prepare foods when cooking for herself and her mother and grandmother will prepare a few meals each week for her as well. For managing personal finances, the physician indicates in the physician report that appellant is periodically restricted and in the assessor report that the appellant takes significantly longer with all tasks of banking, budgeting and paying rent and bills, with the comment that she has a lack of motivation and is not worried about the consequences. The appellant stated that she procrastinates in paying bills. In terms of shopping for her personal needs, the physician indicates in the physician report that the appellant is periodically restricted and, in the assessor report, that the appellant takes significantly longer than typical with going to and from stores and making appropriate choices, and is independent with reading prices and labels, paying for purchases, and carrying purchases home.

For use of public or personal transportation facilities, the physician indicates in both the physician and assessor reports that the appellant is not restricted and is independent with all tasks, including getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation. With respect to performing housework to maintain the appellant's place of residence in an acceptable sanitary condition, in the physician report, it is indicated that the appellant is periodically restricted and, in the assessor report, that the appellant takes significantly longer than typical with doing laundry and basic housework, with the added note: "...bare minimum if at all." The appellant stated that sometimes day-to-day chores, like housework, are not a problem but at other times she feels lethargic with no energy to do things. For moving about indoors and outdoors, the physician has indicated in both the physician and the assessor reports that the appellant is not restricted and is independent in all areas of mobility and physical ability. Regarding performing personal hygiene and self care, the physician indicates in the physician report that the appellant is periodically restricted and, in the assessor report, that the appellant takes significantly longer than typical with 6 out of 8 tasks, with the comment: "...stay in PJ's as long as possible, do bare minimum personal hygiene." The appellant stated that when she is severely depressed she will stay in her PJ's, not take a bath or brush her teeth and will not clean up after herself. With respect to managing her personal medications, the physician indicates in the physician report that the appellant is continuously restricted and, in the assessor report, that the appellant requires continuous assistance from another person with filling/refilling prescriptions and taking as directed

while being independent with safe handling and storage ("was off meds, frequent forgetting"). The appellant stated that her mother contacts her daily to ensure that she has taken her medications. For making decisions about personal activities, care or finances, and with and relating to, communicating or interacting with others effectively, the physician indicates in the assessor report that the appellant requires periodic support/supervision in these areas, with no explanation or description provided other than that the appellant's mother has "intervened frequently." The appellant stated in her letter dated December 2, 2011 that she has a tendency to stay indoors until she is pushed to go out and socialize, and the appellant's mother states in her letter that the appellant takes significantly longer to get ready to go out than anyone else she knows and requires extra notice to go out or she has anxiety issues.

The panel finds that the prescribed professional has confirmed that the appellant is continuously restricted and requires continuous assistance from another person with management of medications and that she is continuously restricted and requires periodic assistance with all areas of social functioning. However, the panel finds that there is not sufficient information provided by the physician regarding the duration or frequency of the help needed in the areas of social functioning to establish the appellant requires periodic assistance for extended periods of time. The panel finds that the evidence demonstrates that there is a different level of social functioning depending on the appellant's use of medication, ranging from functioning with prompting to isolating and not picking up the phone, as occurred during a undefined length of time last year. As the physician indicates in the assessor report that the appellant is independent in her ability to manage all other tasks of DLA, i.e. 26 out of 28, the panel finds that the ministry's determination that the evidence of a prescribed professional does not establish a direct and significant restriction on the appellant's ability to perform DLA either continuously or periodically for extended periods, as required by Section 2(2)(b)(i) of the EAPWDA, was reasonable.

In determining whether the ministry reasonably concluded that the appellant does not require the significant help or supervision of another person or the use of an assistive device, the panel relies on the information from the physician and the appellant that she lives with a room-mate and that assistance is provided primarily by her mother but also by her grandmother. As it has not been established that DLA are significantly restricted, the panel finds that the ministry's conclusion that the requirement for significant help or supervision of another person, an assistive device, or the services of an assistance animal to perform DLA, under Section 2(2)(b)(ii) of the EAPWDA, has not been met was reasonable.

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(2)(a) of the Employment and Assistance Act.