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PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated March 8, 2012 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

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PART E – Summary of Facts

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

1) Diagnostic Imaging Reports dated May 11, 2011 for a right shoulder ultrasound which concludes there are partial width full-thickness tears of the supraspinatus and January 14, 2011 for a CT of the lumbosacral spine which concludes there is a mild degree of congenital and acquired spinal stenosis at L4-5 compromised by mild disc bulging; otherwise, no focal disc herniation;
2) Letter dated June 29, 2011 from an orthopedic surgeon to the appellant's physician stating in part that the appellant presents with complaints of pain in her right shoulder, she has noticed since the injury (January 2010) that she has discomfort doing any overhead activities, driving, and she is having difficulty lifting. She is not able to put any weight on her shoulder and she has difficulty housekeeping, playing her sports, doing her gardening. She has had a trial of a chiropractor who does a manipulation and this seems to help her. She is otherwise pretty healthy and takes over-the-counter medications. On clinical examination, the appellant has good range of motion of her shoulder but lots of pain anteriorly with resisted forward flexion of her arm; she also has pain with palpation in the proximal humerus. The ultrasound shows two full thickness tears of the distal supraspinatous tendon. She has good strength and good range of motion and would like to confirm tears on an MRI;
3) Person With Disabilities (PWD) Application: applicant information dated November 17, 2011, physician report dated October 8, 2011, and assessor report dated October 27, 2011;
4) Letter dated January 5, 2012 from the ministry to the appellant denying person with disabilities designation and enclosing a copy of the decision summary;
5) Letter dated February 21, 2012 from the appellant's physician 'To Whom It May Concern' which states that the appellant was in a MVA in January 2010 and since the accident has been dealing with various injuries. Regarding current issues that the appellant is dealing with, the physician indicates that the pain in her right shoulder has been especially problematic as she has limited range of motion and due to the lack of strength and pain she has not been able to return to her previous occupation. Ultrasound suggested two full thickness tears of the distal portion of the supraspinatus muscle and more recently a shoulder MRI demonstrated supraspinatus tendinopathy and a subtle grade 1 SLAP tear. The orthopedic surgeon feels there is not enough support that surgery will provide sufficient benefit to justify the associated risks of surgery. In addition to the physical limitations due to the chronic pain, the appellant is under stress due to various personal and health issues; her depression has intensified but to date she has not been on any pharmacotherapy. During the interview, her mood is labile, her affect is low, she lacks any motivation and is finding it increasingly difficult to concentrate and function with the low grade of chronic pain; the physician lists the appellant's past medical history to include: pre-menstrual tension syndrome, depression, hirsutism, polycystic ovarian syndrome, right shoulder supraspinatus tear, tendinopathy and SLAP Grade 1, and chronic lower back pain with right side L5-S1 nerve root signs;
6) Letter dated March 1, 2012 from the appellant 'To Whom It May Concern' which states in part that the appellant has limitations in the range of movement of her spine with lack of strength and chronic pain, and she is also in a serious depression from her chronic pain and life transitions. The appellant states that when she wakes with chronic pain, her focus, concentration, strength and motivation are gone, she is emotional with temper fits and crying episodes. She gets a great deal of assistance from her room-mate in the kitchen since chores like washing dishes take her 1/2 to an hour longer as she needs to rest from the pain caused by standing and bending on her waist, neck, and shoulders. Most days she is unable to provide healthy meal choices for herself, feeling very defeated and unmotivated. She is unable to lift heavy pots and move them around in the kitchen without assistance. Her lack of attention and concentration make it frustrating to focus on preparing a large meal, baking, and canning. Her room-mate does most of the sweeping, vacuuming, and mopping because her condition limits what she can do. Another task that her room-mate assists with is chopping firewood as the appellant is no longer able to do so. Doing her laundry takes longer as she hangs her clothes to dry and the bending and reaching causes her to rest for about 10 minutes in the middle. Driving her car is also a painful task and driving into town for groceries and doctor's appointments is an hour drive one way. Her personal care varies depending on her pain and depression and when she is depressed and in pain she is not motivated to get up. She is unable to sit in the bath tub and she gets pain, tingling and numbness into her leg and feet when she sits for 1/2 to an hour.

She finds that her depression is causing problems with managing her finances since the stress of budgeting and paying her bills is overwhelming. This also makes shopping stressful. When she takes medications, she finds her short term memory is absent and she forgets to fill prescriptions and to take the medication as required. Her anxiety and depression has increased due to her pending human rights hearing, her ICBC claim, employment insurance and chronic physical pain; and,

7) Request for Reconsideration- Reasons.

In her self-report included with the PWD application, the appellant refers to the court decision in Hudson v. EAAT 2009 BCSC 1461 as requiring the ministry to give weight to the appellant's statement unless there is a reason not to do so. The appellant states that her spinal cord injury and shoulder injury limit what she can do. The appellant states that she is unable to do most chores from beginning to end because she loses concentration and is in pain; these chores include vacuuming, sweeping, dusting, raking leaves, and chopping firewood. Due to the pain and the need for her to rest, all of these tasks take much longer. Although waking up 6 times during the night due to her pain is not uncommon, it can also lead to one of her bad days during which she is largely immobile. The appellant states that 3 to 4 times a week she has a bad day which includes not getting out of her pajamas, not leaving the house, and not moving except to use the bathroom. The appellant states that when she has driven an hour each way and spent the day in town, she does not have the ability to focus enough to make a meal and it is at times like this when she asks her room-mate to make a meal and clean up because she cannot. Planning a meal goes beyond the appellant's ability to concentrate and this has greatly limited her socializing. The appellant states that her anxiety and concentration issues also come about when she is shopping.

The physician who completed the physician report has confirmed that the appellant has been her patient for 1 year and that she has seen the appellant 11 or more times in that period. In the physician report, the physician confirms a diagnosis of mood disorder: depression and post traumatic stress disorder (PTSD), degenerative disc disease (DDD) of the cervical lumbar spine, rotator cuff injury and fibromyalgia- might be related to depression. The physician adds comments that: "....most of her injuries are related to a MVA that she was in in January 2010; injured cervical spine, thoracic-lumbar sprain and right shoulder injury; despite physio and chiro no improvement; right shoulder has 2 full thickness tears of supraspinatus muscle; neurological symptoms from nerve irritation more on the right, sciatica, bilateral hip pain; all this strain affects her ability to perform even simple tasks that require any physicality; shopping is difficult, she cannot go on her own because she tires from walking and is unable to carry packages; she does suffer from depression and some anxiety and there is a definite causal relationship between her chronic pain and depression; she has difficulty concentrating and with her memory recall." The physician report indicates that the appellant has not been prescribed medication that may interfere with her ability to perform DLA, and the appellant does not require an aid for her impairment. The physician reports that the appellant can walk 2 to 4 blocks unaided on a flat surface, she can climb 5 or more stairs unaided, she can lift 5 to 15 lbs., and can remain seated less than 1 hour. The physician reports that the appellant has difficulties with communication defined as "other" with the note that the appellant "...does find it difficult keep track of thoughts, will often loose (sic) train thoughts, and will mix up her words, however this does seem to be more so when is stressed." The physician indicates that there are significant deficits with cognitive and emotional function in the areas of executive, language, memory, emotional disturbance, motivation, impulse control ("anger"), and attention or sustained concentration, with the note "...often finds it difficult to express her emotions especially if stressed; being in chronic pain obviously also affects all of this, less able to deal with normal daily stressors."

The physician reports that the appellant's impairment directly restricts her ability to perform DLA, with continuous restrictions reported for management of medications, basic housework, daily shopping, use of transportation, and management of finances, as well as periodic restrictions with meal preparation and social functioning, with the note that "...emotional lability really varies depending on stress level, meal preparation just lacking motivation to even want to prepare food." For the periodic restriction to social functioning, the physician also notes that the appellant is "...emotionally labile, easily triggered can have anger outburst and behave inappropriate (sic) in social situation, often cry for no specific reason, because of concentration

problems difficult to have any serious conversation." For additional comments regarding the degree of restriction, the physician has noted that the appellant "...notes that even simple house chores like washing dishes aggravates her lower back pain, because of the height of the basin she has to lean slightly forward, cannot sit or stand for extended periods of time." Regarding the nature and extent of assistance required, the physician comments that "...because of memory and concentration difficulties, will often forget to take medicine, recently moved to single story house, so more mobile in the house now, public transport avoided because of anxiety feeling (illegible)." The physician reports that the appellant is not restricted in the areas of personal self care and mobility inside the home, while it is unknown whether the appellant is restricted with mobility outside the home. For additional comments, the physician adds that the appellant "...describes prolonged PTSD related to childhood issues of abuse and trauma from the accident. She still describes flashbacks and has been experiencing a lot of anxiety especially relating to financial issues since she is not able to return to her previous line of work because of injuries sustained... feels she has difficulty concentrating and problems with memory; pain which is chronic and persistent aggravates depression; she is not on any antidepressants, has not had any success with this in the past, currently not interested. Bilateral SI joint dysfunction, she cannot stand for extended periods because of strain on her back, she has to sit at an angle to relieve right hip pain."

The assessor report has been completed by a chiropractor who has known the appellant for approximately a year and a half and has seen her 11 or more times year for weekly to monthly chiropractic treatments. The assessor indicates that the appellant is independent in all areas of mobility and physical ability, including walking indoors and walking outdoors, climbing stairs, standing, lifting and carrying and holding. Walking indoors is assessed as taking significantly longer than typical ("50%"), as well as walking outdoors ("50%-less with inclines, carrying"), climbing stairs ("uses rails, causes pain") and carrying and holding ("has to be light- shoulder grabs"). The assessor indicates that the appellant is independent with all tasks of personal care while also taking significantly longer than typical with the task of bathing ("can't sit in tub- low back pain"). The assessor reports that the appellant is independent with doing laundry and with basic housekeeping, while also taking significantly longer than typical ("pain restrictions"). The assessor indicates that the appellant is independent with all of the tasks of shopping, while taking significantly longer than typical with going to and from stores ("walks"), paying for purchases ("confusion and anxiety at times"), and carrying purchases home ("smaller amounts, half speed"). Further, the assessor reports that the appellant is independent with all of the tasks of managing meals, taking significantly longer than typical with meal planning ("confusion and anxiety"), food preparation ("standing too long aggravates") and cooking. The assessor indicates that the appellant is also independent with paying rent and bills, banking and budgeting, with the note "confusion and anxiety". The assessor reports that the appellant is independent with all tasks of managing medications and also takes significantly longer than typical with taking medications as directed ("memory gaps"), and is independent with all tasks of managing transportation ("can cause pain", "anxiety and confusion").

In the assessor report, the chiropractor has indicated that there are major impacts to daily cognitive and emotional functioning in emotion, attention/concentration, motivation and other emotional or mental problems ("short fuse/ high temper- irritable"), as well as moderate impacts in executive and motor activity. The remaining 8 areas are assessed with minimal or no impacts to daily functioning. The chiropractor indicates that the appellant is independent in all areas of social functioning, including making appropriate social decisions, developing and maintaining relationships ("decreased social interaction since injury"), interacting appropriately with others, dealing appropriately with unexpected demands ("has problems with this at times") and securing assistance from others. The chiropractor indicates that the appellant has marginal functioning in her immediate social network (partner, family, friends) and good functioning with her extended social networks and notes that "...when interacts is positive but keeps participation at a minimum- pain will make her withdraw." The chiropractor indicates that the appellant receives assistance from family, friends and community service agencies (advocacy centre).

The hearing had previously been adjourned to allow the appellant time to consult with an advocate about preparing for the hearing, and the appellant confirmed that she had consulted with an advocate and was

prepared to proceed and to represent herself.

At the hearing, the appellant highlighted her letters dated November 16, 2011 and March 1, 2012 as setting out the various areas in which she is having problems and that these should all be taken into consideration as per the Hudson decision. The appellant also highlighted her physician's letter dated February 21, 2012 which describes her difficulties at different times and, particularly on November 24, 2010 where the physician indicates that she is unable to do her normal daily activities including cleaning and gardening, and she is unable to sit or stand for any extended period of time. The physician reports that the appellant still has positive signs for impingement when she was seen by the orthopedic surgeon and the appellant explained that, according to a medical information website, impingement syndrome is closely related to shoulder bursitis and rotator cuff tendonitis. The appellant explained that, in response to an injury, the muscles swell, pressure increases, blood flow decreases and the muscle tissue begins to fray like a rope and motions like reaching behind the back or overhead may cause pain. If the muscles are injured for a long period of time, the muscle may tear. The appellant stated that this means that the more that she uses her shoulder, the worse it is because she already has a tear in the muscle.

The appellant highlighted the letter from her orthopedic surgeon dated June 29, 2011 which indicates that the appellant has some discomfort in the shoulder doing any overhead activities and driving. The appellant pointed to the health history section of the physician report which describes that she was in a motor vehicle accident in January 2010, that she injured her cervical spine, had a thoracic-lumbar sprain and a right shoulder injury. The appellant stated that her physician confirmed that even simple chores like washing dishes aggravates her lower back pain and she cannot sit or stand for extended periods of time. The appellant referred to her physician's letter dated February 21, 2012 and explained that the past medical history lists hirsutism which is hair growth all over the body and that this has had an impact on her, both emotionally and physically, and has caused her to withdraw socially. The appellant stated that polycystic ovarian syndrome creates a huge hormonal imbalance and it makes healing of her other injuries challenging. The appellant stated that she has tried taking anti-depressants, for example, but these affect some of her other medical conditions, and she prefers to view food as her medicine.

The appellant explained that the assessor report was completed by a chiropractor who she sees only for a 10 minute adjustment procedure so he has limited knowledge of her other difficulties, although he has noted confusion and anxiety with some of her DLA and that she has memory gaps with taking her medications as directed. The appellant stated that the chiropractor also notes that she is impaired by chronic pain and that she cannot afford nutritional supplements that would be helpful in healing. The appellant stated that she needs more money to make healthy choices, that she has been off work since November 2009 and for 2 1/2 years she has been struggling to get back on her feet. The appellant stated that she would like to get braces for her wrists and her back and also massage and physical therapy. In response to a question, the appellant explained that she currently has one flimsy brace that she uses for her wrist when she is driving, cleaning, cooking, or when she is typing at her computer. The appellant stated that she uses natural supplements and over-the-counter medications for pain relief. The appellant stated that she lives on a mountain an hour drive out of town but she sees her physician about one time per week and she has plans to go to mental health for counseling in the future. The appellant stated that the pain in her back, shoulder and neck is constant and that driving aggravates it. The appellant explained that she when she was young she recognized one day as the time to do all the cleaning but now she can vacuum one day and that is all she can do, she will dust one day and then sweep the next day because she needs to take breaks.

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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 establish that the appellant has a severe physical impairment. The ministry points to the physician report where it is indicated that the appellant is able to walk 2 to 4 blocks unaided, to climb 5 or more steps unaided, to lift 15 to 35 lbs., and to remain seated for less than an hour. The ministry argues that the chiropractor also indicates that the appellant is independently able to do all aspects of mobility and physical abilities albeit walking takes 50% longer, she uses rails to climb stairs, has pain after 1/2 hour of standing and is limited to lifting light weights only. The ministry points out that no assistive devices are routinely used to assist ambulation although wrist braces are worn. The ministry argues that remedial measures in the form of analgesics are available and there is no description of how the appellant functions when her chronic pain is under control with medication. The ministry argues that the functional skills limitations are more in keeping with a moderate degree of impairment.

The appellant referred to the Hudson decision, as set out in her Self Report, and stated that it is authority for additional points, including: 1) the ordinary meaning of the plural "activities" for daily living activities (DLA) dictates that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least 2 DLA and not more, 2) the evidence of either the medical practitioner or the assessor must show that DLA are directly and significantly restricted and there is no requirement that this is confirmed by both, 3) there is no authority for reading the reports discreetly and the evidence must be considered in a broad way, even if the physician or the assessor do not tick a specific box in the PWD application, the evidence must be reviewed in full including narrative portions to see if eligibility confirmation is found elsewhere, 4) any ambiguity in the interpretation of the legislation should be resolved in favour of the appellant, and 5) the EAPWDA should be interpreted with a benevolent purpose in mind. The appellant argues that the evidence establishes that she suffers from a severe physical impairment as a result of DDD of the cervical lumbar spine, rotator cuff injury, fibromyalgia, pre-menstrual tension syndromes, hirsutism, and polycystic

ovarian syndrome. The appellant points to the physician report which describes the injuries she suffered as a result of a motor vehicle accident in January 2010, including to her cervical spine, that she had a thoracic-lumbar sprain and a right shoulder injury. The appellant argues that her physician confirms that even simple chores aggravates the appellant's lower back pain and she cannot sit or stand for extended periods of time. The appellant points to her physician's letter dated February 21, 2012 which lists her other conditions as part of her past medical history, which includes pre-menstrual tension syndromes, hirsutism, and polycystic ovarian syndrome. The appellant argues that her family physician was better able to assess the extent of the appellant's impairment as the appellant only ever met with the chiropractor for 10 minute adjustments.

The panel finds that the evidence of a medical practitioner confirms a diagnosis of DDD of the cervical lumbar spine, rotator cuff injury and fibromyalgia (might be related to depression). Although the appellant argues that her medical history also includes other conditions, the panel finds that these conditions have not been confirmed as likely to continue for at least 2 years, as required by the legislation. The physician reports that the appellant's injuries are related to a MVA that occurred over 2 years ago, with an injured cervical spine, thoracic-lumbar sprain and right shoulder injury and that, despite physiotherapy and chiropractic treatment, there has been no improvement. The physician report indicates that the appellant has not been prescribed medication that may interfere with her ability to perform DLA, and the appellant does not require an aid for her impairment. The physician reports that the appellant can walk 2 to 4 blocks unaided on a flat surface, she can climb 5 or more stairs unaided, she can lift 5 to 15 lbs., and can remain seated less than 1 hour. In the assessor report, the chiropractor indicates that the appellant is independent with walking indoors and walking outdoors as well as with climbing stairs and lifting and carrying and holding but takes significantly longer than typical with walking (50%) and climbing stairs (uses rails) and carrying and holding (has to be light- shoulder grabs).

With respect to the appellant's shoulder injury, the orthopedic surgeon indicates, in a letter dated June, 2011 that, on clinical examination, the appellant has good strength and good range of motion but lots of pain anteriorly with resisted forward flexion of her arm, and the appellant's physician provides an update in her letter of February 21, 2012 that the shoulder MRI demonstrated supraspinatus tendinopathy and a subtle grade 1 SLAP tear and the specialist does not support surgery as a beneficial option. The report of a CT of the lumbosacral spine dated January 14, 2011 concludes there is a mild degree of congenital and acquired spinal stenosis at L4-5 compromised by mild disc bulging but otherwise, there is no focal disc herniation. The appellant stated that the pain in her back, shoulder and neck is constant and that driving aggravates it, but she also stated that she drives an hour one way into town and back at least one time per week to see her physician and to get groceries and she says these are the days, when she returns, that she does not have the ability to focus enough to make a meal. Although the appellant states in her self-report that she has a spinal cord injury and that 3 to 4 times a week she has a bad day where she is largely immobile which includes not getting out of her pajamas, not leaving the house, and not moving except to use the bathroom, the panel finds that this is not consistent with the other evidence that has been provided. The appellant's physician reports that the appellant's fibromyalgia might be related to depression, but no elaboration is provided. Overall, the panel finds that the evidence demonstrates that the appellant is independent with her mobility and physical functioning, although it takes significantly longer than typical with most activities, and that the ministry was reasonable in finding a moderate degree of impairment. Therefore, the panel finds that the ministry's determination that the evidence does not establish a severe physical impairment, was reasonable.

The ministry argues that the evidence does not show that the appellant has a severe mental impairment. The ministry argues that the physician has identified several deficits to cognitive and emotional functioning, described as "...often finds it difficult to express her emotions especially if stressed; being in chronic pain obviously also affects a lot of this, less able to deal with normal daily stressors." The ministry argues that the chiropractor reports major impacts on daily functioning in the areas of emotion, attention/concentration, motivation and other emotional or mental problems described as "short fuse/high temper- irritable" and moderate impacts to executive and motor activity. The ministry points out that the remainder of impacts on daily functioning are minimal and there are a number of aspects with no impact at all. The ministry points out

that the letter from the physician dated February 21, 2012 confirms daily chronic low grade pain causes frustration and depression and that the appellant is under a lot of stress due to court cases, dealing with ICBC and unemployment insurance. However, the ministry argues that the resultant frustration and depression are not solely related to a medical condition but situational stressors also contribute to the appellant's mental health status and these stressors are expected to have an end date. The ministry argues that social functioning is performed independently and the appellant is able to make decisions about personal activities, care, and finances and is able to relate to, communicate or interact with others adequately for the most part.

The appellant argues that the evidence establishes that she suffers from a severe mental impairment as a result of a mood disorder: depression and PTSD. The appellant points to the physician's assessment that she has significant deficits in 7 of the 11 areas listed, as well as the chiropractor's assessment that there are several major and moderate impacts to daily cognitive and emotional functioning. The appellant argues that the physician reports she is restricted on a periodic basis with social functioning and that she is emotionally labile, easily triggered and can have anger outbursts and behaves inappropriately in social situations. The appellant argues that she is looking into counseling with mental health for the future.

The panel finds that the evidence of a medical practitioner confirms a diagnosis of a mood disorder: depression and PTSD. The physician indicates that the appellant "... does suffer from depression and some anxiety and there is a definite causal relationship between her chronic pain and depression; she has difficulty concentrating and with her memory recall." The physician reports that the appellant has difficulties with communication with the note that the appellant "...does find it difficult keep track of thoughts, will often loose (sic) train thoughts, and will mix up her words, however this does seem to be more so when is stressed." The physician indicates that there are significant deficits with cognitive and emotional function in the areas of executive, language, memory, emotional disturbance, motivation, impulse control ("anger"), and attention or sustained concentration, with the note "...often finds it difficult to express her emotions especially if stressed; being in chronic pain obviously also affects all of this, less able to deal with normal daily stressors." The physician indicates that the appellant "...describes prolonged PTSD related to childhood issues of abuse and trauma from the accident. She still describes flashbacks and has been experiencing a lot of anxiety especially relating to financial issues since she is not able to return to her previous line of work because of injuries sustained... feels she has difficulty concentrating and problems with memory; pain which is chronic and persistent aggravates depression; she is not on any antidepressants, has not had any success with this in the past, currently not interested."

In the assessor report, the chiropractor specifies that there are major impacts to daily functioning in 4 areas, being emotion, attention/concentration, motivation and other emotional or mental problems, described as "short fuse/high temper- irritable" as well as moderate impacts in two areas, specifically executive and motor activity. The appellant stated that she only met with the chiropractor for 10 minute adjustment sessions and that he is not as aware of her conditions as her family physician, and the panel places less weight on his evidence with respect to an assessment of a mental impairment as this was beyond his scope of interaction with the appellant. The chiropractor indicates that the appellant is independent in all areas of social functioning, and that the appellant has marginal functioning in her immediate social networks and good functioning in her extended social networks, described as "...when interacts, is positive, but keeps participation at a minimum- pain will make her withdraw." The appellant's physician reports that the appellant is restricted on a periodic basis with social functioning and comments with respect to the periodic nature that "...emotional lability really varies depending on stress level." The appellant's physician indicates that the appellant is under stress due to various personal and health issues; her depression has intensified but to date she has not been on any pharmacotherapy and that she is "...currently not interested." The appellant states in her self-report that she is in a serious depression from her chronic pain and life transitions, and her anxiety and depression have increased due to her pending human rights hearing, her ICBC claim, employment insurance and chronic physical pain. However, the appellant also stated that she is not currently taking anti-depressant medications because she has discovered that these medications can cause problems for her other medical conditions and she prefers to view food as medicine, but that she has not been able to afford the recommended natural

supplements. The panel finds that the appellant is currently not taking any medications or receiving counseling for a mental disorder. The panel finds that the evidence demonstrates that the degree of the appellant's mood disorder varies depending on both the level of stress as well as the amount of physical pain she is experiencing, that many of the listed stressors are situational external factors and the ministry reasonably determined that these stressors also contribute to the appellant's symptoms. The panel finds that the ministry reasonably determined that the appellant is independently able to make decisions about personal activities, care, and finances as confirmed in the assessor report. The evidence shows that the restrictions to relating to, communicating or interacting with others are periodic in nature and vary with the level of stress and the panel finds the ministry reasonably concluded that these are performed adequately for the most part. 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 reports continuous restrictions to management of medications, basic housework, daily shopping, use of transportation and management of finances, described as "...emotional lability really varies depending on stress level, meal preparation just lacking motivation to even want to prepare food" and no information is provided on the frequency or duration of the extreme stress. The ministry argues that the chiropractor reports that all DLA are performed independently, and the appellant is independently able to perform all aspects of social functioning albeit with decreased social interaction since injury and problems dealing with unexpected demands at times. The ministry argues that while several DLA are noted to be restricted, the appellant is able to perform all DLA, including social functioning, independently.

The appellant argues that the Hudson decision is authority for the position that the evidence from a prescribed professional must indicate a direct and significant restriction on at least two DLA and that there is no statutory requirement that more than two DLA be restricted. The appellant stated that she finds the application for PWD is set up for those in an urban setting and that there are many other DLA that are required for someone in a rural setting, as she is, that are not acknowledged as DLA in the forms, such as chopping firewood and gardening. The appellant points to the restrictions to DLA as reported by her physician as well as to the narrative by the physician and the appellant as establishing that her DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods.

The panel finds that the legislation requires that the ministry is satisfied 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. With respect to preparing her own meals, the physician reports that the appellant is restricted on a periodic basis with the clarification regarding periodic "...meal preparation- just lacking motivation to even want to prepare food." In the assessor report, the chiropractor indicates that the appellant is independent with all tasks, including meal planning, food preparation, cooking and safe storage of food, while taking significantly longer than typical with 3 tasks due to "confusion and anxiety" and "standing too long aggravates." In her self-report, the appellant states that most days she is unable to provide healthy meal choices for herself, feeling very defeated and unmotivated, that she is unable to lift heavy pots and move them around in the kitchen without assistance, and that her lack of attention and concentration make it frustrating to focus on preparing a large meal, baking, and canning. The appellant states that when she has driven an hour each way and spent the day in town, she does not have the ability to focus enough to make a meal and it is at times like this when she asks her room-mate to make a meal and clean up because she cannot. For managing personal finances, the physician indicates that the appellant is continuously restricted, and provides additional comments that the appellant "...has been experiencing a lot of anxiety especially relating to financial issues since she is not able to return to her previous line of work because of injuries sustained." The panel finds that the physician suggests that there are financial reasons for the appellant experiencing anxiety and restrictions with this DLA, and not as a result of a mental impairment. The chiropractor assesses the appellant as independent with all tasks, including banking, paying rent and bills,

and budgeting, with the note "confusion and anxiety." In her self-report, the appellant states that her depression is causing problems with managing her finances since the stress of budgeting and paying her bills is overwhelming. In terms of shopping for her personal needs, the physician indicates that the appellant is restricted on a continuous basis, and the chiropractor assesses the appellant as independent with all tasks, while taking significantly longer than typical with 3 tasks described as "confusion and anxiety at times" and "smaller amounts, half speed." The appellant states in her self-report that her anxiety and concentration issues also come about when she is shopping, that since the stress of budgeting and paying her bills is overwhelming, this also makes shopping stressful.

For use of public or personal transportation facilities, the physician indicates that the appellant is continuously restricted and comments that "...public transport avoided because of anxiety." The chiropractor has assessed the appellant as independent with all tasks, including getting in and out of a vehicle, using public transit and using transit schedules and arranging transportation, with the comments "can cause pain" and "anxiety and confusion." The appellant did not provide evidence regarding her use of public transportation and stated she lives in a remote area and that she drives an hour one way into town and back at least one time per week to see her physician and to get groceries. With respect to performing housework to maintain the appellant's place of residence in an acceptable sanitary condition, the physician indicates that the appellant is continuously restricted with the comment that the appellant "...notes that even simple house chores like washing dishes aggravates her lower back pain." The chiropractor reports that the appellant is independent with basic housekeeping and doing her laundry while taking significantly longer than typical with the note "pain restrictions." In her self-report, the appellant states that she gets a great deal of assistance from her room-mate in the kitchen since chores like washing dishes take her 1/2 to an hour longer as she needs to rest from the pain caused by standing and bending on her waist, neck, and shoulders, that her room-mate does most of the sweeping, vacuuming, and mopping because her condition limits what she can do. The appellant states that doing her laundry takes longer as she hangs her clothes to dry and the bending and reaching causes her to rest for about 10 minutes in the middle. The appellant also states that she is unable to do most chores from beginning to end because she loses concentration and is in pain; these chores include vacuuming, sweeping, dusting, raking leaves, and chopping firewood. At the hearing, the appellant stated that due to the pain and the need for her to rest, she can vacuum one day and that is all she can do, she will dust one day and then sweep the next day because she needs to take breaks and that all of these tasks take her longer.

For moving about indoors and outdoors, the physician indicates that the appellant is not restricted with mobility inside the home ("recently moved to a single story house so more mobile in the house now") and that it is unknown if she is restricted outside the home. The chiropractor assesses the appellant as independent with walking indoors, with walking outdoors and with climbing stairs and that, although it takes her significantly longer than typical (50%), she does not use an assistive device for mobility. Regarding performing personal hygiene and self care, the physician indicates that the appellant is not restricted with personal self care, and the chiropractor confirms that the appellant is independent with all tasks of personal care, including dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off a chair, while bathing takes longer ("can't sit in tub-low back pain"). The appellant states that her personal care varies depending on her pain and depression and when she is depressed and in pain she is not motivated to get up. With respect to managing her personal medications, the physician indicates that the appellant is restricted on a continuous basis with the comment that "...because of memory and concentration difficulty, will often forget to take medicine." The chiropractor assesses the appellant as independent with all tasks including filling/refilling prescriptions, taking as directed and safe handling and storage, while taking significantly longer than typical with taking medications as directed and the comment "memory gaps." The appellant stated that she is not currently taking prescription medications. For making decisions about personal activities, care or finances, the physician reports that the appellant is periodically restricted with social functioning and comments that the appellant is "...emotionally labile, easily triggered, can have anger outbursts and behave inappropriate (sic) in social situation, often cry for no specific reason, because of concentration problems, difficult to have any serious conversation." The chiropractor again assesses the appellant as independent in all areas of social functioning, including making appropriate social decisions. For relating to, communicating or interacting with

others effectively, the physician assesses the appellant as having difficulties with communication described as the appellant finding it difficult to keep track of thoughts, that she will often lose her train of thoughts and will mix up words "...however this does seem to be more so when is stressed." The chiropractor assesses the appellant as independently able to develop and maintain relationships, interact appropriately with others, and to secure assistance from others.

The panel finds that although the appellant's physician has reported that the appellant is continuously restricted with 5 DLA, namely management of finances, daily shopping, management of transportation and medications, and basic housework, that she is periodically restricted with 2 DLA and not restricted with 2 DLA, the chiropractor has assessed the appellant as independent in 33 out of 33 individual tasks of DLA. When the consistent evidence is considered, including the narrative portions of the reports and letters, the panel finds that many DLA are subject to the impact of stress from financial issues, particularly the DLA of management of finances and shopping, or other situational stressors (her pending human rights hearing, her ICBC claim, employment insurance), and that the ministry reasonably concluded that many of these stressors are situational external factors that also contribute to the appellant's symptoms. The panel finds that the appellant's evidence is that she chooses not to use prescription medications and that she does not use public transportation since she drives. The panel finds that the appellant's functional skill limitations as described by her physician, that she can walk 2 to 4 blocks unaided on a flat surface, she can climb 5 or more stairs unaided, she can lift 5 to 15 lbs., and can remain seated less than 1 hour, as well as by the chiropractor that she is independent in all areas of mobility and physical ability and does not require or use an assistive device for mobility, do not support a finding that the restrictions to the appellant's DLA are significant. Regarding the appellant's shoulder injury, the orthopedic surgeon indicates a conclusion that the appellant has good strength and good range of motion. The panel finds that the evidence shows that the DLA of basic housework takes the appellant significantly longer than typical but that she performs the tasks independently. The appellant argues that the Hudson decision is authority for the position that only 2 DLA need to be restricted, however the ministry must be satisfied that the evidence of a prescribed professional establishes that the severe impairment "directly and significantly" restricts the person's ability to perform DLA, either continuously or periodically for extended periods of time, which the panel finds the ministry reasonably concluded was not shown in the appellant's case. Therefore, 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 prescribed professionals and the appellant that she lives with a room-mate and receives the help of her room-mate, family and the advocacy centre and sometimes uses a wrist brace as an assistive device. 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.

Overall, 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.