

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated September 11, 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 established 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) Person With Disabilities (PWD) Application: applicant information dated April 11, 2012 with attached worksheets, physician report dated April 13, 2012, and assessor report dated April 13, 2012;
- 2) Letter dated June 14, 2012 from the ministry to the appellant denying person with disabilities designation and enclosing a copy of the decision summary;
- 3) Letter dated July 26, 2012 from the appellant's physician 'To Whom It May Concern' stating in part that the appellant has been diagnosed with chronic anxiety, osteoporosis, hearing loss, glucose intolerance and asthma, which conditions are likely to continue for more than 2 years and must be considered a severe impairment. The physician opines that the appellant meets all the criteria of the definition of a PWD, that she suffers from chronic long-term anxiety that affects her daily living activities (DLA) and she also requires hearing aids and corrective lenses. The appellant is significantly restricted in her cognitive and emotional functioning in the following areas: emotional disturbance, motivation, executive, language, memory and attention or sustained concentration. The appellant is also restricted in her DLA in the following areas: personal self care, meal preparation, basic housework, daily shopping, mobility inside the home, mobility outside the home, management of finances, social functioning (daily decision making, interacting, relating and communicating with others). The physician states that she confirms that the appellant has a severe impairment that significantly restricts her ability to perform her DLA and, as a result of those restrictions, the appellant requires help to perform those activities; and,
- 4) Request for Reconsideration dated August 15, 2012- submission dated July 26, 2012 prepared by an advocate on behalf of the appellant.

Prior to the hearing, the appellant provided a submission dated October 15, 2012 prepared by an advocate on her behalf. The panel reviewed the submission, which did not contain new evidence, and accepted it as argument on behalf of the appellant. The ministry relied on its reconsideration decision as its submission.

In her Notice of Appeal, the appellant stated that she feels the ministry decision is only based on her ability to perform DLA and that she does suffer from severe disabilities that restrict her DLA. In the Request for Reconsideration, the advocate makes arguments based on the evidence that will be set out in the Reasons.

For her self-report in the PWD application, the appellant completed a Worksheet and described her disability as childhood neglect, depression, uncontrollable crying, childhood trauma (sexually molested and raped), severe memory problem (block out abuse), asthma and allergies, chronic back pain, two ear operations as a result of head trauma (fell out of moving vehicle as a child). Her symptoms are listed as sleep changes, severe memory problems, sadness/uncontrollable crying, executive (dysfunction), anxiety/agitation, and not eating or over-eating. The appellant indicated that she needs hearing aids and glasses as assistive devices. The appellant indicated that she requires both continuous and periodic assistance and that she has both a severe physical and a severe mental impairment. The appellant indicated that she needs help with many tasks of DLA, including with areas of cognitive and emotional functioning, physical mobility (bending, getting up from kneeling), personal care (standing in shower, reaching, maintaining sleep patterns), eating (over eating or not eating, low blood sugar, shaky and weak), all tasks of housecleaning, some tasks of managing finances (remembering to pay bills, controlling impulse buying), all areas of mobility inside and outside the home and shopping, many areas of social functioning and communication, with no need for assistance with management of medication or for meal preparation (only for short periods of time).

The physician who completed the physician report has confirmed that the appellant has been a patient of the practice since 2006 and that she has seen the appellant 2 to 10 times in the last 12 months. In the physician report, the physician confirms a diagnosis of chronic anxiety, osteoporosis, hearing loss (mild)/vertigo, glucose intolerance, asthma, chest pain (pleural pain), normal MIBI scan. The physician added comments that the appellant has "...chronic long-term anxiety that affects her daily functioning, social withdrawn, emotional labile, irritable, poor concentration and focus, low energy levels; she has mild raised blood glucose, get occasional lows; osteoporosis causing chronic lower back pain; asthma: control fine but get about 2 bouts of bronchitis per

year." The physician report indicated that the appellant has not been prescribed medication that may interfere with her ability to perform DLA and that she does require an aid for her impairment as she "...requires hearing aids, corrective lenses." The physician reported that the appellant can walk 4 or more 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 for less than 1 hour. The physician reported that the appellant has no difficulties with communication. The physician indicated that there are significant deficits with cognitive and emotional function in the areas of executive, language, memory, emotional disturbance, motivation and attention or sustained concentration. The physician reported, in Part E, that the appellant is restricted periodically in the areas of personal self care, meal preparation, and basic housework, and is restricted continuously in the areas of mobility inside the home and mobility outside the home, as well as with social functioning ("poor decision making, limited concentration/motivation"), and has undefined restrictions in the area of daily shopping. The physician reported that the appellant is not restricted in the areas of management of medications, use of transportation and management of finances. For additional comments regarding the degree of restriction, the physician noted "mild to moderate" and, for assistance with DLA, that the appellant "...needs assistance family/friends with tasks around the house."

The assessor report was also completed by the physician as the prescribed professional. The physician indicated that the appellant's ability to communicate is good or satisfactory in all areas except for hearing which is poor and she requires hearing aids. The physician indicated that the appellant is independent with walking indoors and walking outdoors as well as with climbing stairs and standing, and she takes significantly longer than typical with lifting and carrying and holding ("have chronic lower back pain secondary to osteoporosis -illegible- spine"). The physician indicated that the appellant is independent with all tasks of personal care, including dressing, grooming, bathing, toileting, feeding self, regulating diet, but takes significantly longer than typical with bathing ("some difficulty with showering due to back pain"), and with transfers in/out of bed and on/off of chair. The physician reported that the appellant requires periodic assistance from another person with doing laundry and with basic housekeeping, with no further explanation or description provided. The physician indicated that the appellant requires periodic assistance with going to and from stores and requires continuous assistance from another person with carrying purchases home, and is independent with making appropriate choices and paying for purchases, while taking significantly longer with reading prices and labels. The physician assessed the appellant as being independent with meal planning but she takes longer than typical, and with safe storage of food, but requires periodic assistance from another person with food preparation and cooking, with no further explanation or description provided. The physician indicated that the appellant requires continuous assistance from another person with banking, budgeting and paying rent and bills ("impulse buying, forget to pay bills"). The physician reported that the appellant is independent with all tasks of managing medications (filling-refilling prescriptions, taking as directed, safe handling and storage) and transportation, while taking significantly longer than typical with getting in and out of a vehicle.

The physician reported that the appellant's mental impairment has a moderate impact on her cognitive and emotional functioning in the areas of bodily functions, emotion, attention/concentration, executive, memory, and motivation. The physician indicated that there is a minimal impact to language and no impact to the remaining 7 areas. The physician indicated that the appellant is independent with making appropriate social decisions and developing and maintaining relationships, while requiring periodic support/supervision with interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The physician indicated that the appellant has good functioning in her immediate social network and marginal functioning with her extended social networks. The physician noted that the support/supervision required which would help maintain the appellant in her community is "...assistance from Indian band, family, friends, to help and assist with decisions/tasks." Help is provided by family, friends, and community service agencies and the appellant routinely uses hearing aids to help compensate for her impairment.

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 as follows:

Persons with disabilities

2 (1) In this section:

"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as follows:

Definitions for Act

2 (1) For the purposes of the Act and this regulation, **"daily living activities"**,

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
 - (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self care;
 - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.

Severe Physical Impairment:

The ministry argues that the evidence does not establish that the appellant has a severe physical impairment. The ministry argues that although the appellant's physician provided statements in the letter dated July 26, 2012 that the appellant has a severe impairment, no details are provided regarding the degree of impairment and restriction that are additional to those set out in the reports in the PWD application. The ministry points to the physician report where it is indicated that the appellant is able to walk 4 or more blocks unaided, to climb 5 or more steps unaided and that the degree of restriction is mild to moderate. The ministry argues that there is no additional information submitted to explain that the appellant's functioning has recently changed from that reported in the PWD application.

The appellant's advocate argues that the appellant has a severe physical impairment as a result of a combination of conditions, that she has raised blood glucose, osteoporosis that causes lower back pain and asthma. The advocate argues that the appellant requires assistance with all aspects of mobility inside and outside the home. The advocate argues that the court decision in *Hudson v. EAAT, 2009 BCSC1461* is authority for the position that the application is sufficient if the evidence of the medical practitioner and the assessor, when read together, confirm that a person has a severe impairment and that the evidence must be read in its entirety and in a broad way, that significant weight must be placed on the evidence of the applicant unless there is a legitimate reason not to do so, and the legislation must be interpreted with a benevolent purpose in mind.

The panel finds that the evidence of a medical practitioner confirms a diagnosis of osteoporosis, hearing loss (mild)/vertigo, glucose intolerance, asthma, and chest pain (pleural pain) with a normal MIBI scan. The physician added comments that the appellant has "...mild raised blood glucose, get occasional lows; osteoporosis causing chronic lower back pain; asthma: control fine but get about 2 bouts of bronchitis per year." The physician report indicated that the appellant has not been prescribed medication that may interfere with her ability to perform DLA and that she does require an aid for her hearing loss impairment, being hearing aids. The physician reported that the appellant can walk 4 or more 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 for less than 1 hour. In the assessor report, the physician indicated that the appellant is independent with walking indoors and walking outdoors as well as with climbing stairs and standing, and she takes significantly longer than typical with lifting and carrying and holding ("...chronic lower back pain secondary to osteoporosis"). Although the letter dated July 26, 2012 from the appellant's physician includes a statement that the appellant has been diagnosed with conditions including osteoporosis, hearing loss, glucose intolerance and asthma, which must be considered a severe impairment, the panel finds that the ministry reasonably concluded that there are no details provided regarding the degree of impairment besides those set out in the reports in the PWD application. The panel finds that the evidence provided by the physician demonstrates that the appellant has good mobility and functional skills in the moderate range. Therefore, the panel finds that the ministry's determination that the evidence does not establish a severe physical impairment, was reasonable.

Severe Mental Impairment:

The ministry argues that the evidence does not show that the appellant has a severe mental impairment. The ministry points out that the physician reports deficits to cognitive and emotional functioning with moderate, minimal or no impacts to functioning. The ministry argues that although the appellant's physician provided

statements in the letter dated July 26, 2012 that the appellant has a severe impairment, no details are provided regarding the degree of impairment and restriction that are additional to those set out in the reports in the PWD application.

The appellant's advocate argues that the appellant has a severe mental impairment as a result of chronic anxiety, and that she also suffers from depression, uncontrollable crying, childhood trauma (sexually molested and raped), and severe memory problem (block out abuse). The advocate points to the physician's notes that the appellant has chronic long-term anxiety that affects her daily functioning, that she is socially withdrawn and emotionally labile with poor concentration and focus and low energy levels. The advocate argues that the physician indicated that the appellant is restricted with social functioning, with daily decision making, interacting, relating and communicating with others. The advocate argues that the physician indicated that the appellant has significant deficits in the areas of executive, language, memory, emotional disturbances, motivation and attention or sustained concentration.

The panel finds that the evidence of a medical practitioner confirmed a diagnosis of chronic anxiety, with comments that the appellant has "...chronic long-term anxiety that affects her daily functioning, social(ly) withdrawn, emotional(ly) labile, irritable, poor concentration and focus, low energy levels." The physician reported that the appellant has no difficulties with communication. The physician reported, in Part E, that the appellant is restricted continuously in the area of social functioning ("poor decision making, limited concentration/ motivation") with the degree of restriction noted as "mild to moderate." In the assessor report, the physician indicated that the appellant is independent with making appropriate social decisions and developing and maintaining relationships, while requiring periodic support/supervision with interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. There is no narrative provided to describe the frequency or duration of the support/supervision required in these areas. The physician indicated that the appellant has good functioning in her immediate social network and marginal functioning with her extended social networks. In the physician report, the physician indicated that there are significant deficits with cognitive and emotional function in the areas of executive, language, memory, emotional disturbance, motivation and attention or sustained concentration. In the assessor report, however, the physician indicated that there are no major impacts to the appellant's cognitive and emotional functioning, that there are moderate impacts in the areas of bodily functions, emotion, attention/concentration, executive, memory, and motivation, and a minimal impact to language and no impact to the remaining 7 areas of functioning. Although the letter dated July 26, 2012 from the appellant's physician includes a statement that the appellant has been diagnosed with conditions including chronic anxiety which must be considered a severe impairment, the panel finds that the ministry reasonably concluded that there are no details provided regarding the degree of impairment besides those set out in the reports in the PWD application. The panel finds that the ministry's decision, which concluded that the evidence does not establish a severe mental impairment, was reasonable.

Direct and Significant Restriction:

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 that the appellant is able to walk 4 or more blocks and climb 5 or more stairs unaided and walking indoors and outdoors, climbing stairs and standing are indicated to be independent. The ministry argues that the physician indicates the degree of restriction as mild to moderate. The ministry argues that in the assessor report the physician indicates that carrying purchases home and paying rent and bills are activities indicated to require continuous assistance, however the remaining activities are indicated to be independent, take significantly longer or require periodic assistance or support/supervision. The ministry argues that no description is provided regarding how much longer than typical is taken or the type or amount of the assistance that is required. The ministry points out that although the letter signed by the physician includes a statement that the appellant has a severe impairment that significantly restricts her DLA, no additional details are provided by the prescribed professional who completed the PWD application regarding the degree of impairment or restriction.

The appellant's advocate argues that the evidence of the appellant's physician seen together with the appellant's evidence shows that the appellant's DLA are directly and significantly restricted either continuously or periodically for extended periods. The advocate argues that the court decision in *Hudson v. EAAT, 2009 BCSC1461* is authority for the position that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two DLA, that there is no statutory requirement that more than two DLA be restricted. The advocate argues that the physician indicated that the appellant is restricted in DLA in the areas of personal self-care, meal preparation, basic housework, daily shopping, mobility inside the home, mobility outside the home, social functioning (daily decision making, interacting, relating and communicating with others).

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. In the physician report, the physician reports that, for preparing her own meals, the appellant is restricted on a periodic basis. In the assessor report, the physician indicated that the appellant is independent with safe storage of food and meal planning, but requires periodic assistance with food preparation and cooking. In the Worksheet included as her self-report, the appellant indicated no specified need for assistance with meal preparation, with the note "...only for short periods of time." There is no further explanation or description provided by the physician regarding the frequency or duration of assistance. For managing personal finances, the physician indicates in the physician report that the appellant is not restricted in this area and, in the assessor report, that the appellant requires continuous assistance from another person or she is unable to do banking, budgeting and paying rent and bills, with the note "...impulse buying, forget to pay bills." In the Worksheet included as her self-report, the appellant indicated that she requires some assistance with the tasks of managing finances like remembering to pay bills and controlling impulse buying. In terms of shopping for her personal needs, the physician indicates that the appellant is restricted in this area but does not identify the degree and, in the assessor report, the physician indicates that the appellant requires continuous assistance from another person with carrying purchases home and periodic assistance with going to and from stores and is independent with the tasks of making appropriate choices, paying for purchases and reading prices and labels (takes significantly longer than typical). In the Worksheet, the appellant indicated that she requires assistance with most areas of shopping.

For use of public or personal transportation facilities, the physician indicates in the physician report that the appellant is not restricted in this DLA and, in the assessor report, that the appellant is independent with all tasks although it takes her significantly longer with getting in and out of a vehicle. With respect to performing housework to maintain the appellant's place of residence in an acceptable sanitary condition, in the physician report the physician indicates that the appellant is periodically restricted and, in the assessor report, that the appellant requires periodic assistance from another person with laundry and basic housekeeping. There is no further explanation or description provided by the physician regarding the frequency or duration of assistance. In her self-report, the appellant indicates that she requires assistance with all tasks of housecleaning. For moving about indoors and outdoors, the physician indicates in the physician report that the appellant is continuously restricted with mobility inside and outside the home, however the appellant can walk 4 or more blocks unaided. In the assessor report, the physician indicates that the appellant does not require assistance and is independent with walking indoors and with walking outdoors and with climbing stairs. In her self-report, the appellant indicates that she requires assistance with all areas of mobility inside and outside the home.

Regarding performing personal hygiene and self care, the physician indicates in the physician report that the appellant is periodically restricted with this DLA and, in the assessor report, 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, although she takes significantly longer than typical with bathing ("some difficulty with showering due to back pain") and transferring in/out of bed and on/off of chair. In the self-report Worksheet, the appellant indicated she requires assistance in some areas of personal care, including standing in the shower, reaching, maintaining sleep patterns, eating (over eating or not eating, low

blood sugar, shaky and weak). With respect to managing her personal medications, the appellant's physician indicates in the physician report that the appellant is not restricted in this area and, in the assessor report, that the appellant does not require assistance with the tasks of filling/refilling prescriptions, and taking medications as directed and safe handling and storage. In the self-report Worksheet, the appellant did not indicate a need for assistance with management of her medications. For making decisions about personal activities, care or finances, the physician reports that the appellant is continuously restricted in social functioning and, in the assessor report, that the appellant is independent with making appropriate social decisions but requires continuous assistance with all takes of managing her finances. For relating to, communicating or interacting with others effectively, the physician reports no difficulties with communication. With respect to interacting appropriately with others, the physician reports that the appellant requires periodic support/supervision and also that she has good functioning in her immediate social networks and marginal functioning in her extended social networks.

Looking at the evidence as a whole, the panel finds that the appellant's physician, as a prescribed professional, has reported that the appellant is continuously restricted with mobility inside and outside the home outside the range of walking 4 or more blocks unaided, that she does not use an assistive device for mobility and has been assessed as independent with mobility. Although social functioning is continuously restricted, the need for assistance is assessed as periodic in 3 of 5 areas, with no further descriptions of the frequency or duration of the assistance needed to establish that the periodic assistance is required for extended periods of time. The appellant's advocate argues that there is no statutory requirement that more than 2 DLA be restricted, however the panel finds that the ministry reasonably determined that the evidence does not establish a direct and significant restriction on a minimum of two DLA on either a continuous basis or periodically for extended periods of time. 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.

Help in Relation to DLA:

The ministry's position is that since it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons. The appellant's position is that she requires the significant help or supervision of another person in order to perform her directly and significantly restricted DLA.

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 notes the information from the physician and the appellant that she lives alone and receives assistance for DLA from friends, family and community service agencies and uses hearing aids and corrective lenses as assistive devices. As it has not been established that the ability to perform DLA is 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.

Conclusion:

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.