

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated December 22, 2011 which held that the appellant did not meet all of the applicable statutory requirements of Section 2 of the Employment and Assistance Regulation (EAR) to qualify as a person with persistent multiple barriers to employment (PPMB). The ministry was satisfied that the evidence establishes that the appellant has a medical condition, other than an addiction, that is confirmed by a medical practitioner and that, in the opinion of the medical practitioner, has continued for at least 1 year and is likely to continue for at least 2 more years. However, the ministry was not satisfied that the medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment, pursuant to Section 2(4)(b) of the EAR.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 2

PART E – Summary of Facts

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

- 1) Medical Report- Persons with Persistent Multiple Barriers (PPMB) dated September 2, 2011, which states, in part, that: the appellant's primary medical condition is "anxiety/depression" with a date of onset of March 19, 2010; the prognosis sets out that the expected duration of the medical condition is 2 years or more with the additional comment that "...very little past history available on patient to review, she is new to clinic since March 2010" and it is indicated that the medical condition is not episodic in nature. In the section of the Report regarding restrictions, there is a notation of "none";
- 2) Employability Screen print out dated November 1, 2011, noting a total score of "15";
- 3) PPMB Checklist dated November 1, 2011;
- 4) Client Employability Profile dated November 1, 2011 which states in part that the appellant was in the office to complete the renewal package, she attended with an advocate as she has anxiety, depression and trust issues; she cried throughout most of the interview and describes her life as in turmoil and things never go smoothly, that things have not improved, she has back pains, is always tired, not able to sleep at night, continuing to take medications and doctor is trying to stabilize her, she has been going to counseling and is going to make application for persons with disabilities (PWD) designation;
- 5) Letter from the ministry to the appellant dated November 15, 2011 advising she no longer meets the requirements for PPMB;
- 6) Letter from the appellant's physician dated December 1, 2011 referring the appellant to a mental health physician on a semi-urgent basis. The letter states in part that the appellant has a history of depression and anxiety, that the appellant is reluctant to discuss, and has recently been evicted from her home and lost her dog. The appellant feels overwhelmed, anxious, unsafe, with fleeting suicidal thoughts;
- 7) Letter from a mental health emergency and intake nurse to the ministry dated December 13, 2011 stating in part that the appellant will be attending the mental health office for the next 6 months, with an appointment booked for the appellant on February 2, 2012 with a psychiatry physician and the appellant will be completing an application for a PWD application; and,
- 8) Request for Reconsideration- Reasons.

Prior to the hearing, the appellant provided an additional document, being a Medical Report- PPMB dated January 16, 2012, which states, in part, that: the appellant's primary medical condition is "depression/ chronic anxiety" with a date of onset of 2004 and her secondary medical condition is chronic back pain with date of onset of "many years"; the prognosis sets out that the expected duration of the medical conditions is 2 years or more with the additional comment that "...this has been chronic" and it is indicated that the medical conditions are not episodic in nature. In the section of the Report regarding restrictions, there is a notation that "...her limitations involve back pain- can do no heavy lifting, no bending, can't stand too long; her anxiety is limiting as well- doesn't like to leave house or be in social situations, stress around other people." The ministry did not object to the admissibility of this document. The panel reviewed the document and admitted the portions of the Report relating to the appellant's initial diagnosis of anxiety/depression, and being in support of the information and records before the ministry on its reconsideration, but did not admit the portions relating to a new diagnosis of chronic back pain, as not being before the ministry on reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act.

The appellant's advocate stated that the appellant has been meeting with him, as a mental health emergency and intake nurse, approximately once a week or every two weeks. The advocate stated that the appellant experiences mood fluctuations, especially since she has been evicted from her home, and she has been concerned with finding a place to live for her herself and her children. The advocate states that the physician who completed the Medical Report dated January 16, 2012, who is the appellant's family physician, discussed the appellant with him and told him that the appellant has had depression for 8 years, that her mood stabilization is a priority, and that he does not see her going back to work any time soon. The advocate stated that the appellant has now met with the psychiatrist and that she is of the opinion that the appellant is experiencing symptoms of PTSD (post traumatic stress disorder) from past abuse and she adjusted the

appellant's medications and wants to see the appellant again in 1 month. The advocate stated that the appellant is still living at the women's shelter and she is calmer because she feels safe from an abusive landlord, who she is dealing with through the residential tenancy board. The advocate stated that the appellant has shown signs of agoraphobia and she isolates herself at the women's shelter, that she rages with minor difficulties, and complains of back pain from arthritis. The advocate stated that he is working with the appellant on strategies for maintaining housing and mood regulation and he is of the opinion that the appellant will not be ready to go back to work until her mood swings and her living circumstances have stabilized.

The appellant stated that she has been given some new medications and she was burning the midnight oil to prepare for the hearing, and she feels singled out by the ministry since they held back some cheques alleging that the appellant did not report all the income that she had received. The appellant stated that she was put at risk of eviction for non-payment of rent as a result, when it was an innocent loan between a mother and daughter. In July 2011, the ministry wanted more information to renew her PPMB status and she requested her medical records be transferred from her previous community to her doctor's office in her current community. The appellant stated that her dog died, she was not receiving child support payments so could not pay the rent, her landlord turned down the heat in October 2011 and shut off the hot water in December 2011 and she and her 15-year-old son got very sick. The appellant stated that she entered the women's shelter just before Christmas with her son and her 12-year-old grand-daughter who lives with her. The appellant stated that her lower back hurts and her right arm has been numb for the past week. The appellant stated that she has many aches since her husband thought it was a good idea to break several of her bones when she was sleeping. The appellant stated that she has been going to counseling for 15 years to deal with this and she is not emotionally or physically able to work right now and her current problems have hampered her healing. The appellant stated that the psychiatrist told her she has signs of PTSD as well as borderline personality disorder.

In her Request for Reconsideration, the appellant adds that the doctor who assessed her for this application was a walk-in clinic physician, due to her family physician being away at the time, and he does not know her. The appellant states that she has been booked to see a psychiatrist on February 2, 2012. The appellant states that her current multiple barriers are: chronic anxiety, PTSD issues from abusive landlord(s), near continuous agoraphobia and isolation, panic attacks 2-3 a day, increasing depressed mood, unable to eat much, chronic back pain from arthritis, rage periods up to 2 days at a time, right shoulder arthritis, right shoulder numbness, increased arthritis in jaw, sciatica, swollen feet if she stands or sits over a half hour and poor limited ambulation.

The social worker stated that she has been working with the appellant, through the ministry of children and family development, since September 2011 on a voluntary service basis. The social worker stated that the appellant is relatively new to the community and she needed support around finding housing. The social worker stated that the appellant exhibits extreme fear of people and paranoia so that they could only meet at the appellant's residence until the appellant could be encouraged to meet at the ministry office. The social worker stated that she has observed that the appellant is easily agitated and that she is on a wait-list with the Stopping the Violence program since she has experienced significant violence both as a child and as an adult. The social worker stated that in late November/ early December 2011, the appellant was connected with the advocate, as a mental health nurse, since it was evident the appellant had mental health issues and she has now been referred to a psychiatrist. The social worker stated that the appellant has been pro-active in trying to address some of her barriers to employment. In response to a question, the social worker stated that the appellant's restrictions for work at this time include back pain, as the social worker observed that with the appellant's move in December 2011 she was not able to do very much lifting and was reliant on others, as well as paranoia and fear to be outside of her home, which would make it difficult to be in a work place.

The support worker stated that she has attended several meetings with the appellant, and the appellant has a history of abuse, significant anxiety, a huge distrust of people, PTSD symptoms, borderline personality disorder, and she is unable to be around large groups of people or she becomes agitated. The support worker stated that she has observed the appellant experience mood swings and depression. The support worker

stated that the appellant has accessed many community services and is seeking help for some of her issues. The support worker stated that the physician who prepared the initial Medical Report for the appellant was at a walk-in clinic and did not have the appellant's history available.

The panel admitted the testimony of the advocate as a mental health nurse, the social worker, and the support worker as relating to the appellant's restrictions as a result of her medical condition of anxiety/depression and, therefore, 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 ministry's evidence includes that the appellant has been in receipt of income assistance for at least 12 of the immediately preceding 15 calendar months. The ministry acknowledged that although the reconsideration decision indicates the appellant's score on the Employability Screen is 9, the score on the relevant Employability Screen is "15." The ministry acknowledges that the appellant has a medical condition, other than an addiction, that is confirmed by a medical practitioner and that, in the opinion of the medical practitioner has continued for at least one year and is likely to continue for at least 2 more years. The Medical Report-PPMB dated September 2, 2011 identifies a primary medical condition of anxiety/depression. The physician indicates in the Medical Report that the appellant does not have any restrictions specific to her medical condition. The ministry notes that the letter from a mental health emergency and intake nurse dated December 13, 2011 does not note any restrictions related to the appellant's medical condition. The ministry clarified that its decision on a renewal of PPMB status is based on the evidence available to the ministry at the time, which included the Medical Report dated September 2, 2011, Employability Screen print out dated November 1, 2011, PPMB Checklist dated November 1, 2011 and Client Employability Profile dated November 1, 2011.

The panel finds as fact that the relevant Employability Screen, printed November 1, 2011, assigned the appellant a score of 15.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant did not meet all of the applicable statutory requirements of Section 2 of the Employment and Assistance Regulation (EAR) to qualify as a person with persistent multiple barriers to employment (PPMB); in particular, the ministry was not satisfied that the appellant's medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment, pursuant to Section 2(4)(b) of the EAR.

The criteria for being designated as a person with persistent multiple barriers to employment (PPMB) are set out in Section 2 of the EAR. Under Section 2(2), the person must have been the recipient of one or more of a number of types of assistance for at least 12 of the immediately preceding 15 calendar months and also meet the requirements set out in subsection 2(3) or subsection 2(4). If the person has scored at least 15 on the employability screen as set out in Schedule E to the EAR, then Section 2(3) applies. If the person has scored less than 15 on the employability screen as set out in Schedule E to the EAR, then Section 2(4) applies. Under Section 2(4) of the EAR, the person must have a medical condition, other than an addiction, that has been confirmed by a medical practitioner and that, in the opinion of the medical practitioner, has continued for at least one year and is likely to continue for at least 2 more years, or has occurred frequently in the past year, and is likely to continue for at least 2 more years and, in the opinion of the minister, is a barrier that precludes the person from searching for, accepting, or continuing in employment.

The ministry's position is that although the appellant meets the requirements of Section 2(2) of the EAR, in that she has been the recipient of income assistance for at least 12 of the immediately preceding 15 calendar months, the evidence has not established that the appellant has met all the remaining applicable criteria. The ministry argues that since the appellant scored 9 on the employability screen, she must meet the requirements of Section 2(4) of the EAR. The ministry acknowledges that the appellant has a medical condition, other than an addiction, that has been confirmed by a medical practitioner and that, in the opinion of the medical practitioner, has continued for at least 1 year and is likely to continue for at least 2 more years. However, the ministry argues that the evidence does not establish that the medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment. The ministry points out that the physician has indicated in the Medical Report-PPMB that the restrictions specific to the appellant's medical condition are "none." The ministry points out that the letter from the from a mental health nurse dated December 13, 2011 also does not note any restrictions related to the appellant's medical condition.

The appellant's advocate argues that the Medical Report dated September 2, 2011 was not complete because it was filled out by a physician in a walk-in clinic who does not know the appellant or her history, since the appellant's family physician was not available. The advocate argues that the new Medical Report dated January 16, 2012 has been completed by the appellant's family physician and it details the appellant's restrictions as a result of her depression/ chronic anxiety as well as her chronic back pain. The advocate argues that this, along with the evidence provided by the social work and support worker, establishes that the appellant's medical conditions are a barrier that precludes the appellant from searching for, accepting, or continuing in employment.

The panel finds that it is not disputed that the appellant's physician has provided a medical opinion, in the Medical Report dated September 2, 2011 that the appellant suffers from a medical condition other than an addiction, namely "anxiety/depression" with a date of onset of March 19, 2010. It is also not disputed that the appellant's medical condition has, in the opinion of the medical practitioner, continued for at least 1 year and is likely to continue for at least 2 more years. As the panel finds that the relevant Employability Screen, printed November 1, 2011, assigned the appellant a score of 15, the panel finds further that the applicable sub-section is Section 2(3)(b)(ii) of the EAR, rather than Section 2(4)(b) as determined by the ministry. Section 2(3)(b)(ii) of the EAR requires that the medical condition is a barrier that seriously impedes the person's ability to search for, accept, or continue in employment. Although there has been additional evidence tendered in support of restrictions associated with the appellant's medical condition, the ministry has yet to make a determination under this sub-section and the panel, therefore, does not have the jurisdiction to make a finding on this criteria.

However, the panel finds that the ministry's conclusion that applied Section 2(4)(b) of the EAR and found that the evidence does not demonstrate that the appellant's medical condition is a barrier that precludes her from searching for, accepting or continuing in employment was unreasonable.

The panel finds that the ministry's reconsideration decision was not a reasonable application of the applicable enactment in the circumstances of the appellant and rescinds the decision pursuant to Section 24(1)(b) and 24(2)(b) of the Employment and Assistance Act. Therefore, the ministry's decision is overturned in favour of the appellant.