

PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration Decision dated December 21, 2011 which held that the Appellant did not meet all of the statutory requirements of section 2 of the Employment and Assistance Regulation ("EAR") to be designated as a Person with Persistent and Multiple Barriers ("PPMB"). The Ministry determined that the evidence establishes that the Appellant has a medical condition, other than an addiction, that is confirmed by a medical practitioner. However, the Ministry was not satisfied that the medical practitioner has confirmed that the medical condition has continued for at least 1 year and is likely to continue for at least 2 more years or that the medical condition is a barrier that precludes the Appellant from searching for, accepting or continuing in all types of employment.

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 its reconsideration included the following:

1. The Appellant's Request for Reconsideration dated December 6, 2011;
2. A Medical Report – Persons with Persistent Multiple Barriers dated November 9, 2011 ("Report #1");
3. A Medical Report – Persons with Persistent Multiple Barriers dated November 15, 2011 ("Report #2");
4. A Medical Report – Persons with Persistent Multiple Barriers dated November 18, 2011 ("Report #3");
5. A prescription for counseling for major depression prepared by the Appellant's physician and dated November 9, 2011;
6. The Appellant's Employability Screen dated November 22, 2011;
7. A letter from the Ministry to the Appellant dated November 22, 2011; and
8. The Ministry MIS HST Screen for the Appellant.

Medical Report #1 indicates that the Appellant suffers from major depression with the date of onset being September 2011. The reported treatment includes anti-depressant medication and counseling. The stated condition has existed for 2 months and the expected duration of the condition is less than 2 years. Under restrictions specific to the medical condition, the physician notes "unable to concentrate and perform any gainful employment."

Medical Report #2 indicates that the Appellant suffers from major depression with the date of onset being September 2011. The reported treatment includes anti-depressant medication and counseling. The stated condition is noted in this report to have existed for 1 year and the expected duration of the condition is less than 2 years. Under restrictions specific to the medical condition, the physician again notes "unable to concentrate and perform any gainful employment."

Medical Report #3 indicates that the Appellant suffers from major depression with the date of onset being February 2008. The reported treatment includes anti-depressant medication and counseling. The stated condition is noted in this report to have existed for 3 years and 9 months and the expected duration of the condition is 2 years or more. Under restrictions specific to the medical condition, the physician again notes "unable to concentrate and perform any gainful employment."

The Employability Screen has a total score of 11 which indicates that the Appellant is immediately employable or employable with short-term interventions.

In the Request for Reconsideration, the Appellant says that she was diagnosed with depression in 2008 and that she has been taking anti-depressant medication. She states that due to her depression she suffers from anxiety and panic attacks in stressful situations. The Appellant says that she is a single mother and worries about being able to support her child financially. She has attended a work training program but found it hard to concentrate. Her doctor has referred her to counseling. The Appellant says that she is trying to get better and become independent.

In the Notice of Appeal, the Appellant states that her physician has recommended that she take medication since February 2008 but that she has refused to do so. She goes on to say that her condition has become worse and she has begun to take medication and in addition she has been

referred to a psychiatrist.

At the hearing, the Appellant stated her physician had been treating her for over 7 years since before her child had been born and that he prepared Medical Report #3 by referring to her medical history while she was present with him. She stated that she was a single mother and had suffered from depression since childhood. The Appellant noted that her physician had recommended that she take medication for her depression since February 2008 but she had refused to do so because she was in denial as to her condition for many years. She went on to say that she had never been treated for depression before.

As a result of her depression, the Appellant says that she suffers from migraine headaches, anxiety, panic attacks and difficulty concentrating. She says that she was recently prescribed an anti-depressant and that she had been taking it since November 2011. The Appellant's physician has also recommended that she seek counseling and she stated that she had made plans to do so. The Appellant stated that she attended a work training program but found it hard to concentrate given her depression and she also missed classes to care for her child.

The Ministry relied on the Reconsideration Decision and stated that while it is satisfied that the Appellant does suffer from depression, it is the Ministry's opinion that this does not preclude the Appellant from all forms of employment. The Ministry further commented that with the remedial measures suggested by the Appellant's physician, it is hopeful the Appellant's situation will change.

PART F – Reasons for Panel Decision

The issue to be decided is whether the Ministry reasonably concluded that the Appellant did not meet all of the statutory requirements of section 2 of the Employment and Assistance Regulation (“EAR”) to be designated as a Person with Persistent and Multiple Barriers (“PPMB”). The Ministry determined that the evidence establishes that the Appellant has a medical condition, other than an addiction, that is confirmed by a medical practitioner. However, the Ministry was not satisfied that the medical practitioner has confirmed that the medical condition has continued for at least 1 year and is likely to continue for at least 2 more years or that the medical condition is a barrier that precludes the Appellant from searching for, accepting or continuing in all types of employment.

The relevant legislation, section 2 of the EAR, provides as follows:

2 (1) To qualify as a person who has persistent multiple barriers to employment, a person must meet the requirements set out in

(a) subsection (2), and

(b) subsection (3) or (4).

(2) The person has been a recipient for at least 12 of the immediately preceding 15 calendar months of one or more of the following:

(a) income assistance or hardship assistance under the Act;

(b) income assistance, hardship assistance or a youth allowance under a former Act;

(c) a disability allowance under the Disability Benefits Program Act;

(d) disability assistance or hardship assistance under the Employment and Assistance for Persons with Disabilities Act.

(3) The following requirements apply

(a) the minister

(i) has determined that the person scores at least 15 on the employability screen set out in Schedule E, and

(ii) based on the result of that employability screen, considers that the person has barriers that seriously impede the person's ability to search for, accept or continue in employment,

(b) the person has a medical condition, other than an addiction, that is confirmed by a medical practitioner and that,

(i) in the opinion of the medical practitioner,

(A) has continued for at least one year and is likely to continue for at least 2 more years, or

- (B) has occurred frequently in the past year and is likely to continue for at least 2 more years, and
- (ii) in the opinion of the minister, is a barrier that seriously impedes the person's ability to search for, accept or continue in employment, and
- (c) the person has taken all steps that the minister considers reasonable for the person to overcome the barriers referred to in paragraph (a).
- (4) The person has a medical condition, other than an addiction, that is confirmed by a medical practitioner and that,
- (a) in the opinion of the medical practitioner,
- (i) has continued for at least 1 year and is likely to continue for at least 2 more years, or
- (ii) has occurred frequently in the past year and is likely to continue for at least 2 more years, and
- (b) in the opinion of the minister, is a barrier that precludes the person from searching for, accepting or continuing in employment.

[en. B.C. Reg. 368/2002.]

The Ministry takes the position that the Appellant's physician has not confirmed that she has a medical condition that has lasted for at least 1 year and that is expected to last at least another 2 years. Further, the Ministry takes the position that the Appellant's medical condition is not a barrier that precludes her from searching for, accepting or continuing in employment.

The Appellant argues that her physician has confirmed that her medical condition - major depression - has lasted for more than 1 year, will last at least another 2 years and that her physician has further confirmed that her medical condition is a barrier that precludes her from searching for, accepting or continuing in employment .

There is no dispute that the Appellant has a medical condition - major depression - confirmed by a medical practitioner. There is also no dispute that the Appellant scored 11 on the employability screen and as such, the requirements of s.2(4) of the EAR must be met in order for the Appellant to qualify for PPMB designation.

The Panel finds that in Medical Report #3, the Appellant's physician indicates that the Appellant has suffered from major depression since February 2008 and that the expected duration of this condition is 2 years or more. While Medical Report #1 and Medical Report #2 are inconsistent with Medical Report #3 in that regard, the Panel is unable to speculate as to the reason for the inconsistency. It is the Appellant's evidence that she has suffered from depression since February 2008 and that her physician prepared Medical Report #3 by referring to her medical history. Given the evidence and considering that Medical Report #3 is the most recent report commenting on the onset and duration of the Appellant's medical condition, the Panel finds that a medical practitioner confirms that the Appellant's major depression has lasted for more than 1 year and will last for at least another 2 years

or more and as such the Panel finds that the Ministry's decision that the Appellant did not satisfy s. 2(4)(a) of the EAR was unreasonable.

The Panel finds that in each of the three medical reports, the Appellant's physician states that the Appellant's medical condition restricts her insofar as she is unable to concentrate and perform any gainful employment. The Ministry's argument that the remedial measures put in place by the Appellant's physician are meant to address the symptoms of the medical condition and shorten its duration are speculative as to what may happen in the future. The Panel therefore finds that the Minister's opinion that the Appellant's medical condition was not a barrier that precludes her from searching for, accepting or continuing in employment and that the Appellant did not therefore satisfy s.2(4)(b) of the EAR was unreasonable.

The Panel finds that the Ministry's Reconsideration Decision was not reasonably supported by the evidence and rescinds the decision.