

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated December 16, 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 scored at least 15 on the employability screen and that she 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:

- based on the result of the employability screen, the appellant has barriers that seriously impede her ability to search for, accept or continue in employment, pursuant to Section 2(3)(a)(ii);
- the medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment, pursuant to Section 2(3)(b)(ii); and,
- the appellant has taken all steps that the ministry considers reasonable for the appellant to overcome the barriers referred to in the employability screen, pursuant to Section 2(3)(c) 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 November 15, 2011, which states, in part, that: the appellant's primary medical condition is "depression" with a date of onset of September 2009. The secondary medical condition listed is "history of anemia" with a date of onset of April 2009; the treatment includes anti-depressant medications, Citalopram and Amitriptyline, and the outcome indicates that the dose was increased on November 15, 2011; prognosis sets out that the expected duration of the medical condition(s) is less than 2 years, that it is episodic in nature and that the frequency of the episodes is "difficult to predict". In the section of the Report regarding restrictions, the medical practitioner notes "...feels down, low energy, low motivation, hard to focus";
- 2) Employability Screen print out dated November 24, 2011, setting out in part that a score of "0" was assigned for the appellant's age, a score of "0" was assigned for the number of times she has been on income assistance in the last 3 years, the highest score (7 out of a possible 7) was assigned for the time the appellant has spent on income assistance anywhere in Canada in the last 3 years, that the highest score (3 out of 3) was assigned for the level of education that the appellant has completed, that the highest score (4 out of 4) was assigned for the amount of time that the appellant has spent in paid employment over the last 3 years, and the highest score (3 out of 3) was assigned for the appellant's English speaking ability or literacy level, and noting a total score of "17" out of a possible 21;
- 3) Print out of notes made regarding the appellant dated November 17, 2011 stating in part that the medical conditions are depression and anemia, the prognosis is less than 2 years, restrictions include low energy and low motivation and that the appellant has not been attending counseling, the medication has changed and she is doing well, she attends church on weekends to get support; and dated November 24, 2011 stating in part that conditions and degree of restrictions do not preclude all employment;
- 4) Letter from the ministry to the appellant dated November 24, 2011 advising that she no longer meets the requirements for the PPMB category as the barriers identified on the Employability Screen do not seriously impede her from all forms of employment, as required by EAR Section 2(3)(a)(ii);
- 5) Letter from the physician who completed the Medical Report 'To Whom It May Concern' dated December 7, 2011 and stating in part that the appellant's medical condition is likely to continue for at least 2 more years; the medical conditions and symptoms or health limitations that arise from these conditions that restrict her ability to work are noted as "...depression, symptoms of PTSD, mild anemia, feels nervous, feels anxious, hard to focus, poor concentration, has low mood, low motivation, has flashbacks of past abusive relationship, poor sleep, has nightmares, feels tired, her symptoms all restrict her ability to work"; in response to the question whether her health-related restrictions are severe enough to seriously impede her from searching for, accepting, or continuing in employment in the foreseeable future, the physician has noted "yes"; and,
- 6) Request for Reconsideration- Reasons.

The ministry did not attend the hearing, however the ministry made an interpreter available for the appellant at the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

At the hearing, the appellants advocate provided a written submission on behalf of the appellant, which the panel accepted as argument.

The appellant stated that she is a single parent with two small children and that she has had the PPMB designation for some time. The appellant states that her last application was February 2010 and she has been asked to re-apply because two years have passed. The appellant stated that the ministry has asked for progress reports at different times but she was never asked to take any courses for upgrading of her education or language skills. The appellant states that she has not been well, she has been taking medications and she is not able to take courses. The advocate highlighted the increase in medications for depression on November 15, 2011, as set out by the physician in the Medical Report. The appellant stated that she saw her doctor a

week ago and that she has been given a stronger medication because she told the doctor that she is still not feeling well, that she is becoming more depressed, and that the current medications are not working. The appellant stated that her doctor also ordered more blood tests to check her iron levels because he still has concerns about her anemia. The appellant stated that she wakes up in the night, she is nervous and has nightmares from when she was with her ex-husband and if she does not take her medications she cannot sleep. The appellant explained that in the morning she feels dizzy and she has no motivation, and that it seems to be getting worse because of all of her problems.

The appellant stated that in April 2011, she had some issues with her ex-husband and she ended up being incarcerated. The appellant stated that she was released in August 2011 to house arrest and she could only leave her residence with permission, accompanied by her mother and step-father, which made it difficult to see her doctor or her advocate, or to do anything such as to get groceries. The appellant stated that she let the ministry know about her situation because she called them when she was incarcerated since her mother was having to take care of her children, and she claims that the ministry was aware of her incarceration all along. The appellant stated that she brought the court papers to the ministry to show them when she was released to house arrest in August 2011. The appellant stated that in January 2012, the judge found that she had not broken her conditions so she was released from house arrest but will remain on probation for two years. The panel admitted this new evidence, pursuant to Section 22(4) of the Employment and Assistance Act, as oral testimony in support of information that was before the ministry at the time of its reconsideration decision, according to the appellant, and the ministry was not available to dispute the appellant's claim.

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 appellant's score on the employability screen is 17. The appellant's barriers include more than 12 months on income assistance, less than grade 10 education, no or very limited work experience, and English as a second language. There is no reference to the appellant attending ESL classes that would improve her English language skills or education upgrading or vocational training. In the Medical Report-PPMB dated November 17, 2011, the physician reports that the appellant's primary medical condition is depression with onset in September 2009 and the secondary medical condition is history of anemia with onset of April 2009. In the Medical Report, the physician indicates that the expected duration of the appellant's medical conditions is less than 2 years but, in the letter dated December 7, 2011, the duration of the medical condition was amended to 2 years or more.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry decision, which found 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) as it was not satisfied that the appellant has barriers that seriously impede her ability to search for, accept or continue in employment, or that the evidence establishes that her medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment, or that the appellant has taken all reasonable steps to overcome the barriers referred to in the employability screen, was reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the appellant.

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, the ministry must also consider that, based on the results of the employability screen, the person has barriers that seriously impede the person's ability to search for, accept or continue in employment, and then Section 2(3)(b) and (c) apply. If the person has scored less than 15 on the employability screen as set out in Schedule E to the EAR or, based on the results of the employability screen, the ministry considers that the person does not have barriers that seriously impede the person's ability to search for, accept or continue in employment, then Section 2(4) applies. Under Section 2(3)(b) 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 seriously impedes the person from searching for, accepting, or continuing in employment. Under Section 2(3)(c) of the EAR, the person must have taken all steps that the ministry considers reasonable for the person to overcome the barriers identified in the employability screen and referred to in Section 2(3)(a).

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. As the appellant scored 17 on the employability screen, the ministry argues that she must meet the remaining requirements of Section 2(3) of the EAR. The ministry's position is that the evidence in the employability screen does not establish that the appellant has barriers that seriously impede her ability to search for, accept or continue in employment. The ministry points out that the appellant's barriers include more than 12 months on income assistance, less than grade 10 education, no or very limited work experience and English as a second language. The ministry argues that it is not satisfied that these barriers seriously impede the appellant's ability to search for, accept or continue in employment. The advocate argues, on behalf of the appellant, that these barriers, especially seen in conjunction with her medical conditions, seriously impede the appellant's ability to search for, accept or continue in employment.

The panel finds that the employability screen dated November 24, 2011 has assigned the highest possible scores to the appellant for being on income assistance for more than 12 months, for having less than a grade 10 education, for have 'none' or very limited work experience over the last 3 years, and for having English as a second language or being in need of English skills training, for a total score of 17 out of a total possible of 21. The ministry provided an interpreter on the hearing for the appellant to understand the proceedings and to communicate with the panel. The panel finds that the employability screen has identified issues for the appellant that gives her a score of 81% and that the ministry has acknowledged that these constitute "barriers." Given that the appellant has had no or very limited work experience in paid employment over the last 3 years, according to the employability screen, the panel finds that this evidence demonstrates that these barriers have seriously impeded, or interfered with, her ability to search for, accept, or continue in employment. The panel finds that the ministry's conclusion that the appellant's barriers do not seriously impede her ability to search for,

accept or continue in employment was not reasonable.

The ministry's position is that the appellant has not met the requirements of Section 2(3)(c) of the EAR as the ministry is not satisfied that the appellant has taken all steps that the ministry considers reasonable for the person to overcome the barriers identified in the employability screen. The ministry points out that the appellant has not referred to attending ESL classes that would improve her English language skills or education upgrading or vocational training. The advocate argues that the appellant's medical conditions have impacted her ability to participate in community based job programs and, as well, she has been incarcerated and under house arrest since April 2011. The appellant pointed out that the ministry had not advised her that she was required to take English courses or training.

The panel finds that the appellant's physician has confirmed in the Medical Report dated November 15, 2011 that the appellant's primary medical condition is "depression" and that the date of onset is September 2009, so that the appellant has suffered with this medical condition for at least the previous 2 years. In the updated letter date December 7, 2011, the medical conditions and symptoms or health limitations that arise from these conditions are noted as including symptoms of PTSD, feeling nervous and anxious, difficulty focusing, poor concentration, low mood and low motivation, experiencing flashbacks of past abusive relationship with poor sleep and feeling tired. The panel finds that the appellant's medical condition includes restrictions that would make it difficult for the appellant to pursue ESL classes or education upgrading or vocational training. As well, the panel finds that the appellant has been unable to move freely in the community since her incarceration in April 2011, followed by house arrest until January 2012. The appellant states that she made the ministry aware of her situation during her incarceration and met with the ministry upon her release to house arrest in August 2011. The panel finds that the ministry requirements that the appellant take the steps of ESL classes and education upgrading or vocational training to overcome the appellant's barriers are, in the appellant's circumstances, not reasonable. The panel finds that the ministry's determination that the appellant has not demonstrated that she has taken all reasonable steps to overcome her language and educational barriers, pursuant to Section 2(3)(c) of the EAR, was not reasonable.

With respect to the requirement of Section 2(3)(b) 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 seriously impedes the appellant from searching for, accepting, or continuing in employment. The ministry points out that its definition of "seriously impedes" is: when, as a result of the medical condition, the recipient is unable to participate in any type of employment that would enable independence from income assistance. The ministry points out that in the original Medical Report, the appellant's physician identifies the appellant's medical conditions as episodic with the frequency "difficult to predict". The ministry also argues that although the physician provides an opinion in the letter dated December 7, 2011 that the appellant's health-related restrictions are severe enough to seriously impede the appellant, the ministry has considered the symptoms and is of the opinion that the narrative does not substantiate a severe restriction to employment. The ministry's position is that the stated restrictions do not establish that the appellant is seriously impeded from all types of employment or attending a job program to work towards independence.

The advocate argues that the appellant's physician has diagnosed the appellant with depression and anemia and that she also has symptoms of PTSD, anxiety, lack of focus, poor concentration, low motivation, flashbacks, and nightmares and the physician has confirmed that all of these symptoms restrict her ability to work. The advocate points out that the appellant's physician has provided an opinion that the appellant's health-related restrictions seriously impede her ability to search for, accept, or continue in employment. The advocate argues that the ministry is assuming that the appellant's medical condition is improving but there is nothing in the physician's comments that suggest that the appellant is "doing well" as stated in the ministry's notes and, on the contrary, the Medical Report indicates that her medication was increased in November 2011. The advocate argues that the ministry previously granted the appellant the PPMB designation and that her

doctor has confirmed that she still has medical conditions lasting at least 2 more years that seriously impede her ability to work.

The panel finds that it is not disputed that the appellant's physician has provided a medical opinion, in the Medical Report dated November 15, 2011, that the appellant suffers from medical condition other than an addiction, namely depression and anemia, with dates of onset of September and April 2009, respectively. It is also not disputed that the appellant's medical conditions have, in the opinion of the medical practitioner, continued for at least 1 year and are likely to continue for at least 2 more years. In terms of restrictions associated with the appellant's medical condition, the physician has indicated in the Medical Report that the appellant "...feels down, low energy, low motivation, hard to focus." It is also indicated in the Medical Report that the dose of anti-depressant medications was increased and the appellant stated that her physician prescribed a stronger medication a week ago since the other medications were not working and she was feeling more depressed. The appellant also stated that she has continued to have "problems", including issues with her ex-husband, and that this has made her condition worse.

In the physician letter dated December 7, 2011, the physician has added notes that the appellant has "...symptoms of PTSD, mild anemia, feels nervous, feels anxious, hard to focus, poor concentration, has low mood, low motivation, has flashbacks of past abusive relationship, poor sleep, has nightmares, feels tired" and that "...her symptoms all restrict her ability to work." In response to the question whether the health-related restrictions are severe enough to seriously impede the appellant from searching for, accepting, or continuing in employment in the foreseeable future, the physician has noted "yes." The panel finds that the evidence demonstrates that the appellant has been diagnosed with a mental impairment for which her physician has identified the symptoms and an opinion that this condition restricts her ability to work and seriously impedes her from work-related activities in the foreseeable future. The panel finds that the requirement is that the medical condition seriously "impedes" or seriously interferes with the appellant's ability to search for, accept or continue in employment and not that it "precludes" or prevents these activities. Therefore, the panel finds that the ministry's conclusion that the evidence does not demonstrate that the appellant's medical conditions are a barrier that seriously impedes her from searching for, accepting or continuing in employment, pursuant to the requirement in Section 2(3)(b)(ii) of the EAR, was not reasonable.

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. Therefore, the ministry's decision is overturned in the appellant's favour.