

## PART C – Decision under Appeal

The decision under appeal is the Ministry's reconsideration decision, dated January 25, 2012, which held that the Appellant was not eligible for qualification as a Person with Persistent Multiple Barriers (PPMB) under Section 2 of the Employment and Assistance Regulation. The Ministry determined that the Appellant met the legislated criteria in Section 2(2) in that she has been a recipient of income assistance in 12 of the immediately preceding 15 calendar months. As the Appellant's score on the employability screen was 1 the Ministry considered her application under Section 2(4) of the EAR. However the Ministry determined that the Appellant did not meet the criterion under Section 2(4)(a), that the medical condition is likely to continue for at least 2 more years, or meet the criterion in Section 2(4)(b), that the medical condition is a barrier that precludes the Appellant from searching for, accepting and continuing in employment.

## PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) section 2

## PART E – Summary of Facts

The Ministry did not attend the hearing. After confirming that the Ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

The evidence before the Ministry at reconsideration consisted of:

1. The Medical Report – Persons With Persistent Multiple Barriers completed by the Appellant's physician on December 6, 2011. The physician states that the Appellant has Bipolar Affective Disorder with a date of onset of June 17, 2010 and ADD with a date of onset of January 5, 2011. He states that the medical conditions are treated with medication - Dexidrine, Effexor and Seroquel - and says that the outcome of the treatment is "Improved mood, attention/concentration." He did not provide information on the duration of the medical conditions and placed a question mark in the section of the form. He says the medical condition is episodic in nature and when asked about the frequency he says "Variable – episodic exacerbations of chronic condition". When asked about the nature of the restrictions imposed by the medical conditions the physician states "unable to work full time – work requires supervision".
2. The letter from the Ministry dated December 21, 2011, stating that the Appellant's application for the Persons With Persistent Multiple Barriers category was not approved.
3. The Request for Reconsideration dated January 10, 2012. The Appellant states that she has found it hard to keep a job due to her bipolar and ADHD, that even with medication she finds it hard to get out of bed some days. She also says that it is very hard for her to see her friends getting jobs and (to think) that she will never be like them because her brain "just works differently".
4. A letter from the Appellant's physician dated January 10, 2012, stating that the Appellant's "medical condition has precluded all types of employment for several months and for a further 2-3 months".

The Appellant submitted a Notice of Appeal on February 7, 2012 stating that she does not feel that she has been fairly assessed.

At the hearing the Appellant stated that it is very hard for her to keep jobs and she has had so many jobs since she was 15. She said she was not good in math or other school stuff. She said that it is hard for her to get out of bed some days and that it is hard to deal with everyday life especially since her father has been diagnosed with cancer. She says she has had a drug addiction that she is trying to fight and says she is also on probation.

She said that she is going to go back to her physician, as the medication does not help with the spiral when she is depressed and suicidal. She said that she does not know why he stated that she would be precluded from employment for several months as she has been told that the bi-polar condition will last her entire life. She said that her doctor was not very thorough when he filled out the report.

The panel makes the following findings of fact: The Appellant has been a recipient of income assistance in 12 of the immediately preceding 15 calendar months and the Appellant scores 1 on the employability screen. The Appellant's physician failed to stipulate, in the medical report, the duration of the medical conditions. The Physician comments on the restrictions caused by the medical condition as follows: "unable to work full time – work requires supervision". The physician also states,

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in his letter of January 10, 2012, that the Appellant's "medical condition has precluded all types of employment for several months and for a further 2-3 months".

## PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry reasonably determined that the Appellant has not met the qualification as a PPMB under Section 2 of the EAR. The Ministry determined that the Appellant met the legislated criteria in Section 2(2) in that she has been a recipient of income assistance in 12 of the immediately preceding 15 calendar months. As the Appellant's score on the employability screen was 1 the Ministry considered her application under Section 2(4) of the EAR. However the Ministry determined that the Appellant did not meet the criterion under Section 2(4)(a), that the medical condition is likely to continue for at least 2 more years, or meet the criterion in Section 2(4)(b), that the medical condition is a barrier that precludes the Appellant from searching for, accepting and continuing in employment.

The relevant legislation is section 2 of the Employment and Assistance Regulation (EAR) as follows:

### **Persons who have persistent multiple barriers to employment**

- 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.

The Ministry found that the Appellant met the legislated criteria in Section 2(2) in that the Appellant has been a recipient of income assistance in 12 of the immediately preceding 15 calendar months. As the Appellant scored 1 on the employability screen the Ministry considered her application for PPMB under Section 2(4) of the EAR and determined that the Appellant has not met the criteria specified in Section 2(4) of the Regulation.

The reconsideration decision states that the Appellant has not met the criteria in Section 2(4)(a)(i) because the medical practitioner has not stated that the medical condition is likely to continue for at least 2 more years.

The panel notes the Appellant's argument that she has been told that bi-polar disorder is a life long disorder and also notes the information given by the Appellant about her difficulties in school, her inability to keep a job, drug addiction, depression and trying to deal with her father's illness.

The medical practitioner did not provide information in the Medical report on the expected duration of the Appellant's medical condition although he subsequently stated, in a letter dated January 10, 2012, that the expected duration was 2 – 3 months. The panel is therefore satisfied that the Ministry reasonably determined that the Appellant did not meet the criteria in Section 2(4)(a)(i) given that the information provided by the medical practitioner does not establish that the Appellant has a medical condition that, in the opinion of the medical practitioner, will likely continue for at least 2 more years.

With respect to criteria in Section 2(4)(b) of the Regulation the reconsideration decision states that the information does not establish a medical condition that precludes the Appellant from searching for, accepting and continuing in employment. The Ministry noted the physician's statement that the Appellant's medical condition has precluded employment for several months and for a further 2-3 months. The Ministry also noted that the Medical Report says that the Appellant is taking medication

that improves symptoms of the medical condition and states that the Appellant is unable to work full time and requires supervision. The Ministry concluded that the Appellant is "able to work with some limitations (under supervision and part time)".

The panel heard from the Appellant about her past struggles to find and keep a job, and about being on probation.

The panel finds that the Ministry reasonably determined that the Appellant's medical condition is not a barrier that precludes searching for, accepting and continuing in employment given that the Medical Report says that the Appellant is able to work with some limitations - part time and under supervision. The panel therefore finds that the Ministry reasonably determined that the Appellant does not meet the criteria in Section 2(4)(b) of the Regulation in that the evidence does not show that the Appellant has a medical condition that is barrier that precludes the Appellant from searching for, accepting and continuing in employment.

The panel finds that the Ministry's decision, to deny the Appellant's application for qualification as a Person With Persistent Multiple Barriers, was reasonably supported by the evidence.

The Panel therefore confirms the ministry's decision pursuant to Section 24(1)(a) and Section 24(2)(a) of the Employment and Assistance Act.