

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated January 23, 2012 which held that the appellant did not meet all of the applicable statutory requirements of Section 2 of the Employment and Assistance Regulation (EAR) for requalification as a Persons with Persistent Multiple Barriers (PPMB) designation.

The ministry was satisfied that as the appellant is a 30-year old mother of two dependent children in receipt of income assistance since November 21, 2006 and as she had been in receipt of income assistance for at least 12 of the immediately preceding 15 calendar months, she met the criterion set out in Section 2(2)(a) of the EAR Regulation. The ministry was also satisfied that the evidence established 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 one year and is likely to continue for at least two more years pursuant to Section 2(3)(a) and Section 2(3)(b)(i)(A) and (B) of the EAR.

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 as required in Section 2(3)(a)(ii) of the EAR;
- the medical condition is a barrier that seriously impedes the appellant's ability to search for, accept or continue in employment pursuant to Section 2(3)(b)(ii) of the EAR; 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

At reconsideration, the documents that were before the ministry included the following:

- 1) Incomplete Medical Report – Persons with Persistent Multiple Barriers, one page, signed by the appellant November 8, 2011 (the “First Medical Report”), which indicates that the appellant’s primary medical condition is anxiety disorder and her secondary medical condition is depression, with the dates of onset of both conditions left blank. The First Medical Report indicates that the conditions have existed for 15 years, are expected to last for two years or more and are not episodic in nature. Counseling is indicated under the treatment heading but no outcome is noted. The restriction section is not legible although it appears to have been signed.
- 2) Medical Report - Persons with Persistent Multiple Barriers completed by a doctor January 10, 2012 (the “Second Medical Report”) which states, in part, that the appellant’s primary medical condition is panic disorder and her secondary medical condition is agoraphobia. The date of onset for both conditions is noted as 1998 and the conditions have existed more than ten years. The Second Medical Report also states that the appellant tried medications which initially helped but then her condition got worse. The prognosis is that the appellant’s condition is expected to last more than two years and is not episodic in nature. The Second Medical Report also states that the appellant’s restrictions are: “*any social situations are very difficult e.g. work, shopping, etc*”. The Second Medical Report also indicates that the appellant continues to be disabled. The Second Medical Report was initially presented to the ministry on October 5, 2009 and the doctor crossed out the first date and amended it to read January 10, 2012.
- 3) Persons who have Persistent Multiple Barriers To Employment Checklist dated November 16, 2011 (2 pages) setting out the appellant’s score of 15 and barriers to employment noted as anxiety/panic attacks disorder, agoraphobia, depression and grade 9 education/lack of work experience. The Employment Checklist indicates that the appellant had not tried various employment service/programs and had been referred to mental health and disability resources but had not accessed those services.
- 4) Letter from the ministry to the appellant dated November 29, 2011 advising the appellant that she no longer met the requirements for the Persons with Persistent Multiple Barriers (PPMB) category as she no longer has any restrictions listed that are associated with her medical conditions.
- 5) Request for Reconsideration Reasons dated January 9, 2012 in which the appellant states that she has panic disorder and agoraphobia which keep her from dealing with two or more people at a time. The appellant states that her mother is usually there to help her, that she is usually okay at parent/teacher interviews as long as she has gotten to know the teacher, but it is still a struggle. The appellant states that if she goes shopping on her own she takes a bus but if it is even a little bit crowded she will wait for another hour or more to catch another bus. The appellant states that when she starts to have a panic attack, she becomes shaky and light headed and has passed out in the past. The appellant states that her panic attacks occur on a random basis, even at home.

In the Reconsideration Decision, the ministry states that although the appellant's doctor states that "*any social situations are very difficult e.g. work, shopping, etc.*", the appellant's self-report indicates that she is able to shop and take the bus by herself, and she is able to interact with her children's teacher independently. The ministry states that it was not satisfied that restrictions specific to the appellant's medical conditions seriously impede her from all types of employment including part-time or solitary work or that the stated restrictions seriously impede her from attending a job program to work towards independence.

The ministry's decision states that the appellant has not met the requirements of Section 2(3)(c) of the EAR as she has not provided information to demonstrate that she has attempted to gain more education or to improve her job preparation skills or to improve her mental health disorders. In particular, the ministry states that the appellant was referred to Mental Health but never accessed services.

In her letter dated January 30, 2012 attached to her Notice of Appeal, the appellant states that she has severe panic attacks when dealing with people, on the telephone and in person. She states that her panic attacks can last for five minutes or three to four hours depending on the severity. The appellant states that she tried medications that seemed to help in the beginning but started making her panic attacks worse after the first month of using the medications. The appellant also states that her mother has to accompany her to her appointments with doctors or teachers.

The appeal proceeded by way of a written hearing, and the ministry did not provide any further submissions, relying on the Reconsideration Decision.

The appellant submitted new evidence including a letter from the appellant's mother with a fax date of February 21, 2012, in which the appellant's mother states that they moved in together so that she could help her daughter. The appellant's mother states that she always goes with the appellant to her appointments and makes most of her phone calls for her, or is there with her in case the appellant has a panic attack and needs her mother to take over the phone call for her. The appellant's mother questions how the appellant could attend counseling when she is afraid of people and states that the appellant even has panic attacks at family gatherings.

The panel finds that the letter from the appellant's mother is evidence that relates to the appellant's restrictions as a result of her identified medical conditions and is in support of the information and records that were before the minister when the decision being appealed was made and the panel admits the new evidence pursuant to Section 22(4)(b) of the *Employment and Assistance Act*.

The appellant submitted new evidence including a letter from an employability manager dated February 20, 2012. The employability manager states that she met with the appellant and the appellant's mother on February 20, 2012 and had many previous calls with them. The employability manager states that she runs a 12 week employment program and even though it is a small class she doubts that the appellant would be able to show up. The letter from the employability manager states that "*...I would have great difficulty finding employment*".

The panel finds that the letter from the employability manager is evidence that relates to the appellant's restrictions as a result of her identified medical conditions and is in support of the

information and records that were before the minister when the decision being appealed was made and the panel admits the new evidence pursuant to Section 22(4)(b) of the *Employment and Assistance Act*.

The appellant submitted a letter on her own behalf dated February 20, 2012 stating that she has been on PPMB for over six years and the thought of a tribunal scares her. The appellant states that her mother continuously supports her by going almost everywhere with her due to her panic attacks that occur almost daily and that can last for 15 minutes or a few hours at a time. The appellant states that her mother has to be there for doctor appointments and parent teacher interviews, takes her grocery shopping and attends appointments with her. The appellant states that she has not been able to attend her oldest son's school activities such as Christmas concerts because being in a room full of strangers or having to talk with someone scares her. The appellant states that she dropped out of high school because she could not handle it and she tried medications but they did not help her conditions.

The appellant states that the First Medical Report only consisted of one page because that was all she received and the doctor who completed it was not her usual doctor and he was in a rush. The appellant states that she has considered counseling but the thought of it heightens her anxiety and she begins to feel panicky.

The panel finds that the letter from the appellant dated February 20, 2012 is evidence that relates to the appellant's restrictions as a result of her identified medical conditions and is in support of the information and records that were before the minister when the decision being appealed was made and the panel admits the new evidence pursuant to Section 22(4)(b) of the *Employment and Assistance Act*.

The panel confirms that the new evidence relied on at the appeal was previously provided to the ministry by letter dated February 22, 2012 from the Employment and Assistance Appeal Tribunal Appeal Coordinator. The ministry did not provide any response to the new evidence or any letter objecting to the new evidence.

Based on the evidence, the panel's finding of facts are as follows:

- The appellant has been diagnosed with panic disorder, agoraphobia, anxiety disorder and depression;
- The appellant's doctor confirms that the appellant's medical conditions have existed for more than ten years and, are expected to last more than two years and are not episodic in nature;
- The appellant has been a recipient of income assistance for at least 12 of the immediate preceding 15 months;
- The appellant's Employability Screen is 15, and the appellant has been unemployed for more than two years;
- The appellant has a Grade 9 education and little work experience; and
- The appellant has had PPMB designation for at least six years.

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 EAR to re-qualify as a Person with Persistent Multiple Barriers to employment (PPMB) or whether the ministry's decision was a reasonable application of the legislation in the circumstances of the appellant.

Although the ministry accepted 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 two more years, the ministry was not satisfied that the appellant had barriers that seriously impede her ability to search for, accept or continue in employment, or that the appellant has taken all reasonable steps to overcome the barriers referred to in the employability screen as required by Section 2(3)(a)(ii), 2(3)(b)(ii) and 2(3)(c) of the EAR.

The relevant legislation, section 2 of the EAR, provides 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.

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

The panel finds that it is not disputed that the appellant's doctor has provided a medical opinion that the appellant suffers from a medical condition other than an addiction, that has continued for at least one year and is likely to continue for at least two more years. The ministry's position is that although the appellant meets the requirements of Section 2(2), 2(3)(a)(i) and 2(3)(b)(i) of the EAR, she has not met all of the remaining applicable criteria. The appellant scored 15 on the employability screen, and the ministry argues that she does not have barriers that seriously impede her ability to search for, accept or continue in employment as required in Section 2(3)(a)(ii) of the EAR. The ministry accepts that the appellant has a medical condition, other than an addiction, that is confirmed by a medical practitioner, that has continued for at least one year and is likely to continue for at least two more years but the ministry is not satisfied that the appellant has barriers that seriously impede her ability to search for, accept or continue in employment as required by Section 2(3)(b)(ii) of the EAR. The ministry also argues that the appellant has not taken all steps that the minister considers reasonable to overcome her barriers as required by Section 2(3)(c).

The ministry argues that the information provided does not provide a description of the severity of the appellant's conditions and the information does not demonstrate that the appellant's identified barriers (anxiety/panic attack disorder, agoraphobia, depression and grade 9 education/lack of work experience) are a significant factor. The ministry argues that as the appellant's self-report states that she is usually okay at parent/teacher meetings once she knows the teacher and as there is no information on the frequency or duration of her panic attacks or effect of medication on her panic attacks, that there is not sufficient information to demonstrate that the appellant's barriers seriously impede her ability to search for, accept or continue in employment as required by Section 2(3)(a)(ii) of the EAR.

The appellant's letter dated February 20, 2012 states that she has daily panic attacks that can last from 15 minutes to a couple of hours and happen when she is out of the house. The appellant states that she has had PPMB designation for over six years. Although the appellant in her Request for Reconsideration Reasons states that she is usually okay at parent/teacher interviews as long as she has gotten to know the teacher, she stated that it was still a struggle and that her mother is usually there to help her. Both the appellant and her mother confirmed that her mother accompanies her to almost all appointments. The appellant's mother confirmed that they moved in together so that she can help her daughter and she states that the appellant's panic attacks can happen anywhere, even at family gatherings.

In the Second Medical Report, the appellant's doctor confirms that the appellant's medical conditions cause ongoing restrictions in any social situations including work and shopping. The appellant's doctor states that the appellant tried medications that initially helped but then her condition became worse. The appellant's doctor also confirms that the appellant continues to be disabled. In her Notice of Appeal the appellant stated that she had tried medications and that they seemed to help initially, but then her condition got worse.

The employability manager confirmed that the appellant has difficulty filling out paperwork, has poor memory, procrastinates due to fear and has very poor motivation. The employability manager is of the opinion that the appellant would be unable to complete the 12 week employment program.

The panel finds that although the appellant is able to manage at parent/teacher interviews on her own at times if she knows the teacher, the appellant's mother is usually there to support her daughter at those interviews and at other appointments, shopping and family gatherings. The panel finds that the evidence demonstrates that the appellant's medical conditions have not improved, that she remains disabled and that she has restrictions in any social situations, including working and shopping. The panel finds that the ministry's decision that the appellant's barriers did not seriously impede her ability to search for, accept or continue in employment as required by Section 2(3)(a)(ii) of the EAR was not reasonably supported by the evidence and was not a reasonable application of the legislation in the appellant's circumstances.

The ministry argues that no restrictions were given in the First Medical Report and in the Second Medical Report the doctor describes restrictions as "*any social situations are very difficult e.g. work, shopping, etc.*". The ministry points out that in the appellant's self report, she describes being able to shop, take the bus by herself and interact with her children's teacher independently. The ministry argues that when considering the information as a whole, the ministry is not satisfied that restrictions

specific to the appellant's medical conditions seriously impede her from all types of employment including part-time or solitary work or that the restrictions seriously impede the appellant from attending a job program to work towards independence. Based on that information, the ministry's position is that the appellant has not met the criteria set out in Section 2(3)(b)(ii) of the EAR.

The appellant states that she has severe panic attacks and that her mother has to accompany her to appointments with doctors and teachers. The appellant states that she does not attend her oldest son's school activities as she cannot cope with being in a room full of strangers. The panel finds that on the whole of the evidence the appellant requires assistance from her mother, even at parent/teacher interviews, most of the time.

On the Second Medical Report the appellant's doctors confirm the appellant's restrictions as "*any social situations are very difficult e.g. work, shopping, etc.*" and notes that she remains disabled. The employability manager confirmed that the appellant has difficulty filling out paperwork, has poor memory, procrastinates due to fear, and has very poor motivation. The employability manager is of the opinion that the appellant would likely be unable to complete a 12 week employment program, even if the class was small.

The panel finds that the appellant's medical condition has not improved, that she remains disabled with ongoing restrictions and that she is likely not able to complete a 12 week employment program. The panel finds that the ministry's decision that the appellant's barriers did not seriously impede her ability to search for, accept or continue in employment as required by Section 2(3)(b)(ii) of the EAR was not reasonably supported by the evidence and was not a reasonable application of the legislation in the appellant's circumstances.

The ministry argues that as the appellant scored 15 on the employability screen she is required to demonstrate that she has taken all reasonable efforts to overcome her barriers identified on the employability screen which include anxiety/panic attack disorder; agoraphobia, depression, and grade 9 education/lack of work experience. The ministry's position is that the appellant did not access any of the services that she was referred to and there was no information to demonstrate that the appellant had attempted to gain more education or to improve her job preparation skills or to improve her mental health disorders as required by Section 2(3)(c) of the EAR.

The appellant states that she tried medications but they did not help her. In the Second Medical Report, the appellant's doctor also states that the appellant tried medications and although they helped initially the appellant's condition got worse. Although the appellant was referred to counseling, she states that "*...even the thought of counseling heightens my anxiety and I begin to feel panicky*". The appellant states that she has difficulty with strangers, socializing is difficult, and she "*can't seem to make eye contact with people for more than a couple of seconds*". The appellant states that talking to people scares her.

The appellant's mother confirms that she and her daughter moved in together so that she can help her daughter. The appellant's mother states that she attends appointments with the appellant, takes her shopping, and assists her with phone calls. The appellant's mother questions how her daughter could get counseling when she is afraid of people.

The employability manager confirms that the appellant is likely not able to complete a 12 week

employment program even if the class is small.

The panel finds that the Persons Who Have Persistent Multiple Barriers to Employment Checklist identifies the appellant's barriers to employment as: anxiety/panic attacks disorder, agoraphobia, depression and grade 9 education/lack of work experience. The panel finds that the appellant has tried medications with no success. Given that the appellant has anxiety and panic attacks even at family gatherings, has difficulty talking to strangers and requires her mother to attend at most appointments and has increased anxiety even when considering counseling, the panel finds that the appellant's decision not to attend counseling was reasonable in her circumstances.

The ministry had previously granted the appellant PPMB designation and there is no medical evidence indicating that her medical conditions have improved or that her restrictions have decreased. The letter from the employability manager confirms that the appellant has difficulty filling out paperwork, poor memory, procrastinates due to fear, poor motivation and is likely not able to complete a 12 week employability program. Based on all of the evidence, the panel finds that the ministry's decision that the appellant has not taken all steps that the minister considers reasonable for the person to overcome her barriers pursuant to Section 2(3)(c) was not reasonably supported by the evidence and was not a reasonable application of the legislation in the appellant's circumstances.

The panel finds that the ministry's reconsideration decision was not reasonably supported by the evidence and was not a reasonable application of the legislation in the circumstances of the appellant. Therefore, the panel rescinds the ministry's decision and it is overturned in the appellant's favour.