

PART C – Decision under Appeal

The decision under appeal is the decision made by the ministry at Reconsideration on February 8, 2012. In that decision, the ministry denied the appellant's request to renew her designation as a Person with Persistent Multiple Barriers (PPMB) because she did not meet the criteria as set out in the *Employment and Assistance Regulation (EAR)* Section 2.

Specifically, the ministry found that whereas the appellant had been on income assistance for 12 of the past 15 months, as required by Section 2 (2), she did not have the employability screen score of at least 15 in order for her request to be considered on the basis of Section 2 (3), and when considered under Section 2 (4) she failed to meet the medical condition requirement set out in that section. Section 2 (4) states that, "*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*".

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) Section 2.

PART E – Summary of Facts

Documents before the ministry at reconsideration included the following:

- A letter dated December 6, 2011 from the ministry advising the appellant that her status as a PPMB needed to be reviewed, forwarding a medical report form to be completed by her doctor, and advising her that her cheque could be reduced if the ministry did not receive the information needed to conduct their review.
- An Employability Screen form completed by the appellant;
- a Medical Report – PPMB, completed by a physician on December 16, 2011 providing information on the appellant;
- A letter from the ministry to the appellant dated January 11, 2012, advising the appellant that she no longer met the criteria for the PPMB category and enclosing the appellant's Employability Screen based on the information provided earlier by the appellant.
- The Form Request for Reconsideration completed by the appellant and signed by her on January 19, 2012, together with a self-amended Employability Screen.

At the hearing the panel was asked to accept new evidence from the appellant. This was a one page document with a question posed to the appellant's physician and his answer. The question was, "On the application you note that your patient has a primary diagnosis of Depression and Anxiety: are these health related restrictions still severe enough to preclude her from searching for, accepting, or continuing in employment in the foreseeable future? If so, what are the symptoms/restrictions that prevent her from working?" The physician responded, "Sleep disturbance waking at night, lack of concentration, no interest, lack of energy, moody". The ministry's representative did not object to this document being entered into evidence. The panel's view was that the document is clearly supportive of information that was before the ministry at reconsideration – namely the Medical Report completed by the appellant's physician on December 16, 2011. The panel therefore accepted this document into evidence based on Section 22 (4) (b) of the *Employment and Assistance Act (EAA)*.

When she sought reconsideration, the appellant wrote that she did not agree with the Employability Screen Form as it does not include any questions which relate to medical health. Additionally the appellant stated that she should be considered for Persons with Disabilities status (PWD), and not that of PPMB, that she had been dissuaded from applying for PWD status but had now got the forms and would be applying for PWD status. She wrote that she did not have Grade 10 completed so that the Employability Form should note her educational status as (e – 3) and not (d-1).

The appellant's advocate described the appellant as a 25 year old single woman, and stated that the application for renewal of PPMB status that led to this appeal was the fourth such renewal she had made. She had, he said, been accorded this status first in 2005.

The ministry's representative said that ministry records showed that the appellant was first given the status of a PPMB in March of 2008, and the application that led to this appeal was her second application for renewal of that status.

Based on the documents and on the evidence provided at the hearing the panel makes the following finding of facts:

1. The appellant is currently receiving income assistance as a single person.

2. The appellant currently has a PPMB designation.
3. The appellant has been diagnosed by her physician as suffering with anxiety/depression and diabetes since 2005.
4. The symptoms suffered by the appellant and confirmed by her physician are sleep disturbance waking at night, lack of concentration, no interest, lack of energy and moody.
5. On the Employability Screen the appellant circled the box indicating that her highest level of education was Grade 10 to 12
6. The employability Screen completed by the Ministry indicates that the appellant's score is 13
7. The appellant is a 25 year old single woman.

PART F – Reasons for Panel Decision

The matter to be decided is whether the decision of the ministry at reconsideration was a reasonable application of the applicable legislation in the circumstances of the appellant. At reconsideration the ministry denied the appellant's request to renew her designation as a PPMB because she did not meet the criteria as set out in the *Employment and Assistance Regulations (EAR)* Section 2. Specifically, the ministry found that whereas the appellant had been on income assistance for 12 of the past 15 months, as required by Section 2 (2), she did not have the employability screen score of at least 15 in order for her request to be considered on the basis of Section 2 (3), and when considered under Section 2 (4) she failed to meet the medical condition requirement set out in that section. Section 2 (4) states that, "*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 relevant legislation is set out here. "Income assistance" means an amount for shelter and support provided under section 4 [income assistance and supplements] under the *EAA*.

The applicable legislation governing PPMB to employment is found in the *EAR* 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 *EAPWDA*. (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."

At reconsideration the ministry found that the appellant met the eligibility requirements of Section 2 (2) of the *EAR* as she had been in receipt of income assistance for more than 12 of the preceding 15 months.

The ministry then looked at the requirements as set out in section 2 (3) of the *EAR*. Section 2 (3) (a) (i) requires that the person applying for the benefit of PPMB score at least 15 on the employability screen set out in Schedule E. The ministry refers to the information provided by the appellant regarding the highest level of her education, namely that she had achieved grade 10 -12. They point out that this level of education placed the appellant's Employment Screen Set score at 13.

The ministry took note of the appellant's statement when seeking reconsideration that she had not completed grade 10 and they explain that this level of education would increase her Employability Screen Set score from 13 to 15. However they point out that her statement conflicts with her previous statements, both when she first applied for income assistance in September 2005, and again in November 2005, January 2006 and November 2009, that her highest level of education achieved was grade 10 - 12. Given this contradiction the ministry stated that without confirmation of her education status the ministry considers her highest level of education achieved to be grade 10 - 12, giving her an Employability Screen Set score of 13. The ministry therefore found that the appellant fails to meet the requirement of a score of at least 15 as required by Section 2 (3) (a) (i).

At the hearing the appellant's evidence was that she had mis-read the document asking her to provide information on the highest level of education she had completed. She said she filled out the document without any assistance. Her testimony was that she did not finish Grade 10 and had only completed Grade 9. She said that she did not have her school records and that her father who had them had not been prepared to give them to her. She had sought the school documents from her school but they had advised her that her documents were in a central storage centre away from the school premises; that it would cost her \$25 to get her records and the process would take between 6 to 12 weeks. She said that she did not have the \$25.00 to pay to retrieve the documents and that there had been insufficient time between the reconsideration decision and the hearing of her appeal to get the documents.

Further on the matter of the Employability Screen Set the appellant stated that she found the document unfair because it did not ask her to provide any information on the state of her health.

The appellant's advocate stated that the appellant would not be disputing the Employability Screen Set score but would be basing her appeal not on section 2 (3), but rather on section 2 (4).

The representative from the ministry stated that as the appellant had failed to meet the requirement at Section 2 (3) (a) (i), it was necessary to consider her appeal based on section 2 (4).

The panel finds that given the information before the ministry at reconsideration of the highest level of education achieved by the appellant, given that the appellant had not been able to provide information to support her statement that her highest level of education had been Grade 9 and not between Grades 10 and 12 as she had indicated when making her application, the ministry's decision at reconsideration was a reasonable application of the *EAR* in her circumstances.

When the ministry considered the requirements of Section 2 (4) in the circumstances of the appellant, they referred to the Medical Report provided by the appellant's physician. The physician had stated that the appellant's primary conditions were anxiety and depression, that these had first occurred in

2005 and that her secondary condition was diabetes. The physician had indicated that the expected duration of the appellant's medical conditions was 2 years or more. Therefore the ministry found that the requirement at section 2 (4) (a) (i) had been met.

The ministry then turned their attention to the requirement at section 2 (4) (b), namely, that the appellant's medical condition confirmed by a medical practitioner ... in the opinion of the minister, is a barrier that precludes the person from searching for, accepting or continuing in employment. The ministry pointed out that when completing the Medical Report the appellant's physician had not specified any restrictions. They refer to the detailed submissions provided by the appellant when seeking reconsideration regarding her medical condition. The ailments described by the appellant at that time were asthma, chronic bronchitis, ADD and partial deafness. The ministry point out that these ailments had not been confirmed by a medical practitioner and that such confirmation is required under section 2 (4) at (a).

The appellant's advocate referred to the information in the medical report that the appellant takes Ciprolax and Atavan for anxiety. The appellant said that without these medicines she would not be able to go out of her residence. She described anxiety levels that made her physically sick and said that she was fortunate to have a room-mate who went out and did shopping and other chores for her. She told of difficulty even going to do her laundry in the garage of her place of residence. She said that all that she wanted to do was sleep to escape the pain. She described her diabetes as Stage 2 and explained that this restricted the foods she could eat.

She was asked why her doctor had failed to mention the ailments she had described to the ministry – asthma, chronic bronchitis, ADD and partial deafness. She said she did not know and that her physician provided her with the puffer needed because of the asthma and chronic bronchitis.

When asked about work, the appellant said that she had tried a paper route which required her to deliver the paper once per week. She said she had been able to do this for three months, but had been sexually assaulted and had not been able to continue. She said the assault had taken place last year.

The appellant's advocated argued that the appellant meets the conditions of Section 2 (4). He pointed to her testimony regarding her attempt to work, her need for medication in order to leave her home, and her reliance on others to go shopping for her.

The representative from the ministry pointed out that even with the new document admitted into evidence from the appellant's physician, the physician had not confirmed that the appellant suffered from asthma, chronic bronchitis, ADD and partial deafness. He said that in the minister's opinion the appellant's medical condition does not preclude her from searching for, accepting or continuing in employment as required by section 2 (4) (b). He defined "preclude" as "makes impossible", but admitted that this was a dictionary definition rather than a definition in the legislation.

The health related restrictions that the appellant's physician has confirmed are anxiety, depression and diabetes. The symptoms he has described are sleep disturbance waking at night, lack of concentration, no interest, lack of energy and moody. The panel finds that these are the only medical conditions that it can consider in coming to its decision because of the requirement in the legislation

that the appellant's medical condition be confirmed by a medical practitioner. The appellant's physician had an opportunity as late as March 8 when he provided information on the symptoms to have included the ailments described by the appellant but he failed to do so.

The panel noted at the hearing that when the appellant was offered by the representative of the ministry to have a document mailed to her, she chose instead to say that she would go to the ministry's office and collect it, so the panel finds that her difficulties in leaving her home are not completely overwhelming. The panel appreciates the difficulties the appellant must still face based on her recollection of the sexual assault last year. But as not all employment calls on workers to leave their home or that work be of a full time nature calling for sustained concentration, the panel finds the ministry's decision on this requirement to be reasonably supported by the evidence and a reasonable application of the applicable enactment, namely the *EAR* in the circumstances of the appellant.

Accordingly the panel confirms the ministry's decision.