

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated March 5, 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) to qualify as a person with persistent multiple barriers to employment (PPMB). The ministry was satisfied that the evidence establishes 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 1 year and is likely to continue for at least 2 more years. However, the ministry was not satisfied that the medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment, pursuant to Section 2(4)(b) 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) Letter dated October 27, 2011 from the appellant's physician 'To Whom It May Concern' stating in part that the appellant is suffering with back strain lately and has been unable to attend appointments for about 2 weeks;
- 2) Medical Report- Persons with Persistent Multiple Barriers (PPMB) dated January 16, 2012, which states, in part, that: the appellant's primary medical condition is COPD, depression, anxiety with no date of onset indicated. The secondary medical condition listed is back problems, memory issues with no date of onset provided; the prognosis sets out that the expected duration of the medical condition(s) is 2 years or more. In the section of the Report regarding restrictions, the physician has noted "...unable to work or look for work due to medical issues;
- 3) Employability Screen print out dated February 1, 2012, noting a total score of "14";
- 4) Letter from the ministry to the appellant dated February 1, 2012 denying his application for PPMB; and,
- 5) Request for Reconsideration- Reasons.

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 appellant stated that he had talked to an advocate about helping him with the appeal, but he believes that there was a miscommunication and that the advocate had not scheduled the time to attend the hearing. The panel reviewed the process for the hearing, and the appellant stated that he wanted to proceed with the hearing and represent himself, and he acknowledged that he did not know if the advocate would be prepared to attend on another day in any event. The appellant provided an additional document, namely a letter from his friend dated April 2, 2012. In the letter, the friend states in part that she has observed that the appellant is very quiet and seems to be tired and to have low energy. The friend has observed that the appellant has a hard time leaving the mall because he is afraid he will go into depression, and that he has told her he is thinking about suicide. The friend states that she worries about the appellant's health as he often does not eat all day, and his talk about suicidal thoughts scares her. The friend states that she has observed that the appellant's mental state is not 100% because he sometimes looks confused and at times he does not know where he is. The friend also states that she has noticed that the appellant's back is hurting him more and he has a hard time carrying things, that he is popping pain killers like crazy.

The panel reviewed the document and admitted the letter as being a further description of the appellant's diagnosed impairments and being in support of the information and records before the ministry on its reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act.

In his Notice of Appeal, the appellant states that he attended an employment plan but was told that if he did not, he would be cut off. The appellant states that he has not worked in over 4 years. The appellant states that his mental health and anxiety and confusion make even looking after himself challenging. The appellant states that his back pain takes his breath away. In his Request for Reconsideration, the appellant states that with his COPD he has trouble catching his breath and he gets winded walking more than a few blocks. The appellant states that he is on medication for his COPD and he takes Tylenol for his chronic back pain. The appellant states that some days it is hard to get out of bed. The appellant states that with his poor memory and poor concentration, he struggles daily to manage his life. The appellant states that he has left things on the stove, and his room-mate will remind him of things. The appellant states that he has comprehension problems as well. The appellant states that his anxiety can affect his breathing and he often has to spend days in bed resting. The appellant states that he often cannot carry all the food he is given at the food bank, and only gets the bread because he can carry this. The appellant states that he has been unemployed for 5 years due to depression and he has panic attacks.

At the hearing, the appellant stated that he had an accident at work in about 1973 where a fire extinguisher exploded in his face. The appellant stated that he believes that accident changed him because after that he

was frequently laughing and had trouble explaining things. The appellant stated that about a year or two later he was tackled playing a game with friends and he twisted his back and has had problems with it ever since. The appellant stated he then was involved in a motor vehicle accident where he was ejected from the vehicle and he started taking many pain killers after that and got hooked on them. The appellant stated that he has always done physical labour in a warehouse or in construction but he cannot do any heavy lifting anymore. The appellant stated that he tried to help a friend lift a television around October 2011 and he pulled his back and his doctor wrote the letter dated October 27, 2011 because he could not get around for a long time. The appellant stated that he has been sleeping on an air mattress because that is more comfortable for his back than the bed.

The appellant stated that his depression became worse a few years ago when he was let go from his last job working in construction. The appellant did not know what he would do since he is not able to do physical labour anymore and he thought he would become homeless. The appellant stated that the physician who completed the Medical Report dated January 16, 2012 has been his doctor for about 12 years, although he will only go to see a doctor if something is really serious, which is happening more recently. The appellant stated that his physician prescribed an anti-depressant medication which he has been taking. The appellant stated that he has ups and downs with his depression but he finds that he often gets confused, that he does not understand things. The appellant stated that he has often suggested people get help from mental health services, but now he is looking to get help himself. The appellant stated that he has been attending an employment plan with a service provider but has felt pressured to do so. The appellant stated that it was suggested by the service provider that he apply for PPMB status but when he gets asked questions he goes blank and his thoughts get scrambled. The appellant could not recall stating to the ministry that he had no barriers to employment. The appellant stated that he was given the Medical Report form and told to take it to his family physician to be completed, which he did. The appellant stated that someone helped him fill out the Request for Reconsideration and the Notice of Appeal documents because he did not feel capable of doing this.

The ministry's evidence includes that the appellant has been in receipt of income assistance as a single person since March 2008. The appellant's score on the employability screen is 14. In the Medical Report-PPMB dated January 16, 2012, the physician reports that the appellant has chronic obstructive pulmonary disease (COPD), depression, anxiety, back problems and memory issues. The physician indicates that the appellant is unable to work or to look for work due to medical issues. However, a review of the appellant's file indicates that on September 29, 2011, the appellant declared to the ministry that he does not have any barriers to employment, and he has been attending employment assistance services with a service provider. On October 28, 2011, the appellant submitted a medical note explaining that he was unable to attend for only a 2-week period due to recent back pain.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded 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); in particular, the ministry was not satisfied that the appellant's medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment, pursuant to Section 2(4)(b) of the EAR.

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, then Section 2(3) applies. If the person has scored less than 15 on the employability screen as set out in Schedule E to the EAR, then Section 2(4) applies. Under Section 2(4) 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 precludes the person from searching for, accepting, or continuing in employment.

The ministry's position is that the appellant has been in receipt of income assistance for more than 12 of the preceding 15 months and, therefore, meets the requirements of Section 2(2) of the EAR. However, the ministry argues that the evidence has not established that the appellant has met all the remaining applicable criteria of Section 2. As the appellant scored 14 on the employability screen, he must meet the requirements of Section 2(4) 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 precludes the appellant from searching for, accepting, or continuing in employment. The ministry points out that a medical condition is considered to preclude a recipient from searching for, accepting, or continuing in employment when as a result of the medical condition the recipient is unable to participate in any type of employment activities for any length of time, except in a supported or sheltered-type work environment. The ministry argues that the appellant declared in September 2011 that he had no barriers to employment, he has been attending employment assistance services with a service provider, and the medical note submitted in October 2011 explained he was unable to attend for only a two-week period.

The appellant argues that he may have been confused when the ministry asked him about barriers to employment and he acknowledges that he has been attending employment assistance service with a service provider but has felt under pressure to do so. The appellant points out that it was a representative of the service provider who suggested that he apply for PPMB status, that he does not understand the process but he took the Medical Report to his doctor to complete as he was told to do. The appellant argues that he cannot do physical labour as a result of his back problems and that his depression and confusion have become much more of an issue lately and he has had suicidal thoughts.

The panel finds that it is not disputed that the appellant's physician has provided a medical opinion, in the Medical Report dated January 16, 2012, that the appellant suffers from a medical condition other than an addiction, namely COPD, depression, anxiety, back problems and memory issues. 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. Regarding the nature of restrictions specific to the medical conditions, the physician states that the appellant is "...unable to work or look for work due to medical issues." Although the ministry argues that the appellant previously stated that he has no barriers to employment, the panel finds that the evidence demonstrates that the appellant has difficulties with comprehension, possibly as a result of his anxiety, as his friend stated in her letter that the appellant sometimes looks confused and at

times he does not know where he is, and the appellant stated he finds that he often gets confused, that he does not understand things and when he gets asked questions he goes blank and his thoughts get scrambled, and it is more likely than not that the appellant did not fully understand the question. The appellant could not recall stating to the ministry that he had no barriers to employment, and there was no further evidence from this ministry on this point. The ministry also argues that the appellant has been attending employment assistance services, however the evidence demonstrates that the appellant did not attend appointments for at least a two-week period in October 2011 due to back pain, as set out in the letter from his physician. While the panel finds that the appellant attended some of the program, the appellant has stated that his thoughts get scrambled and he gets confused, it was the service provider who encouraged the appellant to apply for PPMB status and the appellant stated he did not know what it was and simply followed instructions. The panel finds there was no further evidence from the service provider or the ministry on this point or regarding the appellant's level of effective participation given his diagnosed depression, anxiety and memory issues. In view of the opinion of the appellant's family physician as set out in the Medical Report, the panel finds that the ministry's conclusion that the evidence does not demonstrate that the appellant's medical conditions are a barrier that precludes him from searching for, accepting or continuing in employment, pursuant to the requirement in Section 2(4)(b) of the EAR, was not reasonable.

The panel finds that the ministry's reconsideration decision was not reasonably supported by the evidence and rescinds the decision pursuant to Section 24(2)(b) of the Employment and Assistance Act. Therefore, the ministry's decision is overturned in favour of the appellant.