

**PART C – Decision under Appeal**

The appellant appeals the reconsideration decision of February 13, 2012 in which the ministry denied the appellant's application for qualification as a person with persistent multiple barriers to employment under section 2 of the *Employment and Assistance Regulation* because the ministry was not satisfied that the appellant's medical conditions preclude her from maintaining all types of employment.

**PART D – Relevant Legislation**

*Employment and Assistance Regulation*, section 2 ("EAR").

## PART E – Summary of Facts

The evidence before the ministry at the reconsideration was a Medical Report – Persons with Persistent Multiple Barriers form (“PMB Form”) completed by the appellant’s physician November 16, 2011 (2 pages) and a copy of the ministry Employability Screen for the appellant dated December 8, 2011 (1 page) showing a total score of 9 (which, as noted in the reconsideration decision, was revised to a total score of 12).

The reconsideration decision notes that appellant has been a recipient of income assistance for at least 12 of the past 15 months. On the PMB Form, the appellant’s medical practitioner indicated that the appellant’s primary medical conditions are “anxiety, depression, arthritis” and her secondary medical condition is bursitis. The appellant’s physician indicated on the PMB Form that the appellant’s medical conditions will continue for 2 years or more and are chronic medical conditions. As noted in the reconsideration decision, the ministry is satisfied that the appellant’s medical practitioner confirmed that her medical condition has continued for one year and is likely to continue for at least two more years.

On the PMB Form in the section describing treatment and outcome for the appellant’s medical conditions, the appellant’s physician listed medications (Celexa, Zopiclone and Lorazepam) and indicated that this was resulting in “mild” and “short term” improvement. The appellant says in her submission on appeal that “the medications attempted to date have provided only minimal to short term improvement.” The appellant’s physician also wrote that the appellant was referred to psychiatry “pending Agoraphobia” in this section of the PMB Form. In her submissions on appeal (reproducing her submission on reconsideration), the appellant says that she is “terrified” of leaving her home, which accounts for her physician’s suggestion that she has agoraphobia. Under the section “Restrictions” in the PMB Form, the appellant’s physician wrote, “Restriction heavy lifting and strenuous activity [indecipherable] of large crowds.”

Attached to her submissions on appeal, the appellant provided additional material to the panel of a copy of Section 2 of her application for Persons with Disability status completed by the appellant’s physician (5 pages), signed and dated February 7, 2012. Under Section B, Health History, the appellant’s physician wrote, “Patient’s condition severe to a point of having 3 suicide attempts that required hospitalization, multiple episodes of anxiety/panic attacks ... patient being treated with medication for both bipolar and anxiety disorder.” In Section C “degree and course of impairment”, the appellant’s physician has indicated that the appellant’s impairment is likely to continue for two years or more and wrote, “Chronic medical condition, [patient] has been on treatment for almost 3 years already. Working/work environment aggravates her anxiety.” In Section E – Daily Living Activities, the appellant’s physician wrote under “If “periodic” please explain”, “Patient has anxiety/Agoraphobia when in public” and wrote, “Severe anxiety/panic attacks in social situations.”

The panel admits this additional evidence of the copy of Section 2 of the appellant’s application for Persons with Disability status under s. 22(4)(b) of the *Employment and Assistance Act* as the panel finds that it is written testimony from the appellant’s physician in support of the information and records that were before the minister when the reconsideration decision being appealed was made.

The panel makes the following findings of fact:

- The appellant has been a recipient of income assistance for at least 12 of the last 15 months;

The panel makes the following findings of fact:

- The appellant has been a recipient of income assistance for at least 12 of the last 15 months;
- The appellant scored a total of 12 on the employability screen;
- The appellant's physician has confirmed that she suffers from the medical conditions, other than addiction, of anxiety, depression, arthritis and bursitis, and is being treated with medication for both bipolar and anxiety disorder; and
- The appellant's physician has confirmed that her medical conditions have continued for one year and are likely to continue for at least two more years.

## PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the ministry's reconsideration decision of February 13, 2012, denying the appellant's application for qualification as a person with persistent multiple barriers to employment under section 2 of the *Employment and Assistance Regulation* ("EAR") on the basis that the minister was not satisfied that the appellant's medical conditions preclude her from maintaining all types of employment.

Section 2 of the EAR governs the requirements to qualify as a person with persistent multiple barriers (PMB) to employment. Under subsection 2(1), in order to qualify as a person who has PMB to employment, a person must meet the requirements set out in subsection 2(2) **and** subsection 2(3) **or** 2(4). Subsection 2(2) requires that the applicant must be a recipient for at least 12 of the immediately preceding 15 calendar months of income assistance or hardship assistance under the *Employment and Assistance Act* (subs. 2(2)(a)). Subsections 2(3) and 2(4) set out the following requirements:

(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 appellant's position is that the decision to deny her application for qualification as a person with PMB to employment is unreasonable. The appellant says that she has been diagnosed with depression and anxiety "with a fear of crowds, and a possible diagnosis of agoraphobia, plus arthritis that limits physical activities" and that this diagnosis, together with the medications she takes, demonstrates that she has "some serious barriers to seeking and maintaining employment." The appellant submits that her anxiety levels "preclude [her] from leaving her home and if she was able to obtain work it would probably mean a supported/sheltered work environment."

The appellant says that the additional information provided by her physician in the Persons with Disabilities application form supports her submissions – her physician has indicated that working or work environment aggravates her anxiety. The appellant says that this panel should resolve the ambiguity in the PMB Form (that her physician states that she has problems with crowds without relating it back to her agoraphobia and severe anxiety), in her favour following the *Hudson* decision.

The ministry's position is that the denial of the appellant's qualification as a person with PMB to employment was reasonably supported by the evidence, noting that the appellant's Persons with Disabilities application was submitted to the ministry after the reconsideration decision. The ministry says that the information provided does not establish that the appellant's medical conditions present a barrier that precludes her from searching for, accepting or continuing in employment. The ministry says that the appellant's physician wrote that she is restricted from heavy lifting and strenuous activity and "restricted in activities of large crowds." The reconsideration decision notes the appellant's report in her request for reconsideration that she is terrified of crowds and that she had an appointment to see a psychiatrist because she is terrified of leaving her home, which accounts for her doctor's suggestion that she might have agoraphobia. The ministry's opinion is that, while the appellant's medical conditions prevent her from maintaining physically demanding work and working in a crowded environment, the appellant "should be able to manage sedentary or light-duty employment in a solitary work position or an employment position with a few other employees" and thus her medical condition does not preclude her from "all types of employment".

The ministry found that the appellant has been a recipient of income assistance for at least 12 of the preceding 15 months and meets the requirement set out in subsection 2(2)(a). The ministry found that the appellant scored a total of 12 on her employability screen and thus the provisions of subsection 2(3) do not apply to her. The ministry found that the appellant's physician has confirmed that she suffers from the medical conditions (other than an addiction) of anxiety, depression, arthritis and bursitis, which medical conditions have continued for one year and are likely to continue for at least two more years, meeting the requirements of subsection 2(4)(a). The panel finds that the appellant's physician has also confirmed that she suffers from the medical conditions of bipolar and anxiety disorder.

In the reconsideration decision, the ministry says that "a medical condition is considered to preclude the 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 for any length of time except in a supported or sheltered-type work environment." The panel finds that the ministry's determination that the appellant's medical conditions do not preclude her from "all types of

employment" is inconsistent with the ministry's statement in the reconsideration decision reproduced above and is not a reasonable application of the legislation to the circumstances of the appellant. The panel further finds that the ministry's determination that it was not satisfied that the appellant's medical conditions preclude her from participating in any type of employment for any length of time except in a supported or sheltered-type work environment is not supported by the evidence provided by the appellant and her physician that she is terrified of leaving her home, that she suffers from anxiety and is on medication treating her anxiety and bipolar disorders, that she suffers from agoraphobia and that working/work environment aggravates her anxiety.

The panel rescinds the reconsideration decision of February 13, 2012; accordingly, the ministry's decision is overturned in favour of the appellant.