

PART C – Decision under Appeal

The decision under appeal is the ministry's Reconsideration Decision dated 14 January 2012, which held that the appellant did not qualify as a person with persistent multiple barriers to employment (PPMB) under section 2 of the Employment and Assistance Regulation because it had not been established that her medical condition is a barrier that precludes her from searching for, accepting or continuing in employment. The ministry did determine that she has been a recipient of income assistance for at least 12 of the last 15 months. The ministry had determined that she scored 12 on the employment screen set out in Schedule D of the Regulation and therefore assessed her qualification for PPMB under section 2(4) of the Regulation. The ministry also determined that in the opinion of a medical practitioner she has a medical condition that has continued for at least one year and is likely to continue for at least 2 more years.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) – section 2.

PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of the following:

- 2 ½ pages of consultation reports prepared by what the panel presumes to be a psychologist or psychiatrist concerning three consultations, the first in November 1985, the second in December 1986 and the third in October 1988. [The ministry in its Reconsideration Decision stated that: "As this information is about 25 years old, it will not be used in making a decision on your current employability status."] The panel has reviewed this material and for the reason cited, finds the ministry reasonably determined that it was not relevant to the appellant's current application for PPMB, and therefore finds no need to summarize these reports here.
- A Client Employability Profile dated 18 October 2011, on which a worker comments:
"Dr has listed client's barrier as anxiety, but no restrictions noted. Client has not worked in at least 3 years, last employed as housekeeping. As per client, her anxiety flares up when she feels rushed or in large crowds of people. Client may be able to offer cleaning in private homes in the community but states that the field is saturated in her small town. Moved from [another province] 4 years ago. Prior to that had completed her whmis/first aid/computer basic learning skills course skills/security/job readiness, but all expired now. In this worker's opinion, size of community is barrier to employment for this client. Client states that backaches would not prevent her from participating in an employment program as long as she was able to adjust positions every half-hour. She states she can sit up to half an hour before needing to adjust, can walk very short distances before her back bothers her, is able to ride her bike to place of volunteer. Volunteers at local laundromat, cleaning the lint filters. Walks/hikes around town, does not drive."
- The appellant's Employability Screen, also dated 18 October 2011, showing a score of 12, based on the above Profile.
- A Medical Report - Employability dated 13 September 2011, prepared by the appellant's physician, who has been her general practitioner (GP) for over 6 months. The GP reports anxiety as the appellant's primary medical condition, with onset 1985. Under prognosis, the GP reports that the condition is expected to last more than 2 years, with the comment that it has been a constant problem since 1985. The GP notes that this condition is not episodic, but constant. Under restrictions, the GP reports "None."
- A Medical Report – PPMB also dated 13 September 2011, prepared by the same GP, reporting the same primary medical condition – anxiety, prognosis and restrictions (None). Under treatment, The GP lists medications referral to a psychiatrist. Under outcome, the GP states: "Still finding day to day coping difficult due to chronic anxiety."
- The appellant's Request for Reconsideration dated 29 November 2011. The appellant writes:
"I am asking that you reconsider my application as I have lower back problems and severe nerve problems which are ongoing for several years. I am attending help with [name] with BC home care for counseling and with [name] ADAC."

In her Notice of Appeal dated 24 January 2012 the appellant writes:

"This has been an ongoing disability for over 20 years and progressively getting worse each year that passes."

After reconsideration but before the hearing, the appellant submitted a note dated 13 April 2012 from another physician from the same health centre as the GP. The note reads:

"This is to certify that [the appellant] is unfit for work indefinite."

In an email from the ministry dated 18 April 2012, the ministry states that its submission in the appeal will be the reconsideration summary.

The panel finds that the new information provided by the other physician is in support of the information and records that were before the ministry at the time of reconsideration. His certification that the appellant is unfit for work supports the appellant's application that her medical condition qualifies her as a person with persistent multiple barriers to employment. The panel therefore admits the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably determined that the appellant did not qualify as a person with persistent multiple barriers to employment (PPMB) under section 2 of the EAR because it had not been established that her medical condition is a barrier that precludes her from searching for, accepting or continuing in employment.

The ministry did determine that she has been a recipient of income assistance for at least 12 of the last 15 months. The ministry had determined that she scores 12 on the employment screen set out in Schedule D of the Regulation and therefore assessed her qualification for PPMB under section 2(4) of the EAR. The ministry also determined that in the opinion of a medical practitioner she has a medical condition that has continued for at least one year and is likely to continue for at least 2 more years.

The relevant legislation from the EAR is 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
 - [not applicable to appellant].

(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.

In its decision the ministry states 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 for any length of time except in a supported or sheltered-type work environment. The position of the ministry is that the appellant's medical condition does not preclude her from maintaining all types of employment. The ministry notes that in terms of restrictions specific to her medical condition, her GP does not report any restrictions. Further, there is no information from her physician of the severity or restriction of the lower back problems reported by her in her Request for Reconsideration that would affect employability. The ministry therefore found that the appellant did not meet the criterion set out in EAR section 2(4)(b).

The position of the appellant is that she suffers long-standing, progressively severe chronic anxiety which, as her GP reports, makes it difficult for her to cope on a day-to-day basis. Her condition is so bad that another physician, from the same health centre as her GP, has formally certified that she is unfit to work. She argues that she thus meets the criterion of EAR section 2(4)(b) and therefore qualifies as PPMB.

The evidence of the GP as reported in the Medical Report – Employability and the Medical Report – PPMB is that the appellant's primary medical condition relating to employability is anxiety. The GP reports that this has been a constant problem since 1985 and the appellant is still finding day-to-day coping difficult due to its chronic nature. He reports that the anxiety is not episodic but constant. In her self-report to a worker in relation to her Employability Profile, the appellant stated that her anxiety flares up when she feels rushed or in large crowds of people. In her Notice of Appeal she emphasizes that her condition is long-standing and progressively worsening. However, in the Medical Reports, when asked to describe the nature of any restrictions specific to the medical condition, the GP reports "None." The panel notes that the Medical Report – PPMB asks: "Please enclose copies of documentation that supports the severity and restrictions of the medical condition (e.g. laboratory reports, psychological reports, etc.)." It is not clear to the panel whether the consultation reports dating back to the 1980s were submitted by the GP or attached to the Request for Reconsideration separately by the appellant. In either case, as the panel has noted, these reports are not relevant to the present appeal.

The certification by the other physician submitted after reconsideration states that the appellant "is unfit for work indefinite." However, there is no accompanying information as to how often and in what capacity this physician has seen the appellant. Nor is the medical condition that gives rise to her being unfit for work specified. If it is her anxiety condition, there is no explanatory description as to how and to what extent this condition would manifest in a typical work environment or situation, or how dealing with work stresses might affect her overall health. The panel considers it reasonable that any such certification submitted by a physician be supported by the same kind of explanatory and/or documentary information as requested in the Medical Report – PPMB. Absent this supporting information, the panel places little weight on the certification submitted by the other physician and relies on the Medical Report – PPMB submitted by the GP. As the GP reports no restrictions specific to the appellant's medical condition, and as restrictions and their nature and severity are central to any assessment of medical barriers to employability, the panel finds the ministry reasonably determined that it had not been established that the appellant's medical condition is a barrier that precludes her from searching for, accepting or continuing in employment.

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The panel therefore finds that the ministry's decision that the appellant did not qualify for PPMB under section 2 of the EAR is reasonably supported by the evidence. The panel thus confirms the ministry's decision.