

**PART C – Decision under Appeal**

The decision under appeal is the ministry's reconsideration decision dated February 17, 2012 which held that the appellant did not meet the eligibility criteria under s. 2 of the Employment and Assistance Regulation (EAR) to qualify as a person with persistent multiple barriers (PPMB) to employment. The ministry determined that the criteria of s. 2(3) of the EAR were not met because the appellant scored 13 on his employability screen and that the criteria of s. 2(4)(b) were not met because the minister was not of the opinion that the appellant's medical condition is a barrier that precludes all forms of employment. The ministry was satisfied that a medical practitioner had confirmed that the appellant's medical condition has existed for more than 1 year and is likely to continue for at least 2 more years satisfying the criterion of s. 2(4)(a).

**PART D – Relevant Legislation**

Employment and Assistance Regulation (EAR), s. 2

## PART E – Summary of Facts

The evidence before the ministry at reconsideration is that the appellant has been in receipt of income assistance for all of the last 15 months as a single person and applied for PPMB designation on January 9, 2012.

Documentary evidence before the ministry comprised:

- 1) A Medical Report – Employability completed by a general practitioner on May 26, 2011 which lists the appellant's primary medical condition as alcoholism, chronic. Secondary medical conditions are reported as depression, anxiety, and COPD. The appellant's overall medical condition is indicated as severe. The physician indicates that the duration of the appellant's medical condition(s) is more than 2 years commenting "permanently unemployable due to alcohol dependency." Restrictions specific to the medical condition(s) are described as "severe shortness of breath with exertion."
- 2) A June 2, 2011 letter to the ministry from an employment support organization advising that the appellant is working with the organization in the pre-employment stages of his employment journey to work on his barriers to employment as he is not employment ready at this time and has been attending appointments regularly.
- 3) A Medical Report – Persons with Persistent Multiple Barriers completed on November 11, 2011 by a second general practitioner listing the appellant's primary medical condition as substance use disorder. Depression, anxiety, [illegible], and COPD are listed as secondary medical conditions. Treatment is described as "No specific (illegible)." The expected duration of the medical condition(s) is 2 years or more and the condition is not episodic in nature. Restrictions specific to the medical condition(s) are described as "Cannot do work requiring rigorous effort."
- 4) A January 9, 2012 Client Employability Profile completed by the ministry indicating that the appellant has been unemployed for over 3 years, has a severe lack of employment search and planning skills, has post secondary education, no literacy problems, a severe health condition, persistent disability severely impacting employment options, and some difficulty communication and resolving conflicts. The appellant is noted as stating that he suffers from severe anxiety and depression for which he uses alcohol for symptom relief. He experiences panic attacks, avoids unfamiliar situations, and is socially isolated. He states that he has accessed mental health and addictions a couple of times but did not feel it helped. He states he has shortness of breath with any exertion (COPD) and difficulty walking, lifting and climbing stairs.
- 5) A Persons Who Have Persistent Multiple Barriers to Employment Checklist also completed by the ministry on January 9, 2012 indicating that the appellant's score on the Employability Screen is 13 and that the identified barriers to employment are: substance abuse disorder, alcohol, depression, social isolation, anxiety, panic attacks, COPD, chronic smoking, shortness of breath, difficulty with exertion. Additional commentary is that the appellant's employment program provider observed that the appellant appears to struggle with self-awareness related to barriers and that the appellant identified "several barriers but states he is reluctant to w."
- 6) The Request for Reconsideration signed by the appellant on February 9, 2012 in which he describes himself as useless and hopeless.

In a Notice of Appeal (NOA) received by the Tribunal on February 29, 2012 the appellant wrote that

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he disagreed with the reconsideration decision "Because I hate everybody. I don't trust anybody. I don't believe a word anyone says. Everyone lies to my face!!!" In a subsequent NOA received by the Tribunal on March 14, 2012, the appellant wrote "and I'm a danger to myself and others." The appellant's NOA submissions were accepted by the panel as argument.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that the appellant did not meet the eligibility criteria under s. 2 of the EAR to qualify as a person with persistent multiple barriers (PPMB) to employment because the criteria of s. 2(3) of the EAR were not met because the appellant scored 13 on his employability screen and the criteria of s. 2(4) were not met because the minister was not of the opinion that the appellant's medical condition is a barrier that precludes all forms of employment is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

Section 2 of the EAR is set out below.

### 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.

The ministry's position, based on the written record, is that the appellant is not eligible for designation as a PPMB under s. 2(3) of the EAR because his employability screen score was not at least 15. The ministry also takes the position that the appellant is not eligible under s. 2(4) of the EAR. The ministry determined that the criteria of s. 2(4)(a) were met because the appellant has a medical condition, other than an addiction, that is confirmed by a medical practitioner and has, in the opinion of a medical practitioner, existed for at least one year and is likely to continue for at least two more years. However, the ministry determined that the criterion of s. 2(4)(b) was not met because it was not of the opinion that the restrictions identified by the medical practitioner, namely that the appellant cannot do work requiring rigorous effort and has shortness of breath with exertion, establish that the appellant's medical condition is a barrier that precludes all forms of employment.

The appellant's position, based on the written record, appears to be that his medical conditions qualify him for PPMB designation and that he is useless, without hope, mistrusting of others, and poses a danger to himself and others.

With respect to the ministry's determination that the appellant has not met the eligibility requirements for PPMB designation set out in s. 2(3) of the EAR, the panel finds that the appellant's employability screen score of 13 is not in dispute. Therefore, as the initial requirement to satisfy the criteria of s. 2(3) of the EAR is having scored at least 15 on the employability screen set out in Schedule E, the ministry reasonably determined that the appellant did not qualify for PPMB designation under s. 2(3) of the EAR.

With respect to whether the ministry reasonably determined that the appellant had not met the eligibility criterion for designation as a PPMB under s. 2(4) of the EAR, specifically the criterion of s. 2(4)(b), subsection (4) requires that the medical condition be a condition other than an addiction. Accordingly, the appellant's medical conditions under consideration are depression, anxiety, and COPD as the diagnosis of alcoholism and any narrative respecting restrictions resulting solely from alcoholism cannot be relied on to meet the criteria of s. 2(4)(b).

With respect to the diagnosed conditions of depression and anxiety, the ministry PPMB checklist and Client Employability Profile identify problems including appearing to lack self-awareness, avoiding

unfamiliar situations, and being socially isolated. However, the medical practitioner has not provided evidence of any restrictions resulting from the appellant's depression and anxiety in either of the medical reports. The information provided by the medical practitioner respecting restrictions resulting from the appellant's COPD is that the appellant experiences "severe shortness of breath with exertion" and that the appellant "Cannot do work requiring vigorous effort." In both medical reports, the medical practitioner identifies COPD, depression, and anxiety as secondary medical conditions with alcoholism identified as the primary medical condition which is reported to make the appellant permanently unemployable. Again noting that the legislation expressly precludes addictions as medical conditions which may qualify a person for PPMB designation, the panel finds that the information available to the ministry respecting the appellant's COPD, depression, and anxiety was reasonably viewed by the ministry as not establishing that the appellant is precluded from all forms of employment, specifically, work that does not involve physical exertion or vigorous effort. Therefore, the panel finds that the ministry reasonably determined that the appellant was not eligible for designation as a PPMB under s. 2(4) of the EAR.

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision.