

PART C – Decision under Appeal

The decision under appeal is the ministry's Reconsideration Decision dated 05 April 2012 which held that the appellant did not qualify as a person with persistent multiple barriers to employment (PPMB) because she did not meet all of the criteria under section 2 of the Employment and Assistance Regulation. In particular, the ministry determined that it had not been established 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, nor had it 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 14 on the employment screen set out in Schedule E of the Regulation and therefore assessed her qualification for PPMB under section 2(4) of the Regulation.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 2.

PART E – Summary of Facts

The ministry failed to appear at the hearing at the scheduled time and date. After verifying that the ministry had received notification of the hearing at least 2 business days before the hearing date by examining the Notice of Hearing fax transmit confirmation report, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at reconsideration included the following:

1. A Medical Report – PPMB dated 21 November 2011 and completed by a general practitioner (GP). The GP indicates she has known the appellant for over 6 months and has not examined any previous medical records in completing the form. The GP reports that the appellant's primary medical condition is chronic depression + anxiety, with onset 1990. The GP reported that the appellant is being treated with prescriptions for Synthroid, Cytomel and iron supplements. The expected duration of the medical condition is indicated as being 2 years or more, and is not episodic in nature. There are no restrictions reported.
2. A second Medical Report – PPMB, dated 20 February 2012, completed by the appellant's current GP who has known the appellant for less than 6 months. This GP reports that the appellant's primary medical condition is depression, with onset 2007. Under treatment, the GP notes the appellant was taking Effexor, but dropped 1 year ago for unknown reason; she has not been taking any antidepressant for the past year, but the GP started her today on Cipralex. The GP reports this condition has existed for 10= years. Under prognosis, the GP indicates that the duration of the medical condition is less 2 years, commenting that it "should improve when antidepressant's kick in." Under restrictions, the GP reports: "No physical restrictions, but fatigue and reduced concentration."

The panel understands that the first Medical Report – PPMB was the basis for an earlier application for PPMB qualification. The panel relies on this second, more recent, Medical Report – PPMB as it is the basis for the current application.

3. Several medical reports/records, as follows:
 - An undated note from an ENT specialist diagnosing chronic sinusitis with a plan to do a CT scan...
 - A handwritten note with the name and address of the bladder specialist for what appears to be an appointment for April 30 [no year] at 11 a.m.
 - a consultation report from an endocrinologist dated 30 July 2010 diagnosing primary hypothyroidism. The plan is to adjust medications and have routine follow up.
 - An ultrasound of the thyroid/neck dated 11 March 2010. Both thyroid nodes are diffusely heterogeneous with multiple tiny hypoechoic foci throughout the thyroid compatible with a history of Hashimoto's thyroiditis. No dominant nodule.
 - Thyroid ultrasound dated 01 April 2005. Findings are similar to the ultrasound of 11 March 11, 2010.
4. The appellant's Request for Reconsideration dated 23 March 2012. Under reasons, the appellant writes:

"My old doctor moved and dropped some patients. My new doctor does not know my

history and therefore did not complete the form properly. Things that she left out include:

1. Tiredness (due to Hashimoto's thyroiditis).
2. Chronic depression and anxiety
3. Chronic sinusitis (currently waiting to have a CT scan)
4. Stress incontinence (currently waiting to see a specialist on April 30)
5. Sleep disturbances due to anxiety and sinusitis (sinusitis symptoms get worse at night: ear pain, throat pain, gums and cheek bone pain, postnasal drip)
6. Allergies. I do not know what I am allergic to, but my Dr. will refer me for an allergy test after the CT scanned return.

I do believe the major contributing factor to my inability to hold down employment is my lack of energy and sleepiness during the day due to broken sleep. I do believe this will last two years or more. Also possible sinus and bladder surgery within the next few months and allergy testing.”

In her Notice of Appeal, the appellant gives as her reasons for appeal”

“Because I believe that there are enough medical reasons that make it difficult for me to hold down a job at the moment.”

After reconsideration and before the hearing, the appellant submitted a letter from an urologist to the appellant's current GP dated 30 April 2012. The urologist writes that the appellant has had incontinence for the last 5 to 6 years and in the last six months it has gotten markedly worse. She gets tummy pains or pelvic discomfort with running 10- 20 km, or dragon boating. She does not admit to a lot of urgency, but does have leakage with lift, laugh, cough, sneeze or any form of exertion. She is ready to consider a surgical correction for the leakage. He writes that the appellant is normally healthy, and that this is impinging on her quality of life; she is not able to exercise as much as she would like. The appellant had a cystoscopy, which confirmed mild cystourethrocale; urethra is poorly supported and there is a grade 1-to-2 cystocale. His assessment is that she has stress urinary incontinence without much urgency. The plan is for her to have a surgical procedure that has a 95% success rate. He will place a booking for this procedure and because of the protracted wait, reassess her later to answer any questions and go over the procedure. Attached to this letter is a note to the appellant regarding “pre op” requirements and information pages on the surgical procedure.

At the hearing the appellant reviewed her medical conditions as she listed in her Request for Reconsideration. She advised the panel that her surgery by the urologist is now scheduled for 07 June 2012. She said medical appointments before then and recovery after will preclude any employment related activities for the next couple of months. She stated that going on anti-depressant medication has improved her depression/anxiety by about 50%, but she still has times, twice a month or so, when her mood and energy levels are down and would make her unable to work. She said that her Hashimoto's thyroid disease is a contributing factor to her mood and energy fluctuations, and that her sinusitis further affects her by preventing her from sleeping properly. She stated that she was confident in being able to find work, but keeping a job would be difficult because of frequent absences due to fatigue and depression and this would not be fair to an employer.

The panel finds that the new information provided by the appellant and her urologist is in support of the information and records that were before the ministry at the time of reconsideration. The information about the appellant's pending urology surgery updates the appellant's statement in her

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Request for Reconsideration concerning how she has a stress incontinence condition and was waiting to see a specialist. 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 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 and 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 14 on the employment screen set out in Schedule E of the Regulation and therefore assessed her qualification for PPMB under section 2(4) of the EAR.

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.

With respect to whether the appellant has a medical condition confirmed by a medical practitioner that, in the opinion of the medical practitioner, has continued for at least 1 year, or has occurred frequently in the past year, and is likely to continue for at least 2 more years, the ministry relied on the Medical Report – PPMB completed by the appellant's current GP. The physician reported a diagnosis of depression, with onset of 2007, with an expected duration of less than 2 years, with the comment "should improve when antidepressant kicks in." The ministry took into consideration the other medical records, but concluded they do not speak to her current physical restrictions or her current ability to participate in all types of employment. On this basis, the ministry determined that the appellant did not meet the criterion set out in EAR section 2(4)(a).

The position of the appellant is that she has a combination of medical conditions that poses a barrier to her employability over the longer term (more than 2 years): in particular, she continues to have bouts of depression despite taking an antidepressant; her sinusitis and possible allergies await investigation and their prognosis is uncertain; and her Hashimoto's thyroid disease, though being treated, is a life-long affliction. The combination of these conditions negatively affects her ability to get proper sleep, causing a lack of energy and sleepiness precluding her from holding down a job.

The panel notes that the only medical condition reported in the appellant's Medical Report – PPMB is depression. Her thyroid condition has been confirmed by medical practitioners, but no long-term prognosis has been given. An assessment of her sinus condition awaits a CT scan and possible allergies have not been confirmed. She has been diagnosed with stress incontinence, but there is a high likelihood that this will be remedied by pending surgery according to the surgeon. The panel notes that the legislation requires that a medical condition that the minister assesses as a barrier to employability must be confirmed by a medical practitioner. The panel finds no evidence that the combination of conditions described by the appellant has been confirmed by a medical practitioner, nor has it been confirmed that the combination will continue for at least 2 years. The panel finds that the ministry reasonably considered only depression as the medical condition under assessment, and with the GP's prognosis that the depression will continue for less than two years, the panel finds that the ministry reasonably concluded that the appellant did not meet the criterion set out in EAR section 2(4)(a).

As to whether the appellant's medical condition precludes her from searching for, accepting or continuing in employment, the ministry holds that this means that as a result of a 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 environment. As the physician reports restrictions specific to her medical condition as "no physical restrictions but fatigue and reduced concentration", in the minister's opinion, the appellant's medical condition and resultant restrictions do not preclude her from all types of employment, including part-time work or from attending a job program to work towards independence. The ministry thus found the appellant did not meet the criterion set out in EAR section 2(4)(b).

The position of the appellant is that she has presented sufficient medical evidence and reasons for demonstrating that it would be difficult for her to hold down a job in the foreseeable future.

The evidence is that the appellant has a diagnosis of depression confirmed by her GP, with "no physical restrictions but fatigue and reduced concentration." She has a thyroid condition, confirmed

by specialists, which may have a bearing on her mood and energy. She also describes a sinus problem and possible allergies, both awaiting investigation and not confirmed by a medical practitioner, which may contribute to the sleeping difficulties she describes. However, there is no evidence as to the severity of the fatigue and reduced concentration, including how, how often and to what degree these restrictions would manifest in a work environment or during a work schedule. In the absence of such medical information, the panel finds that the ministry reasonably concluded that the appellant's medical condition did not preclude her searching for, accepting or continuing in all types of work, including part-time work or in a job program to work towards independence. The panel therefore finds the ministry reasonably determined that the appellant did not meet the criterion in EAR section 2(4)(b).

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.