

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated May 24, 2012 which held that the appellant is not eligible for Persons with Persistent Multiple Barriers (PPMB) designation pursuant to section 2, ss. (1), (2), (3) and (4) of the Employment and Assistance Regulation (EAR). The ministry determined that the appellant's medical conditions do not preclude her from all forms of employment as required by the legislation.

PART D – Relevant Legislation

Employment and Assistance Regulation – EAR – Section 2

PART E – Summary of Facts

The evidence before the ministry at reconsideration included:

- Ministry's decision dated March 9, 2012 denying the appellant's request for the PPMB designation;
- A copy of the appellant's Employability Screen dated March 9, 2012 with a total score of 8;
- A Medical Report for PPMB completed by a family physician dated January 3, 2012;
- Request for reconsideration dated March 20, 2012.

The appellant in the request for reconsideration submitted that the reason she is not able to look for work is that she has an undiagnosed illness in addition to depression and anxiety. The appellant stated that this undiagnosed illness causes bad breath that is humiliating and it is ruining her life. The appellant submitted that she had spoken with a few physicians about this illness but they were not able to help her. The appellant said that her self-esteem is very low and because she has been ignored by others, it is easier for her to avoid being around other people. The appellant stated that she is completely isolated and has no friends. The appellant said that she feels intense anxiety around others which causes a lot of emotional distress for her. The appellant stated that she does not have a family doctor and has seen physicians in walk-in clinics. The appellant submitted that she has been on anti-depressants since 1998; however, they are not always effective and they are not fixing her problem.

The physician in the medical report for PPMB stated that the appellant's primary medical condition is Depression/Anxiety since 1998 and that the appellant has been treated by Effexor XR. The physician stated that the outcome of the treatment is "moderately stable, ongoing anxiety and mood disruption". The physician indicated 2 years or more for expected duration of medical conditions and answered "no" to whether the medical condition is episodic in nature. The physician noted "poor social interaction and motivation" as the appellant's restrictions. The physician indicated that he has been the appellant's medical practitioner for over 6 months and that he has examined the appellant's previous medical records.

The appellant received 8 score on the Employability Screen. The appellant received 0 for her age as he is between 25 to 49 years of age. The appellant received 1 for being on income assistance 1 to 3 times, apart from her current application, in the last 3 years. The appellant's score on section 4 is 7 as she was on income assistance for more than 12 months in the past 3 years. The appellant's score is 0 for the highest level of education as having some post-secondary education. The appellant's score is 0 on section 6 as she spent more than 12 month in paid employment over the last 3 years and 0 score for her ability to speak English.

The appellant in the Notice of Appeal dated June 1, 2012 submitted that she is not able to look for work as she has an undiagnosed illness. She stated that she would not be able to deal with this medical condition without a diagnosis. The appellant stated that her self-esteem is very low and she is completely isolated. The appellant submitted that she had many tests including CT Scan, MRI, test for "h.pylori" (ulcer), and was referred to an ear/nose and throat doctor. The appellant stated the "none of these tests show anything". The appellant further submitted that she has been on anti-depressants since 1998 but they are not always effective and they are not really fixing her problem. The appellant further stated that "I have the distinct feeling that any doctors I have seen just want me to go away, I have suggested illness I think I might have because of my own research but to no avail". The appellant said that she is really at a loss as to what to do next.

The ministry did not attend the hearing. After establishing that the ministry had been informed of the hearing and waiting for 20 minutes, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation (EAR).

At the hearing, the appellant provided two copies of blood tests. One is dated January 20, 2012 and the date on the second one is not readable. The appellant said that the second laboratory result is from the month of June 2012. The Panel reviewed the documents and noted that there is no diagnosis attached to these laboratory tests. The panel accepted the results of the tests as being in support of the information before the

ministry at the reconsideration under section 22(4) of the Employment and Assistance Act (EAA) and therefore admitted the tests into evidence.

The appellant submitted that on January 20, 2012, she went to a hospital in order to have blood test. The appellant stated that she does not have a family physician and has seen 4 different doctors in the clinic. The appellant said that the physician who completed the PPMB application does not know her well. The appellant submitted that she has chronic illness besides depression. In reviewing the employability scores, the appellant said the information in section 6 is not correct. The appellant stated that she only worked for 3 to 12 months in the past 3 years selling items on EBay.

The panel finds that:

- The appellant spent 3-12 months in paid employment over the last 3 years;
- The appellant's employability screen score is less than 15;
- The appellant is diagnosed with depression/anxiety.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's determination that the appellant is not eligible for PPMB designation was a reasonable application of the applicable enactment in the circumstances of this case or is reasonably supported by the evidence.

Section 2 of the EAR provides eligibility for PPMB and states:

- (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 in the reconsideration decision is that the appellant scored 8 on the employability screen and that there is no indication that the medical condition described by the physician, constitutes a limitation or a barrier precluding the appellant from employment.

The appellant argues that the reason she is not able to look for work is that she has an undiagnosed illness in addition to depression and anxiety. The appellant stated that this undiagnosed illness causes a bad breath that is humiliating, she is completely isolated. The appellant argues that she is affected by the undiagnosed medical condition that constitutes a barrier in term of the legislation but has not submitted any corroborating evidence of these conditions.

Section 2 of the EAR provides that in order to be eligible for the PPMB status, a person who scores less than

15 on the employability screen must have a medical condition, confirmed by a physician, that has continued for at least 1 year and is likely to continue for at least 2 more years, and that precludes that person from searching, accepting and continuing in employment.

The appellant describes a number of medical conditions affecting her including social anxiety, depression; sleeping disorder. The physician stated that he has been the appellant's medical practitioner for over 6 months and that he has examined the appellant's previous medical records and diagnosed the appellant with depression and anxiety. The appellant is under his care and that the outcome of the treatment is "moderately stable, ongoing anxiety and mood disruption". The physician indicated 2 years or more for expected duration of medical conditions and answered "no" to whether the medical condition is episodic in nature. The physician noted "poor social interaction and motivation" as the appellant's restrictions.

The panel accepts the evidence of the appellant regarding the period of time she was working in the past 3 years; however, this only changes her score to 9 on the employability screen. The panel finds that based on the Medical Report, although the appellant's medical condition meets the criteria of duration, there is insufficient information to determine that it also meets the criteria of barrier to employment. The panel finds that the appellant's diagnosed medical condition, depression and anxiety, do not preclude her from searching for, accepting or continuing in employment.

The panel determines that the ministry's reconsideration decision dated May 24, 2012 was a reasonable application of the applicable legislation in the circumstances of the appellant and confirms the reconsideration decision under section 24(2)(a) of the EAA.