

### PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (the ministry) dated 05 July 2012 that denied the appellant's request for renewal of her qualification 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 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 and 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 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

With the consent of the parties the appeal hearing was conducted as a written hearing in accordance with section 22(3)(b) of the Employment and Assistance Act.

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

1. The appellant's Employability Screen dated 07 February 2012, showing a score of 14.
2. A Medical Report – Persons with Persistent Multiple Barriers (PPMB) dated 05 December 2011, prepared by the appellant's general practitioner (GP) who has known the appellant for over 6 months. The GP diagnoses the appellant's primary medical condition as urinary frequency and incontinence (onset few years) and secondary condition as drug abuse (onset many years). The GP notes that the appellant has not had bladder problem looked into, commenting that "improvement if follows through with treatment." The GP reports that the condition is expected to last 2 years or more, and that it is not episodic in nature. Under restrictions, the GP states the appellant is concerned with incontinence causing embarrassment.
3. A form letter from the ministry to the appellant dated 26 November 2011 regarding the renewal of her PPMB category, attaching the Medical Report – PPMB for her physician to be completed, and requesting her to list her medical conditions and resulting restrictions. The form letter was returned to the ministry date-stamped 05 December 2011, with the appellant listing her medical conditions as "Back aches from a vehicle accident in 85/86." She lists her restrictions as "Heavy lifting or getting out of bed."
4. The appellant's Request for Reconsideration dated 16 June 2012, to which is attached a note advising that she can't get in to see her advocate until 14 June 2012 and that her package will be handed in the following day.

At reconsideration, it appears that the ministry had no further information. The reconsideration decision refers to Medical Reports – PPMB dated 12 December 2011 and 23 January 2012, but no copies of these are contained in the appeal record and from the wording of quotations from these reports used in the reconsideration decision, the panel considers it likely that the references were to the 05 December 2011 Medical Report – PPMB cited above.

In her Notice of Appeal dated 16 July 2012, the appellant wrote that she feels her PPMB form wasn't filled out with sufficient detailed information by her doctor. She will have a new form as of 18 July 2012.

In a late submission, the panel received a copy of a letter from the appellant's advocate to her GP dated 14 June asking the GP to note in a new Medical Report – PPMB several restrictions outlined by the appellant. These were: standing limited to less than 10 – 15 minutes due to lower back pain and right-leg numbness; back pain preventing any repetitive bending; lifting limited to less than 20 pounds, no repetition; incontinence and uncontrollable bladder urgencies soaking through adult undergarments; difficulty processing instructions, doesn't retain directions, poor memory; depressed low moods, lack of motivation and ability to follow through. The advocate emphasizes to the GP that due to the above restrictions, the appellant is unable to work.

The appellant also submitted a second Medical Report - PPMB dated 18 July 2012 prepared by the GP. The GP identifies the appellant's primary condition as substance abuse (in remission), with onset

>12 years, and her secondary condition as urinary incontinence, with onset > 10 years. As to treatments, the GP indicates that the appellant is "resisting with her own efforts" regarding substance abuse, and awaiting an appointment with a urologist for the incontinence, The GP expects the duration of these medical conditions to be 2 years or more. With respect to any restrictions specific to the above medical conditions (the form has an example restricted motion in arms or legs), the GP reports: "Remains unemployable – hopefully will be able to return to the work force in the future."

In an email to the tribunal dated 16 August 2012 the ministry stated its submission will be the reconsideration summary.

The panel finds that the new information provided in the late submission is in support of the information and records that were before the ministry at the time of reconsideration. The letter from the advocate to the GP provides more detail relating to the appellant's back aches mentioned in the appellant's return form letter to the ministry date-stamped 05 December 2011 and the second Medical Report – PPMB is largely consistent with the earlier one. 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 and 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 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.

The position of the ministry, as set out in the reconsideration decision, is that the information provided does not establish that the appellant's medical condition is a barrier that precludes her from searching for or accepting work continuing in employment. The ministry reviewed the material contained in the original Medical Report – PPMB, noting that there are concerns with urinary incontinence causing embarrassment; however the GP noted that the appellant has not had her bladder problems looked into and the GP expects "improvement if follows through on treatment." The ministry also noted that the GP has not confirmed that the appellant is unable to participate in any type of employment for any length of time.

The appellant has not explicitly set out her arguments, but the panel assumes her position relies on the restriction indicated by her GP in the second Medical Report – PPMB that she "remains unemployable." She has stated that her GP has not gone into sufficient detail in the medical reports, and refers to the list of restrictions she outlined to her advocate to suggest to her GP: standing limited to less than 10 – 15 minutes due to lower back pain and right-leg numbness; back pain preventing any repetitive bending; lifting limited to less than 20 pounds, no repetition; incontinence and uncontrollable bladder urgencies soaking through adult undergarments; difficulty processing instructions, doesn't retain directions, poor memory; depressed low moods, lack of motivation and ability to follow through. Due to these restrictions, she submits that she meets the PPMB criterion of being unable to work.

The legislation requires that a medical condition that is to be considered a barrier to employment must be confirmed by a medical practitioner. The panel notes that the restrictions listed by the advocate relate to medical conditions - the appellant's back condition and to emotional and cognitive difficulties – that have not been confirmed by the appellant's GP in either of the Medical Reports – PPMB, and therefore the panel finds that the ministry reasonably gave no weight to this evidence. With respect to the appellant's substance abuse medical condition, the legislation clearly states that an addiction is not to be considered a factor in determining PPMB eligibility. As to the appellant's urinary incontinence, the panel considers it reasonable for the ministry to expect more detailed medical information relating to appellant's history with this condition, its likely cause, how seriously it impacts on daily functioning (including in a workplace) and its treatment and prognosis. The panel notes that Medical Report – PPMB asks the physician to "Please provide copies of documentation that supports the severity and restrictions of the medical conditions (e.g. laboratory reports,.... etc)." No such documentation has been provided. Similarly, there is no detailed explanation and/or documentation to substantiate the GP's assessment that the appellant "remains unemployable." This is particularly important as the GP had noted that the appellant's bladder condition should improve if she follows through with treatment and that in the second Medical Report – PPMD her substance abuse is listed as her primary condition, changed from secondary condition in the first report. Without such supporting medical information and explanation, the panel finds that the ministry reasonably determined that it had not been established that her medical condition is a barrier that precludes her from searching for, accepting or continuing in employment.

Accordingly the panel finds that the ministry's decision to deny the appellant renewal of her PPMB qualification was reasonably supported by the evidence. The panel therefore confirms the ministry's decision.