

## PART C – Decision under Appeal

The decision under appeal is the ministry's Reconsideration Decision dated August 7, 2012 which denied the appellant's request for renewal of his designation as a Person with Persistent and Multiple Barriers ("PPMB") on the basis that he did not meet all of the statutory requirements of section 2 of the Employment and Assistance Regulation ("EAR"). The ministry determined that the appellant was a recipient of income assistance under the Employment and Assistance Act ("EAA") for at least 12 of the immediately preceding 15 calendar months and that the appellant has a medical condition other than an addiction that is confirmed by a medical practitioner and that in the opinion of the medical practitioner the medical condition has continued for at least 1 year and is likely to continue for at least 2 more years. However, the ministry was not satisfied that the information provided established that the appellant's medical condition was a barrier that precluded him from searching for accepting or continuing in employment.

## PART D – Relevant Legislation

Employment and Assistance Regulation ("EAR") sections 2(2) and 2(4)

## PART E – Summary of Facts

The evidence before the ministry at the time of its reconsideration included the following:

1. The appellant's Request for Reconsideration dated July 27, 2012 with attached Section 3 prepared by the appellant;
2. A letter dated July 27, 2012 addressed to "To Whom It May Concern" and prepared by the appellant's former employer commenting on the appellant's employment status;
3. An undated statement prepared by the appellant and commenting on his physical and mental conditions including "Lack of Interest," "Chronic Fatigue" and "Attention Deficit";
4. A letter dated August 10, 2012 addressed to "To Whom It May Concern" and prepared by the coordinator of an office where the appellant volunteers, commenting on the appellant's suitability for a number of roles there;
5. A Request for Community Volunteer Supplement form completed by the appellant and dated October 14, 2011;
6. A Medical Report – Persons with Persistent Multiple Barriers dated July 26, 2010 ("Report #1");
7. A Medical Report – Persons with Persistent Multiple Barriers dated June 13, 2012 ("Report #2");
8. The Appellant's Employability Screen (undated); and
9. A letter from the Ministry to the Appellant dated July 23, 2012.

At the hearing, the appellant sought to admit two documents in support of his appeal. The first document was a typed letter prepared by the appellant's family physician dated September 12, 2012 and addressed to "To Whom It May Concern." This letter confirmed that the appellant had been under the physician's care for more than two years, that he was diagnosed with "Major Depression and Diabetes type-2", and that he has been taking medications and part of his treatment as well as psychiatric specialist counseling. At the end of the letter, a handwritten sentence has been added which reads "Because of this problem, he can't hold on to his employment." In response to a question, the appellant stated that he was in the presence of the doctor when he added the handwritten sentence to the letter and the panel notes that the handwriting appears to match that in both of the medical reports which the same physician completed. Further, the panel notes that the physician has applied his stamp a second time to the letter directly under the handwritten sentence. The ministry did not object to this letter being admitted and the panel determined that its contents were in support of the information available at the time of reconsideration and therefore admissible pursuant to section 22(4) of the EAA.

The appellant sought to also admit an undated website extract prepared by a physician that commented on depression in the workplace. The appellant's position was that it was relevant because the ministry in his view did not accept depression as a barrier to employment and that this extract demonstrated that, albeit in general terms as opposed to commenting on his condition specifically. The ministry objected to the admissibility of this document on the basis that it was not directly related to the information that was before the ministry at reconsideration and as it is simply a report on depression generally. The panel determined that the website extract commented on depression and its impact on those in the workplace which was the issue faced by the appellant at reconsideration. The panel therefore determined that the contents of this document as it relates to depression in the workplace generally and not to the appellant specifically was in support of the information available at the time of reconsideration and therefore admissible pursuant to section 22(4) of the EAA.

Report #1 indicates that the appellant suffers from major depressive disorder with the date of onset being three years prior in addition to being pre-diabetic. The reported treatment includes anti-depressant medication. The major depressive disorder has existed for 3 years and 9 months and the expected duration of the condition is less than 2 years. Under additional comments, the physician states that the appellant will be referred to a mood disorder clinic. Under restrictions specific to the medical condition, the physician notes that the appellant is "very depressed – so he is tired, no energy, [concentration] is poor, loss of interest and feelings of hopelessness."

Report #2 indicates that the appellant suffers from major depression with the date of onset being 2010 and diabetes mellitus with date of onset being 2011. The reported treatment includes anti-depressant medication and the physician who prepared the report indicates that the outcome of the anti-depressant medication is "slight improvement". The stated condition is noted in this report to have existed for two years and the expected duration of the condition is 2 years or more. Under restrictions specific to the medical condition, the physician notes "no restrictions."

The Employability Screen has a total score of 9 which indicates that the Appellant is immediately employable or employable with short-term interventions.

In the Request for Reconsideration, the appellant says that he had part time work which he lost at the end of June 2012 due to his poor communication problems. The July 27, 2012 letter from that employer notes simply that the appellant ceased employment in July 2012. The appellant goes on to say in the Request for Reconsideration that over the previous three years, he has worked mostly as a volunteer with three organizations, two of which are confirmed by way of the documents numbered 4 and 5 listed above. The appellant says he has a major problem with communication in English and that due to his depression and diabetes he is always fatigued and suffering from lack of concentration. The result of these conditions according to the appellant are that he is unfit to be hired after numerous job searches and dozens of interviews. The appellant notes that he could not even secure employment at the organization where he had volunteered for the previous three years.

In the Notice of Appeal, the appellant raises two distinct arguments. First, he disagrees with the ministry's position that his physician did not confirm that he was unable to participate in employment. The appellant says that the doctor did not mention this in writing because the PPMB application did not ask him to comment on his work ability. The appellant argues that the doctor's comment that he had "no restriction" was in response to a question as to his physical mobility and not to his ability to work and the appellant points to the language used in the report which states "Please describe the nature of any restrictions specific to the above medical condition(s). (for example, restricted motion in arms or legs). The appellant goes on to argue that the physician clearly commented on his mental and physical conditions in Report #1 which demonstrates barriers to his employability. The appellant states that linking the physician's "no restriction" comment to his work ability did not make sense and was unjustified.

The appellant's second argument relates to the ministry's position that his medical condition does not preclude him from searching and/or accepting and/or continuing with employment. In his submissions the appellant references the website extract that addresses depression in the workplace and in so doing, he lists a number of barriers to work that are experienced by people with major depression. The appellant notes that he has had similar barriers which were noted in his PPMB application and that his failure to obtain and continue employment is proof of his "work-barriers."

At the hearing, the appellant stated that the ministry had been in a position to observe him over the last three or four years and that they can see he is not able to maintain employment. He stated that his condition has not recovered and that he is still struggling to find work as a result. He says he was fired from a position recently because he was not suitable. He posed the question of why the ministry ignored his real life situation given that he is still under medical care. He argues his condition demonstrates as barriers to his ability to search for an obtain employment. He says he now has depression and diabetes and that he could not even secure employment with the organization where he has been volunteering. The appellant argued that the "no restriction" comment made by his doctor in Report #2 was in response to a question regarding physical restrictions and that the language in the report, specifically in section 3 which asks the physician to "describe the nature of any restrictions specific to the above medical condition(s)" is misleading because the example provided in the question refers to physical ability rather than the ability to work. He went on to say after he received the Reconsideration Decision, he attended at his doctor's office and in response his doctor prepared the letter of September 12, 2012 which says in part that the appellant is unable to maintain employment.

In response to a question, the appellant stated that he continues to volunteer with two organizations. In response to a question the appellant confirmed that Report #2 was in support of an application to renew his previous PPMB designation. In response to a question the appellant stated that from the date of his initial PPMB designation in 2010 to the date of his renewal application in 2012 his medical condition had worsened insofar as his anti-depressant medication dosage had been increased, he had gone from pre-diabetic to fully diabetic and he had received psychiatric therapy in 2011 at a hospital.

The ministry relied on the Reconsideration Decision. It confirmed that the appellant had been receiving assistance for at least 12 of the previous 15 months and that he has a medical condition other than an addiction. As the appellant's score on the employability scale is under 15, his medical condition must preclude him from searching for, accepting or continuing in employment and the ministry argues that the appellant does not meet that legislative test for PPMB eligibility.

## PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry reasonably concluded that the appellant did not meet all of the statutory requirements of section 2 of the Employment and Assistance Regulation (“EAR”) to be designated as a Person with Persistent and Multiple Barriers (“PPMB”). The ministry determined that the appellant was a recipient of income assistance under the Employment and Assistance Act (“EAA”) for at least 12 of the immediately preceding 15 calendar months and that the appellant has a medical condition other than an addiction that is confirmed by a medical practitioner and that in the opinion of the medical practitioner the medical condition has continued for at least 1 year and is likely to continue for at least 2 more years. However, the ministry was not satisfied that the information provided established that the appellant’s medical condition was a barrier that precluded him from searching for accepting or continuing in employment.

The relevant legislation, section 2 of the EAR, provides as follows:

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.

[en. B.C. Reg. 368/2002.]

The ministry takes the position that the appellant's medical condition is not a barrier that precludes him from searching for, accepting or continuing in employment. The ministry points to the two medical reports in support of this position. It says that the appellant was determined to be eligible for the PPMB designation in 2010 given the restrictions noted in Report #1 but that the physician specifically noted "no restrictions" in Report #2. The ministry argues that while the appellant does have a medical condition, it does not preclude him from searching out employment and that his volunteer positions and his time spent looking for work supports this.

The appellant argues that his medical condition is a barrier that precludes him from searching for, accepting or continuing in employment. The appellant argues that his physician's comment in Report #2 that he had "no restriction" was in response to a question as to his physical mobility and not to his ability to work and that linking the physician's "no restriction" comment to his work ability did not make sense and was unjustified. The appellant submits further that his depression is a work barrier and that the Ministry's argument that his condition does not preclude him from searching for and continuing with work is without basis.

There is no dispute that the appellant has a medical condition - major depression and diabetes - confirmed by a medical practitioner. There is also no dispute that the Appellant scored 9 on the employability screen and as such, the requirements of s.2(4) of the EAR must be met in order for the appellant to qualify for PPMB designation.

Under section 2(4)(b) of the EAR, to be eligible for PPMB designation the appellant's medical

condition must be a barrier that "precludes the person from searching for, accepting **or** continuing in employment." [emphasis added]. In the present case, while Report #2 indicates that the appellant has seen slight improvement in his depression as a result of anti-depressant medication prescribed by his physician, the evidence from one of the appellant's former employers demonstrates his inability to continue in employment. Further, the September 12, 2012 letter from the appellant's physician supports the appellant's argument that due to his medical condition he is unable to "hold on to his employment." The panel notes that the following quote from the September 12, 2012 letter essentially mirrors the restrictions listed in Report #1 which supported the original PPMB designation:

*His Depression is associated with Tiredness, Lack of Energy, Poor Concentration, Lack of Interest and Feeling of Hopeless.*

While the ministry argues that the evidence does not support a finding that the appellant is precluded from searching for employment and that he has seen improvement in his depression, the legislation is clear that to meet the burden, an appellant must only demonstrate that he or she is precluded, due to a medical condition, to search for, accept or continue in employment. In other words, the use of the word "or" does not require an applicant to satisfy each category to be successful in seeking eligibility. Rather, where an applicant can demonstrate that he or she is precluded from one of the three, the legislative burden will have been met.

Given the evidence, and particularly given Report #2 and the September 12, 2012 letter from the appellant's physician, the panel finds that minister's determination that the appellant's medical condition was not a barrier that precludes him from searching for, accepting or continuing in employment and that the appellant did not therefore satisfy s.2(4)(b) of the EAR was unreasonable.

The Panel finds that the ministry's Reconsideration Decision was not reasonably supported by the evidence and rescinds the decision.