

APPEAL #

PART C – Decision under Appeal

The Decision under Appeal is the Ministry's Reconsideration Decision, dated Oct. 26, 2012, which found that the Appellant no longer qualified as a Person with Persistent Multiple Barriers, (PPMB), under S. 2(4) of the Employment and Assistance Regulation. The Ministry determined that the Appellant's restrictions in her ability to work were due to addiction which is not a medical condition that can be used to designate PPMB.

PART D – Relevant Legislation

EMPLOYMENT AND ASSISTANCE REGULATION- (EAR)-SEC. 2

PART E – Summary of Facts

The evidence before the ministry at the reconsideration level was a two page "Medical Report-Persons with Persistent Multiple Barriers," signed by the appellant's Medical Practitioner, on May 14, 2012, a one page document entitled "Employability Screen" which gave the appellant a score of 11, and the appellant's request for reconsideration.

The physician's report stated, among other things, the primary medical condition is drug addiction, onset 2006, with secondary conditions of anxiety and depression, onset 2004. The material indicates methadone treatment with the outcome noted as recent improvement in significant substance abuse. The prognoses for the conditions are 2 years or more and an additional comment is "unable to work". It is indicated the conditions are episodic in nature and the frequency of recurrence is difficult to predict. Under restrictions, the physician states the appellant has shown recent improvement, however, is "highly unstable, transient IVDU [intravenous drug use] in the past 12 months". The physician a specialist in Psychiatry.

In the request for reconsideration the appellant advises her doctor says she is not able to work, and she says she cannot work. She is trying to help herself with counseling and trying to find a psychologist. She has tried different medications and none have worked. This is all for her anxiety and depression. She now has some stability with her addiction issues; she is clean and sober and on the methadone program. Her status is the exact same as it was when she was previously approved for PPMB.

The reconsideration decision agreed that as the appellant had been receiving assistance since Oct. 2007 she met the qualification under sec. 2(2) of the EAR; receiving assistance for 12 of the last 15 months. As her score on the employability screen was 11, her assessment for PPMB would fall under Sec. 4(4) of the EAR. The decision states that as addiction is not a medical condition that can be used as a barrier precluding the person from employment, the minister would not consider drug addiction. The ministry was satisfied that the appellant's anxiety and depression had lasted at least a year and were expected to last at least another two years, and as such, the application satisfied Sec. 2(4)(a) of the EAR. As such, the only issue was the application of sec. 2(4)(b).

The decision went on to find that the anxiety and depression did not preclude her from searching for, accepting or continuing in employment under Sec. 2(4)(b) of the EAR. The decision found that the Dr. stated the appellant was unable to work and gave restrictions specific to her medical condition as "has shown recent improvement, however, highly unstable, transient IVDU past 12 months." The decision found this was related to her drug addiction. There was no specific evidence that anxiety or depression were medical conditions that would preclude her from employment. In relation to the appellant's statement her condition was the same as when initially given PPMB status, the decision simply notes there is no new information from a medical practitioner reporting restriction to employment as a result of anxiety and depression. The decision concluded that the ministry's opinion was that the medical conditions of anxiety and depression, with no specific restriction to employment related to these medical conditions, did not preclude her from searching for, accepting or continuing in all types of employment, including part-time work.

In her Notice of Appeal to the Tribunal the appellant states she is unable to work due to her anxiety and depression and drug addiction. Her file is the same now as her approval two years ago, her Dr. says she is unable to work, she cannot work.

At the hearing the Appellant gave evidence that her conditions were exactly the same as when she first received PPMB status. She got addicted to drugs because of her anxiety and depression. She started using drugs in college due to the anxiety. She can't talk to people or go out. She is trapped in her own little world. The doctor who filled out her medical report is the same doctor she had on the first application for PPMB. It is filled out exactly the same as last time. She notes that the medical form does not allow the doctor to differentiate between the primary and secondary conditions.

On being asked questions by the tribunal the appellant advised the doctor who filled out the report is her primary care physician who she has seen for about five years. She is on methadone treatment, orally, daily. She has tried different medications for her anxiety and depression but none have worked. She believes her main problem is the anxiety and depression and the addiction is secondary. She stated that she has discussed the medical report with her doctor, since she was rejected for PPMB, and he agrees her primary condition is the anxiety and depression. She recently gave him a disability application to fill out and he can change the PPMB report if need be.

The Ministry reiterated the reconsideration decision that as the medical report seemed to indicate that the drug addiction was the condition restricting her ability to work, the ministry could not renew her PPMB designation.

PART F – Reasons for Panel Decision

RELEVANT LEGISLATION-Sec. 2(2) of the EAR**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.

...

(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 one 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 issue to be determined is whether the Ministry reasonably determined the Appellant was not eligible for PPMB. The ministry has to be satisfied the person has a medical condition, other than an addiction that is confirmed by a medical practitioner and 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 is that the medical condition precluding the appellant from work was addiction, not anxiety or depression. They determined that the restriction reported by the doctor was related to drug addiction, not anxiety or depression, and found there was no specific information relating to anxiety or depression precluding employment. The appellant argues it is anxiety and depression causing her work restriction and further this is the same diagnoses she received initially when she was designated as PPMB.

The medical report from the doctor lists the primary condition as drug addiction. For treatment he states methadone; this is a well-known drug addiction treatment. The appellant confirmed she takes this daily. For treatment outcome the doctor notes improvement in substance abuse. In confirming the medical condition(s) are episodic in nature, he advises the appellant is in relapse, again something not uncommon for addictions. Under "Restrictions" the doctor again notes recent improvement, however the appellant is highly unstable and has had transient IV drug use in the past 12 months. These items all point to the treatment of medical conditions and restrictions as being related to the drug addiction, not anxiety and depression. The appellant advises that after she was rejected for the PPMB designation, she discussed this with her doctor and that he could clarify the issue by confirming her primary condition is anxiety and depression. However, no further information was provided by the doctor confirming this. In all of the circumstances it was reasonable for the ministry to determine that based on the medical information before it, the drug addiction is the barrier to employment. There was no medical information that anxiety or depression is the barrier. If the doctor is of the opinion that anxiety and depression is the barrier to employment then the appellant should be able to re-apply with the updated information. Therefore the panel finds that the Ministry's Reconsideration Decision was reasonably supported by the evidence and is a reasonable application of the legislation based on the evidence of the circumstances of the Appellant and confirms the Decision.