

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated November 15, 2012 which denied the appellant's request for renewal of her qualification as a Person With Persistent Multiple Barriers (PPMB) pursuant to section 2, ss.(1), (2), (3) and (4) of the *Employment and Assistance Regulation (EAR)*. The ministry determined that a medical practitioner confirmed that the appellant has a condition other than addiction and that her medical condition has continued for at least one year and is likely expected to last 2 years or more. However, the ministry found that the information provided by the appellant's medical practitioner does not establish that the appellant's medical condition presents a barrier that preclude her from searching for and maintaining any type of employment as required by Section 2, subsection (4) (b) of the EAR.

PART D – Relevant Legislation

Employment and Assistance Regulation – EAR – Section 2

PART E – Summary of Facts

The appellant sought to introduce three documents, namely;

1. Two Payroll invoices for the period February 29 to March 13 2012 and June 20 to July 3, 2012;
2. A letter from her friend dated December 17, 2012;
3. Persons with Disabilities (PWD) Case Profile Sheet dated January 15, 2004.

The panel reviewed the documents and admitted the documents pursuant to Section 22(4) of the *Employment and Assistance Act (EAA)* as being in support of the evidence before the ministry on reconsideration.

The evidence before the ministry at reconsideration included:

- A copy of a payroll indicating net payment of \$237.67 to the appellant for the pay period of September 12 to 25, 2012;
- A copy of a payroll stating net payment of \$532.12 to the appellant for the period of September 26 to October 9, 2012;
- A copy of a payroll stating net payment of \$330.47 to the appellant for the period of October 10 to October 23, 2012;
- A copy of the appellant's Employability Screen with a total score of 8;
- A Medical Report for PPMB completed by a physician on July 30, 2012;
- The ministry's decision dated October 3, 2012 denying the appellant's request for the PPMB designation;
- A copy of a questionnaire completed by the appellant's physician on October 29, 2012;
- Request for reconsideration dated October 23, 2012.

The medical report – Persons with Persistent Multiple Barriers – completed by the appellant's physician on July 30, 2012. The physician stated that the primary medical condition of the appellant is anxiety/depression that existed since 2000 and is likely to continue for at least 2 more years. The physician reported that the appellant's medical condition is not episodic in nature. The physician reported restriction specific to the appellant's medical condition as being tearful with poor concentration and panic attacks. The physician further reported that the treatment is medication with stable outcome.

The appellant's physician completed a questionnaire that was prepared by the appellant's advocate on October 29, 2012. The physician responded anxiety and depression, easily overwhelmed and frustrated, gets into verbal conflicts with coworkers and supervisor, low motivation, difficulty completing tasks and following directions and poor memory to the question of "what symptoms or health limitations that arise from your patient's medical conditions restrict her ability to work"? The physician responded yes, on longstanding medication and has had extensive counseling in the past to the question of "despite the treatments that have been attempted (i.e. medication and physiotherapy), does your patient still experience the above symptoms"? The physician said yes, patient is unable to maintain employment and has anxiety and panic in some situations (e.g. night shift) responding to the question that "are her health-related restrictions severe enough to preclude her from searching for, accepting or continuing in employment in the foreseeable future"?

The appellant received a score of 8 on the Employability Screen. The appellant received 0 for her age as she is between 25 to 49 years of age. The appellant received 0 as apart from her current application she was never on income assistance. The appellant's score 7 on section 4 as she has been on income assistance for more than 12 months in the past 3 years. The appellant's score is 1 for the highest level of education as she has post-secondary program-degree or diploma; she received 0 on section 6 as the total amount of time she has spent in paid employment over the last 3 years is more than 12 months and 0 for what is her English speaking ability or literacy level.

In the request for reconsideration, the appellant submitted that she meets all the eligibility criteria for PPMB designation.

[Redacted]

The appellant in the Notice of Appeal dated November 22, 2012 submitted that "due to my work only being seasonal its about 20 shifts a year and I only make between 4 to 5 thousand a year with it. But it's the only one I can do and hold down with my condition".

After establishing that the ministry had been notified of the hearing and waiting for 15 minutes, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation (EAR).
The ministry did not attend the hearing.

At the hearing, the appellant indicated that her payroll invoice shows that in some months she only works for a few days. She further submitted that when she applied for PWD in 2004, the ministry determined that the information provided by her physician established that the appellant has a severe mental impairment. There are several significant deficits in cognitive and emotional functioning that have major impacts in three areas of daily functioning. The anxiety disorder appears to have followed robbery at work in July 2000. The appellant further stated that the ministry concluded that the information provided by her physician at the time was insufficient to establish that the impairment significantly restricts her ability to perform daily living activities and as such the ministry could not conclude that she had a severe restriction in her ability to function independently, effectively, appropriately or for a reasonable duration.

The appellant submitted that the only reason she has been able to keep her current job is because it is a union job and her manager told her that if she wasn't a member of the union, he would have terminated her employment. The appellant said this is the only job she can do and it is very over whelming. The appellant said that she is working on call and staff is called based on their seniority. The appellant further stated that she found a second employment in April 2012; however, that was a temporary work for two weeks and because of her mental illness, and inability to cope with stressors, she did not get any further shifts, and will not be asked back.

The appellant said that her physician reported that she is unable to maintain employment and has anxiety and panic in some situations such as night shifts. The appellant further stated that although she has continued working for a same employer as a seasonal worker that is the only job she has been able to do because she receives support from her colleagues and "I double up on medication". The appellant said that she was designated PPMB in September 2009.

The panel finds that:

- The appellant was designated a PPMB in 2009;
- The appellant's employability screen score is less than 15;
- The appellant is diagnosed with anxiety and depression that would be expected to last for more than 2 years;
- The appellant has poor concentration and has panic attacks, she is overwhelmed and frustrated. She has low motivation and has difficulty completing tasks and following directions:

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 the appellant 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 less than 15 on the employability screen and that there is not sufficient evidence indicating that the medical condition described by the physician, constitutes a limitation or a barrier precluding the appellant from any type of employment. The ministry concluded that the appellant's medical condition does not preclude her from maintaining employment and therefore she does not meet section 2(4)(b) of the EAR.

The appellant argues that she is not able to work due to her severe mental illness. The appellant said that the only job she has been able to maintain is the seasonal job because it is a union job and the employer is not able to fire her. The appellant confirmed that she worked in a temporary job in April 2012.

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 for, accepting or continuing in employment.

The appellant describes a number of medical conditions affecting her ability to perform work. The physician stated that she has been the appellant's medical practitioner for over 6 months and that the appellant is under her care and that the medical condition will not resolve with time and would be expected to last for more than 2 years. The physician reported that the appellant is unable to maintain employment and has anxiety and panic in some situation. However, the appellant confirms that she has been working in the same employment for over two years and was employed temporarily in a second job in April 2012.

The panel accepts the evidence of the appellant that she is suffering from anxiety and depression and has difficulty concentrating and is easily overwhelmed. The panel notes that the only issue in this appeal is the reasonableness of the ministry's decision of November 15, 2012. The panel finds that based on the evidence of the appellant's medical condition meets the criteria of duration; however, the panel finds that based on the evidence of the appellant and the history of her employment, there is insufficient information to determine that she meets the criteria of a barrier that precludes employment. The physician stated that the appellant is unable to maintain employment; however, the appellant submitted that she has been working in the same job for over two years and had a second employment. The panel finds that the ministry's decision that the appellant's diagnosed medical conditions do not preclude her from searching for, accepting or continuing in any type of employment was reasonable.

The panel determines that the ministry's reconsideration decision dated June 21, 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.