

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the "Ministry") January 7, 2013 reconsideration decision which denied the Appellant re-qualification as a Person with Persistent Multiple Barriers ("PPMB") because the Ministry determined that she did not meet all of the criteria in section 2(4) of the Employment and Assistance Regulation. Specifically, the Ministry determined that:

1. The Appellant does not have a medical condition, other than an addiction, confirmed by a medical practitioner that in the opinion of the medical practitioner has continued for at least one year and is likely to continue for at least two more years, or has occurred frequently in the past year and is likely to continue for at least two more years; and,
2. In the opinion of the minister, the medical condition is not a barrier precluding the Appellant from searching for, accepting or continuing in employment.

PART D – Relevant Legislation

Employment and Assistance Regulation ("EAR") Section 2.

PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. Information from its records that:

- The Appellant has an employability screen score of 12.
- She has been receiving assistance since December 19, 2008.

2. A PPMB medical report dated July 16, 2010 indicating the Appellant had 3 months post facial fractures, she was unable to use her jaw normally, she had chronic pain and, she was only able to eat liquid dietary supplements.

3. A PPMB medical report dated August 16, 2010 indicating fibromyalgia onset 2007 and chronic pain causing difficulty with most activities, and treatment through various medications and physio/acupuncture with a slight improvement as the outcome. The doctor indicated that the expected duration of the medical conditions would be 2 years or more and they are not episodic in nature. The doctor wrote that the restrictions are "chronic/persistent pain/stiffness and poor sleep, causes difficulty with most activities."

4. A PPMB medical report dated October 23, 2012 indicating that:

- the Appellant's primary medical condition is right supracondylar (elbow) fracture onset September 7, 2012 and secondary medical condition is facial fractures onset April 16, 2010.
- the expected duration of the primary medical condition is less than 2 years pending surgical revisions. The treatment for the elbow fracture is ORIF (open reduction internal fixation) on September 9, 2012 with outcome described as "required revision/hardware removal October 9th, awaiting further revision pending revisit with surgeon, attending physical therapy".
- the treatment for the facial fractures was ORIF maxillary and zygoid fractures with outcome given as "awaiting booking for 2nd surgery".
- restrictions specific to the Appellant's elbow medical condition were described as decreased range of motion and strength of right dominant arm, and to the facial fractures as "pain and difficulty with speech and eating".

5. Appellant's request for reconsideration with a submission from the Appellant's advocate and a letter dated December 17, 2012 from her doctor who wrote, "I am aware of her chronic medical conditions (fibromyalgia, PTSD, chronic jaw/facial pain secondary to trauma) which prevent her from working. As well, she suffered a fractured right elbow in September 2012, which required two surgeries for treatment. Unfortunately her recovery from the elbow fracture has been prolonged beyond the expected recovery time of 8 weeks". The Appellant also submitted copies of the following medical reports:

- operative report dated October 9, 2012 indicating that hardware in the Appellant's elbow was removed and her arm range of motion remained the same.
- medical consultation report from a doctor in a hospital dated September 8, 2012 regarding treatment for the Appellant with a primary goal of treating her elbow fracture and then to treat her alcoholism secondarily after she is discharged from the hospital.
- letter dated June 2, 2010 from a plastic surgeon to another doctor stating that the Appellant's mid-face fractures are healing, her facial nerve function has recovered, and most concerning is that she has an anterior open bite. The letter set out options for treatment. The surgeon also wrote that the Appellant has not had an ideal result and they will have to see how well she functions. She may require an osteotomy to correct her condition.
- medical consultation report from April 17, 2010 indicating various facial injuries, including fractures to her nose, face, neck and lacerations.
- PPMB medical report dated September 13, 2010 completed by a plastic surgeon reporting the Appellant's medical conditions as mandibular and facial fractures onset April 15, 2010. The

treatment described was for reduction of facial fractures and the outcome was noted as "inadequate reduction". The doctor reported that the condition has existed for 5 months and the duration is for 2 years or more, and "likely to have some permanent defects". The restrictions were reported as "difficulty with eating and speech".

At the hearing, the Appellant explained that she had PPMB designation, but it expired in October 2012 and therefore she applied for re-designation. She described how she sustained her facial injuries, how much pain she endures from the fibromyalgia and facial fractures, how much difficulty she has with speaking and how difficult it is for her to eat. The Appellant said she has difficulty walking because of the pain from the fibromyalgia. Because her teeth alignment is off she cannot eat or chew properly and she has to break food into small pieces or consume liquids. She also cannot speak at least 50% of the time. The left side of her mouth is distorted and she has an open bite on that side. The Appellant said that she was referred to an oral surgeon for corrective surgery; however, the possibility of permanent nerve damage frightens her. Therefore, she may not have that surgery. She said she has had a hard enough time trying to live with what was done to her face. The Appellant stated that the October 2012 PPMB medical report was completed by a doctor who was filling in temporarily at the medical clinic she goes to regularly. The Appellant confirmed that the doctor who wrote the December 2012 letter is one of the family physicians who regularly treat her at her local medical clinic.

The Appellant submitted a letter from the same doctor, dated February 4, 2013, stating that this letter confirms that the Appellant is a patient in his family practice. He wrote "In my opinion, she will be unable to work for the next two years due to her multiple medical conditions."

The Ministry did not object to the admissibility of this letter. The Panel finds that the letter is consistent with and related to the issues and the medical reports that were before the Ministry at the time of reconsideration. Therefore, pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits that letter as being in support of the evidence that was before the Ministry.

At the hearing, the Appellant's advocate provided oral and written submissions, which the Panel accepts as arguments in support of the Appellant's position. These are set out in Section F of this decision.

At the hearing, the Ministry relied on and reaffirmed its reconsideration decision.

The Panel makes the following findings of fact:

1. The Appellant has a PPMB employability screen score of 12.
2. The Appellant is applying to re-qualify for PPMB designation.
3. The Appellant's medical conditions as set out in the medical reports and doctors' letters are:
 - Fibromyalgia onset 2007 and continuing through 2012/13.
 - Facial fractures and chronic jaw/facial pain onset April 2010 and continuing through 2012/13.
 - PTSD (post-traumatic stress disorder) onset April 2010 and continuing through 2012/13.
 - Right elbow fracture onset September 2012.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant did not meet all the criteria in section 2(4) of the EAR to re-qualify as a PPMB and specifically that:

1. The Appellant does not have a medical condition, other than an addiction, confirmed by a medical practitioner that in the opinion of the medical practitioner has continued for at least one year and is likely to continue for at least two more years, or has occurred frequently in the past year and is likely to continue for at least two more years; and,
2. In the opinion of the minister, the medical condition is not a barrier that precludes the Appellant from searching for, accepting or continuing in employment,

The following sections of the EAR apply to the Appellant's circumstances in this appeal:

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;

(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 Parties' Positions

The Ministry's position is that because the Appellant has an employability screen score of 12 her application is assessed under section 2(4) of the EAR. The Ministry is not satisfied that the information from a medical practitioner confirms that the Appellant's medical conditions of facial fractures and an elbow fracture are expected to last at least two years because revision surgeries are pending. Also, the Ministry noted that the elbow fracture occurred less than one year ago. Therefore, the Ministry determined that the Appellant did not meet the criteria in section 2(4)(a) of the EAR. The Ministry also was not satisfied that the information provided explained how these medical conditions impact the Appellant's ability to work. The Ministry noted that the Appellant's chronic pain and difficulty with eating and speech are restrictions to employment; however, it found that further surgeries are planned which may ameliorate her medical conditions and allow better functioning of her jaw and elbow. The Ministry determined that the Appellant's medical condition and resultant restrictions do not preclude her from searching for, accepting or continuing in all types of employment including part-time work, and therefore she did not satisfy the criteria in section 2(4)(b) of the EAR.

The Appellant's position is that she has multiple medical conditions preventing her from seeking employment and from working. The Appellant acknowledged that her elbow fracture occurred less than a year ago and is therefore not one of the medical conditions she is relying on in her application. However, the Appellant argued that the evidence in the October 2012 medical report, all the other

medical reports in the record, as well as the December 2012 and February 4, 2013 letters from her doctor confirm that she continues to experience jaw and facial pain from an assault in April 2010 as well as various symptoms from the fibromyalgia and PTSD. Also, the Appellant's doctor confirmed that she is unable to work for the next two years due to her multiple medical conditions. Therefore, the medical evidence supports her PPMB application.

The Panel's Findings

Medical Conditions

The Panel will first address the Appellant's various medical conditions as reported and described in the medical reports. First, with respect to the right elbow fracture, the Appellant acknowledges that because it occurred less than one year ago, it is not a condition that has continued for at least a year as required by section 2(4)(a) of the EAR. Therefore, the Panel finds that the Ministry reasonably determined that the Appellant's right elbow fracture is not a medical condition, which is a barrier to her employment.

Because the Appellant is applying to re-qualify for PPMB designation, the Panel finds that all of the medical evidence that the Ministry had in the record for its decision is relevant to the consideration of the Appellant's medical conditions and how they may restrict her employability. Also, in its reconsideration decision the Ministry indicated that it considered records dating from 2010, which referred to the Appellant's fibromyalgia, PTSD and chronic jaw/facial pain. The Panel further finds that the medical evidence establishes that the Appellant has been treated by doctors at the same clinic since at least 2010 and since then the Appellant's medical conditions have been and continue to be fibromyalgia, PTSD and the chronic jaw/facial pain resulting from the April 2010 facial fractures. This is confirmed by the doctor's letter of December 17, 2012. Therefore, the Panel finds that it was not reasonable for the Ministry to determine that these medical conditions, in the opinion of medical practitioners, have not continued for at least 1 year and are not likely to continue for at least 2 more years.

There is evidence that the Appellant has had facial surgery, including the PPMB report from September 2010. The last medical reference to facial surgery is in the October 2012 PPMB medical report indicating the Appellant is awaiting booking for a second surgery. However, the Appellant testified that she is reluctant to have oral surgery to fix her mouth and bite because that could result in nerve damage. Therefore, the Panel finds that no surgery is scheduled and whether or not the Appellant will in fact have additional facial or oral surgery, and whether any surgery will be successful in addressing what doctors have described as the Appellant's chronic facial/jaw pain and difficulty with speaking and eating, has not been established. Therefore, it was not reasonable for the Ministry to determine that further surgeries may ameliorate the Appellant's facial/jaw medical condition so that it will not last for two years and may allow better functioning of her jaw so that she can work.

In the medical reports, there is some reference to alcoholism; however, in the most recent reference, the hospital consultation of September 8, 2012, the doctor indicates it is to be treated secondarily. Also, that medical condition was not referred to by the doctor who completed the October 23, 2012 PPMB medical report or by the doctor who completed the December 17, 2012 and February 4, 2013 letters, which listed other medical conditions related to the Appellant's ability to work. Therefore, the Panel finds that alcoholism is not a medical condition identified by the doctors as restricting the

Appellant's ability to work or seek work.

With respect to the PTSD, this condition is referred to in the doctor's December 2012 letter, but the Panel finds that there is no evidence about how this condition may restrict the Appellant's ability to work or find work.

Barriers to Working

The Panel notes that the Ministry's PPMB medical report form states that the answers to the questions in the form will be used by the Ministry to determine how a recipient's medical conditions may affect employment. The form has a section in which primary and secondary medical conditions are to be listed. The form also has a section titled "Restrictions" with this instruction: "Please describe the nature of any restrictions specific to the above medical conditions". It does not say describe how the restrictions may affect employability or employment. The Panel also notes that the doctors completed the restrictions section in each of the PPMB medical reports in the record.

As to how the Appellant's medical conditions affect her ability to find work or to work, the Panel will first consider the evidence regarding the fibromyalgia. In the August 16, 2010 PPMB medical report, the doctor reported that the fibromyalgia had an onset of 2007 with a secondary medical condition of chronic pain and a prognosis of 2 years or more. The doctor reported the restrictions as "chronic persistent pain/stiffness and poor sleep causes difficulty with most activities." In the October 2012 PPMB report, there is no mention of fibromyalgia but in the December 17, 2012 letter the doctor listed fibromyalgia as one of the "chronic medical conditions" which prevents the Appellant from working. Then in February 2013, the same doctor stated that the Appellant will be unable to work for the next two years due to her multiple medical conditions.

The Appellant's facial fractures occurred in April 2010 and in a letter dated June 2, 2010 a plastic surgeon indicated that the Appellant has an anterior open bite and that she has not had an ideal result from the surgery. In the September 13, 2010 PPMB Medical Report, a plastic surgeon reported that the outcome from the Appellant's mandibular and facial fractures is "inadequate reduction", the duration of the condition is for two years or more and is "likely to have some permanent defects". That surgeon reported the restrictions as "difficulty with eating and speech". In the October 23, 2012 PPMB medical report, the Appellant's facial fractures are again reported and the restriction is described as "pain and difficulty with speech and eating".

Because the Ministry was not satisfied with the information in the PPMB and other medical reports, the Appellant submitted the December 17, 2012 letter from her doctor for the reconsideration decision. That doctor confirmed that the Appellant is a patient in her family practice and that she is aware of the Appellant's chronic medical conditions of fibromyalgia, PTSD and chronic jaw/facial pain secondary to trauma, which "prevent her from working". The Panel also notes that in the same doctor's February 4, 2013 letter, she refers to the Appellant's multiple medical conditions, which will prevent her from working for the next two years. The Panel finds that the doctor's most recent opinions are not only consistent with the restrictions reported in the earlier PPMB medical reports, but they also provide a specific statement that the Appellant cannot work because of her medical conditions. The Panel further finds that when all of the restrictions reported in the PPMB forms - the chronic persistent pain/stiffness, chronic facial pain, difficulty with eating and speaking - are considered together with the doctor's specific reference to chronic medical conditions such as chronic

jaw/facial pain preventing the Appellant from working, then all of that evidence does provide explanations for how the Appellant's medical conditions are barriers that preclude the Appellant from working or even looking for work. In addition, the Appellant described how difficult it is for her to walk, to speak and to eat because of the pain she endures. On the other hand, the Ministry provided no examples of work that the Appellant might look for while experiencing chronic persistent pain and difficulty with speaking and eating. Therefore, based on all of the evidence and especially the specific evidence and statements from the Appellant's medical practitioners, the Panel finds that it was not reasonable for the Ministry to determine that the Appellant did not meet the requirements in section 2(4)(b) of the EAR.

Based on all of the evidence, the Panel finds that the Ministry's reconsideration decision was not reasonably supported by the evidence and therefore the Panel overturns and rescinds that decision.