

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated December 27, 2012 which held that the appellant did not meet all of the applicable statutory requirements of Section 2 of the Employment and Assistance Regulation (EAR) to qualify as a person with persistent multiple barriers to employment (PPMB). The ministry was satisfied that the evidence establishes 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, 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 medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment, pursuant to Section 2(4)(b) of the EAR.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 2

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Medical Report- Persons with Persistent Multiple Barriers (PPMB) dated October 17, 2012, which states, in part, that: the appellant's primary medical condition is depression with a date of onset of 2000, and her secondary medical condition is drug use/Meth with a date of onset of 2000; the treatment described is a medication and the outcome is "poor," that this condition has existed for 10 years; the prognosis sets out that the expected duration of the medical condition(s) is 2 years or more with the additional comment that the appellant is "...unable to work or look for work due to anxiety/depression, drug use." The physician indicated that the medical condition is not episodic in nature. Asked to describe the nature of any restrictions specific to the medical conditions, the physician wrote "...unable to work or look for work due to anxiety and depression."
- 2) Employability Screen print out for the appellant, noting a total score of "14";
- 3) Undated letter from a coordinator with a women's resource society stating in part that the appellant has been a resident in the second stage housing program with her son since October 1, 2012. She moved to the facility from a transition house after fleeing an abusive relationship. The appellant is accessing supports through their organization, such as one-to-one from staff as well as an aboriginal outreach worker. She is enrolled in a parenting program and is currently seeking a counselor through mental health for a diagnosis of her symptoms. Her family doctor has prescribed medications for depression and anxiety; and,
- 4) Request for Reconsideration- Reasons.

The appellant consented to the attendance at the hearing of an observer from the ministry.

In her Notice of Appeal, the appellant stated that she disagrees with the ministry's reconsideration decision. In her Request for Reconsideration, the appellant stated that she is currently taking medication for depression and anxiety and she is pursuing additional assessment through mental health.

At the hearing, the appellant stated that the Medical Report was completed by her family doctor who has been her doctor for 3 to 4 years. Her doctor told her she has depression, that she just knew that she was not feeling well and having a difficult time. She had a hard upbringing with some traumatic experiences and she was experiencing symptoms and the doctor said she is depressed and gave her medication to take. The appellant stated that she also has addiction problems that she is trying to deal with. The appellant stated that she struggles and constantly has voices telling her she is no good and that she will fail no matter what she does. She is currently trying to get a further evaluation from mental health. She had a telephone interview close to 2 weeks ago and now she is waiting for an appointment to be set up. At one point she signed up to volunteer at one of the reserves and she got so anxious about it, that she felt she could not do it, and she could not go through with it. The appellant stated that she has been taking the medication prescribed but she found that it worked for a while, that it reached a plateau, and now she finds that it is not helping as much and she is feeling depressed again. The appellant stated that she also has a prescription for medication to help her sleep. The appellant was not sure of the definition of "preclude" and it was clarified for her that it means "to prevent from happening."

The ministry relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant did not meet all of the applicable statutory requirements of Section 2 of the Employment and Assistance Regulation (EAR) to qualify as a person with persistent multiple barriers to employment (PPMB); in particular, the ministry was not satisfied that the appellant's medical condition is a barrier that precludes her from searching for, accepting, or continuing in employment, pursuant to Section 2(4)(b) of the EAR.

The criteria for being designated as a PPMB are set out in Section 2 of the EAR 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
 - (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.

Under Section 2(2), the person must have been the recipient of one or more of a number of types of assistance for at least 12 of the immediately preceding 15 calendar months and also meet the requirements set out in subsection 2(3) or subsection 2(4). If the person has scored at least 15 on the employability screen as set out in Schedule E to the EAR, then Section 2(3) applies. If the person has scored less than 15 on the employability screen as set out in Schedule E to the EAR, then Section 2(4) applies. Under Section 2(4) of the EAR, the person must have a medical condition, other than an addiction, that has been confirmed by a medical practitioner and that, in the opinion of the medical practitioner, has continued for at least one year and is likely to continue for at least 2 more years, or has occurred frequently in the past year, and is likely to continue for at least 2 more years 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 appellant has been in receipt of income assistance for more than 12 of the preceding 15 months and, therefore, meets the requirements of Section 2(2) of the EAR. However, the ministry argues that the evidence has not established that the appellant has met all the remaining applicable criteria of Section 2. As the appellant scored 14 on the employability screen, she must meet the requirements of Section 2(4) of the EAR. The ministry points out that the appellant's diagnosis of drug use/Meth cannot be considered under the legislation. The ministry acknowledges that the appellant also has a medical condition other than an addiction, being depression, that has been confirmed by a medical practitioner and that, in the opinion of the medical practitioner, has continued for at least 1 year and is likely to continue for at least 2 more years. However, the ministry argues that the evidence does not establish that the depression is a barrier that precludes the appellant from searching for, accepting, or continuing in employment.

The ministry points out that a medical condition is considered to preclude a recipient from searching for, accepting, or continuing in employment when as a result of the medical condition the recipient is unable to participate in any type of employment activities for any length of time, except in a supported or sheltered-type work environment. The ministry argues that the letter from the coordinator with a women's resource society does not report any specific restrictions to employment that are related to medical conditions. The ministry argues that there is no information on the severity of the appellant's diagnosis or its effect on the appellant's functionality or the reason why depression disenables employment. The ministry argues that remedial measures are in place and there is not sufficient evidence that the appellant's depression and resultant restriction preclude her from any type of employment for any length of time, including part-time work.

The appellant argues that there is sufficient evidence that her depression is a barrier that prevents her from searching for or accepting employment. The appellant argues that the Medical Report was completed by her family doctor who has been her doctor for 3 to 4 years and he told her she has depression. The appellant argues that she was not feeling well and having a difficult time and experiencing symptoms for which her doctor prescribed medication. The appellant gave an example of signing up to volunteer at one of the reserves but she had so much anxiety about it that she could not go through with it. The appellant argues that she has been taking the medication prescribed but she found that it worked for a while, that it reached a plateau, and now she finds that it is not helping as much and she is feeling depressed again.

The panel finds that it is not disputed that the appellant's physician has provided a medical opinion, in the Medical Report dated October 17, 2012, that the appellant suffers from a medical condition other than an addiction, namely depression. It is also not disputed that the appellant's medical condition has, in the opinion of the medical practitioner, continued for at least 1 year and is likely to continue for at least 2 more years. The panel finds that the ministry was reasonable in not considering the appellant's secondary medical condition, being drug use, as the legislation requires that the medical condition is "other than an addiction."

Regarding the nature of restrictions specific to the medical condition, the physician states that the appellant is "...unable to work or look for work due to anxiety and depression." Although the ministry argues that there is no information on the severity of the appellant's diagnosis or its effect on the appellant's functionality, the panel finds that the physician also indicated in the Medical Report that the appellant has been diagnosed with

depression for over 10 years and it is not episodic in nature, that she has been prescribed medication for her condition but the outcome has been "poor." The appellant stated that she has been taking the medication currently prescribed but she found that it worked for a while and that, like the previous medication, it reached a plateau, and now she finds that it is not helping as much and she is feeling depressed again. The letter from a coordinator with a women's resource society confirms that the appellant is currently residing in supportive housing and accessing these supports, as well as seeking a counselor through mental health for a further diagnosis of her symptoms. The panel finds that there is evidence that the appellant needs supports in basic functioning and that remedial measures have not been effective to date.

Although the ministry argues that there is not sufficient evidence that the appellant's depression precludes her from accepting any type of employment for any length of time, including part-time work, the appellant's family doctor of several years described the appellant's restrictions due to her medical condition as being unable to either work or to "look for work." The panel finds that there was no other evidence as to the appellant's ability to look for work or to work, and no reasonable basis for not accepting the doctor's opinion. In view of the opinion of the appellant's family physician as set out in the Medical Report, the panel finds that the ministry's conclusion that the evidence does not demonstrate that the appellant's medical condition is a barrier that precludes her from searching for, accepting or continuing in employment, pursuant to the requirement in Section 2(4)(b) of the EAR, was not reasonable.

The panel finds that the ministry's reconsideration decision was not reasonably supported by the evidence and rescinds the decision pursuant to Section 24(2)(b) of the Employment and Assistance Act. Therefore, the ministry's decision is overturned in favour of the appellant.