

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development (“the ministry”) dated April 9, 2013 which held that the appellant was no longer eligible to qualify as a person with persistent multiple barriers (PPMB) to employment because she did not meet all the criteria under Section 2 of the Employment and Assistance Regulation (EAR). In particular, the appellant has not met; Section 2(4)(a) as it has not been established that in the opinion of a medical practitioner, she has a medical condition that has continued for at least one year and is likely to continue for at least 2 more years, and Section 2(4)(b) because in the opinion of the minister her medical condition, other than an addiction, is not a barrier that precludes the appellant from searching for, accepting or continuing in employment.

The ministry determined that the appellant met Section 2 (2) as she has been a recipient of income assistance for at least 12 months of the preceding 15 calendar months. Also, the ministry determined that the appellant scored 12 on the employability screen set out in Schedule E, and therefore assessed her qualification for PPMB under Section 2(4) of the EAR.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 2

PART E – Summary of Facts

With the consent of the parties, the appeal hearing was conducted in writing in accordance with section 22(3)(b) of the Employment and Assistance Act.

The evidence before the ministry at the time of reconsideration included: (a) a Medical Report-Persons With Persistent Multiple Barriers (PPMB) dated February 14, 2013 completed by the appellant's psychiatrist; (b) an Employability Screen dated February 15, 2013; (c) the appellant's Request For Reconsideration dated March 25, 2013.

In the Medical Report-Persons With Persistent Multiple Barriers dated February 14, 2013, the psychiatrist indicates that the appellant's primary medical condition is Major Depressive Disorder and the secondary medical condition is Anxiety Disorder, both with an onset date of 2009. Treatment reported includes both medication and therapy with an outcome noted to be fair for all. The stated condition has existed for 3 years and 6 months with the prognosis, expected duration indicated at less than 2 years (18 months). Noted is that the appellant is unable to work for 18 months, the medical conditions are episodic in nature and the appellant has had 3-4, [sic] so far and they are likely to recur, dependent on stressful events. Under restrictions specific to the reported medical conditions the psychiatrist noted that the appellant is unable to work for 18 months.

A copy of the Employability Screen dated February 15, 2013 indicates a total score of 12 with results that correspond with Expected to Work (score 0-14) and suggests immediately employable/employable with short-term interventions.

In her Request For Reconsideration dated March 25, 2013, the appellant writes that her regular general practitioner has been away on maternity leave and the other doctors at the clinic have not known her for 2 years. She indicates that her psychiatrist since 2009 has only addressed the 2 issues of depression and anxiety that he treats her for and not her other medical conditions. The appellant states that her other health barriers to work include:

- spurs in both feet, which cause great pain;
- a sharp pain in her right foot - when standing for an hour;
- osteoarthritis in both knees;
- a skin disease called Darier's which when flares up on her face, appears contagious and people are afraid of her;
- irritable bowel syndrome;
- low iron level - energy level low; and
- asthma.

The appellant also provides a list of medications that she is currently taking.

In the Notice of Appeal dated April 17, 2013, the appellant writes that she cannot look for or work at this present time and that she has talked with her psychiatrist since the reconsideration decision and he agrees that she cannot work for 2 years.

In an email dated May 10, 2013, the ministry stated that there will be no submission from the ministry as it is relying on the reconsideration decision.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision which held that the appellant was no longer eligible to qualify as a person with persistent multiple barriers to employment because she did not meet all the criteria under Section 2 of the Employment and Assistance Regulation. In particular, the appellant has not met Section 2(4)(a), as it has not been established that in the opinion of a medical practitioner, she has a medical condition that has continued for at least one year and is likely to continue for at least 2 more years, and Section 2(4)(b) because in the opinion of the minister her medical condition, other than an addiction, is not a barrier that precludes the appellant from searching for, accepting or continuing in employment.

The ministry determined that the appellant met Section 2 (2) as she has been a recipient of income assistance for at least 12 months of the preceding 15 calendar months. Also, the ministry determined that the appellant scored 12 on the employability screen set out in Schedule E, therefore assessed her qualification for PPMB under Section 2(4) of the EAR.

Relevant Legislation

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, or (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. (B.C. Reg. 263/2002)

The ministry's position is that since the appellant's score on the Employability Screen is 12, she must meet the requirements of the EAR section 2(4). The primary medical condition, major depressive disorder and secondary medical condition of anxiety disorder, are confirmed by a medical practitioner to have continued for 3 years and 6 months and are expected to last for less than 2 years (18 months) which does not meet the criterion under section 2(4)(a); and the evidence does not establish that the appellant's medical conditions are a barrier that precludes her from searching for, accepting or continuing in employment and therefore does not meet the criterion under section 2(4)(b) of the EAR.

The appellant's position is that her psychiatrist has only addressed the 2 issues of depression and anxiety that he treats her for and not her other medical conditions and that the appellant's regular general practitioner has been away on maternity leave and the other doctors at the clinic have not known her for 2 years. The appellant indicates that her other health barriers to work include: spurs in both feet, a sharp pain in her right foot, osteoarthritis in both knees, a skin disease called Darier's, irritable bowel syndrome, low iron level and asthma. Also, the appellant states that she cannot look for or work at this present time and that she has talked with her psychiatrist since the reconsideration decision and he agrees that she cannot work for 2 years.

The panel notes that the only medical conditions reported in the appellant's Medical Report-PPMB are a Major Depressive Disorder and an Anxiety Disorder. The panel also notes that the legislation requires that a medical condition that the minister assesses as a barrier to employability must be confirmed by a medical practitioner. The panel finds no evidence that the list of other medical conditions described by the appellant has been confirmed by a medical practitioner and that they are confirmed to continue for at least 2 more years. The panel finds that the ministry reasonably considered that the Major Depressive Disorder and an Anxiety Disorder were the only medical conditions under assessment with the appellant's psychiatrist's prognosis that they will continue for less than 2 years and that the outcome of her treatment is fair. The panel finds that the ministry reasonably concluded that the appellant did not meet the criterion set out in Section 2(4)(a) of the EAR.

The panel notes that the appellant's psychiatrist has reported as a restriction that the appellant "is unable to work for 18 months". Although the psychiatrist has not substantiated this opinion with any further explanation, the panel considers this evidence merits some consideration. The ministry, however, stated in the reconsideration decision that "It is the minister's opinion that the restrictions caused by [the appellant's] medical conditions do not preclude [her] ability to search for, accept or continue in employment" without addressing the psychiatrist's opinion. The panel finds that it was unreasonable for the ministry to reach this conclusion without considering this evidence and therefore, the panel finds that the ministry was unreasonable to determine that the criterion set out in Section 2(4)(b) of the EAR was not established.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry reasonably determined that the appellant was no longer eligible to qualify as a person with persistent multiple barriers to employment because she did not meet all the criteria under Section 2 of the Employment and Assistance Regulation and therefore, the panel confirms the reconsideration decision.