

PART C – Decision under Appeal

This is an appeal of a reconsideration decision of the Ministry of Social Development (“the ministry”) dated April 24, 2013. The ministry found that the appellant was not eligible for qualification as a Person With Persistent Multiple Barriers to employment (PPMB). The ministry relied on section 2 and Schedule E of the Employment and Assistance Regulation (EAR), finding that the appellant’s Employability Screen report did not meet the required score of 15 to have her application considered under section 2(3). The ministry found that her diabetic condition was reported to have continued for more than one year, however her anemia (chronic diarrhea) had not, thereby not meeting the duration requirement under section 2(4)(a)(i). Pursuant to section 2(4)(b), the ministry found that her diabetic condition did not preclude the appellant from searching for, accepting or continuing in employment or participation in a program to upgrade her credentials.

PART D – Relevant Legislation

Employment and Assistance Regulation section 2 & Schedule E

PART E – Summary of Facts

Evidence before the ministry at the time of its reconsideration:

- The appellant had PPMB designation previously approved by the ministry, most recently in 2011. Her current application was to renew the status.
- A medical report for PPMB pertaining to the appellant completed by the appellant's physician, dated May 3, 2011. The report provides the following information:
 - Primary medical condition: Depression, onset 2002.
 - Secondary medical condition: Type 2 Diabetes, Hypertension, onset 2002.
 - Expected duration two years or more; not episodic.
 - Nature of restrictions: "Poor concentration, difficulty handling complex social interactions, poor memory due to low mood.
 - Attached was a list of the appellant's medications.
- A medical report for PPMB pertaining to the appellant completed by the appellant's physician, dated March 6, 2013 pursuant to the appellant's re-application. The report provides the following information:
 - Primary medical condition: Diabetes, onset 2003.
 - Secondary medical condition: Anemia/Diarrhea (chronic), onset December 2012.
 - Treatment/remedial approaches were listed as Diet/Medications, with an outcome of disease management, and Gastro-intestinal disease, with an outcome: "under investigation."
 - Expected duration two years or more; not episodic.
 - No restrictions were listed.
- A ministry Employability Screen relating to the appellant, undated, but with a facsimile date stamp of March 20, 2013. The appellant's score was 9.
- The appellant's annotated revisions to the ministry Employability Screen, changing the following:
 - In answer to the question: "Apart from your current application, how many times have you been on Income or Social Assistance anywhere in Canada in the last 3 years?" the appellant selected "b - 1 to 3 times," whereas the ministry had answered "a - Never." The appellant's answer raised her score from 0 to 1.
 - In answer to the question: "What is the highest level of education you have completed?" the appellant selected "e - less than grade 10," whereas the ministry had answered "d - Grade 10-12." The appellant's answer raised her score from 1 to 3.
 - In answer to the question: "What is the total amount of time you have spent in paid employment over the last 3 years?" the appellant selected "d - none or very limited," whereas the ministry had answered "b - From 3-12 months." The appellant's answer raised her score from 1 to 4.
 - The appellant's answers raised her total score from 9 to 15.
- Ministry file notes which record the appellant's declared income, including from her daycare. According to ministry records she earned between \$210 and \$580 between February 2011 and April 2013 monthly.

- Attached to the April 24, 2013 reconsideration decision were ministry file notes regarding the appellant's Employability Screen set out in a spreadsheet showing her scores for 2007, 2009, 2011, 2013, the appellant's revision (noted above) and the ministry revised score contained in the reconsideration decision. Of relevance to this appeal, the appellant scored as follows:

Question	2011	2013	Appellant's Revision	Ministry's Reconsideration
3. Apart from your current application, how many times have you been on Income or Social Assistance anywhere in Canada in the last three years?	Never - 0	Never - 0	1-3 times - 1	Never - 0
5. What is the highest level of education you have completed?	Grade 10 to Grade 12 - 1	Grade 10 to Grade 12 - 1	Less than Grade 10 - 3	Less than Grade 10 - 3
6. What is the total amount of time you have spent in paid employment over the last 3 years?	From 3-12 months - 1	From 3-12 months - 1	None/Very Limited work Experience - 4	From 3-12 months - 1
Total of all questions	9	9	15	11

Evidence provided subsequent to the reconsideration but prior to the hearing

- A letter from the appellant's physician dated May 6, 2013, regarding the appellant's application for PPMB. It stated:
 - Her chronic depression and anxiety and diabetes have been present for over 10 years and are expected to last for 2 years or more. None of her conditions are episodic in nature. [The appellant] has been my patient for over 15 years.
 - "The combination of these conditions results in significant impairment in concentration, memory and managing complex social relationships. She is unable to maintain employment in the regular workforce as a result of the disability arising from her medical conditions. She is on a number of medications including insulin for her diabetes. She is on daily medication for her depression and anxiety..."
 - Chart notes indicating an improvement with the appellant's diarrhea, some spotting and that the appellant was awaiting a colonoscopy for her anemia.
- A revised medical report for PPMB pertaining to the appellant completed by the appellant's

physician, dated March 27, 2013. The report provides the following information:

- Primary medical condition: Diabetes/Depression, onset 2003.
- Secondary medical condition: Anemia/Diarrhea (chronic), onset Dec 2012.
- Treatment/remedial approaches were listed as Diet/Medications, with an outcome of disease management, and Gastro-intestinal disease, with an outcome: "under investigation."
- Expected duration two years or more; not episodic.
- Restrictions were listed as "Chronic diarrhea, passing stool [approximately] 6 times per day -> easy fatigue + poor stamina due to anemia. Difficulty with concentration + unable to handle complex social situations."

Attached was a list of the appellant's medications.

Evidence presented at the hearing:

The appellant provided oral evidence that:

- She provides daycare before and after school
- She previously overstated her educational achievements because she was embarrassed to say she had not completed grade 10.
- The remainder of the appellant's presentation dealt with her arguments in support of her position, which are summarized below in "Reasons for Panel Decision."

The ministry did not introduce new evidence at the hearing nor did it object to the additional evidence of the appellant's physician's letter of May 6, 2013, the March 27, 2013 revised PPMB application or the chart notes of the same date.

Under section 22(4)(b) of the Employment and Assistance Act, the Panel admitted the additional evidence as it is in support of information and records which were before the Ministry when the decision being appealed was made. The documents provided further insight into the appellant's condition and the restrictions she faces as a result.

PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry's reconsideration decision dated April 24, 2013, which found that the appellant was not eligible for designation as a Person With Persistent Multiple Barriers to employment (PPMB) pursuant to section 2 of the EAR was reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

Section 2 of the EAR states:

- 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 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.

Schedule E sets out the questionnaire through which a recipient's Employability Screen score is determined.

Appellant's argument

The appellant argues two main points:

- First, that the ministry Employability Screen score was inaccurately completed. She revised her Employability Screen which resulted in a total score of 15.
- Second, she states that she still suffers from the same afflictions that resulted in her categorization as a PPMB for the previous six years. This time, however, her physician did not complete the March 6, 2013 form completely, which resulted in her being denied by the ministry.
- A more complete form was completed on March 27, 2013, but was not considered by the ministry in its April 24, 2013 reconsideration (which is the subject of this appeal). As well, her physician's May 6, 2013 letter confirms her eligibility for PPMB status.

Ministry's argument

The ministry stated that the March 27, 2013 PPMB form was mistakenly treated as a new PPMB application and was not properly forwarded to the reconsideration branch. Upon review, the ministry representative felt that the information contained in the March 27, 2013 PPMB application and the May 6, 2013 letter would be sufficient to satisfy the ministry's requirements for a PPMB designation.

In the reconsideration decision the ministry found that the appellant's diabetes did not present a barrier which precluded her from searching for, accepting or continuing in employment and that her anemia (chronic diarrhea) had not been in existence for at least one year.

Reasoning

Section 2(1) of the EAR requires that subsection (2) and subsection (3) or (4) be satisfied in order to qualify for PPMB.

If a recipient scores at least 15 on the Employability Screen, then subsections (2) and (3) are to be applied. If the recipient scores less than 15, then subsections (2) and (4) are to be applied.

In its decision, the ministry found that the appellant had been on some form of ministry assistance for 12 of the previous 15 months, which is a basic requirement of subsection (2).

Whether or not subsection (3) or (4) are to be considered depends upon the outcome of the appellant's Employability Screen. In 2011, the appellant received a score of 9. The score was the same in the ministry's initial assessment in 2013, however the appellant challenged the scoring and felt that it should be 15. She specifically challenged questions 3, 5 and 6.

Question 3 asked: "Apart from your current application, how many times have you been on Income or Social Assistance anywhere in Canada in the last 3 years?" the appellant selected "b - 1 to 3 times," whereas the ministry had answered "a - Never."

At the hearing, the ministry representative stated that question 3 is accurately scored as "0" for the appellant because she has been a recipient of income assistance continuously since 1984. Her previous PPMB designations are not counted as times she has been on income assistance. While the panel found some confusion in the wording of this question, the ministry is not unreasonable in reaching this conclusion as the appellant has not been a recipient of income or social assistance more than once, despite being in receipt of it continuously for the last 29 years.

The appellant then argued that she did not complete grade 10, therefore question 5 should be scored as 3 rather than 1, which is applicable to those who have completed grades 10-12. The ministry referred to its file notes which recorded the appellant as previously reporting grade 10, grade 12 or equivalent, or grade 10-12. The appellant stated she over-reported her education because she felt embarrassed at not achieving grade 10.

The panel notes that in its reconsideration decision, the ministry revised its score on this question and permitted a higher score consistent with the appellant's revision. Therefore the score for this question increased from 1 in the original decision to 3 in the reconsideration.

The final point the appellant disputed was that she had "none/very limited work experience," whereas the ministry stated she had 3-12 months paid employment over the last 3 years. At issue is the appellant's work as a daycare provider. The appellant argued that her income did not qualify as paid employment as she did not work for an employer or receive paycheques with deductions.

The ministry argued that work of any type which results in income counts as "paid employment," in accordance with the definition of "earned income" in the EAR. The panel finds this a reasonable conclusion on the part of the ministry. A review of EAR Schedule B, section 1, which sets out exemptions to the definition of earned income, does not exclude income received by the appellant as a daycare provider.

As a result, the panel finds the revised score of 11 contained in the reconsideration decision was reasonable.

With this result, the ministry was reasonable to assess the appellant's PPMB claim pursuant to subsections (2) and (4), as subsection (4) addresses those whose Employability Screen score is less than 15. As noted above, the appellant meets the requirements of subsection (2) as she has been a recipient of income assistance for at least 12 of the last 15 months.

Subsection (4) states:

- (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 ministry previously accepted the appellant's May 3, 2011 PPMB application, which listed depression as the primary condition and type 2 diabetes and hypertension as secondary conditions. Her restrictions were "Poor concentration, difficulty handling complex social situations, poor memory due to low mood."

Her March 6, 2013 PPMB re-application listed diabetes as her primary condition, with a 2003 onset, and anemia/diarrhea as her secondary condition, with a December 2012 onset. No restrictions were listed.

The ministry did not examine the impact of the appellant's anemia/diarrhea, as it had not continued for at least one year. This was reasonable given that its onset date was December 2012 and the reconsideration decision was April 24, 2013. As well, no restrictions were reported by the appellant's physician.

In the appellant's revised PPMB application, dated March 27, 2013, her physician added depression to the primary condition of diabetes. Anemia/diarrhea remained as the secondary condition. The appellant's physician noted restrictions as "Chronic diarrhea, passing stool [approximately] 6 times per day -> easy fatigue + poor stamina due to anemia. Difficulty with concentration + unable to handle complex social situations."

As the ministry was precluded from examining the impact of the appellant's anemia/diarrhea due to the fact that it had not been continuous for at least one year, it was reasonable to not consider its impact.

That being said, the panel is faced with determining whether, in the face of two PPMB applications (March 6, 2013 and March 27, 2013), the appellant is eligible for the PPMB qualification. The March 6, 2013 application made no mention of her depression/anxiety. Rather, it described diabetes as her main condition. The subsequent application (March 27, 2013) and the appellant's physician's May 6, 2013 letter add depression and depression/anxiety as conditions which restrict the appellant. The March 27, 2013 application discusses the appellant's difficulty with concentration and inability to handle complex social situations. The May 6, 2013 letter states:

The combination of these conditions results in significant impairment in concentration, memory and managing complex social relationships. She is unable to maintain employment in the regular workforce as a result of the disability arising from her medical conditions.

The March 6, 2013 application contained no mention of depression/anxiety nor any resulting restrictions, however the appellant's physician's March 27, 2013 and May 6, 2013 communications set them out clearly. Despite the absence of the diagnosis of depression in the March 6, 2013, the panel is satisfied based on the physician's evidence in the May 6, 2013 letter, that it was a result of an oversight. The panel notes that a PPMB designation is designed for those with barriers to employment and that the appellant has employment as a daycare provider. However, the appellant's physician makes note specifically that her restriction applies to maintaining employment in the "regular workforce."

As a result of the new information, the panel finds the ministry was not reasonable in denying the PPMB application and rescinds the ministry's decision.