

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (Ministry) reconsideration decision dated March 15, 2013 which denied the appellant's request for qualification as a Person With Persistent Multiple Barriers (PPMB) pursuant to section 2 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 pursuant to Section 2 (3) (b) (i). However, the Ministry was not satisfied that the appellant's lack of work experience and English as a second language present barriers that seriously impede her ability to search for, accept or continue in employment as required by s. 2(3)(a)(ii) of the EAR. The Ministry also determined that the appellant's medical condition does not satisfy the criteria of s. 2(3)(b)(ii). The Ministry also found that the appellant has not demonstrated that she has taken all reasonable efforts to overcome her barriers as identified on her employability screen pursuant to Section 2 (3) (c) of the EAR.

## PART D – Relevant Legislation

*Employment and Assistance Regulation – EAR – Section 2*

## PART E – Summary of Facts

The appellant sought to introduce four documents, namely;

- Three income tax returns for 2006, 2007, and 2008;
- A medical referral for pelvic ultrasound.

The panel reviewed the documents and admitted the medical referral for ultrasound 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 panel notes that the income tax returns indicating the appellant's income in 2006, 2007 and 2008 are not in support of the evidence before the Ministry and, therefore, the panel does not admit the income tax returns into evidence.

The evidence before the Ministry at reconsideration included:

- The Ministry's decision dated January 23, 2012 denying the appellant's request for the PPMB designation;
- A copy of the appellant's letter to the Ministry dated June 22, 2012;
- A Medical Report for PPMB completed by a physician on July 21, 2012
- A copy of the appellant's Employability Screen with a total score of 15;
- Request for reconsideration dated February 16, 2013.

The medical report – Persons with Persistent Multiple Barriers – was completed by the appellant's physician on July 21, 2012. The physician stated that the primary medical condition of the appellant is over active bladder, and anxiety/depression that existed since 2008 and is likely to continue for at least 2 more years. The physician stated that the secondary medical condition of the appellant is chronic urethritis (Hematuria). The physician reported that the appellant's medical condition is episodic in nature. The physician reported restriction specific to the appellant's medical condition as "not suitable to work".

The appellant received a score of 15 on the Employability Screen. The appellant received 0 for her age as she is between 25 to 49 years of age. The panel notes that there is an error on the screen stating the appellant's age as 25 to 49. The appellant is a 53 years old woman. This will not change the number of the screen as clients 50 to 65 also receive 0 for section 2. 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 completed Grade 10 to 12; she received 4 on section 6 as the total amount of time she has spent in paid employment over the last 3 years is none or very limited work experience and 3 for what is her English speaking ability or literacy level.

The appellant's letter dated June 22, 2012 stated the following:

- She is having serious problems with her over-active bladder;
- She is in "mid-life crisis" and she is very depressed;
- She is afraid that she might have cancer;
- The appellant requests that the Ministry assist her and grant her disability allowances.

In the request for reconsideration dated February 16, 2013, the appellant submitted that she has difficulties such as over active bladder, midlife crisis, and tumors in her pelvic area. The appellant stated that she runs to washroom frequently, she is "worry, scare, depress, loneliness". More specifically, the appellant submitted that she has three tumors in her pelvic area and that she needs to undergo a surgery to remove the tumors. The appellant further submitted that she receives \$610 income assistance per month. She pays \$500 rent, \$42 for bus ticket, \$42 for her cellular phone and has \$26 other expenses. She requested to be designated as a PPMB. The appellant stated that she has been told that if she receives a PPMB designation, she will receive \$400 per month that will help her to pay for her expenses. The appellant further stated that she attempted to

commit suicide in 2007 and that she can't survive without receiving extra help. The appellant stated that she worked as a waitress-hostess for many years but she is not able to continue to work in the same industry due to her age.

At the hearing, the appellant said that she has serious health problems. In 1989 she had an ectopic pregnancy and as a result she lost one of her ovaries. Her husband left her after this "big loss". The appellant said that she attempted to commit suicide by taking 100 sleeping pills. She slept for two days but kept this as a secret as she was ashamed. The appellant further said that she can't go for a walk because of her over active bladder. The appellant was very emotional and said that she is lonely and depressed and that many times she thought about killing herself. The appellant further stated that she cannot survive on her income assistance.

The appellant said that she can work part time but she won't look for an employment until the Ministry accepts her request and designates her as a PPMB.

In response to the Ministry's questions, the appellant said that her physician suggested some prescription medications for anxiety but she decided not to take them as she prefers to deal with her anxiety by praying. Furthermore, the appellant agreed that she wrote her request for reconsideration and is able to speak and read English. The appellant said that she has a good working knowledge of English. The appellant said that she does not want to work at this time as the Ministry will deduct her earnings from her income assistance. The appellant agreed with the Ministry that if she is a PPMB, she will have \$400 earning exemptions and will be able to find an employment and earn more income. The appellant further stated that she needs to apply for BC housing but she was told that she needs to be a PPMB prior to making an application. The appellant acknowledged that she is suffering from mental health issues.

The Ministry relies on the reconsideration decision stating that the reconsideration decision is reasonable. The Ministry submitted that the information provided by the appellant's medical practitioner does not establish that the appellant's medical conditions present a barrier that preclude her from searching for and maintaining any type of employment and that the appellant has not demonstrated that she has taken all efforts to overcome her barriers. The Ministry said that the appellant confirmed that she has not followed her physician's recommendation for treatment and that she has confirmed that she is able to work part time.

The panel finds that:

- The appellant has been a recipient of income assistance for at least 12 of the immediately preceding 15 calendar months;
- The appellant is diagnosed with over active bladder, anxiety, depression and chronicle urethritis that would be expected to last for more than 2 years.
- The appellant has been referred to have an ultrasound and might undergo a surgical procedure;
- The physician reported that the appellant's restriction is that she is not suitable to work;
- The appellant has not followed the treatment program suggested by her medical practitioner.

## 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 is that the appellant scored 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 argues that the appellant's medical condition does not seriously impede her from searching for, accepting or continuing in employments. The Ministry submitted that the appellant agreed that she is able to work part-time and that she has not reasonably sought treatment to overcome her medical conditions.

The appellant argues that she is not able to work due to her severe illness. The appellant described a number of medical conditions affecting her ability to perform work. The appellant said that the only job she was able to maintain was working as a waitress which is no longer suitable for her due to her age. However, the appellant also confirmed that she is able to work part-time. The appellant agreed with the Ministry that she has not

followed her treatment or has taken medications suggested by her physician for her anxiety. The appellant further agreed with the Ministry that she has not attempted to seek counselling for her anxiety and mood. The appellant said that she does not have enough bus passes to seek assistance from the community services or counselling.

Section 2 of the EAR provides that in order to be eligible for the PPMB status, a person 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 physician stated that the appellant's medical condition would be expected to last for more than 2 years. The physician reported that the appellant is not suitable to work and she has an over active bladder, anxiety, depression and chronic urethritis.

The panel accepts the evidence of the appellant that she is suffering from an over active bladder, anxiety and depression and has chronic urethritis. The panel further accepts the appellant's evidence that she has been referred to have an ultrasound and, pending the outcome, she might have to undergo surgery.

The only issue in this appeal is the reasonableness of the Ministry's decision of March 15, 2013. The Ministry's decision found that the appellant failed to satisfy 3 statutory criteria:

- a) The appellant's limited work experience and language had a limited effect on her employability screen score pursuant to Section 2(3)(a)(ii) of the EAR;
- b) There is insufficient information to determine that the appellant's medical condition is a barrier that seriously impedes the person's ability to search for, accept or continue in employment pursuant to Section 2(3)(b)(ii) of the EAR;
- c) The appellant has not demonstrated that she has taken all reasonable efforts to overcome her barriers as identified on her employability screen pursuant to Section 2(3)(c) of the EAR.

Respecting the appellant's limited work experience and language barrier, the panel notes that the appellant acknowledged that she worked as a waiter for many years and that she is able to work part time, 3-5 hours per day, if she is approved a PPMB. The panel further notes that the appellant agreed that she wrote her request for reconsideration, she is able to speak and read English. The appellant further said that she has a good working knowledge of English. Therefore, the panel finds that the Ministry was reasonable determining that the appellant's limited work experience and language has a limited effect on her employability screen and is not a barrier that seriously impedes her ability to search for, accept or continue in employment as required by Section 2(3)(a)(ii).

Respecting Section 2(3)(b)(ii) the panel finds that in consideration of the evidence of the appellant and the physician's report, the Ministry was reasonable in concluding that there is insufficient information to determine that the appellant meets the criteria of the legislation. The panel notes that the physician reported that the appellant is not suitable to work; however, the panel finds that the physician has not provided any further information regarding medical treatment and/or provided additional information explaining why the appellant is not suitable to work. The panel further notes that the appellant acknowledged that she is able to work part time. Therefore, the panel finds that there is insufficient evidence to conclude that the appellant's medical condition is a barrier that seriously impedes her ability to search for, accept or continue in employment.

Respecting Section 2(3)(c) of the EAR, the panel finds that the Ministry was reasonable to determine that the appellant has not demonstrated that she has taken all reasonable efforts to overcome her barriers as identified on her employability screen. The panel accepts the appellant's evidence that she is under the care of a physician, she has been referred for an ultrasound and might have to undergo a surgery pending the outcome of the ultrasound. However, the panel notes that the appellant acknowledged that she has not followed her physician's recommendations for treatment and decided not to take the prescribed medications. Furthermore,

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the panel notes that the appellant acknowledged that she is able to work part time.

Therefore, the panel determines that the Ministry's reconsideration decision dated March 15, 2013 was a reasonable application of the applicable legislation in the circumstances of the appellant and confirms the reconsideration decision.