

### PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development and Social Innovation (“the ministry”) dated August 27, 2013, which held that the appellant was no longer eligible to qualify as a person with persistent multiple barriers (PPMB) to employment because he did not meet all the criteria under Section 2 of the Employment and Assistance Regulation (EAR). In particular, the appellant had not met: Section 2(3)(b)(ii) because, in the opinion of the minister, the appellant had not established that the medical condition is a barrier that seriously impedes the ability to search for, accept, or continue in employment; and Section 2(3)(c) because the ministry is not satisfied that the appellant has taken all the steps that the minister considers reasonable for him to overcome the barriers referred to in paragraph 2(3)(a).

The ministry determined that the appellant met Section 2 (2) as he 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 met Section 2(3)b(i) as, in the opinion of a medical practitioner, the appellant has a medical condition that has continued for at least one year and is likely to continue for at least 2 years.

The ministry has not made a determination on Section 2(3)(a) because, as the appellant did not attend the PPMB renewal appointments, the ministry was unable to prepare a current Employability Screen.

### 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 reconsideration included:

- Medical Report, dated January 27, 2011, signed by family doctor, defining appellant's Medical Conditions, Treatment, and Restrictions.
- Client Employability Profile for appellant, dated March 21, 2011.
- Persons Who Have Persistent Multiple Barriers to Employment Checklist, dated March 21, 2011, pertaining to appellant.
- Letter, dated March 25, 2011 from ministry to appellant, indicating that the appellant qualified under the Person with Persistent Multiple Barriers (PPMB) category, and that his employability would be reviewed within two years.
- Letter, dated December 28, 2012, from ministry to appellant, defining the need for a status review, noting that a voice message had been left at the phone number on file, setting up a appointment for February 14, 2013, and indicating that a completed medical form was to be returned to the ministry no later than February 12, 2013.
- Medical Report, dated March 15, 2013, signed by family doctor, defining appellant's Medical Conditions, Treatment, and Prognosis, and Restrictions.
- Letter, undated, from ministry to appellant, indicating that the appellant missed a scheduled appointment, setting July 4, 2013 as the date for a new appointment, and indicating the need to have the required information to the ministry by June 1, 2013.
- Letter, dated July 8, 2013, from ministry to appellant, indicating that the appellant no longer met the criteria for the Persons with Persistent Multiple Barriers (PPMB) category because the ministry was unable to determine whether the appellant met the criteria as he failed to attend two scheduled PPMB review appointments.
- Request for Reconsideration, dated July 17, 2013, which added the following evidence:
  - July 8, 2011 – appellant qualified under the PPMB category (note that the date does not match the date on letter noted above).
  - February 14, 2013 – ministry contacted appellant via phone and left message that medical form had not been received and that day's appointment would have to be rescheduled.
  - March 18, 2013 – appellant contacted ministry on another matter and mentioned he would be bringing the PPMB when he attended the ministry office.
  - April 12, 2013 – ministry left voice message that medical form had not been received.
  - May 14, 2013 – PPMB medical report received.
  - June 13, 2013 – ministry tried to contact appellant by phone but it was out of service. Ministry sent second appointment letter.
  - July 4, 2013 – appellant did not attend PPMB renewal appointment. Appellant could not be contacted because phone was still out of order. File was assigned to Regional Adjudicator to consider denial of PPMB designation.
  - In Reasons for Request for Reconsideration, appellant reiterated his medical conditions, stated that he was taking four different medications, and stated that his family doctor was on vacation and proper supporting documents would be provided upon his return. The appellant also stated that the reason for missing the appointment was because of severe side effects from a medication prescribed by his surgeon, and that supporting documentation for this would also be provided upon this family doctor's return.
- Letter, dated July 23, 2013, from the appellant's doctor's office, stamped received by Province of BC on July 29, 2013, verifying that the family doctor was on vacation until August 6, 2013, and that the appellant had an appointment for August 8, 2013.

Prior to the hearing, the appellant provided the Tribunal with a copy of a letter from his doctor, dated August 28, 2013, confirming that the appellant has significant anxiety and depression, and indicating that these conditions made employability very difficult to impossible. When presented at the hearing, the Ministry had no objection to the letter being accepted. The panel admitted the letter into evidence under Section 22(4) of the Employment and Assistance Act as being in support of the information that was before the ministry at the time

of reconsideration and as it related directly to the appellant's statement that his medical condition impeded his ability to search for, accept, or continue in employment.

At the hearing, the appellant reviewed the evidence and argument provided with the Notice of Appeal. He indicated that, in addition to the medical conditions shown in the Medical Report, he also suffers from heart disease and high blood pressure. He has severe anxiety whenever he leaves the house and panic attacks when dealing with people. He is trying to do whatever he can. However, he has been prescribed a large number of different drugs, which have either had no effect or have resulted in severe reaction. He has also been experiencing pain and associated bleeding. The surgeon recommended prescription drugs to ease these symptoms until a diagnostic test could be completed. The appellant's reaction to these drug was severe to the point of being life-threatening. This caused him to miss both the medical test and the PPMB meeting. In response to questions from the ministry, he indicated that he is still morbidly obese but has difficulty exercising due to depression and leg pains. He also indicated he was unaware of the Mental Health Unit in his city – his doctor had not mentioned it. Nor had the doctor referred him to a nutritional specialist. He has been referred to a psychiatrist but the appointment is not until January 2014.

The ministry stood by the record, as documented in the Reconsideration Decision.

## PART F – Reasons for Panel Decision

he issue under appeal is the reasonableness of the ministry's reconsideration decision, which held that the appellant had not established that the medical condition is a barrier that seriously impedes the ability to search for, accept, or continue in employment, as required by Section 2(3)(b)(ii); and which held that the appellant had not taken all the steps that the minister considers reasonable for him to overcome the barriers referred to in paragraph 2(3)(a), as required by Section 2(3)(c).

### Relevant Legislation - Employment and Assistance Regulation (EAR) - Section 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).

Re: Section 2(3)(b)(ii) of the EAR

The legislative requirement for 2(3)(b)(ii) is that, in the opinion of the minister, the medical condition is a barrier that seriously impedes the person's ability to search for, accept or continue in employment. The Medical Report dated January 27, 2011, describes the appellant's medical conditions as "morbid obesity with knee pain" with a secondary condition of "depression and anxiety." The medical report of

March 15, 2013, however, describes the appellant's primary medical conditions as "anxiety disorder/agoraphobia" with a secondary medical condition of morbid obesity. It also states the appellant is self-medicating with marijuana, that his condition is not controlled, and that he is awaiting an appointment with a psychiatrist. The letter, dated August 28, 2013, submitted at the hearing, states that the appellant has significant anxiety and depression requiring ongoing medical therapy and that he has extreme difficulty coping in a work environment due to these conditions making employment very difficult to impossible.

The ministry argued that the information provided does not meet the requirements set out in Section 2(3)(b)(ii) of the EAR. The ministry accepts that agoraphobia could seriously impede the appellant's ability to obtain employment, but the medical practitioner did not report that the appellant is unable to leave the house, only that he has "trouble with shopping and leaving the house". The ministry argues that the date of onset is January 27, 2011, but agoraphobia was not identified as a medical condition at that time. Other current barriers could not be fully identified because the appellant had not attended the PPMB renewal appointments.

The appellant argued that he has a medical condition that is a barrier that seriously impedes his ability to obtain work. He is unable to hold down a full time or part time job as he has severe anxiety whenever he leaves the house and panic attacks when dealing with people.

The panel finds that the appellant was diagnosed with a primary medical condition of "morbid obesity with knee pain" and a secondary condition of "depression and anxiety", but by January 2011, this changed and the appellant's secondary condition became his primary medical condition and the condition of "anxiety and depression" was now described as "anxiety disorder/agoraphobia." While the ministry argues the onset of agoraphobia was after the January 27, 2011 medical report, the panel finds this description more accurately reflects the appellant's condition described in the January 27, 2011 medical report and the appellant's description of his medical conditions, "severe anxiety whenever he leaves the house and panic attacks when dealing with people."

Given the appellant's medical conditions, and given that the physician indicates the appellant requires ongoing medical therapy and would experience extreme difficulty coping in a work environment due to these conditions, the panel finds the ministry decision that the appellant's medical condition does not seriously impede his ability to search for, accept, or continue in employment is unreasonable.

Re: Section 2(3)(c) of the EAR

The legislative requirement for 2(3)(c) is that the person has taken all steps that the minister considers reasonable for the person to overcome the barriers to employment.

The Medical Report dated January 27, 2011 describes the appellant's medical conditions as "morbid obesity with knee pain" with a secondary condition of "depression and anxiety". It indicates that treatment included a pharmaceutical drug for the anxiety, and diet and exercise for the morbid obesity. It also indicates that the appellant was losing weight but was being impeded by knee pain which decreased tolerance for exercise. The Medical Report dated March 15, 2013 indicates that both conditions still exist, but with anxiety/agoraphobia as the primary condition. When asked to describe any treatments/remedial approaches that have been tried to date or that are expected in the future, the medical practitioner states that the appellant's conditions are not controlled and that the

appellant is self-medicating with marijuana. The letter, dated August 28, 2013, submitted at the hearing indicated that ongoing medical treatment is required.

The ministry argued that the medical evidence indicates that the appellant has not continued with the treatment plan reported by the medical practitioner in January 2011 and, instead, is self-medicating with marijuana. The appellant had not contacted support organizations, such as the Mental Health Unit, or obtained advice from a nutritionist regarding his diet. The appellant also missed two scheduled PPMB meetings where he would have obtained advice on services available. Therefore, the minister was not satisfied that the appellant had taken all steps that the minister considers reasonable to overcome the barriers identified, as required by Section 2(3)(c).

The Appellant argued that he was prescribed a large number of different drugs for his anxiety, but they either didn't help or resulted in severe negative conditions. He is currently taking four drugs for other conditions and is waiting to see a psychiatrist before attempting other drugs. He is trying to follow the advice of his doctor but is losing confidence in the doctor and is seeking another. He has attempted several times to get the desired information from his doctor, who assures him it will be sent. However, it is never produced. He missed the PPMB meetings because he was prescribed a drug for another problem by his surgeon which resulted in life-threatening conditions.

The panel notes that, while the letter from his doctor indicates ongoing medical treatment is required, the appellant is self-medicating and his condition is not being controlled. No evidence was provided to substantiate the oral testimony. The appellant missed a PPMB meeting on February 14, 2013 and did not contact the ministry again until March 18, 2013. A second meeting on July 4, 2013 was missed without notifying the ministry. Given these facts, the panel finds that the ministry was reasonable in finding that the appellant has not demonstrated that he has taken all the steps the ministry considers reasonable to overcome the barriers to employment.

Therefore, the panel finds that the ministry's decision, that the appellant was no longer eligible to qualify as a person with persistent multiple barriers (PPMB) to employment because he did not meet all the criteria under Section 2 of the Employment and Assistance Regulation (EAR), was reasonably supported by the evidence and is a reasonable application of the applicable enactment in the circumstances of the appellant. The panel confirms the decision of the ministry.