

PART C – Decision under Appeal

The decision under appeal is the Ministry's reconsideration decision dated September 17, 2013 which held that the appellant did not qualify as a person who has persistent multiple barriers to employment (PPMB) because he did not meet all of the eligibility requirements specified in section 2 of the Employment and Assistance Regulation (EAR). Specifically, the ministry was not satisfied that the appellant's medical condition is a barrier that seriously impedes his ability to search for, accept or continue in employment as per EAR section 2(3)(b)(ii).

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) section 2

PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under section 86(b) of the EAR.

The evidence before the minister at reconsideration was as follows:

1. The appellant is a single person who was approved to receive income assistance as a Person with Persistent Multiple Barriers to Employment (PPMB) on July 27, 2010 and continued to receive this assistance until November 2012. He received regular income assistance in December 2012 and his file was closed in January 2013. The appellant returned to the province on January 14, 2013 and reapplied for income assistance;
2. The appellant's request for reconsideration dated September 1, 2013 in which the appellant stated that the employment screen was not correct in that his highest level of education was "some Grade 10". He noted that he has serious anxiety problems and states that he was told by a worker to have his old form refilled/copied and that he didn't need to add his other problems;
3. A medical report – employability (Medical Report #1) dated December 10, 2009 indicating that the appellant has a primary medical condition of drug dependence (onset 2008) and a secondary medical condition of depression & anxiety (onset 2009). The overall medical condition is listed as "severe". This report indicates that the medical conditions are expected to last more than 2 years. The symptoms are episodic in nature and occur with a monthly frequency. A restriction listed by the physician is that the patient is "Unable to work, needs close follow-up by physician." The physician noted that he is a specialist in Community Medicine who has known the appellant for 6 months or less, and that he has not examined the appellant's previous medical records;
4. A medical report – PPMB (Medical Report #2) dated July 15, 2010 and completed by the same physician who completed Medical Report #1. This medical report confirmed the same medical conditions and dates of onset as Medical Report #1. These conditions have existed for 2 years, and have been treated by Methadone and Effexor resulting in stable outcomes, and by Trazodone resulting in some symptoms. A restriction identified with these conditions is that it is "difficult to participate in programs because of anxiety".
5. A letter from the ministry to the appellant dated July 27, 2010 advising that the appellant has been granted PPMB status;
6. A medical report – PPMB (Medical Report #3) dated March 25, 2013 indicating that the appellant has a primary medical condition of anxiety and depression (onset June 2009) and a secondary medical condition of drug addiction/(illegible) (onset 2009). These medical conditions have been treated by Effexor and Trazodone and were previously treated by Methodone. No outcomes are reported for these treatments. The conditions have existed for 3 years and 9 months and are expected to last for less than 2 years. The symptoms are not episodic in nature. No restrictions resulting from the appellant's medical conditions are noted. The physician indicated that he is a general practitioner who has known the appellant for over 6 months, but he is not the appellant's regular medical practitioner;

7. A medical report – PPMB (Medical Report #4) dated May 29, 2013 indicating that the appellant has a primary medical condition of depression (onset 2008) and a secondary medical condition of anxiety (onset 2008). These medical conditions have been treated by Trazone (sic), Effexor and inhalers. No outcomes are reported for these treatments. The conditions are expected to last for 2 years or more and are not episodic in nature. The report indicates that a restriction associated with these conditions is that (increased) anxiety and (increased) depression (lead to) difficulty in participating in programs. The physician noted that he is a general practitioner. He states that he has not examined the appellant's previous medical records which implies that he has known the appellant for under 6 months;
8. An employability screen (undated but apparently completed in 2010) showing a total score of 9;
9. An employability screen (undated but since 2010) showing a total score of 12;
10. A letter from the ministry to the appellant dated August 2, 2013 advising the appellant that his application for PPMB status had not been approved because his Employability Screen score was less than 15, and in the opinion of the minister the appellant's medical conditions did not preclude him from all forms of employment.

At the hearing, the ministry reviewed the eligibility criteria for qualification for PPMB status relevant to this appeal. In particular, the ministry noted that the applicant did not meet the requirement set out in section 2(3)(b)(ii) which specifies that the appellant have a medical condition that in the opinion of the minister is a barrier that seriously impedes the appellant's ability to search for, accept or continue in employment. The ministry reviewed the medical reports included in the appeal record and noted any restrictions listed in the medical reports.

In response to a question, the ministry confirmed that the appellant's score on the employability screen had been corrected from 12 to 15 based upon the information provided by the appellant regarding his educational attainment.

In response to a question, the ministry explained that a determination could not be made regarding whether the appellant had taken all steps that the minister considered reasonable for the appellant to overcome the barriers to employment identified in the employability screen, because the appellant had submitted no information in support of his efforts to satisfy this requirement.

The panel noted that the ministry's testimony provided a useful focus upon the medical evidence relevant to the reconsideration decision. Accordingly, the panel admitted the ministry's testimony as being in support of the information before the ministry at reconsideration, in accordance with section 22(4) of the Employment and Assistance Act.

PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry reasonably concluded that the appellant did not meet all of the statutory requirements of section 2 of the EAR to qualify for the PPMB status because the ministry determined that the appellant's medical conditions did not seriously impede his ability to search for, accept or continue in employment as per section 2(3)(b)(ii). Specifically, the issue is whether the ministry's decision is reasonably supported by the evidence, or is a reasonable application on the legislation in the circumstances of the appellant.

The relevant legislation is the following:

From the EAR:

- 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.

[en. B.C. Reg. 368/2002.]

The appellant provided his reasons for the appeal in his notice of appeal. He noted that he has qualified for PPMB status for years and has done so for reasons that still apply, but he is no longer accepted for this status. He indicates that he has serious medical issues that are becoming problematic due to the higher stress and anxiety he has experienced due to his not being approved for PPMB status. He states that "There is also false information on the review." Unfortunately, the panel was unable to determine what information was regarded by the appellant as being false, due to his absence from the hearing.

In the reconsideration decision, the ministry concluded that the appellant had met the eligibility requirements for sections 2(2), 2(3)(a)(ii), and 2(3)(b)(i)(A) of the EAR. The ministry concluded that it could not make a determination regarding whether the appellant had met the criterion specified in EAR section 2(3)(a); that the appellant has taken all steps that the ministry considered reasonable to overcome the barriers to employment identified by the latest eligibility screen (unemployed for over 12 months, lack of education, none or very limited work experience). The ministry stated that no program for removing these barriers appears to have been formulated. At the hearing, the ministry noted that the appellant has submitted no evidence of having made efforts to overcome these barriers.

The reconsideration decision concluded that the appellant failed to satisfy the eligibility criterion in EAR section 2(3)(b)(ii). This section sets out the eligibility requirement 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 ministry's definition of seriously impedes is "a medical condition is considered to seriously impede the recipient's ability to search for, accept or continue in employment when, *as a result of the medical condition*, the recipient is unable to participate in any type of employment that would enable independence from income assistance." The reconsideration decision noted the following:

- Medical Report #3 reported that the appellant is being treated with Effexor and Trazadone but is no longer on Methadone. The report identifies no outcomes from these treatments and does not list any restrictions related to the appellant's medical conditions of anxiety and depression;
- Medical Report #4 reported that the appellant has been prescribed Trazadone, Effexor and inhalers. In describing the nature of any restrictions specific to the appellant's medical conditions the physician

wrote that increased anxiety and depression lead to "difficulty in participating in programs";

- additional information from a medical practitioner is not provided by the appellant in his Request for Reconsideration;
- the ministry has some discretion in determining whether a medical condition is a barrier that seriously impedes the person's ability to search for, accept or continue in employment. However, the ministry does rely on information provided by medical practitioners in making such an assessment.
- the ministry reviewed the comments in the more recent medical reports (Medical Reports #3 and #4) concerning any restrictions resulting from the appellant's medical conditions. The ministry found that these did not constitute confirmation that the appellant's medical conditions seriously impeded his ability to search for, accept or continue in employment; or to participate in a program that would work with the appellant in overcoming his barriers.

At the hearing, the ministry noted that the reconsideration decision relied upon the findings of the most recent medical reports (Medical Reports #3 and #4). The ministry observed that the restrictions listed in the earlier two medical reports are greater than those listed in the two more recent medical reports. Moreover, the ministry attempts to tailor a program appropriate for each applicant to assist them to overcome their barriers to employment. Consequently, the ministry concluded that *difficulty in participating in programs* is not a sufficient barrier to seriously impede the appellant's ability to search for, accept or continue in employment.

The panel noted that section 2(3)(b)(ii) of the legislation provides the ministry with some discretion in determining whether the appellant's medical condition is a barrier that seriously impedes his ability to search for, accept or continue in employment. Moreover, the appellant provided no evidence to refute the ministry's determination, apart from the comments contained in the notice of appeal. Accordingly, the panel accepted the ministry's argument that Medical Reports #3 and #4 did not identify restrictions upon the appellant that could reasonably be considered to be a barrier that seriously impedes his ability to search for, accept or continue in employment. The panel therefore concluded that the ministry reasonably concluded that the appellant's medical conditions do not constitute a barrier that seriously impedes the appellant for searching for, accepting or continuing in employment.

Having reviewed and considered all of the available evidence and the relevant legislation, the panel found that the ministry's decision that denied the appellant PPMB status is reasonably supported by the evidence.

The panel therefore confirms the ministry decision.