

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated October 10, 2013 which held that the appellant did not meet all of the applicable statutory requirements of Section 2 of the *Employment and Assistance Regulation* (EAR) to qualify as a person with persistent multiple barriers to employment (PPMB).

The ministry was not satisfied that the requirement in section 2(4)(a) of the EAR had been fully met and that:

- in the opinion of the medical practitioner, the appellant's medical condition has continued for at least 1 year and is likely to continue for at least 2 more years or has occurred frequently in the past year and is likely to continue for at least 2 more years.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 2

PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Medical Report- Persons with Persistent Multiple Barriers (PPMB) dated May 3, 2013 which states, in part, that: the appellant's primary medical condition is major depressive disorder with a date of onset of "2 to 3 years"; the treatment described is a medication and the outcome is "...patient continues to be sad, tearful, decreased concentration, poor memory, decreased energy, difficulty making decisions, feels hopeless about future"; for the prognosis, the physician has not indicated an expected duration and provided additional comments: "...difficult to comment. I have just started seeing her since December 2012." The physician, who is a specialist in psychiatry, indicated that the medical condition is not episodic in nature. Asked to describe the nature of any restrictions specific to the medical conditions, the physician wrote "...patient has vegetative and cognitive symptoms of depression. She is not capable of working at present time";
- 2) Employability Screen print out for the appellant indicating a total score of "12"; and,
- 3) Request for Reconsideration- Reasons dated October 2, 2013.

In her Request for Reconsideration, the appellant wrote that she does not agree with the decision not to approve her application for PPMB. She thinks she is not ready for work yet. Her body feels very weak. Sometimes she loses the balance of things in her hand because she has muscle spasms. She gets confused most of the time and she cannot make decisions. She feels scared and sad. Sometimes she starts to cry and she does not know why. She forgets things way too much now. She just had an anxiety attack and she gets them every few months and sometimes she has to go to the hospital. She has polio in her right leg so it is really weak and it is hard to walk or carry heavy things. She has a back problem and she cannot work more than 2 hours and it starts to hurt.

In her Notice of Appeal, the appellant expressed her disagreement with the ministry's reconsideration decision. The appellant wrote that she is not ready to go to work yet and she requests some time to recover. She cannot think straight. She feels very weak. She is taking medications for depression and gets confused way too much and forgets things easily. She gets scared feelings that she does not know what is going to happen next. Too much pressure makes her confused and scared.

In an additional letter dated October 20, 2013, the appellant wrote that she has polio in her right leg so it is weak and smaller than the other leg and it is hard to walk and to carry heavy things. Her toes on her right foot bend inward when she walks and, after a little while, her leg and foot start to hurt. She cannot put on running shoes because they hurt the toes on her right foot. She is ready to see a doctor that can check that what she is saying is true.

Prior to the hearing, the appellant also provided an additional letter from her psychiatrist dated October 17, 2013. The psychiatrist wrote that the appellant has been under her care since December 2012. She presented with symptoms consistent with a diagnosis of major depressive disorder. She is presently on medication. She continues to be sad, anxious. She gets easily overwhelmed and has low frustration tolerance. She was dependent on her husband and now starts crying at the prospect of being alone, raising kids. She wants to eventually get a job but feels that she has difficulty concentrating, thinking and making decisions. She denies suicidal ideation. Marked financial stress.

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The psychiatrist wrote that she will increase the medication but she does not expect a significant improvement in the next few months. The appellant's anxiety paralyses her and hopefully with cognitive restructuring and adjustment of medication, there may be some improvement in her symptoms.

The ministry relied on its reconsideration decision and did not raise an objection to the admissibility of the new documents. The panel admitted the letters from the appellant and her psychiatrist as providing further information about the appellant's medical conditions, and being in support of the information and records before the ministry at reconsideration, pursuant to section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reconsideration decision, which concluded that the appellant did not meet all of the applicable statutory requirements of Section 2 of the *Employment and Assistance Regulation* (EAR) to qualify as a person with persistent multiple barriers to employment (PPMB), is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

The criteria for being designated as a PPMB are set out in Section 2 of the EAR as follows:

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*;
 - (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.

Under Section 2(2), the person must have been the recipient of one or more of a number of types of assistance for at least 12 of the immediately preceding 15 calendar months and also meet the requirements set out in subsection 2(3) or subsection 2(4). If the person has scored at least 15 on the employability screen as set out in Schedule E to the EAR, then Section 2(3) applies. If the person has scored less than 15 on the employability screen as set out in Schedule E to the EAR, then Section 2(4) applies. Under Section 2(4) of the EAR, the person must have a medical condition, other than an addiction, that has been confirmed by a medical practitioner and that, in the opinion of the medical practitioner, has continued for at least one year and is likely to continue for at least 2 more years, or has occurred frequently in the past year, and is likely to continue for at least 2 more years and, 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 has been in receipt of income assistance for more than 12 of the preceding 15 months and, therefore, meets the requirements of Section 2(2) of the EAR. As the appellant scored 12 on the employability screen, she must meet the further requirements of Section 2(4) of the EAR. The ministry acknowledged that the appellant also has a medical condition other than an addiction, namely major depressive disorder, that has been confirmed by a medical practitioner and that, in the opinion of the medical practitioner, has continued for at least 1 year. However, the ministry argued that the medical practitioner did not indicate that the expected duration of the medical condition will be 2 years or more. The ministry pointed out that in the Medical Report dated May 3, 2013, the medical practitioner wrote for the prognosis: "difficult to comment. I have just started seeing her since December 2012" and, therefore, the requirement in section 2(4)(a) of the EAR has not been met.

The appellant's position is that there is sufficient evidence that she is not ready for work yet and that she needs some time to recover. The appellant argued that, with respect to her major depressive disorder, she has many symptoms including confusion most of the time. The appellant argued that she cannot make decisions, she feels scared and sad and that sometimes she starts to cry and she does not know why. The appellant argued in her Request for Reconsideration that she just had an anxiety attack and she gets them every few months and sometimes has to go to the hospital. The appellant argued that she is taking medications for depression and gets confused and forgets things easily. The appellant argued that she also has physical health conditions and her body "feels very weak." The appellant argued that sometimes she loses the balance of things in her hand because she has muscle spasms and she has polio in her right leg, which is "really weak" and makes it hard to walk or carry heavy things. The appellant argued that she has a back problem and she cannot work more than 2 hours and it starts to hurt. The appellant also argued, in her letter dated October 20, 2013, that her toes on her right foot bend inward when she walks and, after a little while, her leg and foot start to hurt.

The panel finds that it is not disputed that the appellant's psychiatrist has provided a medical opinion, in the Medical Report dated May 3, 2013, that the appellant suffers from a medical condition other than an addiction, namely major depressive disorder. It is also not disputed that this medical condition has, in the opinion of the medical practitioner, continued for at least 1 year. However, the ministry argued that the medical practitioner did not indicate that the expected duration of the medical condition will be 2 years or more since the medical practitioner wrote for the prognosis in the Medical Report: "difficult to comment. I have just started seeing her since December 2012." The psychiatrist also did not check one of two possible options for the expected duration of the medical condition, either "less than 2 years" or "2 years or more" in the prognosis section of the Medical Report.

In the updated information in the letter dated October 17, 2013, the psychiatrist wrote that the appellant is presently on medication and she continues to be sad and anxious. The psychiatrist indicated that she will increase the medication but does not expect a significant improvement in the appellant's condition in the next few months. While the psychiatrist reported that the appellant's anxiety currently paralyzes her, the psychiatrist also expressed her hope that "...with cognitive restructuring and adjustment of medication, there may be some improvement in her symptoms." The panel finds that, given an opportunity to update her prognosis after a further period of treating the appellant for major depressive disorder since the date of the Medical Report, the psychiatrist has not provided an opinion that the expected duration of the medical condition is 2 years or more, although this is the question posed in the Medical Report- PPMB form. While the appellant also argued that she has physical health conditions that are impacting her abilities, including muscle spasms, polio in her right leg and toes that "bend inward" on her right foot, and back problems, these medical conditions have not been confirmed by a medical practitioner, as required by the legislation. The panel finds that the ministry reasonably concluded that the evidence does not demonstrate an opinion from the medical practitioner that the appellant's diagnosed medical condition of major depressive disorder is likely to continue for at least 2 more years, pursuant to the requirement in Section 2(4)(a) of the EAR.

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(2)(a) of the *Employment and Assistance Act*.