

PART C – Decision under Appeal

The appellant appeals the reconsideration decision of November 6, 2013 in which the Ministry of Social Development and Social Innovation (Ministry) denied the appellant's application for qualification as a person with persistent multiple barriers to employment (PPMB) under section 2 of the *Employment and Assistance Regulation* ("EAR") on the basis that the information provided does not establish that the appellant's medical conditions preclude her from searching for, accepting or continuing in employment as required by subs. 2(4)(b) of the EAR.

PART D – Relevant Legislation

Employment and Assistance Regulation, section 2 ("EAR").

PART E – Summary of Facts

The Ministry did not attend the hearing. The panel confirmed that the Ministry had been notified of the date and time of the hearing. Accordingly, under subs. 86(b) of the EAR, the panel conducted the hearing in the absence of the Ministry.

The evidence before the Ministry at the reconsideration included the following documents:

- Copy of 2 page form, Medical Report – Persons with Persistent Multiple Barriers, completed by the appellant on August 23, 2013 and the portion by her physician on September 16, 2013 (“PPMB Form”);
- Copy of 1 page Ministry Employability Screen for the appellant, not dated, showing a total score of 13 (“E Screen”); and
- Copy of the appellant’s request for reconsideration dated November 1, 2013.

In the PPMB Form completed September 16, 2013, the appellant’s physician diagnosed her primary medical condition as anxiety and depression, onset in July 2011, and there was no secondary medical condition. The treatment for the condition is medication and the physician wrote, “mood is stable if patient is compliant with treatment.” The physician indicated the appellant’s condition has existed for 2 years and 1 month, and was expected to continue for 2 years or more. He indicated that the condition is episodic in nature, writing, “moods flare up when off medication” with “+/- yearly” frequency. In his answer to the question asking the physician to indicate the nature of the appellant’s restrictions, the physician wrote, “none.” The physician indicated he had been the appellant’s medical practitioner for over 6 months.

In her request for reconsideration, the appellant wrote, “In 1998 I was diagnosed with ADD [attention deficit disorder]. I have a really hard time concentrating on more than one thing at a time. I have trouble following instructions as I cannot remember things very well. I cannot seem to keep a job as I cannot stay organized. I have PTSD [post traumatic stress disorder], depression and anxiety. I take medication for depression. I get angry or sad very spontaneously over little things. I get frustrated easily especially if things do not work out as I think they should.”

In her Notice of Appeal, the appellant wrote that she disagreed with the reconsideration decision “because I have anxiety and depression and I cannot hold down a job due to mood swings. Motivation and coping I have a real hard time with.” The appellant attached the following documents to her Notice of Appeal:

- A one-page typed submission on appeal, not dated, written on the appellant’s behalf by her mother (“Document #1”);
- A one-page letter dated November 20, 2013 from the appellant’s social worker who has treated her since April 2013 (“Document #2”); and
- A PPMB Form, showing the appellant completed her portion on November 26, 2013, and the appellant’s new physician completed his portion on November 27, 2013 (“Document #3”). The second page of Document #3 was missing from the appeal materials, but the appellant provided it to the panel at the hearing.

As the Ministry did not attend the hearing, there were no submissions from the Ministry regarding the

admission of the appellant's submission with her Notice of Appeal, or Documents #1 through #3.

In Document #1, the appellant wrote that she has had a hard time comprehending what she reads and what people tell her. She says that she works well when with a partner who can explain things to her, but on her own she is easily confused and had been fired from all her jobs because she didn't understand the instructions. The appellant wrote that she was let go by the military because she was unable to follow orders and that she suffers from ADD, depression and PTSD. She also wrote that she has a birth defect in her spine, which causes her severe back pain. The appellant told the panel that she wanted the panel to have this information and that her mother had helped her write the submission before she received the reconsideration decision. She said that it supported the information she gave the Ministry at the reconsideration decision.

The information contained in the appellant's written submission on her Notice of Appeal and in Document #1 elaborates on evidence addressed by the Ministry in the reconsideration decision and the panel admits the appellant's written submission in her Notice of Appeal, together with the submission in Document #1, under section 22(4)(b) of the *Employment and Assistance Act* as written testimony in support of the information and records before the minister when the decision being appealed was made.

In Document #2, the appellant's social worker confirmed that the appellant is attending individual and group therapy sessions targeting her depression and anxiety and that the appellant has recently begun to work with an outreach support worker to address "specific life skills that will address her lack of organizational skills and attention deficits." The social worker wrote that the appellant "has difficulty with follow through and concentration and often has difficulty with consistency in regard to maintaining appointments and following a care plan. This may be due to her current high levels of stress and anxiety or lack of coping skills and/or her difficulties with mood regulation." The appellant told the panel she had asked her social worker to write this letter in support of her appeal as she felt it helped explain her situation and was relevant to the appeal.

In Document #2, the appellant's social worker notes the appellant is being treated for her anxiety and depression (which was noted by the Ministry in its reconsideration decision), and discusses the effect that her anxiety and depression has on the appellant's ability to concentrate and follow through. The panel admits Documents #2 under section 22(4)(b) of the *Employment and Assistance Act* as written testimony in support of the information and records before the minister when the decision being appealed was made.

Document #3 is a PPMB Form completed by the appellant and her new physician on November 26 & 27, 2013. In Document #3, the appellant's primary condition is listed as PTSD and anxiety onset July 2007, and her secondary condition is ADHD [attention deficit hyperactivity disorder] with onset in September 1998. The physician indicates that the appellant is taking medication, writing "stabilized but still gets mood swings." The physician indicates that the appellant has had these conditions for 15 years and that they are expected to continue for 2 years or more. The physician indicates that the appellant's conditions are not episodic in nature. In response to the question asking the physician to describe the nature of the appellant's restrictions specific to her medical conditions, the physician has written, "She regularly has low mood. Because of her history of PTSD, anxiety and depression, she is not able to motivate herself, can't hold down a job." The physician indicates that he has been the appellant's physician for over 6 months.

The appellant told the panel she had moved since the PPMB Form was completed in September 2013, and that the doctor who completed Document #3 had been her physician in the past. She told the panel that the information in Document #3 supported her submissions to the Ministry on reconsideration that she suffered from ADD and had suffered from it, and anxiety and depression for several years. In Document #3, the appellant's new physician confirms that the appellant suffers from ADHD (which she had submitted to the Ministry at the reconsideration) and that the appellant's condition stabilizes with medication (which was also set out in the PPMB Form of September 2013 before the Ministry). The panel admits Document #3 (the PPMB Form completed November 26 & 27, 2013) under section 22(4)(b) of the *Employment and Assistance Act* as written testimony in support of the information and records before the minister when the decision being appealed was made.

The reconsideration decision notes that the appellant has been a recipient of income assistance for at least 12 of the past 15 months. On the appellant's E Screen, she scored 13. The appellant does not challenge the score on the E Screen and she told the panel that she has a certificate in computers from a college in the United States (as reflected in the score on the E Screen showing that she has a post-secondary diploma), and that she has not worked since 2000 as she has been raising her 5 children (reflecting the score on the E Screen that she has no or very limited work experience in the past 3 years).

The appellant told the panel she can't keep jobs because she lacks organizational skills and can't remember things – she can only perform one task at a time. She said she has been actively looking for work for the past 2 years, but she lives in a small town and there isn't much work available. The appellant told the panel that she was able to perform a job ordering parts, and that she was also able to perform a job stocking shelves but that it was a short-term position. The appellant says that she takes medication for her anxiety and depression, and also attends therapy for this, and that it helps, but she still has bad days. The appellant told the panel she was discharged from the military because of her ADD, but she is not taking any medication or having therapy for her ADD as she didn't feel her ADD was as big a problem for her as her depression and anxiety. The appellant told the panel she doesn't find it difficult to look after her 5 children, who are all in school, or perform her household chores.

The panel makes the following findings of fact:

- The appellant has been a recipient of income assistance for at least 12 of the last 15 months;
- The appellant's previous physician has confirmed in the PPMB Form of September 2013 that she suffers from the medical conditions of anxiety and depression;
- The appellant's current physician has confirmed in Document #3 that she suffers from the secondary medical condition of ADD; and
- The appellant's physicians have confirmed that her medical conditions have continued for one year and are likely to continue for at least two more years.

PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the Ministry's reconsideration decision of November 6, 2013, denying the appellant's application for qualification as a person with persistent multiple barriers ("PPMB") to employment under section 2 of the *Employment and Assistance Regulation* ("EAR") on the basis that the information provided does not establish that the appellant's medical conditions preclude her from searching for, accepting or continuing in employment.

Section 2 of the EAR governs the requirements to qualify as a person with persistent multiple barriers (PPMB) to employment. Under subsection 2(1), in order to qualify as a PPMB to employment, a person must meet the requirements set out in subsection 2(2) and subsection 2(3) or 2(4). Subsection 2(2) requires that the applicant must be a recipient for at least 12 of the immediately preceding 15 calendar months of income assistance or hardship assistance under the *Employment and Assistance Act* (subs. 2(2)(a)). Subsections 2(3) and 2(4) provide the following:

(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 found that the appellant met the requirement of subs. 2(2) as she had been receiving income assistance for at least 12 of the immediately preceding 15 months. The appellant did not challenge her score of 13 on the E Screen at the reconsideration or on appeal. Given that the appellant did not qualify for consideration under subs. 2(3) of the EAR (which requires a score of 15 or higher on the E Screen), the Ministry considered her application for PPMB designation under subs. 2(4) of the EAR.

In the reconsideration decision, the Ministry noted that in order to satisfy subs. 2(4) of the EAR, the minister must be satisfied of three things: 1) the appellant has a medical condition other than an addiction that, 2) in the opinion of a medical practitioner has lasted or occurred frequently for at least 1 year and is likely to continue for at least 2 more years and, 3) in the Ministry's opinion, the medical condition presents a barrier that precludes the appellant from searching for, accepting or continuing in employment.

In the reconsideration decision, the Ministry found that a medical practitioner had confirmed that the appellant has a condition other than an addiction – noting the information in the PPMB Form that the appellant suffers from the primary medical conditions of anxiety and depression. The panel also finds that a medical practitioner has confirmed in Document #3 that the appellant suffers from the secondary medical condition of ADHD. Accordingly, the appellant has met the first criteria set out under subs. 2(4) that a medical practitioner has confirmed she suffers from a medical condition, other than an addiction.

In the reconsideration decision, the Ministry found that it was satisfied that the appellant's medical practitioner had confirmed that her medical condition has continued for one year and is likely to continue for at least 2 more years, as set out in the evidence in the PPMB Form. The panel also notes this information is confirmed by the appellant's new physician in Document #3. Accordingly, the appellant has met the second criteria set out in subs. 2(4)(a) that in the opinion of a medical practitioner, her conditions have lasted for at least one year and are likely to continue for at least 2 more years.

In the reconsideration decision, the Ministry noted that a medical condition is considered to preclude the appellant from searching for, accepting or continuing in employment (the criteria set out in subs. 2(4)(b) of the EAR) when, as a result of the medical condition, the recipient is unable to participate in any type of employment for any length of time except in a supported or sheltered-type work environment. The Ministry found in the reconsideration decision that the information provided did not establish that her medical conditions presented a barrier that prevented her from searching, or accepting or continuing in employment. The Ministry relied on the evidence of the appellant's physician in the PPMB Form in which he indicated that the appellant's mood was stable if she is compliant with her treatment and that there were no restrictions related to her medical condition.

The appellant points to the evidence of her new physician in Document #3 which states, "because of her history of PTSD, anxiety and depression, she is not able to motivate herself, can't hold down a job." She says that this is a more accurate reflection of the restriction caused by her medical conditions than the earlier evidence of her former physician on the PPMB Form stating that there were no restrictions caused by her medical conditions relied on by the Ministry. The appellant did not challenge the evidence provided by both her physicians in the PPMB Form and Document #3 that her depression is regulated when she takes her medication – she only said she still has some bad days and confirmed that she is not taking medication to treat her ADHD which affects her ability to concentrate. The panel also notes the appellant's own evidence at the hearing that she was able to perform a job stocking shelves and that she is able to perform jobs where she is given simple, straight-forward tasks, which is more in keeping with the evidence provided by her former physician in the PPMB Form, than by her current physician in Document #3.

The panel finds that the appellant has not provided evidence that her medical conditions preclude her from searching for, accepting or continuing in employment. Although the appellant's current physician's remarks on Document #3 indicate that she "is not able to motivate herself, can't hold down a job" there is no further explanation to explain how and why his response differs from that of her previous physician in the PPMB Form completed 2 months before in September 2013 that her medical conditions caused no restrictions for her. Further, there is no information before the panel from the appellant's current or former physicians or from the appellant to confirm that she is precluded from searching for, accepting or continuing in all types of employment – in fact, the appellant's own testimony at the hearing supports that she is capable of searching for, accepting or continuing in employment of a certain type.

The panel finds that the Ministry's determination that the information provided did not establish that the appellant's medical conditions preclude her from searching for, accepting or continuing in employment as required by subsection 2(4)(b) of the EAR is reasonably supported by the evidence. Accordingly, the panel confirms the reconsideration decision of November 6, 2013.