

PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration Decision dated September 26, 2013, which held that the Appellant is not eligible for designation as a Person with Persistent Multiple Barriers to Employment (PPMB). The Ministry found that the Appellant had been on assistance for at least 12 of the past 15 months, meeting the requirement of section 2(2), EAR. The Ministry found that the Appellant scored less than 15 on his employability screen; therefore under the provisions of section 2(4), EAR, he must have a medical condition, other than an addiction, confirmed by a physician, which has continued for at least 1 year and is expected to last for at least another 2 years and which, in the opinion of the minister is a barrier that precludes him from searching for, accepting or continuing in employment. The Ministry found that although the Appellant's physician confirmed that his medical condition has continued for at least 1 year and is likely to continue for at least 2 more years, the medical conditions and restrictions reported by the Appellant's physician did not establish that he has a barrier that precludes him from searching for, accepting or continuing in employment.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) Section 2

PART E – Summary of Facts

The Appellant requested an adjournment at the original hearing, stating that he had an appointment with a psychiatrist the following day, and he expected to obtain a medical report which he would submit to the Panel. He stated that the appointment was originally scheduled for the day before the hearing, but was changed. The Ministry had no objection; the Panel granted an adjournment in order to allow the Appellant time to obtain additional evidence.

Information before the Ministry at Reconsideration included:

1. A copy of a Medical Report – Persons with Persistent Multiple Barriers, signed by a physician July 29, 2013, reporting that the Appellant's primary medical condition is depression/cocaine addiction and secondary medical condition is anxiety disorder, with no treatment or restrictions listed, and a notation "Patient has been dealing with cocaine addiction for years".
2. A copy of the Appellant's Employability Screen, undated, with a total score of 12.
3. A copy of a letter dated September 9, 2013, advising the Appellant that he no longer meets the criteria for designation as a PPMB.
4. The Appellant's Request for Reconsideration, dated September 12, 2013.

Prior to the hearing, the Appellant submitted a physician's report dated September 15, 2013, listing his health history of depression and drug abuse, assault and anxiety, stating that he is unable to seek gainful employment due to mental illness and reporting significant deficits with cognitive and emotional function, specifically consciousness, executive, emotional disturbance, motivation, motor activity and attention or sustained concentration, with a comment that he has great difficulty staying in the task and concentrating on anything for long periods of time. The physician reported that the Appellant has continuous restrictions in six aspects of daily living activities (DLA's): personal health care, meal preparation, basic housework, daily shopping, mobility outside the home and management of finances, with comments that the Appellant has an inability to figure out bus schedules and that he is ignorant of what constitutes a healthy diet and needs help to organize his daily schedule. The physician noted that the Appellant is unable to get motivated to get retrained for any occupation. The Ministry had no objection to the admission of this evidence. The Panel admitted the physician's report under section 22(4), EAA as written testimony in support of the information and records that were before the minister when the decision being appealed was made, noting that the same physician completed the initial medical report submitted with the Appellant's application for PPMB designation.

At the hearing the Appellant submitted a report from a psychiatrist dated October 30, 2013 stating that the Appellant's presentation is suggestive of depressive disorder, moderate in severity, signs suggestive of PTSD from an assault 12 months ago, and that he has been completely abstinent of alcohol and illicit drugs, with a comment that the Appellant has started taking antidepressants and attending counselling, with a guarded long term prognosis. The Ministry had no objection to the admission of this evidence. The Panel admitted the physician's report under section 22(4) EAA as written testimony in support of the information and records that were before the minister when the decision being appealed was made, noting that the psychiatrist made reference to the same diagnoses as the physician who completed the medical report- PPMB.

At the hearing the Appellant stated that he suffers from depression and anxiety which make it impossible for him to search for or accept employment. He reported that he was assaulted in August, 2012, which adds to his anxiety and caused extreme trust issues. He stated that he cannot go out in crowds and has problems with thought processes and motivation. He stated that he is now on medications which make him drowsy, and he is not competent to accept employment at this time.

The Ministry responded by referring to the Reconsideration Decision, which refers to the medical report

prepared by the Appellant's physician. The Ministry stated that the same physician completed the Appellant's medical report in 2011, listing depression as the Appellant's primary medical condition. The 2013 report from the physician refers to depression and addiction as the primary conditions, and addiction is not a factor in PPMB designation. In addition, the Ministry noted that there are no restrictions reported by the physician in 2013, and no treatment is noted.

In response to a question from the Panel, the Ministry stated that the evidence admitted at the hearing would have been taken into account as it deals with remedies.

The Panel makes the following findings of fact:

- The Appellant has been on assistance for at least 12 of the past 15 months, as required under section 2(2), EAR.
- The Appellant scored 12 on his employability screen; therefore his application must be considered under section 2(4), EAR.
- The Appellant's physicians have confirmed that his medical conditions are depression, anxiety and drug addiction, and he is currently not using drugs.
- The Appellant's physician reported that the Appellant has significant deficits with several aspects of cognitive and emotional function and that he is continuously restricted in performing several aspects of DLA's.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's decision to deny the Appellant's application for designation as a Person with Persistent Multiple Barriers to Employment (PPMB). The Ministry found that the Appellant had been on assistance for at least 12 of the past 15 months, meeting the requirement of section 2(2), EAR. The Ministry found that the Appellant scored less than 15 on his employability screen; therefore under the provisions of section 2(4), EAR, he must have a medical condition, other than an addiction, confirmed by a physician, which has continued for at least 1 year and is expected to last for at least another 2 years and which, in the opinion of the minister is a barrier that precludes him from searching for, accepting or continuing in employment. The Ministry found that although the Appellant's physician confirmed that his medical condition has continued for at least 1 year and is likely to continue for at least 2 more years, the medical conditions and restrictions reported by the Appellant's physician did not establish that he has a barrier that precludes him from searching for, accepting or continuing in employment.

Legislation

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.

The Appellant argues that his medical reports confirm that he is unable to search for or accept employment.

The Ministry argues that the information provided by the Appellant does not establish any restrictions due to a medical condition, and that the Appellant's medical condition, other than an addiction, does not preclude him from searching for, accepting and maintaining employment.

With respect to the legislative criteria, the Panel finds that the Ministry reasonably determined that the Appellant met the requirements of section 2(2), EAR and that his application for PPMB designation is required to be considered under section 2(4), EAR because he scored less than 15 on his employability screen. The Panel finds that the Ministry did not reasonably determine that the Appellant does not have a barrier, other than an addiction, that precludes him from searching for, accepting or continuing in employment. The Appellant's physicians have confirmed that his medical conditions are depression, anxiety and drug addiction, and he is currently not using drugs, stating that he is unable to seek gainful employment due to mental illness and reporting significant deficits with cognitive and emotional function, specifically consciousness, executive, emotional disturbance, motivation, motor activity and attention or sustained concentration, with a comment that he has great difficulty staying in the task and concentrating on anything for long periods of time. The physician reported that the Appellant has continuous restrictions in six aspects of daily living activities (DLA's): personal health care, meal preparation, basic housework, daily shopping, mobility outside the home and management of finances, with comments that the Appellant has an inability to figure out bus schedules and that he is ignorant of what constitutes a healthy diet and needs help to organize his daily schedule. The Panel notes that the Appellant's physician specifically addressed the issue of employability, stating that the Appellant is unable to seek gainful employment and unable to be retrained for any occupation. With respect to the requirement that the person applying for PPMB designation have a medical condition other than an addiction, the Panel notes that the first diagnosis listed is depression/cocaine addiction, and the Appellant's psychiatrist has confirmed that he is not currently using drugs. The restrictions listed by the Appellant's physician refer to his mental illness, not his addiction.

The Panel finds the Ministry's decision was not reasonably supported by the evidence and rescinds the decision.