

PART C – Decision under Appeal

The Decision under Appeal is the Ministry Reconsideration Decision of November 19th, 2013 in which the ministry determined the appellant was ineligible for the qualifications of Persons With Persistent Multiple Barriers (PPMB) because she did not meet the requirements set out in Section 2 of the Employment and Assistance Regulation. The ministry found that because the appellant has been in receipt of income assistance for at least twelve (12) of the past fifteen (15) months prior to her application she met the requirements under Section 2 (2). The ministry found that as the appellant scored twelve (12) on the employability screen, her application did not meet the requirements to be assessed under Section 2 (3). The appellant's application was therefore considered under Section 2 (2) and (4) of the EAR. The appellant's physician confirmed that she has a medical condition that has lasted at least one (1) year and that the condition is expected to continue for two (2) years or more. However, in the opinion of the ministry, the appellant's medical condition and the resulting restrictions are not a barrier that precludes her from searching for, accepting or continuing in all types of employment and as she did not meet all of the criteria under subsection (4) (a) and (4) (b) she does not qualify for PPMB.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) – Section 2

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- An Employability screen in the name of the appellant undated showing a score of 12.
- Medical Report – Persons With Persistent Multiple Barriers dated June 17th, 2013. The report lists the appellant's conditions as depression and anxiety and that she is receiving counseling as therapy. The report adds that her restrictions are decreased short-term memory, low mood, decreased concentration, and high anxiety.

At the hearing the appellant told the panel that she had given the ministry new evidence in the form of a letter dated November 4, 2013 signed by the appellant's physician. She said she dropped it in the ministry mail slot after-hours on Nov 20, 2013. The appellant did not have a copy of the letter to give to the panel however the ministry had the letter in her file and distributed it to the panel for review. The letter was prepared by the appellant's advocate and asked the physician to agree or disagree to several statements about the appellant's condition. The ministry had no objection to the submission of the letter as new evidence. This letter accepted and the panel found that some of the evidence contained in the document was in support of evidence that was before the ministry at the time of the reconsideration because it includes details about how the appellant's depression and anxiety affects her, therefore admissible per the Employment and Assistance Act section 22 (4). The ministry stated that the report was not considered in the reconsideration decision because the ministry received it after the cut-off date of 1pm on Nov 19, 2013.

The letter also contained a reference to a seizure disorder and its effects on her. The panel found that the evidence of this medical condition was not before the ministry at the time of the reconsideration and therefore would not be considered by the panel as it was not in support of the information before the Ministry at reconsideration and therefore not admissible.

At the hearing the appellant told the panel that she understood why the ministry rejected her application without information about her seizure disorder. She told the panel that her physician did not include details of her seizures in her medical report because the seizures and their cause have not been diagnosed. The appellant said that she has been having seizures for the past 7 years and they occur every 2 weeks to 2 months. The appellant added that she has seen a neurologist but the cause of the seizures could not be determined. She continued that she gets headaches prior to the seizures. When she feels the onset of a seizure she takes pain medication and drops her children off at her parent's house so that the kids aren't home for her seizure and for the days following it. She added that she feels that stress causes her depression and anxiety as well as bringing on her seizures. She said that she has attended counseling sessions to work on her stress management but she has a limited amount of funding for these sessions and she feels she would need many more counseling sessions to fully work through the root causes of her anxiety. She is no longer seeing a counselor and told the panel that she thinks counseling makes things worse for her as it brings up her issues which creates more anxiety and depression. She tries to manage her stress level and remain calm to prevent her headaches and seizures. The appellant told the panel that her seizure disorder is her most significant medical condition. The appellant added that she has had 3 strokes (TIA'S) in the past 15 years that she believes are the result of stress as well as predisposition due to family history. She told the panel that her seizures began following a 5-day hospitalization for a stroke 5 years ago.

The Panel finds as a fact the following:

1. The appellant has been on income assistance for at least twelve (12) of the past fifteen (15) months.
2. The appellant scored twelve (12) on the employability screen.
3. The appellant's primary medical condition according to her physician is anxiety.
4. The appellant's secondary medical condition according to her physician depression.
5. The appellant's physician has indicated the condition has existed for two (2) years.
6. The appellant's physician has indicated in his prognosis that the expected duration of the medical condition is more than two (2) years.
7. The appellant's physician indicates the condition is not episodic.
8. The appellant provided the ministry a letter of support from her physician after the cut-off date of 1pm on Nov 19, 2013.
9. The appellant's seizure disorder is not included on the medical report dated June 17, 2013 however is noted on the letter signed by the physician dated November 4, 2013.

PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the ministry's decision that the appellant does not qualify as a person with persistent multiple barriers on the basis that she does not meet all of the legislative requirement. The ministry found that the appellant has met the requirements of Section 2 (2) that she has been a recipient of income assistance for at least 12 of the immediately preceding 15 calendar months. The appellant's score on the employability screen is 12, therefore the ministry considered the application under section 2 (4) of the Employment and Assistance Regulation (EAR). The legislation states;

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.

It is the ministry's position that the appellant's physician has confirmed that she has a medical condition other than an addiction that has continued for 1 year and will endure for more than two years but that her medical condition is not considered a barrier that would preclude her from searching for, accepting, or continuing in employment.

It is the position of the appellant that her medical condition creates a barrier to her searching for, accepting, or continuing in employment.

The panel considered the evidence provided by the appellant and ministry both in the appeal record and at the hearing. In the medical report the physician writes that the appellant's medical condition is not episodic and causes a low mood, decreased concentration, high anxiety and decreased short-term memory. In the November 4th advocate's letter the physician agrees with the writer that the appellant has periodic difficulties with self-care, leaving the house, and house keeping. The panel considered the appellant's oral testimony that her anxiety and depression is affected by her stress level and that she tries to remain calm in order to manage her condition. The panel finds that the legislation requires that the appellant's medical condition would, in the opinion of the minister, preclude the person from searching for, accepting, or continuing employment. The panel acknowledges that the appellant's anxiety and depression has an effect on her however the panel notes that she has methods and medication to help her manage and mitigate the symptoms. The panel finds that despite her restrictions the ministry was reasonable to determine that the appellant's medical condition is not a barrier that precludes her from searching for, accepting, or continuing in employment.

The panel finds that the reconsideration decision was a reasonable application of the applicable legislation in the circumstances of the appellant and therefore the panel confirms the decision.