

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the “ministry”) dated February 26, 2014, 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 (PPMB) to employment. The ministry was satisfied that the evidence establishes that the criterion set out in the EAR section 2(2) has been met, as the appellant has been a recipient of income assistance for at least 12 of the preceding 15 months. However, the ministry found that the appellant did not meet the requirement set out in EAR section 2(3)(a)(i) as her score on the Employability Screen was less than 15 and therefore relied upon the provisions set out under section 2(4)(a) and (b) of the EAR. The ministry determined that the appellant's physician did not confirm that she has a medical condition, other than addiction, that has continued for one year and is likely to continue for at least 2 more years, as set out in section 2(4)(a) of the EAR and that the medical condition did not establish that she has a barrier that precludes her from searching for, accepting, or continuing in employment, as set out in 2(4)(b) of the EAR.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) section 2

PART E – Summary of Facts

Evidence before the ministry at the time of reconsideration included the following:

Request for Reconsideration dated February 12, 2014.

Letter dated February 12, 2014, accompanying to the appellant's Request for Reconsideration, addressed "To Whom it may concern".

PPMB Medical Report dated November 13, 2013.

Ministry Employability Screen, undated, with a total score of 12

Ministry PPMB Renewal letter to the appellant dated October 31, 2013.

PPMB Medical Report dated November 16, 2011.

In the appellant's Request for Reconsideration dated February 12, 2014, and her accompanying letter of the same date, she wrote that she was previously "on disability" (i.e. PPMB) "for the same reasons as I am now being denied for". She reports that she suffers from depression and anxiety for which she takes medication A, which helps a little. She is also taking medication B for sleep. She was taking medication C for drug addiction but switched to medication D just before, or around Christmas 2013, because medication C was making her feel sick. She is working at getting off medication D as she does not want to be a lifer. Unlike the medication C, the cost of her prescription for medication D is not covered if she is no longer eligible for PPMB. As a result she will not be able to afford her current medication which costs \$200.00 a week or more. She reports that she is steadily reducing her reliance on medication D starting at 24 mg. and has reduced this to 20 mg.

In the appellant's PPMB Medical Report dated November 13, 2013, her physician states that the appellant's primary medical conditions are "depression/anxiety", date of onset 2011, and that her secondary medical condition is "drug dependence", no date of onset is provided. Treatment is reported as medication E, and her primary medical conditions have existed for 2 years. Expected duration of these conditions is reported as "less than 2 years", and her condition is not episodic in nature. The appellant's restrictions specific to her medical conditions are reported as "Difficulty sleeping" with the comment "Improving with treatment". No further narrative was provided by the physician. The physician who completed the PPMB medical report is a General Practitioner (GP) and has been the appellant's GP for more than 6 months.

In the ministry's PPMB renewal letter to the appellant dated October 31, 2013, the appellant was informed that in order to determine her eligibility for PPMB the ministry required a new PPMB Medical Report and an Employability Screen. In addition to this the appellant voluntarily reported the following responses to additional questions asked in the ministry's letter.

1. List any medical conditions not included on your Medical Report form:

Response--medication B (sleeping); medication D (drug addiction) 24 mg daily dose; Just switched from medication C October 2013.

2. Describe any conditions that are a result of your medical conditions:

Response--Problems sleeping, always tired (medication D) just switched to new meds want to lower my dose over time to get off all meds (was drug addict) Once off medication D goal is to get a job full time and get off my other meds.

The appellant's PPMB Medical Report dated November 16, 2011, was completed by the same physician who completed the appellant's November 13, 2013, PPMB Medical Report. The physician reports that the appellant's primary medical conditions as "depression/anxiety"; date of onset is reported as "years", secondary medical condition "substance abuse", date of onset not specified. The physician further reports the treatment for the appellant's primary medical conditions as being various antidepressants, her outcome as stable, her

conditions have existed for 25 years, the expected duration, "more than 2 years". The physician further reports that the appellant's conditions are not episodic in nature and restrictions specific to her medical conditions are "trouble concentrating, no energy, and low motivation".

After the ministry Reconsideration Decision and prior to the hearing the appellant submitted the following information in the Reasons section of her Notice of Appeal.

"I was on PPMB with the medications I'm on now, but I'm being denied. I'm guessing due to renewed app saying 2 years or less. I told him I wanted to be off my meds in 2 years or less. Been taking antidepressants for over 2 years. Switched to medication D because complications with medication C. I am also on other pills due to sleeping issue".

A two page submission from the appellant received by the Tribunal March 24, 2014, signed by the appellant March 20, 2014. This submission included a signed Release of Information form permitting the appellant's representative to attend the hearing, and a letter addressed "To Whom it May Concern" from the appellant's physician dated March 22, 2014. The physician's letter reports the following:

"She has been on medication for mental illness since 2011 and has been unable to work since that time as well. She is still unable to work due to mental illness."

At the hearing the appellant reported that she has been on PPMB since 2011 and has been on anti depressants medication since that time. She reported that the only real change has been in her medications from medication C to medication D because medication C was not working and was making her sick. The appellant also reported that she is also taking sleeping pills as she has difficulty sleeping. The appellant then referred to a letter from her physician submitted to the Tribunal prior to the hearing which reports that she has been on medication for mental illness since 2011, and has been unable to work since that time and she is currently unable to work due to mental illness. In response to a question from the panel the appellant reported that she has been seeing the same physician that completed both of her PPMB Medical Reports for the past six years and that she may have been somewhat overly optimistic by informing him that she is determined to reduce her dependency on medication D and on all medications if possible in less than two years. The advocate added that the appellant will likely require anti depression medications for a prolonged period of time and that medication D is the medication that she is trying to reduce her reliance on.

The ministry stood by the record at the hearing. In response to a question from the panel asking how the ministry determined that the appellant's medical conditions are not a barrier which preclude her from searching for, accepting or continuing in employment, the ministry referred the panel to the restrictions listed by the appellant's physician in the PPMB Medical Report, "Difficulty sleeping", and "Improving with treatment".

The panel found both the appellant's oral testimony and the physician's letter of March 22, 2014, admissible under section 22(4) of the Employment and Assistance Act as both were found to be in support of the information and records before the ministry at reconsideration. The oral testimony provided additional information from the appellant and her advocate as to why she believes the ministry's decision to be unreasonable, and the up to date opinion from the appellant's physician regarding her medical conditions and the impact he believes they have had on her previous and current employability added medical evidence regarding the appellant's health. The ministry did not object.

The panel made the following findings of fact from the evidence presented:

- The appellant has been in receipt of income assistance for at least 12 of the preceding 15 calendar months.
- The appellant's score on the Employability Screen is less than 15.
- The appellant's physician has diagnosed her primary medical condition as depression/anxiety and a secondary medical condition of drug dependency.
- Treatment has included "medication E".
- The physician reports that the appellant's primary medical conditions have existed for 2 years and that the prognosis is that the expected duration of these medical conditions is less than two years.
- The physician that the appellant has been unable to work since 2011, and is still unable to work due to mental illness.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's determination that the appellant did not meet all of the applicable statutory requirements of section 2 of the Employment and Assistance Regulation to qualify as a person with persistent multiple barriers to employment was either a reasonable application of the legislation or reasonably supported by the evidence. The ministry was satisfied that the evidence establishes that the criteria set out in the EAR section 2(2) has been met, as the appellant has been a recipient of income assistance for at least 12 of the proceeding 15 months. However, the ministry found that the appellant did not meet the requirement set out in EAR section 2(3)(a)(i) as her score on the Employability Screen was less than 15 and therefore relied upon the provisions set out under section 2(4)(a) and (b) of the EAR. The ministry determined that the appellant's physician did not confirm that she has a medical condition, other than addiction, that has continued for one year and is likely to continue for at least 2 more years, as set out in section 2(4)(a) of the EAR and that the medical conditions reported by her physician did not establish that she has a barrier that precludes her from searching for, accepting, or continuing in employment, as set out in 2(4)(b) of the EAR. In arriving at their decision the ministry relied upon the following legislation:

Employment and Assistance Regulation

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 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.

There is no dispute by either party that the appellant's score on the Employability Screen is 12, which is less than 15, and therefore her PPMB application has been assessed under sections 2(2) and 2(4) of the EAR. There is also no dispute that the appellant has met the requirements set out in section 2(2)(a) of EAR as she has been on income assistance for at least 12 of the preceding 15 calendar months.

The appellant's position is that she has been unable to work as a result of her medical conditions since 2011 and that if she does not receive PPMB she will not be able to afford medication D and will get sick. The ministry's position is that the appellant did not meet all of the applicable statutory requirements of section 2 of the EAR and specifically that she does not meet either of the legislative criteria set out in section 4(a) or (b) and is therefore ineligible to receive benefits as a PPMB to employment.

As to the requirements set out in section 2(4)(a) of the EAR, the appellant argued at the hearing that her medical conditions have not changed since she was approved as a PPMB to employment in 2011. She further argued that because she is an optimistic person, and likes to set goals for herself, she may have told her physician that she wanted to be off of her medications in less than two years and this may account for his reporting that the expected duration of her conditions is less than 2 years. The appellant also argued that her physician's most recent medical report of March 22, 2014, clearly states that she has been unable to work since 2011, and that she is currently unable to work. Furthermore, in the appellant's submission included with Request for Reconsideration dated February 12, 2014, she argues that she was taking medication C for drug addiction but switched to medication D just before, or around Christmas 2013, because medication C was making her feel sick. She is working at getting off medication D as she does not want to be a lifer, however unlike medication C; the cost of her prescription for medication D is not covered if she is no longer eligible for PPMB. The appellant argued that as the cost for medication D is \$200.00 a week or more she will soon not be able to afford it and will get sick without it.

The ministry argued at the hearing and in their Reconsideration Decision that that the appellant's physician clearly states in the PPMB Medical Report of November 13, 2013, that the expected duration of her medical condition is less than 2 years. While the appellant may have reason to believe differently it is the physician's opinion that the ministry must rely on in response to this question. As to the appellant's concerns about not having the funds required for the purchase of medication D, to treat her substance dependency, the ministry argued in their Reconsideration Decision that section 2(4)(a) of the EAR requires that the person must have a medical condition, other than addiction, therefore any restrictions related to the appellant's substance dependency can not be considered.

The panel finds that while the appellant may well have been overly optimistic with her physician regarding her medical prognosis, the physician had an opportunity to change his mind regarding his prognosis in his submission of March 22, 2014, and did not address this issue. As to the appellant's concerns about not being able to continue to afford the purchase of medication D, used to treat her substance dependency if she is no longer in receipt of PPMB, the panel finds that the ministry reasonably determined that section 2(4)(a) of the EAR requires that the person must have a medical condition, other than addiction in order to meet this legislative requirement, therefore any restrictions related to her substance dependency can not be considered. Based on the evidence presented the panel finds the ministry reasonably determined that the appellant's physician has not confirmed that she has a medical condition, other than addiction, that has continued for one year and is likely to continue for at least 2 more years, as set out above in section 2(4)(a) of the EAR.

As to the requirements set out in section 2(4)(b) of the EAR the appellant argued that her medical conditions have not changed since her PPMB application was approved in 2011, and that her physician's submission of March 22, 2014, provides confirmation that in his opinion she has been unable to work since 2011 and is currently unable to work, due to mental illness.

The ministry argued that in the appellant's PPMB Medical Report dated November 13, 2013, the physician reports the restrictions specific to the appellant's medical condition as "Difficulty sleeping" and "Improving with treatment", and although the same physician provides confirmation that in his opinion the appellant has been unable to work since 2011, and is currently unable to work due to mental illness, based on the restrictions reported in the PPMB Medical Report of November 13, 2013, the ministry was not satisfied that the appellant's primary medical condition is a barrier that precludes her from searching for, accepting, or continuing in employment.

While the appellant argued at the hearing that the nature of the restrictions related to her medical conditions has not changed since her PPMB application was approved in 2011, the panel finds that the ministry reasonably determined that only the restrictions related to the her primary medical condition of anxiety/depression can be considered and that the reported restrictions have changed significantly. Whereas in 2011 the physician reports the nature of any restrictions specific to the appellant's medical conditions as "trouble concentrating, no energy and low motivation," the same physician reported in 2013 that the appellant has "Difficulty sleeping" and "Improving with treatment." Section 2(4)(b) of the EAR requires that the evidence establish that the medical condition is a barrier that precludes the person from employment, not just certain types of employment, or from job search-related activities. Although the appellant currently has difficulty sleeping, there is no detail provided regarding the frequency of this difficulty, which the physician indicated is responding positively to treatment, or the resulting impact to the appellant's abilities. In his recent letter of March 22, 2014, the appellant's physician was provided with an opportunity to elaborate on his Report and he indicated that the appellant has been unable to work since 2011, and is currently unable to work due to mental illness. Given the lack of further details provided in the recent letter regarding the restrictions associated with the appellant's mental illness, the panel finds that it is not clear whether the physician is referring only to an inability to maintain full-time employment, or to all types of work, including sedentary or part-time work. Therefore, the panel finds that the ministry reasonably determined that there is insufficient evidence to show that the appellant's anxiety/depression is a barrier which precludes her from searching for, accepting, or continuing in employment and the statutory requirements set out above in section 2(4)(b) of the EAR have not been met.

For these reasons the panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the ministry's decision.