

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development (“the ministry”) dated December 4, 2013 which held that the appellant does not qualify as a person with persistent multiple barriers (PPMB) to employment because she did not meet all the criteria under Section 2 of the Employment and Assistance Regulation (EAR). In particular Section 2(4)(b) was not met because in the opinion of the minister, her medical condition other than an addiction is not a barrier that precludes the appellant from searching for, accepting or continuing in employment.

The ministry determined that the appellant met Section 2 (2) as she has been a recipient of income assistance for at least 12 months of the preceding 15 calendar months. Also, the ministry determined that the appellant scored 10 on the employability screen as set out in Schedule E, not meeting the required 15 under Section 2(3) and was subsequently assessed under Section 2(4) of the EAR. The appellant has met Section 2(4)(a) as it has been established that in the opinion of a medical practitioner, she has a medical condition that has continued for at least one 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 the parties, the appeal hearing was conducted in writing in accordance with section 22(3)(b) of the Employment and Assistance Act.

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

- a Medical Report - Persons With Persistent Multiple Barriers (PPMB) dated September 16, 2013 and completed by a specialist in emergency medicine;
- a PPMB Employment Checklist dated October 7, 2013 with an Employability Screen, Employability Profile and Employability Plan attached;
- the appellant's Request For Reconsideration dated November 21, 2013 including;
 - (a) a note from the appellant's physician dated November 19, 2013 reporting that she is unable to work or look for work for at least the next 3 months,
 - (b) a letter dated November 19, 2013 from an employment services center confirming that the appellant has attended scheduled appointments for the last several months and has recently provided a job search log that includes proof of the applied for positions,
 - (c) a series of Job Search Records (74 pages) dated from April 3, 2012 – November 20, 2013,
 - (d) a letter dated June 7, 2013, from an Employment Services case manager confirming the appellant's participation since April 10, 2013;
- the appellant's Medical Chart summary from July 22, 2009 – November 26, 2012;
- a letter from the appellant's psychiatrist dated July 10, 2012.

In the Medical Report the specialist who has known the appellant for 6 months or less and has examined previous medical records reported that the appellant's primary medical condition is Anxiety and the secondary medical condition is Axis 11 - Personality Disorder, NOS (not otherwise specified), with "remote" onset. Under treatment prescribed; Celexa, which the appellant no longer takes. The stated condition has existed for 10 years with the prognosis expected duration at 2 years or more. Noted is that the medical conditions are not episodic in nature and under restrictions specific to the reported medical conditions, the physician wrote "Fear of intimacy + commitment. Unable to maintain long term relationship."

The PPMB Employment Checklist noted under barriers to employment, income - May 2013, \$1977.27.

A copy of the Employability Screen indicated a total score of 10 with results that correspond with Expected to Work (score 0-14) and suggests immediately employable/employable with short-term interventions.

A copy of the Employability Profile indicated that the appellant:

- has been unemployed for over 3 years,
- has a good employment search strategy and definite plan of action,
- has post-secondary education,
- is fluent in written/spoken English,
- has vehicle/public transportation available and accessible,
- has no childcare limitations,
- has a criminal record that may limit employment options,
- is transient,
- has minor or short-term health problems,
- has a disability that may limit certain types of occupations or require specialized accommodations, and
- has some difficulty communicating and resolving conflicts.

Additional comments indicated that she is currently suffering from eye problems and has an appointment on October 16, 2013, to request a referral to an Ophthalmologist and will also consult on anxiety problems.

The appellant's Medical Chart summary provides only one visit to her physician after June 2, 2010 which is noted as November 26, 2012 when the appellant visited after returning from another community - stated due to lack of work. The physician reported that her health had been fine while there and that her transferred documents would be reviewed. Noted were a previous dual diagnosis of depression/anxiety and a refill for Cipralex. At the appointment on June 2, 2010, the physician reported that the appellant was on stress leave, her diagnosis - neurotic disorders - anxiety, GAD and stress related to financial, work and accommodation issues. Noted were a short term refill of Ativan and that a letter for employability issues was written.

A letter from the appellant's psychiatrist dated July 10, 2012 summarized her personal history, reported that the appellant had no suicide ideations, no clear evidence of psychotic symptomatology, does not appear objectively depressed and whose main intention was to obtain person with disability status. The overall impression leaned toward Axis 11 Disorder, possibly Personality Disorder, NOS. The appellant was advised to continue Cipralex as prescribed. The psychiatrist wrote that he does not think she meets the criteria for disability.

In the Notice of Appeal dated December 20, 2013, the appellant wrote that she is unemployable and includes a new PPMB medical report dated December 18, 2013. The GP who has known the appellant for 6 months or less and has examined previous medical records reported that the appellant's primary medical condition is Depression/Anxiety and the secondary medical condition is Borderline Personality Traits. Medication is noted as not overly effective. The stated condition has existed for more than 2 years with the prognosis expected duration at 2 years or more and chronic. Noted is that the medical conditions are not episodic in nature and under restrictions specific to the reported medical conditions, the physician wrote, low energy, poor concentration, problems with decreased memory, low motivation, easily overwhelmed and anxious - that in combination with advanced age makes her competitively not employable.

On appeal, the appellant provided the following documents: a Promise to Appear notice to attend court for August 22, 2013, a Monthly report for Income Assistance with employment income of \$900.81 indicated for May 8-11, 2013, a 1 month notice to End Tenancy for Cause dated September 4, 2013, a 10 day notice to End Tenancy for Unpaid Rent or Utilities dated June 13, 2013, and a 10 day notice to End Tenancy for Unpaid Rent or Utilities dated June 1, 2013.

The appellant submitted that the recent Medical Report speaks directly to her employability and she accepts the GP's opinion. She noted that she wishes to revise or add to the Employability Profile and Employability Screen as follows: lack of employer/personal references, severe health condition and persistent disability - severely limits employment options and the history of evictions - affects employment options. The appellant wrote that she is not employable due to her medical condition as noted in her extensive Job Search records dated April 3, 2012 - November 20, 2013. She indicated that she relocated in the summer of 2013, sought emergency shelter and shortly after finding housing was evicted however, was successful in having the eviction cancelled. The appellant stated that a charge of mischief as a result of a broken window in her suite, which caused her to be homeless, will be dropped by the police. Also, the appellant stated that her employment net income was \$900.81 for May 8-11, 2013 although, the Ministry reported that she had income of \$1977.27 for the same period.

Admissibility of New Information

The new information the appellant provided prior to the hearing regarding her medical conditions and employability provided additional detail with respect to issues addressed in the original PPMB application forms. Accordingly, the panel has admitted this new information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with Section 22(4) of the

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Employment and Assistance Act.

The ministry relied on its reconsideration decision and submitted no new information.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision which held that the appellant does not qualify as a person with persistent multiple barriers to employment because she did not meet all the criteria under Section 2 of the Employment and Assistance Regulation. In particular, the appellant has not met Section 2(4)(b), because in the opinion of the minister, her medical condition other than an addiction is not a barrier that precludes the appellant from searching for, accepting or continuing in employment.

The ministry determined that the appellant met Section 2 (2) as she has been a recipient of income assistance for at least 12 months of the preceding 15 calendar months. Also, the ministry determined that the appellant scored 10 on the employability screen as set out in Schedule E, not meeting the required 15 under Section 2(3) and was subsequently assessed under Section 2(4) of the EAR. The appellant has met Section 2(4)(a) as it has been established that in the opinion of a medical practitioner, she has a medical condition that has continued for at least one year and is likely to continue for at least 2 more years.

Relevant Legislation

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, or (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. (B.C. Reg. 263/2002)

In accordance with the legislation to be designated as a PPMB the appellant must meet the all the criteria set out in Section 2, subsection (2) and subsection (3) or (4). The criteria in Section 2, subsection 2, and subsection (4)(a), have been met.

Ministry's Position

The ministry's position is that a medical condition is considered to preclude the appellant from searching for, accepting or continuing in employment when, as a result of the medical condition, the appellant 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 argues that it has some discretion in determining whether a medical condition is a barrier that precludes the person from searching for, accepting or continuing in employment; however, the

ministry does rely on information provided by medical practitioners in making such a determination.

The ministry noted that the restrictions described by the specialist pertain to the appellant's difficulties with maintaining personal relationships and do not speak directly to employability.

The appellant's Employability Profile indicated that serious barriers include unemployment for over 3 years and being transient, which has since been resolved. Other barriers affecting the appellant's employment options include minor or short-term health problems, that her disability may limit certain types of occupations or require specialized accommodations, and she has some difficulty communicating and resolving conflicts. Positive factors included are; a good employment search strategy and definite plan of action, post-secondary education, fluency in written/spoken English, and the availability and accessibility of vehicle/public transportation.

The ministry concluded that the information provided does not demonstrate that the appellant has either numerous or severe barriers to employment. Also, the ministry acknowledged that no details were provided as to whether the appellant's difficulties with finding and maintaining employment are directed related to her medical conditions or to the economic conditions in the area.

Appellant's Position

The appellant's position is that the recent Medical Report speaks directly to her employability and she accepts the GP's opinion. She argues that the lack of employer/personal references, history of evictions, her severe health condition and persistent disability severely limits employment options. The appellant further argues that she is not employable due to her medical condition, as evidenced by her extensive Job Search records dated April 3, 2012 - November 20, 2013.

Panel's Findings

The panel notes that in the appellant's Medical Report- PPMB dated September 16, 2013, the primary medical condition is Anxiety and the secondary medical condition is Axis 11 - Personality Disorder, NOS. The appellant's restrictions specific to the reported medical conditions are fear of intimacy and commitment, unable to maintain long term relationship. Treatment reported is Celexa which the appellant no longer takes.

In the new Medical Report dated December 18, 2013, the GP reports that the appellant's primary medical condition is Depression/Anxiety and the secondary medical condition is Borderline Personality Traits. The appellant's restrictions specific to the reported medical conditions - low energy, poor concentration, problems with decreased memory, low motivation, easily overwhelmed and anxious - in combination with advanced age makes her competitively not employable. Medication is noted as not overly effective. The panel notes that although the physician has not substantiated this opinion with any further explanation, the panel considers this evidence merits consideration.

After reviewing both PPMB Medical Reports and the psychiatrist's letter, the panel finds that other than Depression being added as a primary medical condition, there is no additional information to support the severity and restrictions of the medical conditions. While the appellant argues that the new Medical Report speaks to her employability, the panel finds that the physician's comment that the appellant has low energy, poor concentration, problems with decreased memory, low motivation, and is easily overwhelmed and anxious, that in combination with advanced age makes her competitively not employable, is quite different from the legislation which requires that the nature of the restrictions is a barrier that precludes the person from searching for, accepting or continuing in employment. The panel further notes that in the Employability Screen, ages from 25 - 65 inclusive, the category in to which the appellant falls, does not score any points in the

screening results. The panel acknowledges the note from the appellant's physician dated November 19, 2013 reporting that she is unable to work or look for work for at least the next 3 months, however, the panel notes that it was not extended or further referenced in the recent PPMB Medical Report and that it is less than the 2 years or more legislated requirement.

Although the appellant has requested that her Employability Profile be changed to reflect her severe health condition and persistent disability, the panel finds that this is self-reported and not supported by the medical professionals. The panel does agree with the appellant that due to her unemployment, history of evictions and alleged charge of mischief, that she would lack employer/personal references but finds that this information would not change her employability screen score.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry reasonably determined that the evidence does not establish that the appellant's medical conditions are a barrier that precludes her from searching for, accepting or continuing in employment and therefore the criterion under section 2(4)(b) of the EAR was not established.

The panel finds that the appellant does not qualify as a person with persistent multiple barriers to employment and confirms the reconsideration decision.