

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated April 8, 2014 denying the appellant continuing qualification as a Person with Persistent Multiple Barriers (PPMB) to employment upon the renewal of his application. The ministry was not satisfied that two of the criteria set out in section 2 of the Employment and Assistance Regulation (EAR) had been met:

1. The appellant has a medical condition, that is not an addiction, that has continued for at least one year and is expected to continue for at least 2 more years as required by paragraph 2(4)(a); and
2. in the opinion of the minister, the medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment as required by paragraph 2(4)(b).

The ministry specifically found that the appellant's medical information indicated his primary medical condition, Polymyalgia Rheumatica (PMR) had not continued for at least 1 year (date of onset July 2013) and was expected to last for less than 2 years; that no date of onset or expected duration was provided for his secondary condition, Hepatitis C; and no date of onset was provided for another secondary condition, Mood Disorder Not Yet Specified (Mood Disorder NOS). The ministry was also not of the opinion that the information provided indicated the appellant's medical conditions present barriers that preclude employment.

## PART D - Legislation

Employment and Assistance Regulation, section 2

## PART E – Summary of Facts

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

1. Information from the ministry's records indicating the appellant was previously approved for PPMB assistance in February 2012 on the basis of two medical conditions, basal cell carcinoma and anxiety; that the approval of the PPMB category would be reviewed within 2 years; and that the appellant had been on income assistance for at least 12 of the immediately preceding 15 calendar months.
2. Medical Report – Persons with Persistent Multiple Barriers dated January 9, 2012 (2012 medical report) signed by the appellant's previous physician indicating the appellant had basal cell carcinoma and anxiety since 2007, that these conditions were expected to last for 2 years or more, and that the appellant was unable to work due to surgery. Attached to this report are 2 prescriptions for post-operative supplies.
3. Medical Report – Persons with Persistent Multiple Barriers dated January 6, 2014 (2014 medical report) signed by the appellant's current physician indicating the following:
  - Primary medical condition: PMR, with date of onset July 2013;
  - Secondary medical condition: Hepatitis C, with date of onset left blank;
  - Treatment: Prednisone for PMR;
  - Outcome: left blank;
  - The PMR has existed for 8 months;
  - Prognosis: "should last less than 2 years";
  - Additional comments: the physician check marked that the condition is not episodic in nature;
  - Restrictions: "extreme weakness and fatigue"; sees a Rheumatologist.
4. Appellant's undated Employability Screen indicating a total score of 11.
5. Request for Reconsideration, signed by the appellant on March 25, 2014 and referencing a letter from the appellant dated March 25<sup>th</sup> and addressed to whom it may concern in which the appellant stated:
  - Other than PMR he has also been struggling with drug misuse since age 14, and this has caused him many complications including difficulty with maintaining relationships, work and housing. He stated that despite his efforts he expects his struggle to last for more than 2 years.
  - He also suffers from a mood disorder that has negatively affected his social relationships and working potential. He stated that he is quick to anger, sometimes for no apparent reason in the form of unexplainable rage.
  - His conditions have contributed to an "unstable precarious life that is hard for me to find and maintain work and a real home." He added that he has been approached by many professionals to apply for disability and he has the full support of his doctor for his PPMB application.

6. A note from the appellant's current physician, dated March 24, 2014 (March 2014 doctor's note) and recorded in Section 3 of the appellant's Request for Reconsideration. In this note the physician stated:

- The appellant "has multiple barriers precluding ability to work."
- The appellant has the following diagnoses: Substance Abuse history (started at age 14); Ongoing active PMR; Mood Disorder NOS; and Anger Issues.
- The substance abuse, mood disorder, and anger diagnoses are expected to last for more than 2 years, and "The PMR also may last more than 2 years (usually not)".

#### New evidence

At the hearing the appellant's advocate introduced a note from the appellant's current physician dated May 9, 2014 (May 2014 doctor's note) in which the physician stated that the appellant has an Anxiety Disorder "for at least 3 years and I do not see this condition improving in the near future." The physician stated that the appellant has also been diagnosed with PMR which causes him significant joint pain and he sees a specialist for that condition.

The ministry had no objections to admitting the May 2014 doctor's note into evidence. The panel finds that the note elaborates on the appellant's medical conditions and includes information regarding the onset and duration of a medical condition; therefore, the panel admits it under section 22(4)(b) of the *Employment and Assistance Act (EAA)*, as testimony in support of information that was before the ministry at the time the decision being appealed was made.

In oral testimony, the appellant stated that he got a new physician 2 years ago after his previous physician passed away and they weren't sure which boxes needed to be filled in on his PPMB application. He stated that his PMR caused him to be homeless and make irrational decisions due to pain and prevents him "from walking out the door and being employed like I was all my life." He added that his Mood Disorder was also made worse by the PMR and he takes Diazepam to help him sleep.

The appellant stated that his mood disorder causes him difficulty with focusing on priorities and he was never as disorganized in the past. It takes him "90 minutes to get everything together, never mind getting things done" and sometimes he is so overwhelmed that he can't go out the door. He stated that he is really hyper and if he could work for 3 days he would not be able to continue due to his symptoms. He added that he suffers from "randomness of thought" and has to write down everything he needs to do. He has lost his ID 3 times since January and he lost his wallet again 10 days ago.

The appellant stated that he doesn't have HIV, and though his Hepatitis C is a chronic condition he no longer has symptoms from it. He experiences anger including "unexplainable rages" that stem from his frustration at not being able to cope and not function the way he used to. In response to questions from the ministry, the appellant stated that he has had PMR for a couple of years but it was not diagnosed until July 2013 because he doesn't like to ask for help and he put off doing so until the pain got very bad. His PMR "may be able to burn itself out in a couple of years" if he stays on medication. Also, the pain is different from his Mood Disorder and anxiety which started happening in 2008 when he had two bouts of pneumonia and lost weight. He added that he still has difficulty keeping weight on and he has not been the same since he had pneumonia.



In response to further questions from the ministry the appellant stated that he worked in a single profession for 30 years, and then had other jobs until 2008 but has been unable to work since then because of significant barriers including "my hands are too stiff and I can't focus due to anxiety." When asked about his substance abuse, he stated that his forgetfulness and difficulty focusing do not stem from his substance abuse because he "quit heroin 11 years ago" and "quit crystal meth on my own." He added that he attended a treatment program from 1999-2002, is not on a methadone program, has lifelong issues from his substance abuse but only uses "prescribed drugs now": diazepam, another drug for his mood disorder, and prednisone for PMR. He believes that his forgetfulness is secondary to his anxiety from "being wound up so tight and having so many things to do that none get done."

In response to questions from the panel the appellant stated that the prednisone added to his mood disorder, that his pain has decreased with the treatment, and that while his mood disorder and anxiety are two separate diagnoses "one feeds the other and they do interrelate." In his Notice of Appeal dated April 23, 2014 the appellant stated that he has had anxiety and a mood disorder for at least 3 years, and these conditions will last more than 2 years and they preclude him from finding and maintaining employment.

At the hearing, the ministry relied on its reconsideration decision and did not introduce any new evidence. The panel admits the appellant's statements in his Notice of Appeal and oral testimony under section 22(4)(b) of the *EAA*, as testimony pertaining to his medical conditions and his barriers to employment in support of information that was before the ministry at the time the decision being appealed was made.

The panel makes the following findings of fact:

1. The appellant was approved for PPMB assistance in 2012 and this appeal relates to his renewal application dated January 7, 2014.
2. The appellant has a medical condition (Anxiety Disorder), other than an addiction that is confirmed by a medical practitioner, and in the opinion of the medical practitioner has lasted for at least one year and is likely to continue for at least 2 more years.
3. The appellant is not currently using illegal drugs.
4. The appellant's medical condition (Anxiety Disorder) causes him difficulty with concentration, organization and memory and he has not worked since 2008.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's determinations that the information provided did not establish that the appellant has a medical condition that has continued for at least one year and that the medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment as required by subsection 2(4) of the EAR were reasonably supported by the evidence, or were a reasonable interpretation of the applicable legislation in the circumstances of the appellant.

The sections of the legislation that are relevant to the issue in this appeal are set out as follows:

**Employment and Assistance Regulation, section 2**

**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.

The panel notes that in order for a client to qualify for the PPMB qualification and renew their application, all of the criteria in section 2 of the EAR must be satisfied. The ministry found that the appellant meets the requirements in subsections 2(1) and 2(2) of the EAR because he has been an income assistance recipient for at least 12 of the immediately preceding 15 calendar months. The ministry explained that based on the appellant's employability screen score of 11, it assessed the remaining factors for qualifying for PPMB under subsection 2(4) of the EAR. This subsection requires the criteria set out in paragraphs 2(4)(a) and 2(4)(b) to be met. Paragraph 2(4)(a) requires a medical practitioner's opinion that the client's medical condition has continued for at least 1 year and is likely to continue for at least 2 more years. Paragraph 2(4)(b) requires the minister to have the opinion that the medical condition is a barrier that precludes the client from searching for, accepting or continuing in employment.

***paragraph 2(4)(a): onset and duration of medical condition***

Appellant's Position

The appellant's position is that he is not complaining about his treatment by the ministry and realizes that his physician omitted the date of onset for his (mental health) conditions. His physician was not sure what information the appellant needed to qualify (for PPMB) or what boxes needed to be checked. The appellant argued that since he has now gone back to his physician and asked him "to write what he thinks" the May 2014 doctor's note confirms the missing information and qualifies him for PPMB. Specifically, the physician has confirmed that the appellant has had an Anxiety Disorder "for at least 3 years" that will endure 2 years or more into the future.

Ministry's Position

The ministry's position is that the appellant is no longer eligible for PPMB qualification because a medical practitioner has not confirmed that the appellant has a medical condition that has continued for at least 1 year and is likely to continue for at least 2 more years as required by paragraph 2(4)(a) of the EAR. The ministry's argument is summarized as follows:

- Pursuant to subsection 2(4) of the EAR the appellant's substance abuse "cannot be considered in assessing eligibility for the PPMB category."
- The appellant's PMR does not meet the onset and duration requirement in paragraph 2(4)(a) because this condition has not lasted for at least one year;
- The condition of Mood Disorder NOS could be induced by the appellant's substance abuse or occur concurrently with substance abuse or withdrawal from substance dependency;
- The appellant's physician provides no date of onset for the appellant's Mood Disorder NOS;
- The appellant's "Anger Issues" is not a medical condition; and
- The appellant's physician provides no date of onset or expected duration for Hepatitis C.

## Panel's Decision

The panel's task, based on its jurisdiction, is to decide the reasonableness of the ministry's reconsideration decision in light of the ministry's assessment of the evidence and its interpretation of the relevant enactment, section 2 of the EAR. The panel finds that the ministry reasonably determined that based on the information it had at the time of the reconsideration, there was no evidence that the appellant had a medical condition that in the opinion of his physician has continued for at least 1 year and is likely to continue for at least 2 more years. The physician indicated that the onset of the PMR was shy of one year (July 2013) and no date of onset was provided for any of the other conditions the physician listed except for the appellant's substance abuse (onset at age 14) which as the ministry noted cannot be considered in determining PPMB qualification pursuant to subsection 2(4) of the EAR.

Nevertheless, in determining the reasonableness of the ministry's reconsideration decision the panel has the authority to consider all of the evidence including new evidence introduced by a party at the hearing and admitted as being in support of the information that was before the ministry at the time the reconsideration decision was made. The May 2014 doctor's note, which the ministry had no objections to admitting into evidence, clearly states that the appellant has had an Anxiety Disorder for at least 3 years and this condition is not expected to improve in the near future. Further, even though the 2012 medical report relates to the appellant's 2012 PPMB application, the panel notes as a fact that the physician who filled out that report indicated the appellant had anxiety since 2007 and it was expected to continue for 2 years or more. In light of the new evidence regarding the appellant's Anxiety Disorder, the panel finds that the ministry was not reasonable in finding that the requirement in paragraph 2(4)(a) of the EAR is not fulfilled.

### ***paragraph 2(4)(b): barrier that precludes employment***

#### Appellant's Position

The appellant's position regarding his medical condition being a barrier that precludes employment is that he can't work because of the pain and stiffness from his PMR and because of his inability to focus, concentrate, organize, and remember things which are due to his anxiety and not because of his substance abuse issues. He argued in his Request for Reconsideration that his mood and anxiety disorders affect his relationships and level of frustration and preclude him from finding and maintaining employment. These conditions have also contributed to his "unstable precarious life" that makes it "hard for me to find and maintain work". He noted that he has not worked since 2008 and cannot "walk out and be employed" or "load a truck to make a buck." The appellant's physician argued in the 2014 medical report that the appellant's barrier to employment is "extreme weakness and fatigue – sees a rheumatologist" and in the March 2014 doctor's note the physician argued that the appellant has "multiple barriers precluding ability to work".

#### Ministry's Position

Regarding barriers that preclude employment, the ministry's position is that "the information provided does not establish that your medical condition *that is not an addiction* precludes you from searching for, accepting or continuing in employment." The ministry argued that the appellant's physician's comments regarding the appellant's restrictions, "extreme weakness and fatigue – sees a Rheumatologist", apply to the appellant's PMR which has not continued for at least one year. The

ministry further argued that the information provided by the appellant's physician in the March 2014 doctor's note, "the patient has multiple barriers precluding ability to work", does not describe restrictions that are specific to the appellant's medical conditions.

At the hearing the ministry's position regarding paragraphs 2(4)(a) and 2(4)(b) was that its reconsideration decision was based on the information it had at the date of the reconsideration. At that time it did not have information that the appellant had a medical condition that had continued for at least one year. The ministry argued that its investigators "are not doctors and they have to make the decision based on credible sources" and despite new information that the appellant has had an Anxiety Disorder "for at least 3 years", the issue is the reasonableness of the reconsideration decision based on the information provided at the time. The ministry's position was that it "probably would have made a different decision" if it had had the new evidence and "he can still apply again if the tribunal does not change the decision."

### Panel's Decision

The panel notes that paragraph 2(4)(b) relates to a barrier presented by the medical condition referred to in paragraph 2(4)(a); that is, a condition that has continued for at least 1 year and is likely to continue for 2 years or more. While paragraph 2(4)(b) gives the ministry discretion to determine whether the appellant's medical condition presents a barrier to employment, the panel notes that the ministry in forming its opinion, relies on the medical practitioner's information, with Section C.3 of the PPMB medical report asking the practitioner to describe any restrictions specific to the client's condition.

Accordingly, the panel finds that the ministry was reasonable in concluding that the appellant's medical condition did not present a barrier to employment because the ministry noted that the physician's information in the 2014 medical report regarding the appellant's limitation of "extreme weakness and fatigue" related to the appellant's PMR diagnosis (onset July 2013). The panel views the ministry's conclusion that the noted restriction is connected to the appellant's PMR to be a reasonable finding because the physician had written "sees a Rheumatologist" right beside his description of the limitation.

Regarding the March 2014 doctor's note in which the physician wrote "the patient has multiple barriers precluding ability to work", the panel finds that the ministry was reasonable in finding that this comment does not establish a barrier that precludes employment as it does not describe restrictions that are specific to the appellant's medical conditions. The panel further notes that the physician's comment does not relate to a medical condition that has continued for at least 1 year and is expected to last for at least 2 more years.

Regarding the new evidence that the appellant does have a medical condition that has continued for at least one year (his Anxiety Disorder), the panel notes that in describing this condition the physician, in the May 2014 doctor's note, does not write any comments regarding any barrier or restriction to employment that the Anxiety Disorder (or any other condition) presents. The appellant described barriers to employment (difficulty focusing, remembering, etc.) that he attributes to his anxiety and mood disorder and there is no evidence that these barriers are due to substance abuse. As well, the ministry stated it "probably would have made a different decision" regarding the appellant's PPMB qualification if it had had the new evidence. However, the panel finds that there is no clear indication that the Anxiety Disorder is a barrier that precludes the client from searching for,





accepting or continuing in employment, especially considering that the May 2014 doctor's note is silent regarding any barrier or limitation that the Anxiety Disorder presents. The panel therefore finds that the ministry was reasonable in finding that the barrier to employment criterion is not met pursuant to paragraph 2(4)(b) of the EAR.

Conclusion

The panel finds that the ministry's reconsideration decision that held the appellant is not eligible for a continuing PPMB qualification was reasonably supported by the evidence and is a reasonable interpretation of the applicable enactment in the circumstances of the appellant. Accordingly, the panel confirms the ministry's reconsideration decision.