

## PART C – Decision under Appeal

The appellant appeals the June 19, 2014 reconsideration decision of the Ministry of Social Development and Social Innovation (Ministry) in which the Ministry denied the appellant's application to renew her qualification as a person with persistent multiple barriers to employment (PPMB) under section 2 of the *Employment and Assistance Regulation* ("EAR"). The Ministry found that the appellant's score on the Employability Screen was less than 15 (so her PPMB qualification was to be considered under subs. 2(4)) and determined that the appellant had not met the requirement of subs. 2(4) of the EAR because the information provided does not establish that the appellant's medical condition precludes her from searching for, accepting or continuing in employment, as required by subs. 2(4)(b) of the EAR.

## PART D – Relevant Legislation

*Employment and Assistance Regulation, section 2* ("EAR").

## PART E – Summary of Facts

The evidence before the Ministry at the reconsideration included the following documents:

- Copy of 2 page form, Medical Report – Persons with Persistent Multiple Barriers, signed by both the appellant and her family physician on April 1, 2014 (“2014 PPMB Form”);
- Copy of 1 page Ministry Employability Screen for the appellant, not dated, showing a total score of 7 (“2014 E Screen”);
- Copy of 1 page Ministry Employability Screen, not dated, completed by the appellant by circling certain answers which would score a total of 13 (“Appellant’s E Screen”);
- A letter from the appellant’s mother to the Ministry dated May 29, 2014;
- Copies of the appellant’s cheque stubs for the weeks of April 22, 29, May 6, 13 and 20, 2013 showing that she received \$250/week for a training program;
- Copies of the appellant’s pay stubs for her current employment dated February 14, 28, March 14, 28, April 11, 25, May 9 and 23, 2014;
- Copy of the appellant’s fall 2013 registration at a post-secondary institution;
- Copy of 1 page Ministry Employability Screen for the appellant, not dated, showing a total score of 11;
- Copy of 2 page form, Medical Report – Persons with Persistent Multiple Barriers, signed by both the appellant and her former physician on March 12, 2012 (“2012 PPMB Form”). On this form, the appellant’s former physician identified the restriction caused by the appellant’s medical conditions of major depressive disorder and panic disorder as follows: “difficulty [with] concentration [and] increased depression. Subject to panic attacks. Easily stressed out”; and
- Copy of the appellant’s request for reconsideration dated May 29, 2014 on which the appellant has submitted that the answers to questions 3, 5 and 6 on the 2014 E Screen are incorrect.

The appellant qualified for PPMB designation June 1, 2012. The Ministry advised the appellant that her PPMB status was reviewed every two years and asked her to have her physician complete the PPMB Form and return it to the Ministry by April 17, 2014. In the 2014 PPMB Form completed April 1, 2014, the appellant’s family physician identified the appellant’s primary medical condition as major depressive disorder onset 2006 and her secondary medical condition as panic disorder onset 2007. The family physician indicated that the appellant’s conditions were expected to last 2 years or more, commenting “likely lifetime” and that the conditions were not episodic but constant. The family physician indicated that the appellant was on medication for her conditions and that her “mood symptoms well-controlled, follow up with [her psychiatrist].” In describing the nature of the appellant’s restrictions specific to her medical conditions, the family physician wrote, “restricted to jobs that allow flexibility in schedule (as she is unable to work prolonged hours, multitask); gets easily fatigued & overwhelmed.” The Ministry denied the appellant’s request for renewal of her PPMB qualification on May 14, 2014.

At the hearing, the appellant submitted a medical certificate document from her family physician dated July 23, 2014, on which the appellant’s physician has written that she would like to add to the 2014 PPMB Form completed April 1, 2014. In the medical certificate, the family physician writes that the appellant “tires easily and must ensure she gets adequate rest. Therefore, she is unable to work prolonged hours. She requires some flexibility in scheduling but would not be able to maintain a job with rotating shifts such as days/evenings/graveyards.” The family physician wrote that, because the appellant “is easily overwhelmed by small stressors” she “must work in an environment that is not fast

paced or highly stressful. Her anxiety is increased by stress which can trigger panic attacks making it difficult for her to continue in employment.” The family physician also wrote, “At present her mood symptoms are relatively stable; however, she is vulnerable and I am not certain [the appellant] would be able to participate in full-time employment except in a supported or sheltered type work environment.”

The Ministry did not object to the admission of the July 23, 2014 medical certificate from the appellant's family physician and the panel admits it as information in support of the information that was before the Ministry at reconsideration, under section 22(4) of the *Employment and Assistance Act*. The information set out in the July 23, 2014 medical certificate reiterates the information provided by the appellant's family physician in the 2014 PPMB Form.

At the hearing, as in her request for reconsideration, the appellant questioned the Ministry's answers to questions on the 2014 E Screen. The appellant said that although she has employment working serving customers in a food store, her job is not permanent, but part-time and her hours are not guaranteed. She said she typically works 12 hours per week, and never more than 20 hours per week. The appellant also told the panel that she obtained an associate arts degree from a post-secondary institution.

The Ministry notes that the appellant has been a recipient of income assistance since her file was opened on February 3, 2009 and has been on income assistance for at least 12 of the past 15 months.

## PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the Ministry's reconsideration decision of June 19, 2014, denying the appellant's application to renew her qualification as a person with persistent multiple barriers ("PPMB") to employment under section 2 of the *Employment and Assistance Regulation* ("EAR") on the basis that the information provided does not establish that the appellant's medical conditions preclude her from searching for, accepting or continuing in employment.

Section 2 of the EAR governs the requirements to qualify as a person with persistent multiple barriers (PPMB) to employment. Under subsection 2(1), in order to qualify as a PPMB to employment, a person must meet the requirements set out in subsection 2(2) **and** subsection 2(3) **or** 2(4).

Subsection 2(2) requires that the applicant must be a recipient for at least 12 of the immediately preceding 15 calendar months of income assistance or hardship assistance under the *Employment and Assistance Act* (subs. 2(2)(a)). Subsections 2(3) and 2(4) provide the following:

(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 Ministry found that the appellant met the requirement of subs. 2(2) as she had been receiving income assistance for at least 12 of the immediately preceding 15 months. The Ministry also determined that the appellant did not qualify for consideration under subs. 2(3) of the EAR, which requires a score of 15 or higher on the E Screen (the appellant's 2014 E Screen score was 7), and the Ministry considered her application for PPMB qualification under subs. 2(4) of the EAR.

## Submissions

The appellant argued that because she had qualified for PPMB in 2012 and her medical conditions had not changed, she should still qualify for PPMB in 2014. The appellant told the panel that she has been working part-time at a food store serving customers, but she only works about 12 hours per week as she is not able to work full-time because of her medical conditions. The appellant told the panel that she finds the process of having to reapply for PPMB qualification very stressful and it increases her anxiety. She told the panel that did not understand how the Ministry scored her 2014 E Screen, that she believed the answers to questions 3, 5 and 6 should be different. The appellant told the panel that she thinks the answer to question 3 should be "1 to 3 times" as she has been on income assistance for the past 3 years. She also told the panel that she has obtained an associate arts degree/certificate from a post-secondary institution, affecting the answer to question 5. The appellant said that although she has been working part-time at the food store since February 2014, prior to that, she received \$250/week in the spring of 2013 as part of a training program sponsored by the Ministry – it was not employment. Accordingly, the appellant believes the answer to question 6 on the E Screen should not be "more than 12 months" for a score of 0, but "none or very limited" for a score of 4 because she only works part-time hours.

The Ministry addressed the appellant's questions regarding her score of 7 on the 2014 E Screen. The Ministry noted that the appellant has been receiving income assistance steadily since she applied in February 3, 2009 and the appellant does not dispute this. Question 3 on the E Screen asks "apart from your current application, how many times have you been on income assistance ... anywhere in Canada in the last 3 years?" The Ministry noted that the appellant's "current application" is from February 2009, and the answer to question 3 must accordingly be "never" for a score of 0 because she has not had to reapply for income assistance in the last 3 years. As noted in the reconsideration decision, the Ministry accepted that the appellant should score 1 on question 5 as she has received a degree from a post-secondary institution. The Ministry explained that in considering the answer to question 6 on the E Screen, "what is the total amount of time you have spend in paid employment over the last 3 years?" the Ministry does not define "month" in the answers, "more than 12 months" "from 3 to 12 months" or "under 3 months." The Ministry noted that as the appellant has worked some part-time hours at the food store since the beginning of 2014, the answer to question 6 would likely be "under 3 months" for a score of 2. The Ministry submitted that even with changes to the answers to questions 5 and 6 on the 2014 E Screen, the appellant's score would still be below 15 (the most she could score would be 12) and she could not be considered for PPMB designation under subs. 2(3).

The Ministry noted that in order to satisfy subs. 2(4) of the EAR, the minister must be satisfied of three things: 1) the appellant has a medical condition other than an addiction that, 2) in the opinion of a medical practitioner has lasted or occurred frequently for at least 1 year and is likely to continue for at least 2 more years, and, 3) in the Ministry's opinion, the medical condition presents a barrier that precludes the appellant from searching for, accepting or continuing in employment. The Ministry noted that in the 2014 PPMB Form, the appellant's family physician indicated that the appellant has a condition other than an addiction – she suffers from major depressive disorder and panic disorder – and that her conditions are expected to last 2 years or more, "likely lifetime." Accordingly, the Ministry determined that the appellant has met the first criteria set out under subs. 2(4)(a) that a medical practitioner has confirmed she suffers from a medical condition, other than an addiction, which is likely to continue for at least 2 more years.

The Ministry noted that a medical condition is considered to preclude the appellant from searching for, accepting or continuing in employment (the criteria set out in subs. 2(4)(b) of the EAR) when, as a result of the medical condition, the recipient 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 noted that in the 2014 PPMB Form, the appellant's family physician indicated that with medication, her "mood symptoms are well controlled" with follow up with the appellant's psychiatrist. The Ministry also noted that the family physician wrote in the 2014 PPMB Form that the appellant's medical conditions caused her to be "restricted to jobs that allow flexibility in schedule (as she is unable to work prolonged hours, multitask), gets easily fatigued and overwhelmed." The Ministry also referred to the information in the July 23, 2014 document noting that it supported the information provided by the appellant's doctor in the 2014 PPMB Form. The Ministry compared the information in the 2014 PPMB Form to that on the 2012 PPMB Form and noted that the information suggests the appellant's conditions "have improved with treatment." The Ministry also noted that the appellant has been able to work in part-time since February 2014, that she completed a training program in 2013 and was enrolled in post-secondary courses in the fall of 2013. The Ministry determined that, based on the information provided, the appellant's medical conditions did not preclude her from searching, or accepting or continuing in employment. The Ministry determined that the appellant no longer meets the eligibility requirements of subs. 2(4)(b) for PPMB qualification.

#### Decision

The panel notes that subs. 2(3) of the EAR requires a score of at least 15 on the E Screen to be considered for PPMB qualification under the rest of subs. 2(3). The appellant did not dispute that she has been on income assistance since February 2009 (the renewal of PPMB qualification is not a new application for income assistance) and agreed that the answer to question 3 should be "never" for a score of 0. Further, the appellant does not dispute that she has been working part-time hours at a food store since the beginning of February 2014 – her evidence was that she worked about 12 hours per week, but never more than 20 hours per week. Accordingly, the panel finds reasonable the Ministry's determination that the appellant does not qualify for PPMB consideration under subs. 2(3) of the EAR on the basis that her E Screen score is less than 15, even with the amended answers to questions 5 (changing the score from 0 to 1) and 6 (changing the score from 0 to 2 or 4).

Subsection 2(4)(b) requires that the minister be satisfied that the medical condition of the person seeking PPMB qualification precludes the person from searching for, accepting or continuing in employment. In the 2014 PPMB Form, the appellant's family physician wrote that the appellant's conditions "restricted [her] to jobs that allow flexibility in schedule (as she is unable to work prolonged hours, multitask); gets easily fatigued & overwhelmed." The appellant does not dispute that she participated in a training program in 2013 and took a couple of post-secondary courses in the fall of 2013, and that she has been working part-time hours at a food store since February 2014.

In the July 23, 2014 medical certificate submitted at the hearing, the appellant's family physician indicated that the appellant tires easily and is "unable to work prolonged hours" and "requires some flexibility in scheduling but would not be able to maintain a job with rotating shifts such as days/evenings/graveyards." The appellant's family physician also wrote in the July 23, 2014 document that, because the appellant "is easily overwhelmed by small stressors" she "must work in an environment that is not fast paced or highly stressful" and that, "at present [the appellant's] mood

symptoms are relatively stable; however, she is vulnerable and I am not certain [she] would be able to participate in full-time employment except in a supported or sheltered type work environment.” There is no information from the appellant’s family physician before the panel that the appellant’s medical conditions preclude her from searching for, accepting or continuing in employment.

The panel finds that the Ministry’s determination that the information provided did not establish that the appellant’s medical condition precludes her from searching for, accepting or continuing in employment as required by subsection 2(4)(b) of the EAR is reasonably supported by the evidence. In particular, the panel finds that the information provided by the appellant’s family physician in the July 23, 2014 medical certificate document reiterates the information provided in the 2014 PPMB Form on which the Ministry based its determination that the appellant was no longer eligible for qualification as a PPMB under subs. 24(b). In both documents, the family physician indicates that the appellant can work – but she requires flexibility and must work in an environment that is “not fast paced or highly stressful.” Accordingly, the panel confirms the reconsideration decision of June 19, 2014.