

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry)'s Reconsideration decision dated August 7, 2014 wherein the ministry determined that the appellant is not eligible for Person with Persistent Multiple Barriers (PPMB) qualification because she does not meet the eligibility criteria as set out in the *Employment and Assistance Regulation*, Section 2, subsection 2(4)(b), specifically, the ministry is not satisfied that the appellant's medical condition, as confirmed by a medical practitioner, is a barrier that precludes the appellant from searching for, accepting or continuing in employment.

PART D – Relevant Legislation

Employment and Assistance Regulation, Section 2 and Schedule E.

## PART E – Summary of Facts

The appellant has been in receipt of assistance since July 1992 and her file was reopened in April 2011. She has an employability screen score of 14; therefore her PPMB application was assessed under Section 2(2) and 2(4) of the EAR. The appellant completed an application for PPMB qualification on April 7, 2014. On June 23, 2014 the ministry denied the appellant's application for continued PPMB qualification and on July 30, 2014 she requested reconsideration of that decision.

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

1) A copy of a Medical Report – Persons with Persistent Multiple Barriers, dated April 6, 2014, completed by Dr. A, which states that the appellant's primary medical conditions are chronic dysthemia and anxiety, accompanied by secondary medical conditions of fibromyalgia and osteoarthritis. These conditions have existed for 24 years and were expected to persist for 2 years or more. Dr. A also writes that the appellant has had partial improvement following bilateral foot surgery, sleeps up to 4 hours with prescription medication for insomnia, and that the appellant's bipolar disorder is stable with use of prescription medication. The physician reported restrictions specific to the appellant's medical conditions as "remain active".

2) A copy of a Persons with Persistent Multiple Barriers to Employment Checklist, dated May 8, 2014, indicating that the appellant's employability screen score was 14, she had been on assistance 12 of the past 15 months and that a medical practitioner had confirmed that the appellant's medical condition has continued for at least 1 year and is likely to continue for at least 2 years or has occurred frequently over the past year and is likely to continue for at least the next 2 years. Attached was a handwritten summary of the appellant's conditions (depression, surgery on feet, fibromyalgia, financial stress, insomnia, rotator cuff and counselling) and brief description of the status and impact of the condition on the appellant's life. The appellant reports that this handwritten summary was written by Dr. A, however the panel notes that the summary included no physician identifying details (signature or office identification) and that the handwriting was markedly different than the handwriting on the Medical Report of April 6, 2014, signed by Dr. A. Due to the absence of confirmation of the source of this summary document, the panel does not accept it as information provided by a medical practitioner.

3) A copy of the appellant's Client Employability Profile and Employability Screen, indicating a total score of 14.

4) In Section 3 of the Request for Reconsideration, the appellant wrote, "I wrote and fax a letter an appeal letter July 11, 2014. Thank you."

As set out in the reconsideration decision, the ministry states that although the appellant provided a written statement regarding her current medical conditions, there was no additional information submitted by a medical practitioner to support any restrictions to searching for or accepting employment, therefore determining that her request for qualification as a person with PPMB does not meet the eligibility criteria set out in the EAR.

In her signed Notice of Appeal the appellant states that she disagrees with the ministry's reconsideration decision because she is unable to be around the public due to her social anxiety and depression. She adds that many of her symptoms are triggered by stress and anxiety. She concludes that, "even the thought of having to be around public triggers many thoughts and symptoms."

A letter from a different physician, Dr. B, was attached to the appellant's Notice of Appeal, dated August 20, 2014, which states that the appellant is on indefinite sick leave. The letter further explains that the appellant suffers from severe depression and anxiety and she is frequently unable to leave her house or perform the basic activities of daily living. The letter concludes, "Because of multiple intrusive thoughts, she is unable to work indefinitely."

The panel notes the August 20, 2014 physician letter was not part of the records before the ministry at the time of the reconsideration decision. The ministry was given the opportunity to state a position on the admissibility of the August 20, 2014 physician letter and made no objection. The panel considered the admissibility of this letter and found that although it did not introduce any new medical diagnoses, this physician provided a new interpretation of how these diagnoses restrict the appellant's employability, which do not substantiate or corroborate the restrictions identified by Dr. A in the Medical Report. The panel determined, therefore, that this documentary evidence was not admissible under s. 22 of the Employment and Assistance Act as it was not in support of the records before the minister at reconsideration.

The appellant's evidence at the hearing included the following information:

- The appellant doesn't understand how she was eligible for PPMB qualification two years ago, when her mental and physical health were not as bad as they are now.
- The appellant stated that she had sent a letter to the ministry on July 11, 2014 explaining her medical conditions and related restrictions in great detail, but notes that this letter was not included in the Appeal Record.
- The appellant explains that her health has worsened and she has received additional diagnoses of osteoarthritis and fibromyalgia from a rheumatologist since her previous PPMB application.
- The appellant states that she cannot work and she cannot be in public, her anxiety becomes overwhelming.
- The appellant states that when Dr. A wrote "remain active" on her form (Medical Report – Persons with Persistent Multiple Barriers) he intended it to mean that she try to keep her mind engaged and not become overrun with all the intrusive thoughts and depressed feelings she has which can prevent her from managing her tasks of everyday living.
- The appellant states that her medical conditions prevent her from being able to take care of herself and because of this she isn't able to care for children, so they do not reside with her full time.

The ministry relied on the information within the reconsideration decision and otherwise submitted no new information. The ministry clarified that the appellant's Employability Score of 14 did not meet the threshold of 15, which would indicate that a medical condition could be taken into account as a reason in itself that impeded employability. The ministry confirmed that the physician did not provide any indication within the Medical Report – Persons with Persistent Multiple Barriers that the appellant is unable to participate in searching for, accepting employment or that there are specific restrictions due to her medical conditions.

The ministry confirmed that this PPMB application is a continuation of the same application for income assistance as when the appellant's file was reopened in April 2011, and no other applications for Income or Social assistance were made in the past three years. The appellant confirmed that prior to the application in April 2011 she was not in receipt of any other Income or Social assistance and had been supported by family and friends.

When questioned as to the meaning of "Client has severe barriers?" being checked "Yes" on the Employability Screen, the ministry explained that with an employability score of 14, a medical report is required to consider a medical condition as a severe barrier.

## PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry reasonably concluded that the appellant is not eligible for Person with Persistent Multiple Barriers qualification because she does not meet the eligibility criteria as set out in the *Employment and Assistance Regulation*, subsection 2(4)(b), specifically, the ministry is not satisfied that the appellant's medical condition, as confirmed by a medical practitioner, is a barrier that precludes the appellant from searching for, accepting or continuing in employment.

In arriving at its reconsideration decision, the ministry relied upon the following legislation:

### **Employment and Assistance Regulation applied to this decision:**

#### **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)

The ministry's position is that although the appellant has explained her current medical state and functional restrictions, at the time of reconsideration there was no information submitted by a medical practitioner to support any restrictions to searching for or accepting employment, therefore her

request for qualification as a PPMB does not meet the eligibility criteria set out in the EAR, section 2(4).

The appellant argues that her medical condition has worsened since her original PPMB qualification, two years ago, and she still struggles with the same and increased challenges and restrictions that she has had for years.

While the panel acknowledges the appellant's argument that her medical circumstances have worsened over the past two years, the medical condition and associated restrictions must be provided to the ministry and confirmed by a medical practitioner, as required by the EAR, section 2(4). Given that the only restriction identified by the appellant's long-term physician was to "remain active", and additional comments included that the appellant had experienced partial improvement following bilateral foot surgery, sleeps up to 4 hours with prescription medication for insomnia, and that the appellant's bipolar disorder is stable with use of prescription medication, the panel finds that the ministry reasonably concluded that the appellant was not precluded from searching for, accepting or continuing in employment.

### Conclusion

In conclusion, the panel finds that the ministry's decision to deny the appellant's application for continued Person with Persistent Multiple Barriers (PPMB) qualification because she did not meet the eligibility criteria as set out in the *Employment and Assistance Regulation*, subsection 2(4)(b) was reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant. The panel thus confirms the ministry's decision.