

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of March 24<sup>th</sup>, 2015 wherein the ministry determined the appellant does not meet the criteria for qualification as a Person with Persistent Multiple Barriers (PPMB) to employment under section 2 Employment and Assistance Regulation (EAR).

In particular, the ministry determined that section 2(4) EAR has not been met because, in the opinion of the medical practitioner, the appellant’s medical condition, other than an addiction, has not continued for at least one year and, in the opinion of the ministry, is not a barrier that precludes her from searching for, accepting or continuing in employment.

## PART D – Relevant Legislation

EAR, section 2 and Schedule E

## PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Medical Report – PPMB application signed by a medical practitioner (MP) on October 6<sup>th</sup>, 2014 and amended on January 30<sup>th</sup>, 2015;
- Employability Screen indicating the appellant's score of 11;
- Letter dated February 19<sup>th</sup>, 2015 from the ministry to the appellant advising her application for PPMB has been denied because she did not meet the legislated criteria;
- Request for Reconsideration signed by appellant on March 20<sup>th</sup>, 2015 with a one page attachment.

The appellant has been in receipt of income assistance on and off since October 1996 and the ministry is satisfied the criteria set out in section 2(2) EAR has been met. On October 6<sup>th</sup>, 2014 the appellant's MP signed the appellant's application for PPMB designation. The MP diagnosed the appellant's primary condition as cancer, date of onset June 26<sup>th</sup>, 2014, with a secondary condition of chemotherapy, date of onset October 1<sup>st</sup>, 2014. The MP stated the appellant's medical condition has existed for 3 months and is not episodic in nature. The MP's prognosis is that her condition the expected to last less than 2 years. Under additional comments he wrote, "uncertain course". Under treatment, the MP wrote "start October 1<sup>st</sup>" and under Outcome, he wrote, "weakness, unwell. Treatment 6 months and at least 2-3 months convalescence". Under restrictions the MP wrote, "Fatigue – possible abnormal blood counts. Chemotherapy!".

An Employability Screening completed on the appellant provided a score of 11 and therefore the appellant's PPMB application was assessed by the ministry under sections 2(2) and 2(4) of the EAR.

On January 30<sup>th</sup>, 2015 the MP amended some of his comments on the appellant's PPMB application. Under Outcome (for treatment) he added, "may need more treatment". Under prognosis the MP changed the expected duration of the appellant's medical condition from less than two years to 2 years or more with the added comment, "uncertain response to treatment". The MP did not add any additional comments to page 2.

Prior to the commencement of the hearing the appellant submitted the following:

- Letter from the appellant's MP dated April 30<sup>th</sup>, 2015. In the letter the MP stated that between August 1<sup>st</sup> and September 30<sup>th</sup>, 2014 the appellant was convalescing from major surgery and between October 1<sup>st</sup>, 2014 and March 11<sup>th</sup>, 2015 underwent IV chemotherapy every 3 weeks. During this time she was nauseous, fatigued, and unable to work or seek work. The MP added, she is still unwell and fatigued and her situation will be reviewed after tests and examination. The MP added, I believe the disability is self-evident from the information supplied.
- 2 page prepared submission outlining the appellant's position on the issue under appeal;
- 2 page Victim Impact Statement prepared by the appellant and dated June 26<sup>th</sup>, 2013 explains the effect that a 2013 incident had on her both physically and emotionally.

The ministry did not object to the additional documents and the written submission provided by the appellant.

The panel finds the appellant's Victim Impact Statement does not contain evidence relative to the issue under appeal and therefore is not admissible as evidence under Section 22(4) of the Employment and Assistance Act (EAA).

The panel finds the two page prepared submission and the MP's letter of April 30<sup>th</sup>, 2015 do contain information that is in support of the information that was before the ministry at Reconsideration and therefore is admissible as evidence under section 22(4) of the EAA.

At the hearing the appellant called one witness. The witness testified that she became involved with the appellant and the family in April 2014 at the request of the ministry. She stated that when she first met the

appellant, she complained of stomach issues and could not do housework because of the pain. The witness encouraged the appellant to seek medical assistance and provided support and transportation for her to attend the various medical appointments, her surgery in July and her chemotherapy treatments. She stated the appellant was always complaining that she felt ill, that she was having severe abdominal pain. The witness stated that she continues to provide support to the appellant as she still complains of abdominal pains. The witness stated the appellant is still under the doctor's care.

The panel finds the witnesses oral testimony does contain information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence in accordance with section 22(4) of the EAA.

The advocate, reading from a prepared statement, provided the following:

- In January 2013 the appellant had surgery but continued to have stomach/abdominal pain.
- She continued to see her MP on a regular basis and the MP diagnosed her with a hernia, ordered a CT scan and an ultrasound.
- In June 2014 the appellant was diagnosed with cancer and underwent another surgery.
- In October 2014 she began chemotherapy which continued until March 2015.
- Doctors do not realize the importance of including all medical evidence of their patient; past and present and just focus on the recent or immediate medical condition.
- The MP completed his Medical Report (PPMB application) on October 6, 2014 stating he the appellant's primary condition being cancer was diagnosed on June 26<sup>th</sup>, 2014. His prognosis was that the expected duration of her medical condition is less than 2 years but cautioned, "uncertain course".
- The MP amended his report on January 30<sup>th</sup>, 2015 indicating duration of her medical condition to be 2 years or more with a notation of "uncertain response to treatment".
- The MP provided an additional letter on April 30<sup>th</sup>, 2015 confirming major surgery, that the appellant was unable to work or seek work from August 1<sup>st</sup>, 2014 to March 11<sup>th</sup>, 2015. The MP stated, "She is still unwell and fatigued. I will be reviewing her situation after tests and examination. I believe the disability is self-evident from the information."

The panel finds the advocate's submission does contain information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence in accordance with section 22(4) of the EAA.

The ministry relied on the facts in the reconsideration decision.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration wherein the ministry determined the appellant does not meet the criteria for qualification as a PPMB under section 2 EAR.

In particular, section 2(4) EAR has not been met because, in the opinion of the medical practitioner, the appellant's medical condition, other than an addiction, has not continued for at least one year and, in the opinion of the ministry, is not a barrier that precludes her from searching for, accepting or continuing in employment.

The legislation considered:

### Section 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*.
- (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 argued that the appellant does not meet the criteria set out in section 2(4)(a) EAR because on the PPMB application the MP indicated the appellant's medical condition has existed for 3 months with a date of onset of June 2014. The ministry argued the legislative criteria states the medical condition must have continued for at least one year or have occurred frequently in the past year. The ministry argued the time frame between the MP's diagnosis and the appellant's application is only 9 months. The ministry also argued that the appellant's restriction(s) specific to her medical condition is "fatigue, possible abnormal blood counts, chemotherapy". The ministry argued the information provided by the MP on the appellant's original application and the amended application does not indicate that the appellant cannot work at all due to her chemotherapy treatments. The ministry argued that based on the information provided by the MP there was not sufficient information to determine that the appellant's medical condition precluded the appellant from searching for, accepting or continuing employment as set in section 2(4)(b) EAR.

The appellant argued that her MP dated and initialed all the changes on her original application of October 6<sup>th</sup>, 2014; that she does meet the legislated criteria to be designated as a PPMB; and her MP has confirmed that her condition is likely to continue for two years or more. The appellant argued that her MP in a further letter dated April 30<sup>th</sup>, 2015 confirmed that between October 1<sup>st</sup>, 2014 and March 11<sup>th</sup>, 2015 she underwent chemotherapy treatments for her medical condition which precluded her from searching for, accepting or

continuing in employment. The appellant argued the MP restated his opinion that the appellant was not unable to seek work from August 1<sup>st</sup>, 2014 to September 30<sup>th</sup>, 2014 and then underwent chemotherapy treatment from October 1<sup>st</sup>, 2014 to March 11, 2015.

To qualify as a PPMB the applicant must meet the criteria in both section 2(4)(a) and section 2(4)(b) EAR. Section 2(4)(a)(i) EAR states the applicant has a medical condition that, in the opinion of a MP, has occurred for at least one year and is likely to continue for two more years or section 2(4)(a)(ii) has occurred frequently in the past year. Section 2(4)(b) EAR states that, in the opinion of the minister, is a barrier that precludes the applicant from searching for, accepting or continuing in employment.

In reference to section 2(4)(a) - the evidence is that the appellant's medical condition (cancer) was diagnosed in June 2014 which is only 9 months from the date of the ministry's Reconsideration decision. The panel accepts the appellant's evidence that she has been suffering from abdominal pain for some time, however, the legislation requires that the appellant have a medical condition, which is confirmed by a MP, that has continued for at least one year, as set out in section 2(4)(a)(i) EAR.

The panel finds the medical opinion of her MP is that the onset of her medical condition (cancer) was June 2014 which is not one year from the date of the ministry's decision or the ministry's reconsideration decision which denied her PPMB eligibility. The panel does not have any discretion and must apply the legislation. Therefore, the panel finds the ministry reasonably determined the appellant did not meet the criteria set out in section 2(4)(a)(i) EAR.

In reference to section 2(4)(a)(ii) - the evidence is the appellant's medical condition (cancer) was ongoing or continuous from June 2014 and did not "occur frequently" as set out in section 2(4)(a)(ii) EAR. On the PPMB application the MP checked the box to indicate the appellant's medical condition is not episodic in nature. Therefore the panel finds the ministry reasonably determined the appellant does not meet the criteria set out in section 2(4)(a)(ii) EAR.

In reference to section 2(4)(b) EAR - The evidence before the panel is that the appellant's application for PPMB designation was dated October 6<sup>th</sup>, 2014. The MP's letter of April 30<sup>th</sup>, 2014, which was not before the ministry at the time of the Reconsideration decision, supports the appellant's position that she was unable to search for, accept or continue in employment from August 1<sup>st</sup>, 2014 to March 1<sup>st</sup>, 2015.

The panel finds that based on the MP's letter of April 30<sup>th</sup>, 2015 that the ministry unreasonably determined that the appellant's medical condition is not a barrier that precludes her from searching for, accepting or continuing in employment.

**Conclusion:**

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for PPMB qualification as she did not meet all the criteria set out in section 2(4) EAR was reasonably supported by the evidence. The panel therefore confirms the ministry's decision.