

### PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated 8 April 2015 determined the appellant did not qualify as a person with persistent multiple barriers (PPMB) because, while the information provided established he had a medical condition which had continued for at least one year and was likely to continue for at least two more years, it did not establish that in the opinion of the minister it presented a barrier that precluded him from searching or accepting or continuing employment and therefore he did not meet all the required conditions set at section 2 of the Employment and Assistance Regulation.

### PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 2.

## PART E – Summary of Facts

The following evidence was before the ministry at the time of reconsideration:

- The appellant had been on assistance for at least 12 of the previous 15 months.
- A medical report dated 3 October 2014 by the appellant's physician indicated:
  - The appellant's primary medical condition was depression / anxiety.
  - Secondary medical condition: opiate dependency.
  - The appellant was treated through medication.
  - This condition has existed for years.
  - The expected duration of his condition was 2 years or more, the physician commenting this was a life issue.
  - The medical condition was not episodic in nature and is ongoing.
  - The physician did not indicate any restriction specific to the appellant's medical condition.
  - No additional documentation supporting the severity and restrictions of the medical condition was provided.
  - The physician had been the appellant's medical practitioner for over 6 months.
- An undated Employability Screen form indicating the appellant scored a total of 14.
- A 2-page letter dated 28 November 2014 from the ministry to the appellant informing him that in the opinion of the minister his medical condition did not seriously impede him from all forms of employment and that the appellant had not taken all reasonable steps to overcome the barriers identified in the Employability Screen as required by legislation and thus did no longer meet the criteria for PPMB category.
- In his request for reconsideration dated 16 February 2015, the appellant indicated that he suffered from depression, sleep disorder (he could not sleep more than 4 – 5 hours per night) and panic attacks that prevented him from being in big crowds. He had trouble thinking at times and had not found adequate medication. He could not bathe and had little appetite. He stated that some days, he could not function properly or even get out of bed. He also had bad headaches, poor energy and snapped easily.

In his Notice of Appeal dated 15 April 2015, the appellant indicated that his health prevented him from seeking and getting employment.

Further to questions posed by the ministry at the hearing the appellant testified that:

- He was not tested for a sleep disorder and indicated that he slept only 2 to 3 hours a night.
- He had been designated as a PPMB in the past, the last year being 2014.
- He had not looked for employment since the termination of his last job approximately 5 years ago even though he could consider working in a solitary environment.

The panel determined that this additional oral evidence was admissible under s. 22(4) of the Employment and Assistance Act (EAA) as it was in support of the records before the ministry at reconsideration and in particular it tended to corroborate the documentation provided by the physician and the ministry letter of 28 November 2014.

However, the panel determined that the following additional oral evidence was not admissible as it was not in support of the records before the ministry at reconsideration and was new additional information that the reconsideration officer did not have when making the decision:

- The appellant is looking into counseling for his sleep disorder.

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- He had a solitary type of work as a truck driver for his last employment that ended about 5 years ago and he received employment insurance (EI) for 9 months after that termination.

## PART F – Reasons for Panel Decision

The issue under appeal in this case is whether the ministry's decision that determined the appellant did not qualify as a PPMB because, while the information provided established he had a medical condition which had continued for at least one year and was likely to continue for at least two more years, it did not establish that in the opinion of the minister it presented a barrier that precluded him from searching or accepting or continuing employment and therefore he did not meet all the required conditions set at section 2 of the EAR was either a reasonable application of the legislation or reasonably supported by the evidence.

Section 2 of the EAR states the conditions necessary to qualify as a PPMB:

**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,...

(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 argued that section 2 (2) and (4) of the EAR apply in this matter. The ministry agreed

that the appellant met the requirements under subsection (2) as he had been a recipient of income assistance for at least 12 of the immediately preceding 15 months but not those of subsection (3)(a) as he has not scored 15 on the employability screen but only 14. Thus, subsection 4 applied and the documentation provided by the medical practitioner did not confirm any restriction to employment as a result of the appellant's medical condition.

The appellant argued that he met those conditions as his depression has worsened over the last few years as well as his anxiety attacks, in particular when in large crowds like shopping malls. He stated he had a severe sleep disorder that allowed him to sleep only 2 to 3 hours a night, according to his oral testimony which the panel accepts as being the most recent, and he had poor energy and snapped easily making it difficult for him to find employment.

The panel notes that the appellant did not argue that subsection 3 applied or challenge the results of the employability screen of 14 and in the absence of evidence to the contrary, the panel is satisfied that the ministry reasonably determined that given the results of the employability screen, subsection 3 did not apply but only subsection (4) of s. 2 of the EAR.

The panel acknowledges that the appellant suffers from significant medical issues but the evidence that his medical condition precludes him from finding employment is absent. The panel notes that the medical report does not mention any restriction to employment based on his medical condition nor is there any support medical information to that effect. Besides depression, anxiety and opiate dependency, the physician did not mention any of the other medical conditions described by the appellant like sleep disorder, panic attacks and headaches. The panel also notes that the appellant admitted he could probably work in a solitary environment. Given the absence of any medical evidence to that effect, the panel finds the ministry reasonably determined that in the minister's opinion there was not enough evidence to establish that the appellant's medical condition precluded him from searching for, accepting or continuing in employment as required under s. 2(4)(b) of the EAR.

Therefore, the panel finds the ministry's decision was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.