

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“the Ministry”) reconsideration decision dated June 22, 2015 in which the Ministry found that the Appellant is ineligible for the Person with Persistent Multiple Barriers to employment (“PPMB”) qualification pursuant to section 2 of the Employment and Assistance Regulation (“EAR”). While the Ministry found that the PPMB application met the requirements for length of time on income assistance pursuant to section 2(2), and duration of medical condition (anxiety/depression) pursuant to section 2(4)(a), the Ministry was not satisfied that the criteria in EAR section 2(4)(b) were met: *In the opinion of the minister, the (Appellant’s) medical condition is a barrier that precludes the person from searching for, accepting or continuing in employment.*

PART D - Legislation

Employment and Assistance Regulation - EAR - section 2

PART E – Summary of Facts

The evidence before the Ministry at the reconsideration consisted of:

1. A Request for Reconsideration signed by the Appellant on June 12, 2015 with two PPMB medical reports attached:

(a) An updated report signed by the Appellant's physician on June 12, 2015, and

(b) An earlier report signed by the physician on February 3, 2015.

The reports contained the following information:

- Primary medical condition: "Anxiety/Depression", date of onset (June 12 report) more than five years ago.
- Secondary medical condition: "Substance abuse/Withdrawal", and a broken right wrist since May 2015 (June 12 report).
- Treatments: "Detox/Rehab" and an antidepressant medication.
- Prognosis: "optimistic"
- Expected duration of medical condition: Two years or more with the comments "Anxiety/depression issues persist" and "Generally continuous Anxiety/Depression" (June 12 report).
- Restrictions specific to the noted medical conditions: "No physical restriction" (February 3, report) and "presently right wrist fracture – dominant hand – unable to work x 6/12" (June 12 report).

2. The Appellant's undated Employability Screen, indicating a total score of twelve. Points were awarded for being an income assistance recipient for more than twelve months in the last three years, having a Grade 10 to 12 education, and having no/very limited work experience over the last three years.

3. The Ministry's PPMB denial letter dated May 6, 2015 in which the Ministry informed the Appellant that she no longer meets the requirements for the PPMB category (for reasons different from those described in the reconsideration decision). The Ministry advised that the Appellant will continue to receive the higher support allowance, monthly earnings exemption and have access to general health supplements for the next three months so she can plan for the reduction in income assistance. The reduction would take effect at the end of August 2015 and the Appellant will now be expected to find work and develop an Employment Plan.

Appellant's additional evidence

The Appellant attended the hearing with a support person (her friend) following an adjournment on July 17, 2015, requested by the Appellant to provide additional information. Subsequent to the reconsideration decision, she filed a Notice of Appeal dated June 29, 2015 with the following documents attached:

(a) A letter written by an advocate and signed by the Appellant and signed by her physician on June 3, 2015. The letter states that the Appellant was diagnosed with anxiety and depression and designated as PPMB. She recently had substance abuse issues in conjunction with her mental health disorders and underwent "successful detox and rehab" in February-April 2015. The letter further states that the Appellant recently broke her right wrist and cannot use her primary hand for

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any type of work, personal care, or other tasks, and she cannot do much with her right arm until the fracture recovers. She has also been recently diagnosed with bilateral hearing loss and needs hearing aids. At the bottom of the letter the physician provided an opinion regarding the Appellant's restrictions to employment.

(b) A prescription from the Appellant's physician for "bilateral hearing aids" dated May 20, 2015.

(c) An audiogram report dated May 11, 2015.

The panel finds that all of the above information, except the information about hearing loss, corroborates the information and records that were before the Ministry at the reconsideration because the record included descriptions of the Appellant's medical conditions and restrictions. Accordingly, the panel admits the June 3, 2015 letter, with the exception of the information on hearing loss, under section 22(4)(b) of the *Employment and Assistance Act* (EAA) as evidence in support of the information and records that were before the ministry at the time the decision being appealed was made.

Oral testimony

At the hearing the Appellant explained that her anxiety and depression started a long time ago following the death of a friend. She takes the highest dose of medication and attends counselling sessions three times per week but experiences four to five panic attacks per day, sleeps in a dark room, and she had to take a medication for anxiety in order to attend the hearing. The Appellant reported that she not worked for five years and her only work experience was in an industry where she had contact with other people; however, she has been unable to be around crowds for five years or longer as any kind of stress is overwhelming for her and causes terrible panic attacks.

The Appellant testified that she does not recall taking the "Employability Screen test" and in response to a question from the Ministry, she stated that she does not dispute the Employability Screen score, but does not remember the Ministry contacting her to ask for the information. The Ministry explained that the information was taken from her file when she applied for PPMB and they would only contact her if they did not already have all of the information.

In response to another question from the Ministry, the Appellant confirmed that she has not voluntarily contacted an employment program for persons with medical barriers or other resources (except counselling), and she did not receive information about the employment program. The Ministry explained that clients are referred to the program when the Ministry deems them to be employment obligated and the Appellant had not yet been found employment obligated so she would have to gather information on her own and self-refer.

In response to the Ministry's question about what the physician meant when he wrote in the PPMB medical reports that the Appellant's prognosis was "optimistic", the Appellant stated that her doctor cannot predict that she will get better as of a certain date and it is hard to say what will happen with her depression and anxiety. In response to a question from the panel, the Appellant stated that she had tried volunteer work "to get an idea of what I can do but it didn't work out too good."



At the hearing, the Ministry reviewed its decisions to deny the Appellant the PPMB qualification. The Ministry clarified that it determined that the Appellant meets some of the criteria for PPMB but the Ministry was not satisfied that the information in the reconsideration record established that the Appellant is precluded from searching for, accepting, and continuing in all forms of employment including part time work. In response to a question from the panel as to how the Ministry opinion is formed, the Ministry explained that it looks at any supplementary medical reports and any efforts the client has made to work or access employment resources such as the employment agency for persons with medical barriers.

The panel finds that all of the oral testimony substantiates the information in the reconsideration record as that record included medical reports describing the Appellant's conditions and restrictions. Accordingly, the panel admits all of the oral testimony under section 22(4)(b) of the EAA as evidence in support of the information and records that were before the ministry at the time the decision being appealed was made.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's June 22, 2015 decision finding that the Appellant is ineligible for PPMB qualification because the information provided does not establish that her medical condition is a barrier that precludes her from searching for, accepting, or continuing in employment pursuant to section 2(4)(b) of the EAR, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant.

The sections of the legislation relevant to the issue on 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

(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.

In order for a client to be eligible for the PPMB qualification or renew their application, all of the criteria in section 2 of the EAR must be satisfied. The Ministry noted that the Appellant's PPMB application was assessed under EAR sections 2(2) and 2(4) as she had an Employability Screen score of twelve. The Ministry found that the Appellant met the requirements in EAR sections 2(2) and 2(4)(a) because she has been an income assistance recipient for at least twelve of the immediately preceding fifteen calendar months and her physician had confirmed that her anxiety/depression had continued for at least one year and would likely continue for at least two more years.

The Ministry noted that it could not consider the Appellant's addictions or broken wrist in assessing her PPMB eligibility because addictions are excluded under EAR and the wrist fracture did not meet the duration (of medical condition) criteria. As addictions are excluded under EAR section 2(4), and there was evidence that the Appellant's wrist fracture had not continued for at least one year as

required by section 2(4)(a)(i) and that the Appellant's Employability screen score was less than fifteen thereby excluding consideration under section 2(3), the panel finds that the Ministry was reasonable in their application of these sections of the legislation in the circumstances of the Appellant.

Regarding the specific criteria that the Ministry determined were not met, the panel's analysis is as follows: *EAR subsection 2(4)(b): In the opinion of the minister, the medical condition is a barrier that precludes the person from searching for, accepting, or continuing in employment.*

Ministry's position

The Ministry submitted that it did not have enough information from the Appellant's physician to determine that the Appellant's medical condition precludes her from searching for, accepting, or continuing in all types of employment including sedentary or part-time work. The Ministry argued that a medical condition is considered to preclude a client from searching for, accepting, or continuing in employment when as a result of the condition, the client is unable to participate in any type of employment, for any length of time, except in a supported/sheltered type of work environment. The Ministry noted that although the physician was invited to enclose documentation that supports the severity and restrictions of the Appellant's anxiety/depression, no additional information was submitted. The Ministry noted that although the physician remarked that the Appellant's anxiety/depression issues were "present", he "does not provide any further explanation or description of how these issues make you unable to participate in any type of employment for any length of time except in a supported or sheltered-type work environment."

Appellant's position

In her Notice of Appeal, the Appellant submitted that the Ministry "has not correctly interpreted the medical information". She argued that she has had her conditions for a long time and cannot work due to anxiety symptoms including "terrible panic attacks". She stated that she is taking counselling to better herself and she is definitely on a better path but is not yet ready to work. In the appeal submission, signed by the physician on June 3, 2015, the Appellant argued that her mental health conditions "have made it difficult if not impossible to work in a job for several years." Her mental health conditions prevent her from "seeking, accepting or continuing employment" and "preclude me from employment."

The Appellant further argued that her physician supports that her anxiety and depression are "generally continuous" and both her physician and advocate told her that the information provided is sufficient to meet the legislation. In particular, for her appeal submission, her physician endorsed her position that she is precluded from work by signing below the following statement: *I agree that the above statement is an accurate assessment of my patient's overall health conditions and her current circumstances. After reviewing this additional information and speaking to [the Appellant] I can now confirm that she has severe impairments that prevent her from searching, accepting, or continuing employment. I confirm that her conditions preclude her from employment.*

Panel's decision

EAR subsection 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. The

Ministry submitted that “precludes” means that the client is unable to participate in any type of employment except in a supported/sheltered type of work environment and that the only evidence it had regarding the Appellant’s limitations from anxiety/depression was the physician’s remark in the updated PPMB medical report (June 12, 2015), “Anxiety/depression issues persist”.

The panel notes that although the PPMB medical report provides a space for describing “Restrictions” (question 3 on the form), the physician noted in the original report, “no physical restriction”, and in the June 12, 2015 update, he described restrictions in relation to the Appellant’s wrist fracture. He did not describe any restrictions resulting from anxiety/depression, and as the Ministry noted, he did not provide any supplementary medical reports.

The panel notes that the physician’s comment “optimistic” was in relation to the Appellant’s prognosis and does not address any restrictions that preclude the Appellant from searching for, accepting, or continuing in employment. The panel can find no information in the PPMB medical reports that explain the Appellant’s anxiety/depression symptoms and how such symptoms preclude her from any type of employment. The Appellant mentioned in her oral testimony that she has panic attacks and cannot be around crowds; however, her physician did not address these or any other symptoms in the medical reports.

Regarding the Notice of Appeal where the Appellant argued that the Ministry “has not correctly interpreted medical information”, the panel notes that there was no medical information for the Ministry to interpret regarding how or why her anxiety/depression precludes her from employment. The physician’s evidence that “Anxiety/depression issues persist” does not explain how/ why these conditions preclude the Appellant from searching for, accepting, or continuing in employment.

Regarding the June 3, 2015 appeal submission, the panel gives it little weight because even though both the Appellant and the physician now explicitly state that the Appellant has long standing conditions that preclude her from employment, the information provided still does not explain how or why her anxiety/depression precludes her from working. Further, no supplemental medical reports or psychological assessments were provided that could shed light on how her conditions and symptoms preclude her from searching for, accepting, or continuing in employment. In addition, the Appellant testified that she had not voluntarily explored any employment programs and while the Appellant was not under any obligation to look into employment programs or try to work, any attempts to do so could provide evidence of any restrictions. The Appellant testified that she tried volunteer work; however, she did not provide any information on how/why her anxiety/depression precluded her from continuing in such work.

Conclusion

Given the above analysis, the panel finds that the Ministry reasonably determined that based on the information provided, it could not be satisfied that the criteria in EAR section 2(4)(b) were met. The panel finds that the Ministry decision was a reasonable application of the applicable enactment in the circumstances of the Appellant and confirms the reconsideration decision that held the Appellant is not eligible for PPMB qualification under section 2 of the EAR.