



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of July 22, 2015, which found that the appellant did not qualify for the Persons with Persistent Multiple Barriers (PPMB) status. The ministry determined that the appellant had an employability screen score of less than 15 and in the opinion of the minister the medical condition of the appellant did not preclude him from searching for, accepting, or continuing in employment as required by section 2 of the Employment and Assistance Regulation (EAR) (Note that the ministry incorrectly cited section 2 of the Employment and Assistance Act in the Reconsideration Decision).

### PART D – Relevant Legislation

EAR section 2

## PART E – Summary of Facts

With the consent of both parties the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act* (EAA).

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

1. A *Medical Report – Persons with Persistent Multiple Barriers* dated April 22, 2015 that was completed by the appellant's general practitioner and reports that the appellant has a primary medical condition of severe depression with an onset of (around) 2010 and a secondary medical condition of social anxiety with the date of onset not indicated. The report notes that the appellant has been treated by a psychiatrist with minimal change in outcome and that the appellant has refused medications to date. The report states that the appellant has had this condition(s) for 10 ½ years (which does not concur with the stated date of onset) and is constant rather than episodic in nature. The expected duration of the condition(s) is 2 years or more. The physician also notes "*Condition affects almost all aspects of life & is unable to do any type of work currently.*"
2. An undated *Employability Screen* that reports a total score of 8.
3. The appellant's *Request for Reconsideration* signed and dated by the appellant on June 6, 2015. In it the appellant explains that he had completed the employability screen incorrectly for questions #3, #5 and #6. His suggested alternate responses go to argument and are discussed in Part F. He goes on to explain that many days he is unable to function in public and consequently cannot perform in a job regularly. The appellant included a handwritten statement expanding upon his reasons for requesting reconsideration. He noted that his doctor has indicated the impact his medical condition has upon his ability to work (noted above) and comments that his psychiatrist agreed that his condition severely limits his life and work. Unfortunately, this statement appears to continue beyond the one-page included in the appeal package but the balance of the appellant's statement is not available to the panel.

The appellant's *Notice of Appeal* was dated August 5, 2015. He includes an undated letter which states that he has worked part time for the last year or two making an average of \$250 - \$400 a month. He reports that this is the most he has been able to work in 7-8 years. The rest of the statement goes to argument and is included in Part F. Also included with the Notice of Appeal was a note from the appellant's physician dated August 5, 2015 that states "*This is to confirm that (the appellant) is severely unwell with mental health concerns & therefore unable to work. Please support him to apply for disability.*"

In the Reconsideration Decision the ministry indicates that it accepts the appellant's proposal that question #5 on the Employability Screen should be "*a – Post-secondary program – degree or diploma*" but it does not agree with the appellant's suggested alternate responses to questions #3 and #6. The ministry concludes that the appellant's score on the Employability Screen is less than 15. In addition, the ministry concludes that the information provided by the appellant's doctor does not support that his medical condition is expected to preclude him from searching for, accepting, and maintaining employment.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision to deny the appellant PPMB status was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant has an Employability Screen score of less than 15 and in the opinion of the minister the medical condition of the appellant did not preclude him from searching for, accepting, or continuing in employment as required by section 2 of the Employment and Assistance Regulation (EAR).

The relevant legislation is as follows:

EAR

### **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*;
- (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 one 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 Appellant's Position

The appellant argues that his condition is misunderstood. Although he has worked part time for the last year or so he states that this is the most he has been able to work for 7 – 8 years but he has only earned \$250 - \$400 a month and this is not enough to live on. The appellant notes that the reconsideration decision states that the employer has made no special arrangements for the appellant's condition but the appellant points out that he did not want to tell his employer about his condition. He wanted to try to get better and get back to working to see how capable he was without pushing himself in a way that was unhealthy for him in his condition. He states that his psychiatrist agreed with this. He reports that he has had a lower back injury since childhood and is incapable of keeping up the work on top of the mental emotional stress it generates. He indicates that there have been many days when he has been unable to work and it is a severe push to get himself to go to work which often results in exhaustive repercussions which shut him down for days. He notes that the reconsideration package stated that the ministry concluded that the correct response to question #6 on the *Employability Screen* should be "a – More than 12 months" whereas he considers the correct response to be "d – None or very limited work experience" since he is unable to earn enough money to survive on. He states that he has no family home or money to fall back on.

### The Ministry's Position

In the *Reconsideration Decision* the ministry states "To be eligible for PPMB, a recipient must meet the criteria in the *Employment and Assistance Regulation* ("the Regulation"), Sections 2, by meeting subsection 2 and either 3 or 4. The ministry has determined that you meet subsections 2 and 4 therefore are eligible for PPMB." But in the *Reconsideration Decision* the ministry goes on to state that while the appellant meets subsection 2 (which requires that the applicant have been in receipt of income assistance for at least 12 of the past 15 months), it reports that subsection 3 is not applicable (because the appellant has an employability screen score of less than 15) and subsection 4 is not met (because in the opinion of the ministry the information provided does not support that the appellant's medical condition is expected to preclude him from searching for, accepting, and maintaining employment). The ministry argues that a medical condition is considered to preclude working 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. Since the appellant is not in such a supported or sheltered work environment the ministry concluded that the appellant's medical condition did not preclude him from searching for, accepting or continuing in employment.

### Conclusion

The panel reviewed the appellant's employability screen score. Question #3 asks "Apart from your current application, how many times have you been on income or Social Assistance anywhere in Canada in the last 3 years? The appellant argued that the correct response to question #3 was "c – More than 3 times" and explained that this was the correct response "as I have been on income assistance since 2007." The ministry selected "a – Never" as the correct response to this question and explained that this was the correct response because the appellant's current application opened December 28, 2006. The panel accepts the ministry's answer to this question because it states "Apart from your current application . . ." The appellant has provided no information to support the claim that he has been on Social Assistance more than three times in the past three years apart from his current application. The ministry did concur with the appellant that the correct response to question #5 is "a – Post-secondary program – degree or diploma". For question #6 the appellant argued that the correct response was "d – None or very limited work experience" whereas the ministry chose "a –

*More than 12 months*” as the correct response. Since question #6 specifies time spent in paid employment and the appellant has been in paid employment since August 2013, the panel accepts the ministry’s judgment that “a” is the correct response to question #6. The panel notes that the adjusted response to question #5 (i.e. “a”) increases the appellant’s employability screen score by 1 point but the adjusted response to question #6 (i.e. “a”) results in the appellant’s revised employability screen score remaining at 8 which is well short of the requirement of 15. Accordingly, the panel finds that the ministry reasonably determined that the appellant does not satisfy the requirements of section 2(3) of the EAR.

The panel acknowledges that the appellant’s medical condition affects his ability to function and observes that the doctor’s note of August 5, 2015 states that the appellant is unable to work. Nonetheless, the panel also notes that the appellant reported in his undated letter accompanying the *Notice of Appeal* that his plan to get back into working and see how capable he was to do so had been approved by his psychiatrist. Moreover, section 2(4) of the EAR clearly provides for the minister to have discretion in determining whether a person is precluded from searching for, accepting or continuing in employment due to their medical condition though that discretion must be exercised reasonably. In the case of the appellant there is no dispute by either party that he has maintained part-time employment for a minimum of the past 12 months without special support from his employer and for this reason the minister reasonably determined that his medical condition did not preclude him from searching for, accepting or continuing in employment. Accordingly, the panel finds that the ministry reasonably determined that the appellant does not satisfy the requirements of section 2(4) of the EAR.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry’s determination that the appellant has not met the requirements of section 2 of the EAR for PPMB status was a reasonable application of the applicable enactment in the circumstances of the appellant.

The panel therefore confirms the ministry decision.