

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“the Ministry”) reconsideration decision dated September 30, 2015 in which the Ministry found that the Appellant is ineligible for the Persons with Persistent Multiple Barriers to employment (“PPMB”) qualification pursuant to section 2 of the Employment and Assistance Regulation (“EAR”). The Ministry found that the PPMB application could not be assessed under EAR subsection 2(3) because the Appellant’s Employability Screen score is less than 15. The Ministry found that while the Appellant met the criteria under subsections 2(2) and 2(4)(a), she does not meet the criteria in EAR subsection 2(4)(b) which requires: *In the opinion of the minister, (the 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 the following:

1. A Request for Reconsideration signed by the Appellant on September 16, 2015 with attached information as follows:

A Medical Report - Employability (“employability medical report”) signed by the Appellant’s family physician on June 30, 2015, that stated the following:

- Primary medical condition: Major Depressive Disorder, date of onset April 20, 2009. When asked to describe the overall medical condition, the physician check marked “moderate”.
- Prognosis: The physician check marked that the condition is expected to last “more than 2 years” with the comment, “chronic condition”. The condition is not episodic in nature.
- Restrictions: The physician wrote, “none physical”, and “PHQ 9 8 – poor energy levels, poor social functioning”.

2. *A Medical Report – Persons with Persistent Multiple Barriers* (“PPMB medical report”) signed by the Appellant’s family physician on November 18, 2014, that stated the following:

- Primary medical condition: Major Depressive Disorder, date of onset April 20, 2009.
- Treatment and Outcome: Panxetine 20 mg daily, “started post-partum on 18 Nov. 2014, outcome pending. Developed side effects on Panxetine, will hold on medication until stopped breastfeeding (with notation, ‘9 Dec.’).”
- The medical condition has existed for 5 years and 7 months.
- Prognosis: Expected duration of medical conditions is less than 2 years with the comment, “Able to start medicative management now.”
- The medical condition is not episodic in nature.
- Restrictions specific to the noted medical condition: “none physical”, and “PHQ 9 10 - poor energy levels, poor social functioning.”

3. The Appellant’s undated Employability Screen, indicating a total score of 12. Points were awarded for being on income assistance for more than 12 months in the last 3 years, having a post-secondary degree or diploma, and having no/very limited work experience over the last 3 years.

4. The Ministry’s PPMB denial letter dated September 1, 2015, informing the Appellant that the PPMB category has not been approved. The Ministry advised that the Appellant will be expected to look for work and create an Employment Plan.

5. Information from the Ministry record that indicates the Appellant is a sole recipient of income assistance.

Additional submissions

In her Notice of Appeal dated October 7, 2015, the Appellant attached the following documents:

1. A 2-page submission signed by the Appellant and dated October 8, 2015 that outlines her argument (which the panel will address in Part F - Reasons). The submission also provides the following information:

-
- The Appellant states that she was not given the “right document (Medical Report for PPMB form)”. When she asked for a PPMB medical form at the Ministry office on September 17, 2015 they told her it was already too late.
 - Between October and November 2014 she received a letter from the Ministry advising that her PPMB status was going to end soon. They provided a PPMB medical form and gave her a due date for the last week of January 2015. She faxed the medical report to the Ministry before the due date.
 - In May 2015, the Ministry advised that she was “no longer PPMB” and they had not received her medical report. The Ministry asked her to submit copies of PPMB medical reports dated (by her doctor) November 18 and December 9, 2014. The Appellant re-submitted this report on June 15, 2015. She also submitted, on June 30, 2015, the Employability Medical Report form that the Ministry sent her in June.
 - The Appellant stated that she is currently in her third trimester of pregnancy.

2. A letter from the Appellant’s family physician to the Ministry, dated October 7, 2015 in which the physician requested, “Please provide (the Appellant) with the appropriate forms for medical report regarding Persons with Persistent Multiple Barriers.”

Oral testimony

The Appellant did not attend the hearing. After confirming that she had been notified of the date, time, and location, the panel proceeded with the hearing in accordance with section 86(b) of the EAR.

The Ministry testified that the Appellant submitted two medical reports for the reconsideration: the PPMB medical report dated November 18, 2015 (received by the Ministry on June 1, 2015) and the employability medical report dated June 30, 2015 (received by the Ministry on June 30). The Ministry stated that it did not receive the November report in January even though the Appellant said she submitted it then. The Appellant’s PPMB status therefore expired and she has been receiving regular income assistance since then.

In response to questions, the Ministry testified that the Appellant was in contact with the Ministry for other matters at the same time that she was inquiring about PPMB, but stated that the two medical reports were the only ones received. The Ministry stated that it is unclear why the Appellant was given an employability medical report form instead of a PPMB form, and although the June 30th Employability Medical Report was not the correct form for a PPMB application, both reports were given consideration in the reconsideration decision.

Admissibility

The panel finds that the written and oral statements substantiate the information in the reconsideration record regarding the types of medical reports that were submitted. The panel admits these statements under section 22(4)(b) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the ministry at the time the decision being appealed was made. Regarding the Appellant’s position as set out in her appeal submission including the information that she is in her third trimester of pregnancy, the panel accepts these as argument, substantiating the Appellant’s position in the Request for Reconsideration that her PPMB application was “inappropriately declined.”

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reconsideration decision of September 30, 2015, finding that the Appellant is ineligible for the PPMB qualification pursuant to section 2 of the EAR because the criteria in subsections 2(3) and 2(4)(b) were not met, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. The Ministry found that the PPMB application could not be assessed under EAR subsection 2(3) because the Appellant's Employability Screen score is less than 15. The Ministry also found that she does not meet the criteria in EAR subsection 2(4)(b) which requires: *In the opinion of the minister, (the medical condition) is a barrier that precludes the person from searching for, accepting or continuing in employment.*

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

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.

In order for a client to be eligible for the PPMB qualification or renew their application, all of the criteria in EAR section 2 must be satisfied including the requirement that the person's medical condition is seen by the Ministry as a barrier to employment under either subsection 2(3) or 2(4) depending on the client's Employability Screen score. The Ministry assessed the Appellant's PPMB application under subsections 2(2) and 2(4) based on her Employability Screen score of 12. The Ministry found that the Appellant met the requirements in EAR subsection 2(2) as she has been an income assistance recipient for at least 12 of the immediately preceding 15 calendar months. The Ministry also found that subsection 2(4)(a)(i) was met as the physician had confirmed the onset and duration of the Appellant's medical condition.

Regarding the specific criteria the Ministry determined did not apply or were not met, the panel's analysis follows:

EAR subsection 2(3)

The Ministry noted that subsection 3 requires an Employability Screen score of 15 or more, and argued that the Appellant's PPMB application cannot be assessed under this subsection as her Screen score is 12. The Appellant does not dispute the calculation of her Employability Screen.

Panel's decision

In order to have PPMB eligibility assessed under subsection 2(3) the client must have an Employability Screen score of at least 15, and have a medical condition of at least one year duration that is expected to last for at least 2 more years. As there is no evidence or argument that the Screen score was calculated incorrectly, the panel finds that the Ministry reasonably determined that the Appellant's PPMB application cannot be assessed under subsection 2(3). The panel finds that the Ministry was therefore reasonable in assessing PPMB eligibility under EAR subsection 2(4).

EAR subsection 2(4)(b)

Appellant's position

In her reconsideration and appeal submissions, the Appellant argued that the Ministry "inappropriately declined" her PPMB approval and did not have the proper information when it denied her application. She submitted that there is a glitch in the Ministry system and she has been given conflicting information by Ministry staff over the phone and in person during the past 6 months. The Appellant submits that while the June 30, 2015 medical report contains "the proper updated information", the Ministry failed to provide her with the "right document (Medical Report for PPMB form)" in time for her Request for Reconsideration. As she did not receive a PPMB medical form, she submitted an updated employability medical report. Her doctor also provided the note of October 7, 2015 "for (her) medical condition". Regarding her restrictions to employment, the Appellant submits that even if she tries to find a job, it would be impossible for her because she is in her third trimester of pregnancy with her current medical condition.

Ministry's position

The Ministry submitted that the test under subsection 2(4)(b) is for the medical condition and subsequent restrictions to preclude "all forms of employment". The Ministry acknowledged that the Appellant's medical condition, described by her physician as moderate with no physical restrictions but with "poor energy levels and poor social skills", may create "some limitations for certain employment circumstances". However, the Ministry argued that subsection 2(4)(b) is not met because in the opinion of the minister, there is no evidence to support that the medical condition and resulting restrictions would preclude all forms of employment.

At the hearing, the Ministry stated that it did consider all of the medical reports the Appellant submitted (two in total), as confirmed in the reconsideration decision which references both the PPMB medical report of November 18, 2015 and the employability medical report of June 30, 2015. The Ministry argued that giving the Appellant the "wrong report" had no bearing on the reconsideration decision because the information in both reports regarding the Appellant's restrictions is the same, and the employability medical report provides an additional piece of information – that the medical condition is moderate. Regarding the Appellant's late stage pregnancy, the Ministry stated that it does not consider pregnancy to be a barrier that precludes 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 panel finds that the Ministry's position that the client must be precluded from "all forms of employment" is a reasonable application of the legislation as subsection 2(4)(b) does not differentiate between different types of employment such as full or part-time work. The two medical reports, completed by the Appellant's physician seven months apart, do not provide any detail about how the Appellant's "poor energy levels" and "poor social functioning" preclude her from looking for or accepting a job, or continuing in a position.

Both reports are referenced in the reconsideration decision, confirming the Ministry's position that all information relevant to the Appellant's PPMB application has been reviewed. Further, while the physician in her letter of October 7, 2015, requests a PPMB medical report form, she did not add any detail regarding the Appellant's restrictions to employment due to Major Depressive Disorder or pregnancy impacting this condition. As there is insufficient information describing how the Appellant is precluded from searching for, accepting or continuing in employment, the panel finds that the Ministry reasonably determined that the criteria in subsection 2(4)(b) were not met.

Conclusion

The panel finds that the Ministry reconsideration decision that found the Appellant ineligible for the PPMB qualification was reasonably supported by the evidence. The panel confirms the reconsideration decision.