

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (“the ministry”) dated 16 September 2015 that held that the appellant was not eligible for qualification as a person with persistent multiple barriers to employment (PPMB). The ministry determined that the appellant’s employability screen score was 11 and therefore assessed her PPMB eligibility under sections 2(2) and 2(4) of the Employment and Assistance Regulation (EAR). The ministry found that the appellant met the requirements of sections 2(2) and 2(4)(a). However, the ministry was not satisfied that the information provided established that the appellant met the criterion set out in section 2(4)(b) of the EAR, that to qualify for PPMB a person must have a medical condition, other than an addiction, that in the opinion of the minister is a barrier that precludes the person from searching for, accepting or continuing in employment.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 2.

PART E – Summary of Facts

With the consent of parties, the hearing was conducted in writing pursuant to section 22(3) (b) of the *Employment and Assistance Act*.

The evidence before the ministry at reconsideration included the following:

1. From the ministry's files: the appellant has been a recipient of income assistance since February 2000 and PPMB since 2003.
2. The appellant's Employability Screen, showing a score of 11.
3. Medical Report – PPMB, completed by a general practitioner (GP), dated 07 May 2015, who indicates that he has known the appellant for over 6 months.
 - Primary medical condition: chronic Anxiety/Depression, Hepatitis C and substance use disorder, all with onset "x years."
 - Treatment: methadone treatment – with an outcome of partial remission and for anxiety, partial reduction.
 - How long has this condition existed? >10 years.
 - Prognosis: expected duration of medical condition – 2 years or more.
 - The medical condition is not episodic.
 - Restrictions: the GP did not complete this section of the form.
4. The appellant's Request for Reconsideration dated 11 September 2015. Under Reasons, the appellant refers to the GP's Medical Report – PPMB and states she has had Hepatitis C for many years. She writes that fatigue has disrupted her way of living on a regular basis and the Hepatitis C has caused much depression, and she has anxiety attacks occasionally.

In her Notice of Appeal, dated 30 September 2015, the appellant writes under Reasons for Appeal: "My medical condition constricts me from employability in any way. There will be a doctor's note to follow this Notice."

The appellant's GP faxed a hand-written "To whom it may concern" note to the ministry on 27 October 2015. This was forwarded to the Tribunal on 28 October 2015 and accepted as a late submission by the Tribunal Chair. The note reads:

"[The appellant] has multiple medical conditions: (1) Hep C (2) Anxiety (3) Depression, all of which produce 'very severe significant' [GP's emphasis] impairments in physical and psychological functioning."

The ministry did not provide a submission for the written hearing.

Admissibility of new information

The panel is guided by section 22(4) of the *Employment and Assistance Act*, which states:

22(4) In a hearing referred to in subsection (3), a panel may admit as evidence only

- (a) the information and records that were before the minister when the decision being appealed was made, and
- (b) oral or written testimony in support of the information and records referred to in paragraph (a).

Section 22(4)(b) is designed to strike a balance between a pure appeal on the record of the ministry decision and a hearing *de novo* (a completely new hearing). It contemplates that while a party may wish to submit additional evidence to the panel on the appeal, the panel is only empowered to admit (i.e. take into account in making its decision) “oral or written testimony in support of” the record of the ministry decision; it provides appellants with a limited opportunity to augment their evidence on appeal but it does not provide them with a hearing *de novo*, as the panel is tasked with assessing the reasonableness of the ministry’s decision. If the additional evidence substantiates or corroborates the information and records before the minister at the reconsideration stage, the evidence should be admitted; if it does not, then it does not meet the test of admissibility under s. 22(4)(b) of the *Employment and Assistance Act* and should not be admitted.

With respect to the GP’s note, the list of diagnoses serves to corroborate that which the GP provided in the Medical Report – PPMB (with the exception that the substance use disorder is not included). However, in the panel’s view, the statement regarding the nature and degree of the appellant’s impairments cannot be said to corroborate or substantiate anything before the ministry at reconsideration. Pursuant to section 22(4)(b) of the EAR, the panel therefore does not admit this statement as evidence.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry was reasonable in determining that the appellant did not qualify for PPMB because she did not meet the criterion set out in section 2(4)(b) of the EAR. More specifically, the issue is whether the ministry's decision, which held that the information provided did not establish that the appellant has a medical condition, other than an addiction, that in the opinion of the minister, is a barrier that precludes him from searching for, accepting or continuing in employment, is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is from the 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*[not applicable to this appeal]*
- (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 ministry's position, as set out in the reconsideration decision, is that it is unable to consider any restrictions related to the appellant's substance use disorder, as an addiction is specifically excluded when assessing medical conditions for PPMB. The ministry acknowledges that the appellant has chronic hepatitis C, anxiety and depression and was qualified as PPMB since 2003. However there is no information provided from the appellant's physician to confirm her restrictions. While she indicates that she experiences fatigue, anxiety, depression and occasional anxiety attacks, not enough detail was provided by her physician to demonstrate that her medical condition precludes employment, or

that for her to be able to maintain employment she would require a supportive or sheltered work environment.

The appellant's position, as explained in her Notice of Appeal, is that her medical conditions restrict her from being able to work in any way. This position is supported by a doctor's note that she indicated would follow.

Panel decision

Section 2(4)(b) of the EAR requires that the minister be "satisfied" that the person seeking PPMB qualification has a medical condition which precludes the person from employment. The panel considers it reasonable that the ministry would rely on the description of the restrictions provided by a medical practitioner in determining whether the minister is "satisfied" that the criterion is met. In the Medical Report – PPMB, the appellant's GP, while providing diagnoses of Hepatitis C, chronic Anxiety/Depression and substance use disorder, did not complete the section on restrictions, and therefore did not describe, as requested, the nature of any restrictions specific to these medical conditions. The panel finds that it is unreasonable to expect that the ministry deduce restrictions that may preclude employment from a list of diagnoses.

Accordingly, the panel finds that the Ministry's determination that the information provided did not establish that the appellant met all the criteria to qualify as a person with persistent multiple barriers to employment is reasonably supported by the evidence. The panel therefore confirms the ministry's decision.