



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) Reconsideration Decision dated November 3, 2015, which found the Appellant ineligible for Persons with Persistent and Multiple Barriers (PPMB) qualification under s.2, EAR. The Ministry found that the Appellant's condition (other than an addiction) does not preclude her from searching for, accepting or continuing in employment as required under s.2(4), EAR.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) Section 2; Schedule E

PART E – Summary of Facts

Information before the Ministry at reconsideration included:

- The Appellant's Client Employability Profile, dated July 2, 2015.
- The Appellant's Employability Screen, undated.
- A copy of a letter from the Appellant's social worker to the Ministry dated June 24, 2015, stating that the Appellant has difficulty standing and requesting accommodation for service at their office.
- The Appellant's PPMB Medical Report, dated June 25, 2015, stating that her condition is expected to last 2 years or more and that she is unable to work, not employable.
- A copy of the Ministry's letter to the Appellant dated September 22, 2015, advising her of their decision.
- A copy of the Appellant's Request for Reconsideration, dated October 22, 2015, with an attached letter from the Appellant's social worker.
- A copy of the Appellant's PPMB Medical Report dated June 18, 2007, stating that her condition is expected to last more than 2 years, with restrictions listed as unable to work due to medical illness, fatigue, impairment of concentration.
- A copy of the Appellant's PPMB Medical Report dated June 10, 2009, stating that her condition is expected to last more than 2 years, with restrictions listed as no operation of heavy machinery, no work at heights, no driving.
- A copy of a note from a physician dated July 10, 2015, stating that the Appellant is not employable for medical reasons.
- A copy of the Appellant's PPMB Medical Report dated August 27, 2012, stating that her condition is expected to last more than 2 years, with restrictions listed as unable to work, not employable.

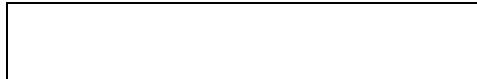
At the hearing, the Appellant submitted:

- A copy of a letter from her physician dated December 1, 2015, stating that the Appellant suffers from PTSD and recurrent depression, has generalized anxiety disorder with panic, she is disabled and cannot work in his medical opinion, and that she has a GAF score of 40 with major impairment in several areas including work, family, judgment, thinking and mood.
- A copy of the Appellant's GAF (Global Assessment of Functioning) scale, with a notation of 40.

The Ministry had no objection to the admission of these documents. The two documents were admitted by the Panel under section 22(4) of the Employment and Assistance Act (EAA) as they were in support of the records before the minister at reconsideration. The letter is from the same physician who completed the Appellant's June 25, 2015 PPMB Medical Report and the GAF score is referred to by him.

The Appellant stated that she had previously been qualified as PPMB by the Ministry for several years, but was not in receipt of income assistance for about 18 months. She then reapplied and was found not eligible for the PPMB qualification. She stated that she suffers from mental illness, depression, PTSD and generalized anxiety disorder. She stated that her drug use is as a result of her medical conditions, not the other way around. She stated that the use of opioids allows her to function and that she has a great deal of pain. She stated that her depression sometimes causes her to go long periods without bathing or changing clothes. In response to questions from the Panel, the Appellant stated that she was approved for PPMB in the past with similar restrictions listed by her physician. The Appellant's representative stated that she is the social worker who wrote in support of the Appellant's request for reconsideration. She stated that she intended to say more clearly that it is the Appellant's medical condition that is responsible for her addiction, not the other way around, but she may not have made that clear in her note.

The Ministry responded that the Appellant was denied because they look at all of the criteria. Because the Appellant's employment screen score was below 15, she is assessed according to the criteria listed in section 2(4), EAR. The Ministry found that she meets the criterion of duration of her condition, but that the information provided by the physician does not establish that she has a barrier that precludes her from searching for, accepting or continuing in employment. The Ministry stated that it cannot be determined from the details of



restrictions listed that they are specific to the Appellant's medical condition or to her addiction. The Ministry noted that there are no specific restrictions listed in the report. In response to questions from the Panel, the Ministry stated that looking at the restrictions listed in the PPMB medical report, they do not show how the Appellant is precluded from working.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry decision which found the Appellant ineligible for Persons with Persistent and Multiple Barriers (PPMB) qualification under s.2EAR. The Ministry found that the Appellant's condition (other than an addiction) does not preclude her from searching for, accepting or continuing in employment as required under s.2(4), EAR.

Legislation

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,

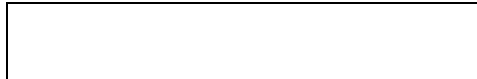
- (i) has continued for at least one year and is likely to continue for at least 2 more years, or
(ii) has occurred frequently in the past year and is likely to continue for at least 2 more years,
and

(b) in the opinion of the minister, is a barrier that precludes the person from searching for, accepting or continuing in employment.

Schedule E

Employability Screen

Number	Criteria	Category of Response	Score
1	What is the person's age?	(a) under 19 (b) 19 to 24 inclusive (c) 25 to 49 inclusive (d) 50 to 65 inclusive	0 1 0 0
2	Apart from the current application, how many times has the person been on Income or Social Assistance anywhere in Canada in the last 3 years?	(a) never (b) 1 to 3 times (c) more than 3 times	0 1 3
3	What is the total amount of time the person has spent on Income or Social Assistance in the last 3 years?	(a) less than 2 months (b) 2 to 12 months (c) more than 12 months	0 3 7
4	What is the highest level of education the person has completed?	(a) post-secondary program — degree or diploma (b) some post-secondary (c) high school/GED (d) grade 10 to grade 12 (e) less than grade 10 (f) trade certificate	1 0 1 3 0
5	What is the total amount of time the person has spent in paid employment over the last 3 years?	(a) more than 12 months (b) from 3 to 12 months (c) under 3 months (d) none or very limited work experience (e) volunteer work only	0 1 2 4 3
6	What is the person's English speaking ability or literacy level?	(a) good working knowledge of English (b) English as a second language (ESL) or in need	0 3



		of English skills training	
TOTAL			

The Appellant's position is that she meets the criteria for qualification as a Person with Persistent Multiple Barriers to Employment (PPMB). She argued that the Ministry did not consider her first diagnosis, depression, anxiety and PTSD as the cause of her drug use, but looked at her drug use as the reason for her restrictions on employability. The Appellant argued that she is receiving opiate-based therapy to be able to function.

The Ministry's position is that the Appellant does not meet the criteria for qualification as a PPMB because the details of her employment restrictions are not clearly related to her medical condition rather than her addiction, and restrictions based on addictions cannot be considered. Due to the Appellant's score of less than 15 on the employability screen she was required to be assessed under s.2(4), EAR, which requires that she be precluded from searching for, accepting or continuing in employment. The Ministry's position is that the physician's report is not thorough enough.

The PPMB Medical Report submitted by the Appellant states that her primary medical conditions are depression, anxiety and PTSD, with secondary medical conditions of opiate use severe, Hepatitis C. The physician's letter admitted by the Panel as evidence is in support of the physician's original finding including a diagnosis of PTSD and recurrent depression, with impairment in several areas including judgment, thinking and mood. The physician stated that the Appellant is disabled and cannot work but does not address restrictions to employment.

The Panel notes that the Ministry found on reconsideration that the Appellant has a condition that is likely to continue for at least 2 more years, and satisfies s.2(4)(a)(i), EAR. However, the Ministry determined that they cannot rely on the information from the medical practitioner in determining employability under s. 2(4)(b). The medical practitioner indicated that the Appellant is unemployable, but did not specify restrictions. The physician's evidence is that the Appellant is unemployable and unable to work. The ministry must make the determination of whether a person qualifies for PPMB – it cannot delegate that decision to the physician. In the present appeal, the Appellant's physician has not made it clear in his report whether she is unable to work and not employable due to restrictions from her medical condition or from her addiction. In fact, the physician has not reported restrictions but a conclusion. This, taken together with the social worker's note submitted at reconsideration, which states that the Appellant is drowsy and high after receiving injectable heroin, make a determination of the cause of her employment restrictions unclear.

The Panel finds that the Ministry reasonably determined that the Appellant does not meet the criteria for qualification as a PPMB under s. 4, EAR. The Panel therefore confirms the Ministry decision as reasonably based on the evidence.