

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision dated November 16, 2015 wherein the ministry denied the appellant’s application for qualification as a person with persistent multiple barriers to employment (“PPMB”). The ministry determined that the appellant satisfied all statutory criteria for PPMB designation except that, in the ministry’s opinion, the appellant’s medical conditions do not preclude her from searching for, accepting, or continuing in employment as required by section 2(4)(b) of the Employment and Assistance Regulation (“EAR”).

PART D – Relevant Legislation

EAR: section 2 [*persons who have persistent multiple barriers to employment*], and Schedule B section 3(6)(d) [*exemption – earned income*].

PART E – Summary of Facts

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

- A PPMB Medical Report form dated April 15, 2014. The appellant's primary medical condition was listed as "anxiety/depression." The secondary condition is "eating disorder." Related restrictions were described by the appellant's physician as "Tends to self isolate. Marginal social skills in public situations." The physician commented "Struggles academically. Reclusive – struggles with public situations." The appellant is under CBT treatment and takes antidepressant medication.
- A PPMB Medical Report form dated March 23, 2015. The appellant's primary medical condition was listed as "anxiety/depression," and secondary condition as "learning difficulties." Related restrictions were described by the physician as "Limited ability to concentrate/learn new tasks/organize herself." The physician commented "Struggles with anxiety and depression. Learning difficulties." The appellant is under CBT treatment and takes antidepressant medication.

The appellant has been a recipient of income assistance for 14 of the past 15 months. She is attending a program of study (the "Program") at a local university that the ministry stated in its reconsideration decision is "specifically designed for students with developmental and cognitive disabilities and is designed to assist student's development with personal, interpersonal, and employment skills."

At reconsideration the appellant made written submissions stating that:

- She is not ready for employment because she is currently enrolled in the Program to gain employment.
- Her physician has shown in writing how severe her depression and anxiety are.
- She is not able to cope with a job search and attending school.
- She is in the first year of a two year course.

In her oral testimony on appeal, the appellant (sometimes speaking for herself, but primarily through her mother who represented her), the appellant stated that:

- She is anxious and prone to panic. She often freezes up in public.
- She is maturing and her skills are improving but she is not yet ready for the demands of employment. Her mother cannot afford to keep her at home. She is not good with crowds or new situations.
- The Program has been very helpful. The second year of the program will provide an opportunity for job shadowing and subsequent employment.

In response to a question from the ministry, the appellant stated that she attends the Program three days a week, from 9:00 a.m. to noon. They learn how to speak to people, how to dress for work, and one of the mornings each week is dedicated to working outdoors on a community garden and community farm store to learn employment skills. The class consists of approximately 13 students with developmental issues similar to the appellant's.

In response to a question from the panel the appellant stated through her representative that she

does not dispute the employment screen score of 12.

At the hearing the appellant, through her representative, submitted a letter from her physician for consideration. In the letter, dated December 17, 2015 the physician wrote that:

“I am writing in support of this young woman’s application for disability status. (*sic*) She is now [age]. She has a well established learning disorder. She is quite disorganized and would have trouble coping with most employment stressors. Her thought processes are very concrete and she is easily overwhelmed by anxiety and panic. She has difficulty undertaking complex multistep tasks. She is somewhat agorophobic (*sic*) and uncomfortable with people she doesn’t know well. In order to cope in any employment situation she would have to be very closely supervised and directed. This would preclude her participating in most jobs except in very special circumstances.”

The ministry expressly took no position on admissibility of the physician’s letter.

In the panel’s view, the physician’s letter of December 17, 2015 substantially reiterates information that was in the two PPMB Medical Reports, while at the same time providing more detail which is consistent with, and tends to corroborate, the earlier information. Accordingly the panel has admitted this letter into evidence in accordance with section 22(4) of the *Employment and Assistance Act* (“EAA”).

The appellant’s oral testimony provided more detail about – and tended to corroborate - information that was before the ministry at the time of reconsideration. Accordingly, the panel has admitted the oral testimony into evidence in accordance with EAA section 22(4).

The ministry relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's reconsideration decision wherein the ministry denied the appellant's application for qualification as a PPMB. The ministry determined that the appellant satisfied all statutory criteria for PPMB designation except that, in the ministry's opinion, the appellant's medical conditions do not preclude her from searching for, accepting, or continuing in employment as required by section 2(4)(b) of the 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.

EAR Schedule B

Exemption — earned income

- 3** (1) Subject to subsection (2), the amount of earned income calculated under subsection (6) is exempt for a family unit.
- (2) If an application for income assistance (part 2) form is submitted to the minister, the family unit may not claim an exemption under this section in relation to the first calendar month for which the family unit becomes eligible for income assistance unless a member of the family unit received disability assistance under the *Employment and Assistance for Persons with Disabilities Act* for the calendar month immediately preceding that first calendar month.
- (3)-(5) Repealed. [B.C. Reg. 145/2015, Sch. 1, s. 16.]
- (6) The exempt amount for a family unit is the lesser of the family unit's total earned income in the calendar month of calculation and the following:
- ...
- (d) \$500, if the family unit includes a person who has persistent multiple barriers to employment.

* * *

The appellant's position is that there is sufficient evidence to demonstrate that the appellant qualifies for designation as a PPMB. She stated that the physician has demonstrated the severity of her anxiety and depression, and argued that while she is improving and learning new skills in the Program, she cannot engage in the Program and search for employment at the same time.

The ministry's position, as stated in its reconsideration decision, is that the physician has not provided enough information on the restrictions resulting from the appellant's medical condition to establish that her condition would preclude her from searching for and maintaining employment. The ministry argued that the appellant acknowledged that she cannot engage in the Program and search for employment at the same time, implying that she could engage in employment if she weren't enrolled in the Program.

Panel Decision

The only issue in dispute is whether the appellant's medical condition is a barrier that precludes her from searching for, accepting or continuing in employment as contemplated by section 2(4)(b) of the EAR. The usual meaning of the word "preclude" is "to make impossible or prevent from happening."

However, reading the legislation as a whole it is clear that the legislative intent is not to interpret “preclude” in such a literal fashion, since the earnings exemption in section 3(6)(d) of EAR Schedule B anticipates that a PPMB may earn some employment income. The ministry acknowledged that a less stringent interpretation of “preclude” is appropriate in citing its policy that “a medical condition precludes employment 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.”

The ministry did not directly address the statutory interpretation issue and apply it to the evidence, other than to conclude that the physician did not provide enough evidence of restrictions imposed by the appellant’s medical conditions. The ministry also inferred that the appellant cannot attend the Program *and* search for work, but that she is capable of either individually. However, reading the two PPMB Medical Reports together with the physician’s letter of December 17, 2015 (which the panel acknowledges was not before the reconsideration officer), the evidence demonstrates that the appellant’s medical condition restricts her from engaging in a work environment that presents typical “employment stressors.” She is currently engaged in the Program for only a very few hours per week, in an environment which in the appellant’s circumstances reflects the “supported or sheltered-type” environment contemplated by the ministry’s policy and the legislative intent.

Based on the foregoing rationale, the panel finds the ministry’s reconsideration decision was not a reasonable application of the legislation in the appellant’s circumstances, and rescinds the decision in the appellant’s favour.