

## 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 07 December 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 8 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

The appellant did not attend the hearing. After confirming that the appellant was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

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 as a single parent since September 2010.
2. The appellant's Employability Screen, showing a score of 8.
3. Medical Report – PPMB, completed by a general practitioner (GP), dated 17 August 2015, who indicates that she has known the appellant for over 6 months. The GP provides the following information:
  - Primary medical condition: post traumatic stress disorder, with onset January 2010.
  - Treatment: she is attending counseling. Outcome: some response but only partial.
  - How long has this condition existed? 5 years, 7 months.
  - Prognosis: expected duration of medical condition – 2 years or more.
  - The medical condition is not episodic.
  - Restrictions: unable to work in any capacity.
  - Additional comments: "She also has a [teenage] daughter who is battling with [chronic illness] which has made it difficult for her to .” [sic]
4. The appellant's Request for Reconsideration dated 13 November 2015, requesting an extension. The ministry subsequently received a letter from the appellant's GP dated 25 November 2015 ("the GP's letter"). In the letter the GP writes:

"[The appellant] suffers from severe anxiety on a daily basis with panic attacks once a week. She is depressed on a daily basis which leads to chronic fatigue, lack of motivation, crying spells and negative thoughts. Due to [the appellant's] severe mental health conditions, she has sleep disturbances and nightmares. She experiences a constant headache which restricts her leaving her home when pain level increases. Additionally, [the appellant] is constantly thinking about the incident which caused PTSD, and suffers from confusion, poor attention and concentration and memory issues.

Moreover, [the appellant] has had very limited work experience in the last 3 years, only working part-time (10 hours per week). Her daughter is also suffering from [a chronic illness] which adds further stress to [the appellant].

As a result, [the appellant's] medical conditions, along with her lack of work experience, preclude her ability to search, secure and maintain employment.

It is my opinion, as the medical practitioner for [the appellant], that she has medical conditions that have continued for at least one year and is likely to continue for at least 2 more years and as a result she has significant barriers to employment to the degree that she is been precluded in her ability to search for accept or continue employment. She is

currently unemployable and unable to participate in any employment related activities.”

5. At reconsideration, the ministry reviewed the appellant’s employment history and found that in 18 of the last 24 months the appellant has had earnings in excess of \$500 from employment with [Company A].

In her Notice of Appeal, dated 11 December 2015, the appellant writes under Reasons for Appeal:  
“I have a right to work and try to overcome my barriers. I found something that allows me to work alone on my computer. Not in a typical job environment.”

At the hearing, the ministry stood by its position at reconsideration.

*Admissibility of new information*

At reconsideration, the only information before the ministry regarding the appellant’s employment was the name of her employer and her income over the past 24 months. In her Notice of Appeal, the appellant provided further information in this respect – she works alone on her computer, not in a typical job environment.

At the hearing, the ministry did not object to the admissibility of this new information. Despite the ministry’s position in this respect, the panel finds that this new information is not in support of the information and records before the ministry at reconsideration, as it cannot be said to corroborate or substantiate anything before the ministry when it made its decision. Pursuant to section 22(4) of the *Employment and Assistance Act*, the panel therefore does not admit this new information as evidence.

The panel accepts the statement in the appellant’s Notice of Appeal as her position in this appeal (see Part F, Reasons for Panel Decision, below).

## 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 her 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 position of the ministry, as set out in the reconsideration decision, is that while it accepts that the appellant has a medical condition that affects employability, her employment history indicates that the restrictions caused by her medical condition do not preclude her ability to search for, accept or continue in employment and therefore the ministry is unable to approve her application for PPMB.

The reconsideration decision noted the appellant's employability screen score of 8 and reviewed the information provided in the Medical Report -- PPMB and in the GPs letter. In reviewing the appellant's employment history, the ministry found that 18 of the last 24 months she had earnings in excess of

\$500 from the [Company A]. This indicated to the ministry that the appellant had been working relatively consistently over the past two years. The ministry noted that a medical condition is considered to preclude a recipient from searching for, accepting or continuing in 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. No evidence has been submitted to establish or even indicate that [Company A] is a supported or sheltered-type work environment. Therefore her employment history contradicts GP's opinion that she is precluded from all employment.

The appellant's position is explained in her Notice of Appeal: "I have a right to work and try to overcome my barriers. I found something that allows me to work alone on my computer. Not in a typical job environment."

### Panel decision

At issue is the PPMB criterion set out in section 2(4)(b) of the EAR that the appellant has a medical condition, confirmed by a medical practitioner, that in the opinion of the minister, precludes her from searching for, accepting or continuing in employment. The panel notes that a common interpretation of the term "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's policy -- as cited in the reconsideration decision -- acknowledges a less stringent interpretation of "preclude" by adding the proviso that "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.*"

In the reconsideration decision, the ministry found that no evidence had been submitted to establish or even indicate that [Company A] is a supported or sheltered-type work environment. On appeal, the appellant stated that she "found something that allows me to work alone on my computer. Not in a typical job environment." However, the appellant has not explicitly stated that she works from home (which, depending on other factors, might be considered a sheltered environment). Nor has she provided other information that might establish how her work environment accommodates her barriers, such as her schedule (whether she is expected to work fixed hours or on a flexible basis only when her medical condition permits), her expected output (whether fixed or flexible), whether she is expected to attend the company office on occasion and how often and for how long, and whether she is expected to respond to or make telephone calls. Without such information, the panel finds that the ministry was reasonable in determining that it was not able to establish that she is working in a supported or sheltered-type environment.

In the reconsideration decision, the ministry also placed significant weight on the appellant's employment history contradicting the GP's opinion that she is precluded from all employment. In the panel's view, it was reasonable for the ministry to give weight to this contradiction, as it raises questions respecting the GP's knowledge of the appellant and therefore her ability to accurately describe the appellant's barriers arising from her medical condition.

Given the lack of information on the appellant's work environment and the contradiction between the appellant's work history and the GP's medical opinion, the panel finds that the ministry was



reasonable in determining that the appellant did not meet the PPMB criterion set out in section 2(4) of the EAR.

Based on the foregoing, the panel finds that the ministry decision to deny the appellant qualification as PPMB was reasonably supported by the evidence. The panel therefore confirms the ministry's decision.