



### PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated 24 November 2015 that determined the appellant did not qualify as a person with persistent multiple barriers (PPMB) under section 2 (4) of the Employment and Assistance Regulation (EAR). The ministry determined that while the information provided established she had a medical condition which had continued for at least one year and was likely to continue for at least two more years, the minister was not satisfied it presented a barrier that precluded her from searching for or accepting or continuing in employment.

### PART D – Relevant Legislation

EAR section 2.

## PART E – Summary of Facts

The following evidence was before the ministry at the time of reconsideration:

- The appellant previously qualified for PPMB designation and had to reapply in April 2015 when she was denied and she reapplied on 20 August 2015.
- A 2-page Medical Report PPMB dated 5 August 2015 by the appellant's physician, a general practitioner (GP) that had known the appellant for over 6 months indicated:
  - Appellant's primary medical condition: Anxiety disorder, onset 2008.
  - Secondary medical condition: ADHD (onset 1961) / alcohol abuse.
  - Treatment: counselling and medications, outcome illegible.
  - The condition existed for over 30 years.
  - The expected duration of her condition was 2 years or more with the comment that for over 10 years the appellant has great difficulty / avoidance of any level of pushy people – she prefers short / part time jobs as all seem to give her an "out" when uncomfortable / scared.
  - The physician left the box blank for restrictions specific to the appellant's medical condition.
  - The GP provided no additional documentation supporting the severity and restrictions of the medical condition.
- Undated Employability Screen form indicating that the appellant scored 8.
- A letter dated 22 October 2015 informing the appellant that she did not meet the requirements for PPMB category for the following reasons:
  - Her ES score was less than 15;
  - "In the opinion of the minister your medical conditions do not preclude you from all forms of employment as required under [EAR] section 2(4)(b)"
  - The letter indicated that the appellant was expected to look for employment and to contact the ministry to prepare an Employment Plan (EP).
- With her Request for Reconsideration dated 10 November 2015 the appellant provided further evidence from her GP who had completed the Medical Report PPMB in the form of a letter dated 11 November 2015 as follows:
  - Diagnoses: general anxiety disorder and eating disorder.
  - In terms of conditions precluding the appellant from searching for, accepting or continuing in regular employment, the GP wrote "Yes, she can hold herself together in sporadic part-time work but every time she has attempted full-time work she has quit. She becomes completely overwhelmed and does not have the ability to cope."

In her Notice of Appeal dated 1 December 2015, the appellant stated that her medical condition prevented her from continuing in employment unless her condition can be accommodated since her medical condition limits what she can do and how long she can work on any given day and, as a result, she does not make much money each month.

Prior to the hearing, the appellant filed 2 statements:

- A 2-page statement from the appellant dated 15 December 2015 indicated that she has been working for the same person (the employer) for about 7 years and that because of her medical condition she does not think she could work at other places. She stated she gets easily stressed and overwhelmed and it took her about a year of working before she stopped being sick as a result of her work. Her employer accommodates her but at times she gets so upset at work that she cries because of being overwhelmed and her employer will give her something else to do or

[ ]

send her home. She also stated her employer lets her work split shifts if need be and that work is important for her because she feels useful and trusted. She has not been able to do other jobs and tried working at a senior's home years ago but that did not work for her because she had high anxiety and frustration. She also tried another job but that didn't work either because she was stressed out. She works every month for approximately 15 – 37 hours.

- A 1-page statement dated 18 December 2015 by her employer indicated that the appellant had been working for her for a number of years and that she does a number of different tasks with sporadic hours. She wrote, "It is not a full or even part time job". She is aware the appellant suffers from anxiety and that when she is overwhelmed she may cry and she keeps an eye on her and if she sees signs of anxiety she asks her to do something else or allows her to go home if need be. The appellant works a maximum of 12 hours a week and she prefers split shifts as she can go home between shifts and rest. When she tried to increase her hours, the appellant's stress became unmanageable and she got extremely disoriented at work to the extent that one time the employer's husband had to take her home and another time they had to call a family member to come to get her. She stated that this arrangement works well for both of them as the appellant's hours are so sporadic and short notice that no one else would work on that basis and because of this, she is willing to accommodate the appellant's disability. She is of the opinion that the appellant could not work in a standard work environment.

At the hearing, the appellant testified that she had a PPMB designation approximately 3 years ago and that this was a renewal. She reported her income monthly to the ministry and indicated that the figures mentioned by the ministry in the reconsideration decision were probably accurate. She stated that nothing had changed in her job other than pay raises and some seasonal increase in work.

The ministry relied on the reconsideration decision and added that one of the reasons the ministry found the appellant was employed was the fact that in the past 13 months, her monthly income had increased, the lowest being \$359 and the highest around \$700 with an average of \$514 while in the past 2 years, her monthly income had varied between \$308 to \$787.29 with an average of \$509.23. The appellant's advocate indicated that the ministry should have provided the appellant's monthly income but objected when the ministry offered to provide those numbers because it came too late for the appellant to verify but the ministry confirmed the amounts were collected from the appellant's monthly income reports. The ministry did not object to the admissibility of the additional evidence.

The panel determined the additional oral evidence was admissible under s. 22 (4) of the Employment and Assistance Act (EAA) as it was in support of the records before the minister at reconsideration and provided further information about the appellant's employment conditions and the special arrangements she had with her employer. In particular, the ministry was aware of her employment for over 3 years, of her income and of the fact that when she was first designated as PPMB, she was already working for this employer.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that determined the appellant did no longer qualify as a PPMB under section 2 (4) of the EAR was either a reasonable application of the legislation or reasonably supported by the evidence. The ministry determined that while the information provided established the appellant had a medical condition which had continued for at least one year and was likely to continue for at least two more years, the minister was not satisfied it presented a barrier that precluded her from searching for or accepting or continuing in employment.

Section 2 of the EAR states the conditions necessary to qualify as a PPMB:

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,...

(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 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.

The appellant argued that she could only work a few hours / week and that her income confirmed that. However, she argued that the ministry should have provided documentation to support the

figures that appear in the reconsideration decision and that the appellant had not been able to confirm those numbers.

Further, the appellant argued that the work she was doing for her employer was not “employment” under the legislation but merely “work” and that the legislation made such a distinction. Thus, she argued, the ministry cannot consider her work as “employment” and cannot use the fact that she works for this employer as a reason to deny the PPMB designation. She also argued that the fact the legislation allows a \$500 exemption is a recognition that individuals may be able to do some work while being unable to maintain “employment”. As well, the appellant argued that the average of \$509.23 monthly income is consistent with the allowable income exemption for individuals with PPMB designation.

The appellant also referred to the ministry policy that allows a supported or sheltered-type work environment and argued that the evidence in this matter demonstrated that the appellant had such a type of work. She also relied on the medical reports that she could not work in a standard work environment.

The ministry acknowledged the appellant has been in receipt of income assistance for more than 12 of the preceding 15 months and met the requirement of s. 2 (2) of the EAR. Because the appellant scored under 15 on her ES (she scored 8 and the appellant did not contest that), the ministry argued that subsection 4 applied and acknowledged as well that a medical practitioner confirmed that her medical condition, excluding addictions, continued for at least 1 year and is expected to continue for at least another 2 years, meeting the requirement under s. 2 (4)(a)(i) of the EAR. However, the ministry argued that since the appellant had been reporting income every month for over 2 years, that she was not precluded from continuing employment. The ministry stressed the fact that the medical practitioner was of the opinion the appellant was precluded from searching for, accepting or continuing *regular* full-time employment while the legislation does not make such a distinction. Because the appellant had maintained part-time employment for an extended period of time, the ministry argued that this was beyond a supported or sheltered-type of work. Finally the ministry argued that the appellant’s medical documentation did not establish that her condition had recently changed so as to preclude her from maintaining employment.

***Panel decision:***

First, the panel notes that the appellant’s ES had a result of 8 and thus scoring under 15 the ministry reasonably determined that s. 2 (2) and (4) of the EAR applied. The panel also notes that the ministry is satisfied that a medical practitioner confirmed that the appellant has a condition other than addiction that has continued for at least one year and is likely to continue for at least 2 more years.

The panel agrees with the appellant that the legislation respectively uses “employment” and “work” but for the purpose of this appeal, the panel notes that one of the definitions of “work” is “a person’s employment or occupation etc. as a means of earning income” and while “work” is broader than “employment” the panel finds that the appellant’s situation falls within the general meaning of employment, whether it is part-time or full time, particularly taking into account that the appellant has had the same job for over 7 years with the same employer.

The ministry relies heavily on the GP's opinion that the appellant is precluded from searching for, accepting or continuing *regular* employment but the word "regular" was printed on the form prepared by the appellant's advocate and prompted the GP's response as follows: "Yes, she can hold herself together in sporadic part-time work but every time she has attempted full-time work she has quit. She becomes completely overwhelmed and does not have the ability to cope." The panel understands that the last sentence reflects the GP's opinion that as a result of her medical condition, in certain circumstances, the appellant can become overwhelmed to the extent she does not have the ability to cope and this is not a comment on the appellant's preferences as the ministry suggested. It should also be considered together with the GP's comments on the medical report of 5 August 2015 that states: "For the last [more than] 10 years [the appellant] has great difficulty / avoidance of any level or pushy people. She prefers short / part time jobs as all seem to give her an "out" when uncomfortable / scared." In fact the evidence shows that it is more than a preference: when she tried anything more than a sporadic, part-time employment, it failed. The panel notes that the GP did not complete section 3 of the Medical Report dealing with "Restrictions" which could have provided more useful information but cannot speculate as to why this section was not completed. The panel notes that the appellant's and her employer's evidence is consistent with the GP's comments and corroborate each other.

The evidence also shows that when the appellant was designated the first time as a PPMB, she had been working for approximately 4 years for her present employer and the ministry found that she qualified for a PPMB designation. Yet, the reconsideration decision states: "The medical documentation [the appellant] provided does not establish that [her] condition has recently changed so as to preclude [her] from maintaining employment." If her condition has not changed and if she was qualified for a PPMB designation, then how is it reasonable to determine that she would not qualify anymore? It would be understandable if her conditions had changed but the ministry indicated that they hadn't.

Section 2 (4)(b) of the EAR, unlike subsection (a) does not require that a medical practitioner provide an opinion as to whether an applicant is precluded from searching for, accepting or continuing in employment and the panel notes it is reasonable for the ministry to look at the medical report to get information as to the appellant's employability but the ministry must also consider all the evidence.

Further, for all those years the appellant had been reporting her monthly income as required by legislation and the ministry used that information to determine that she had part-time employment for an extended period. At the hearing the ministry indicated that there was an increase in her monthly income during the last 13 months (as opposed to the 2 years that was mentioned in the reconsideration decision) but that increase, according to the evidence presented was not significant and there is no evidence to suggest it was the result of an increase in work as opposed to an increase in wages. Any attempt to gain other employment was unsuccessful as mentioned by the appellant. The appellant argued that the ministry should have provided a list of monthly earnings that were reported but the panel notes that she knew well before the hearing that this was an issue for her and she could have looked into her own documents and provide that information to the panel since the onus is on her to demonstrate that the ministry's decision is unreasonable. Yet, when the ministry offered to present those figures, the appellant objected as it was in her opinion too late. The panel finds that the appellant should have provided this information if she thought it would be necessary for her appeal.

The ministry policy itself allows for some flexibility in the interpretation of “precludes” when the employment is a “supported or sheltered-type work environment”. In the documentation provided and at the hearing, it is not clear why the ministry finds that the appellant’s work environment does not meet its policy. The ministry seems to have considered that the appellant could work independently as a result of her statement that her employer knows she likes “to do things by myself with no competition. I can get frustrated when working with other people, for example, if I am trying to do what [the employer] says but others don’t. When I am at work, I hardly say a word.” The panel finds this is an unreasonable conclusion to draw from the evidence. The appellant’s employer stated that she must keep an eye out for her and check if she is crying or if there is any outward expression of frustration, she must act and ask her to do something else or allow her to go back home. It ignores the evidence that when the employer tried to increase her hours, the appellant’s stress became “unmanageable” and she got disoriented at work to the extent her husband had to take her home or call a family member to get her. It also ignores the fact that the work the appellant does is unlikely to be of interest to anyone else because it is too sporadic, with too short notice and with not enough hours.

As well, the ministry relied on the fact that the appellant had maintained part-time employment for an extended period of time. Yet, the legislation itself grants an exemption up to \$500 monthly income for a family unit where one person is designated as a PPMB. The evidence is to the effect that in fact, when the appellant’s income exceeded the monthly \$500, her income assistance was deducted of the amount in excess, which was anything from a few dollars up to \$287.29. Nothing in the legislation suggests that such an exemption is temporary or that if it were used regularly it would amount to a “part-time employment for an extended period of time”.

The panel also notes that the evidence is to the effect that the appellant works for a maximum of 12 hours a week and the monthly income reported to the ministry does corroborate those figures. The panel acknowledges that the reconsideration officer did not have the benefit of the information provided by the appellant for this hearing and that her Request for Reconsideration did not mention those circumstances but the panel notes that this information was available to the ministry for the whole time that the appellant was designated as a PPMB and while she was reporting her monthly income.

In conclusion, the panel finds the evidence shows that the appellant is and has for the past 7 years been working in a supported and sheltered-type employment and that the ministry unreasonably determined that she did not demonstrate that her medical conditions present a barrier that precludes her from searching for, accepting or continuing in employment.

Based on the foregoing rationale, the panel finds the ministry’s decision was not reasonably supported by the evidence and rescinds the decision. Therefore, the ministry’s decision is overturned in favour of the appellant.