

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated November 30, 2015 which held that the appellant did not meet all of the applicable statutory requirements of Section 2 of the *Employment and Assistance Regulation* (EAR) to qualify as a person with persistent multiple barriers to employment (PPMB). The ministry was satisfied that the evidence establishes that the appellant has a medical condition, other than an addiction, that is confirmed by a medical practitioner and that, in the opinion of the medical practitioner, has continued for at least 1 year and is likely to continue for at least 2 more years. In addition, the ministry found that EAR subsection 2(3) is not applicable to the appellant on the basis of her score on the Employability Screen and her PPMB application therefore needs to be assessed under subsection 2(4).

However, the ministry was not satisfied that the medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment, pursuant to Section 2(4)(b) of the EAR.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 2

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Two pages of a 3-page Psychiatry Consult Report dated May 17, 2012 (the "Psychiatry Report"), which included the following information:
 - The appellant had no previous psychiatric history, had not seen a psychiatrist nor received any psychiatric medications.
 - The appellant said she had some work-related stressors. She sustained some swelling of her leg and knee due to her work which involves constant bending down.
 - She feels anxious and depressed and entertains some suicidal thoughts. There is no previous history of self-harm. She also gives a history of some panic attacks.
 - The diagnosis is most likely an adjustment disorder with moderately severe depressed and anxious mood, and panic disorder. She does not seem to have any antisocial or borderline traits. No history of past abuse. She has psychosocial stressors, problem with primary support, financial and social difficulties, threat of eviction, worry about her physical ailments.
- 2) Medical Report- Persons with Persistent Multiple Barriers (PPMB) dated August 6, 2015, which states, in part, that:
 - the appellant's primary medical condition is major depression with no date of onset provided,
 - her secondary medical condition is anxiety disorder with no date of onset provided;
 - the treatment described is medication and psychiatric and mental health help and the outcome "remains the same,"
 - this condition has existed for 30 years; the prognosis sets out that the expected duration of the medical condition(s) is 2 years or more.
 - the physician indicated that the medical condition is not episodic in nature.
 - when asked to describe the nature of any restrictions specific to the medical conditions, the physician wrote "Nil."
- 3) Employability Screen print out for the appellant, noting a total score of "14." Points were awarded for being on income assistance for more than 12 months in the last 3 years, having less than a grad 10 education, and having no or very limited work experience over the last 3 years;
- 4) PPMB Checklist;
- 5) Client Employability Profile which included information that the appellant has a severe health condition, a persistent disability severely impacts on her employment options, and she has ineffective interpersonal skills. The comments indicated that the appellant has poor communication skills and social barriers, she panics and stated she is terrified around others or in new situations. The recommendation for Employment Plan activities are life skills and mental health programs, to continue weekly counseling/communication and conflict resolution programs, and to pursue a Persons With Disabilities (PWD) application; and,
- 6) Request for Reconsideration dated November 20, 2015.

In her Request for Reconsideration, the appellant wrote that:

- She has been told by the ministry that her employability score of "14" is high;
- She has been recommended to apply for Persons With Disability (PWD) designation.
- The ministry acknowledges that she has multiple barriers which severely limit her ability to search for and keep employment;
- She has a serious health condition, struggles with basic essential skills such as

communication and managing her emotions and behaviors in interpersonal relationships especially when under stress.

- She is working to overcome these barriers with support and counseling and she is focusing on regaining her health at this time.

Additional Information

In her Notice of Appeal dated December 11, 2015, the appellant stated that she disagrees with the ministry's reconsideration decision and that:

- She does not agree that her employability score is 14 and she believes it is higher than that.
- She feels that she lacks the foundational life skills that would allow her to maintain employment.
- She is struggling with health issues and other problems that make it very difficult for her to look for work.

At the hearing, the appellant's advocate stated that:

- There is a problem with the employment scoring, which seems unfair and discriminatory.
- It has taken her about a year to earn the appellant's trust. The appellant is quite fearful of medical professionals. She is afraid of people and social situations and feels safe at home.
- They had two doctors retiring at the same time in the appellant's community and it was an interim locum who prepared the Medical Report. The appellant has never seen a psychiatrist.
- There are no other medical reports available at this time.

At the hearing, the appellant's counselor stated that:

- She is a registered clinical counselor who has been providing counseling to the appellant.
- The appellant's current condition is similar to that described in the Psychiatry Consult Report of 2012 except that, rather than an adjustment disorder, she believes the appellant primarily has severe, recurrent depression and anxiety, with some symptoms of PTSD [post traumatic stress disorder].
- The reference to "work-related stressors" relates to the appellant's physical challenges and the counselor cannot speak to that. The appellant's social and financial difficulties have gotten worse since the Psychiatry Report as the appellant and her partner are both no longer working.
- She has had to help the appellant problem solve and it has become evident that the appellant would not be able to work by herself. She would need someone to support her.
- The appellant's suicidal tendencies are on-going although they are a bit better since she has been attending counseling.
- Forcing the appellant back into employment will result in more adjustment disorder. With financial stressors, they will not be able to address the appellant's trauma issues. With so many stressors, the appellant may fall back into alcohol abuse.
- The appellant likely suffers the effects of fetal alcohol syndrome from the womb, which compromises her intellectually.
- While the appellant has resiliency skills, she has never maintained employment consistently. She used to work for her partner when the appellant could work alongside him or with some direction from him.

The ministry relied on its reconsideration decision, as summarized at the hearing. The ministry clarified at the hearing that the Employability Score form is set out in the EAR.

Admissibility of Additional Information

The panel considered most of the oral testimony on behalf of the appellant as information that corroborates the extent of the appellant's impairment as diagnosed in the Medical and Psychiatry Consult Reports, and as argument in support of the appellant's position, which were before the ministry at reconsideration. Therefore, the panel admitted this additional information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*. The panel did not admit the information from the appellant's counselor regarding the appellant's additional medical conditions, fetal alcohol syndrome and symptoms of PTSD, and the restrictions relating to her conditions as this information was not in support of the information and records before the ministry at reconsideration in terms of her diagnoses and restrictions, given that the medical practitioner indicated she had no associated restrictions.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant did not meet all of the applicable statutory requirements of Section 2 of the *Employment and Assistance Regulation* (EAR) to qualify as a person with persistent multiple barriers to employment (PPMB); in particular, the ministry was not satisfied that the appellant's medical condition is a barrier that precludes her from searching for, accepting, or continuing in employment, pursuant to Section 2(4)(b) of the EAR.

The criteria for being designated as a PPMB are set out in Section 2 of the EAR as follows:

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 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.

Under Section 2(2), the person must have been the recipient of one or more of a number of types of assistance for at least 12 of the immediately preceding 15 calendar months and also meet the requirements set out in subsection 2(3) or subsection 2(4). If the person has scored at least 15 on the employability screen as set out in Schedule E to the EAR, then the PPMB application must be assessed under Section 2(3). If the person has scored less than 15 on the employability screen as set out in Schedule E to the EAR, then Section 2(4) applies to the assessment of the application. Under Section 2(4) of the EAR, the person must have a medical condition, other than an addiction, that has been confirmed by a medical practitioner and that, in the opinion of the medical practitioner, has continued for at least one year and is likely to continue for at least 2 more years, or has occurred frequently in the past year, and is likely to continue for at least 2 more years and, in the opinion of the minister, is a barrier that precludes the person from searching for, accepting, or continuing in employment.

Ministry's position

The ministry's position is that the appellant has been in receipt of income assistance for more than 12 of the preceding 15 months and, therefore, meets the requirements of Section 2(2) of the EAR. However, the ministry argued that the evidence has not established that the appellant has met all the remaining applicable criteria of Section 2. As the appellant scored 14 on the employability screen, she must meet the requirements of Section 2(4) of the EAR. The ministry acknowledged that the appellant has a medical condition, other than an addiction, that has been confirmed by a medical practitioner and that, in the opinion of the medical practitioner, has continued for at least 1 year and is likely to continue for at least 2 more years. However, the ministry argued that the evidence does not establish that the medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment.

The ministry submitted 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 activities for any length of time, except in a supported or sheltered-type work environment. The ministry argued that the Psychiatric Consult Report was from May 2012 and is not considered a reliable indication of the appellant's current medical condition. The ministry argued that the PPMB Medical Report, in the section titled "restrictions," where the medical practitioner wrote "nil," indicates that the appellant has no restrictions related to her medical conditions that preclude her from searching for, accepting, or continuing in employment. The ministry accepted that the appellant has medical conditions that affect her employability but argued that there is not sufficient evidence that the appellant's major depression and resultant restrictions preclude her from any type of employment for any length of time, including part-time work or participating in employment-related programs.

Appellant's position

The appellant's position is that there is sufficient evidence that her major depression is a barrier that precludes her from searching for, accepting, or continuing in employment. The appellant's advocate argued that the employability screen questions are not fair and the appellant's score should be higher because if it is over 15 she would not be expected to work. In her Request for Reconsideration, the appellant argued that she has a serious health condition and struggles with basic essential skills such as communication and managing her emotions and behaviors in interpersonal relationships, especially when under stress. The appellant wrote in her Notice of Appeal that she feels that she lacks the foundational life skills that would allow her to maintain employment and argued that the

ministry was unreasonable to conclude that there was not sufficient information that her major depression is a barrier that precludes her from searching for or accepting employment.

Panel decision

The panel notes that it is not disputed that the appellant's physician has provided a medical opinion, in the Medical Report dated August 6, 2015, that the appellant is diagnosed with a primary medical condition other than an addiction, namely major depression, and with a secondary medical condition of anxiety disorder. It is also not disputed that the appellant's medical condition has, in the opinion of the medical practitioner, continued for at least 1 year and is likely to continue for at least 2 more years. At the hearing, the appellant's counselor corroborated these diagnoses and placed less emphasis on the adjustment disorder diagnosed in the Psychiatry Report of 2012.

Regarding the ministry's assessment of the appellant's PPMB application under EAR subsection 2(3) as opposed to subsection 2(4), and despite the advocate's argument that the appellant's score on the Employability Screen should be higher, there was no evidence to confirm that the ministry made any error in calculating the Screen score of 14. The panel therefore finds that in the circumstances of the appellant, the ministry reasonably determined that an assessment of PPMB eligibility should be made under subsections 2(1), 2(2) and 2(4) of the EAR.

Regarding whether the ministry reasonably determined that the criteria in EAR subsection 2(4) were not met, the panel notes that in describing the nature of restrictions specific to the appellant's medical condition, the physician wrote "nil" in the PPMB Medical Report. While the appellant's advocate stated at the hearing that an interim locum completed the Medical Report and may not have been as diligent as a regular physician, the question posed in the PPMB medical report regarding "restrictions" is clear and the response by the physician is unequivocal. While the appellant argued that she struggles with communication and managing her emotions and behaviors in interpersonal situations, these were not described as barriers that preclude her from searching for, accepting, or continuing in employment according to the information provided by the physician in the PPMB Medical Report. The Psychiatry Report indicated the appellant said she had some work-related stressors, that she sustained some swelling of her leg and knee due to her work which involves constant bending down; however, these were not addressed by the physician in the PPMB Medical Report and there was no mention of "work stressors" in the PPMB Medical Report. The panel finds that the ministry reasonably relied on the information provided by the medical practitioner in the Medical Report and reasonably concluded that the evidence does not demonstrate that the appellant's medical condition is a barrier that precludes her from searching for, accepting or continuing in employment, pursuant to the requirement in Section 2(4)(b) of the EAR.

Conclusion

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(1)(a) and 24(2)(a) of the *Employment and Assistance Act*.