



PART C – Decision under Appeal

The decision under appeal is the reconsideration decision dated December 9, 2015 made by the Ministry of Social Development and Social Innovation (the ministry) which determined that the ministry does not have enough information to determine that the appellant's medical condition is a barrier that precludes him from searching for, accepting or continuing in employment in accordance with section 2(4)(b) of the Employment and Assistance Regulation (EAR) and so cannot designate the appellant as a Person with Persistent Multiple Barriers to Employment (PPMB).

PART D – Relevant Legislation

The relevant legislation is section 2 of the EAR.

PART E – Summary of Facts

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

- (1) A Medical Report – PPMB (MR1) dated March 20, 2015 completed by the appellant's physician indicating that the appellant suffers from generalized anxiety disorder and social phobia with an onset of 2005 and likely to continue for 2 or more years. In section 3 of the form entitled "Restrictions", which asks the physician to "describe the nature of any restrictions specific to the above medical condition(s)" the physician entered "Nil". Section 4 of the form, also entitled "Restrictions", asks the physician to "enclose copies of documentation that supports the severity and restrictions of the medical condition". No such documents were included with the MR1.
- (2) A Medical Report – PPMB (MR2) dated November 25, 2015 completed by the appellant's psychiatrist indicating that the appellant suffers from social anxiety disorder and major depression which have existed for 14 years with an onset of "childhood" and likely to continue for 2 or more years. The psychiatrist states that the appellant has been prescribed Zoloft with a partial response. Section 3 of the form has been left blank and there were no supporting documents included with the MR2.
- (3) An employability screen completed by the appellant with a score of 12.
- (4) In his request for reconsideration the appellant writes: "Phychiatrist has updated Primary and Secondary medical conditions to reflect current diagnosis and severity of medical conditions ... Phychiatrist also completing PWD. Will hand in to worker when completed."

The ministry determined that the appellant met the requirements of subsection (2), but that with an employability screen score of 12 he did not meet the requirements of subsection (3) so that in order to qualify as a PPMB he must meet the requirements of subsection (4). The ministry found that the appellant met the requirements of subsection 4(a) but not of subsection 4(b) because, without any information regarding the appellant's "restrictions", the ministry cannot determine that the appellant's medical condition "is a barrier that precludes the person from searching for, accepting or continuing in employment."

In his Notice of Appeal dated January 11, 2016, the appellant stated that the psychiatrist advised him that he would have included the restrictions from the PWD [application] on that form as well and that he only completed the part that related to the denial, which was "medical conditions". The psychiatrist offered to provide a letter indicating that it was unclear that the PWD and the PPMB applications would not be used together to make a decision.

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PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's determination that it does not have enough information to determine that the appellant's medical condition is a barrier that precludes him from searching for, accepting or continuing in employment in accordance with section 2(4)(b) of the EAR and so cannot designate the appellant as a PPMB was reasonably supported by the evidence and/or a reasonable application of the legislation.

The criteria for being designated as a PPMB are set out in s. 2 of 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

(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.

THE APPELLANT'S POSITION

At the hearing the appellant was represented by his mother. She advanced two arguments. First, the

original ministry decision stated that the reason for the denial was because “In the opinion of the minister your medical conditions do not preclude you from all forms of employment as required under Employment and Assistance Regulation – Section 2(4)(b)”. In response to this specific reasoning regarding MR1, which did not address the issue of the physician writing “Nil” under “Restrictions”, the appellant sought a more thorough diagnosis and completed and submitted MR2. Had the ministry’s decision been more specific in this regard, the appellant would have insisted that the psychiatrist completing MR2 complete this section properly.

The second argument advanced by the appellant’s mother was that she had been advised by ministry staff to submit both her son’s PPMB and Persons with Disabilities (PWD) applications at the same time so that they could be considered together. She was under the impression, therefore, that the information contained in the PWD application, which is much more extensive than the PPMB application and deals in detail with the applicant’s restrictions, would be used to support the PPMB application.

THE MINISTRY’S POSITION

The ministry’s position is that with MR1 indicating “Nil” under “Restrictions, MR2 being left blank as to restrictions and no supporting documentation included with either, it simply does not have enough information to determine whether the appellant meets the legislative requirement that the appellant is precluded from searching for, accepting or continuing in employment.

The ministry acknowledged that there may have been some misunderstanding of its initial decision which did not specifically refer to the issue of “Restrictions”. The ministry also acknowledged that there may have been some misunderstanding in regards to how the ministry processes PPMB and PWD applications: as they are assessed completely separately and based on different criteria, the information in the appellant’s PWD application could not be used to support his PPMB application.

Consequently, based on the appellant’s MR1 and MR2, there is not enough information regarding the appellant’s restrictions for the ministry to be able to determine that he is precluded from searching for, accepting or continuing in employment.

THE PANEL’S DECISION

The panel notes that there does appear to have been some misunderstanding, and perhaps miscommunication, in this case but PPMB and PWD applications are two different processes with different criteria and the panel finds that the ministry reasonably based its decision for the PPMB application on the MR1 and 2 submitted by the appellant. Additionally, the information before the ministry at the time of the reconsideration decision regarding the appellant’s restrictions indicated “Nil” (MR1) or is left blank (MR2). In other words, either the appellant has no restrictions, or they are not described. Based on this lack of information, the panel finds it was reasonable for the ministry to decide that it did not have enough information to determine that the appellant’s medical condition is a barrier that precludes him from searching for, accepting or continuing in employment in accordance with section 2(4)(b) of the EAR.

Accordingly, the panel concludes that the ministry's decision that the appellant does not qualify for



PPMB designation was reasonable based on the evidence before it, and confirms the ministry's decision.