

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision dated January 7, 2016 made by the Ministry of Social Development and Social Innovation (the ministry) which determined that the appellant does not qualify as a Person with Persistent Multiple Barriers to Employment (PPMB) because:

1. she does not have an employability score of at least 15 as required by section 2(3)(a)(i) of the Employment and Assistance Regulation (EAR), and
2. the minister is not satisfied that the appellant has a medical condition that is a barrier that precludes her from searching for, accepting or continuing in employment in accordance with section 2(4)(b) of the EAR.

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 (MR) dated September 14, 2015 completed by the appellant’s physician indicating that the appellant suffers from PTSD Anxiety with an onset of 1979 and likely to continue for 2 or more years. Under “Treatment” the physician has written “N/A”. 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 “No physical restrictions”. 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 MR.
- (2) An employability screen completed by the appellant with a score of 13.
- (3) A letter (Letter) dated December 17, 2015 prepared by a community services organization on behalf of the appellant and completed by the appellant’s physician which lists six “Restrictions” experienced by the appellant and asks the physician to indicate either ‘yes’ or ‘no’ beside each. The physician has indicated ‘yes’ to each of the following:
  - i. Due to childhood trauma involving a motor vehicle accident, panic attacks are triggered intersections, traffic lights, vehicles on the road. This occurs as a driver and a pedestrian.
  - ii. Anxiety around germs, being around people who cough, sneeze, just smelling other people causes major anxiety.
  - iii. People being close to her, coming into her personal space causes panic attacks.
  - iv. Unfamiliar people, unfamiliar situations, surroundings increase anxiety causing panic attacks.
  - v. Hypersensitive to sounds, easily afraid, needs to be in complete control of her surroundings in order to manage anxiety attacks.
  - vi. Sciatic pain has been ongoing for many years. Flares up with cold or damp weather.The Letter contains a space for comments which has been left blank.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's determination that the appellant's medical condition is not a barrier that precludes her 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.

This was a written hearing.

**THE APPELLANT'S POSITION**

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In her appeal submission the appellant writes: "I do not have a grade 10. I have less than that. I have a hard time w/ the wording. I have education 9-10 modified. This would bring me to the needed 15 score."

### **THE MINISTRY'S POSITION**

In its written submission that ministry argues that the new information provided by the appellant regarding her education level was information that "was not before the ministry at the time of the reconsideration decision and should be considered new information by the tribunal."

The ministry indicates that it stands by its reconsideration decision in which it determined that the appellant met the requirements of subsection (2), but that with an employability screen score of 13 she did not meet the requirements of subsection (3) so that in order to qualify as a PPMB she 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 the appellant was currently enrolled and participating in an employment program in which she had completed 23 job search activities between December 1 and 15.

### **THE PANEL'S DECISION**

#### **Admissibility of New Evidence**

In accordance with section 24(2) of the Employment and Assistance Act, the panel may only admit information and records that were either before the ministry at the time of the reconsideration decision or are in support of information and records that were before the ministry at the time of the reconsideration decision.

The appellant's statement that she has not completed grade 10 is not information that was before the ministry at the time of the reconsideration decision. To be admissible, it must therefore be evidence in support of information that was before the ministry at the time of the reconsideration decision. In this case, the evidence clearly contradicts the information that was before the ministry at the time of the reconsideration decision and so cannot be in support of that information.

Based on this analysis, the evidence submitted by the appellant is not admissible.

#### **Reasonableness of the Ministry's Decision**

Based on the information before the ministry the appellant had an employability score of 13 and so did not qualify for PPMB under subsection 2(3). In order to qualify as PPMB she must therefore meet the requirements under subsection 2(4).

The ministry found that the appellant did not qualify under subsection 2(4) because it was not of the opinion that the appellant's medical condition is a barrier that precludes her from searching for, accepting or continuing in employment. This determination was based on the MR, which indicates "No physical restrictions" and the Letter which lists the appellant's "Restrictions".

The MR provides no information that would establish that the appellant's medical condition precludes her from searching for, accepting or continuing in employment. It simply states that she has PTSD and that she has no physical restrictions based on this condition. The Letter, while providing more information about the appellant's medical condition, again, does not provide any indication as to how these conditions are a barrier that precludes her from searching for, accepting or continuing in employment.

Finally, as the ministry points out, the appellant was actually currently enrolled and participating in an employment program at the time of the reconsideration decision in which she had carried out numerous job search activities. This *de facto* demonstrates that the appellant's medical condition is not a barrier that precludes her from searching for, accepting or continuing in employment.

Accordingly, the panel concludes that the ministry's decision that the appellant does not qualify for PPMB designation because she does not meet the requirements of paragraph 2(4)(b) of the EAR was reasonably supported by the evidence before it, and confirms the ministry's decision.