



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) Reconsideration Decision dated February 25, 2016, wherein the Ministry determined that the Appellant is not eligible for qualification as a person with persistent multiple barriers to employment (PPMB) because she did not meet all of the criteria under Section 2 of the Employment and Assistance Regulation. In particular, section 2(4)(b) was not met because in the opinion of the minister, her medical condition other than an addiction is not a barrier that precludes the appellant from searching for, accepting or continuing in employment.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) section 2; Schedule E

PART E – Summary of Facts

Information before the minister at reconsideration included:

- The Appellant's Medical Report – PPMB dated December 23, 2015, which states the primary medical condition as PTSD, clinically depressed, and the secondary medical condition as insomnia, panic anxiety. There is a notation "also has COPD" in the section headed "Prognosis". The section headed "Restrictions" has a notation "no physical restrictions".
- The Appellant's Employability Screen, undated, with a total score of 12.
- A Client Employability Profile dated December 24, 2015.
- A Persons with Persistent Multiple Barriers Decision Summary dated January 26, 2016.
- A copy of a letter from the Ministry to the Appellant dated January 26, 2016 informing her of their decision.
- A copy of a letter to the Appellant from the Ministry dated December 8, 2015 advising her of an eligibility review of her PPMB status.
- A copy of a letter to the Appellant from the Ministry dated October 22, 2015 advising her of an eligibility review of her PPMB status.
- A copy of a prescription form in the Appellant's name dated February 23, 2015.
- A copy of a medical imaging report in the Appellant's name dated November 20, 2015, stating alignment of the spine is normal, mild scattered disc space narrowing, mild degenerative changes, vertebral body heights normal with no compression fractures, no paraspinal abnormalities.
- A copy of a note To Whom it May Concern from the Appellant's physician dated February 23, 2016 stating that the Appellant has no required physical limits due to her medical conditions but she is limited by pain and shortness of breath in her daily living activities, she gets short of breath walking a block, her level of anxiety can also limit her – she has to avoid situations that make it worse, "in my opinion she is disabled and unable to work".
- The Appellant's Request for Reconsideration signed February 23, 2016 with attachment.
- A copy of the Appellant's Medical Report – Employability dated December 17, 2010, which states the primary medical condition as major mood disorder, and the secondary medical condition as generalized anxiety disorder, COPD. The section headed "Restrictions" has a notation "must avoid infections, problems with handling stressors of daily living".
- A copy of the Appellant's Medical Report – Employability dated January 24, 2012, which states the primary medical condition as major mood disorder, and the secondary medical condition as anxiety disorder, COPD. The section headed "Restrictions" is blank.
- A copy of the Appellant's Medical Report – Employability dated January 5, 2014, which states the primary medical condition as asthma and COPD, and the secondary medical condition as mood disorder, anxiety and panic disorder. The section headed "Restrictions" has a notation "mood fluctuations, easily overwhelmed, shaky, emotional lability, stress easily overwhelms her".

At the hearing, the Appellant referred to her history as having been qualified for PPMB for six years and referred to the medical reports included with her Request for Reconsideration. She referred to her doctor's letter of February 23, 2016 in which the doctor wrote "disabled and unable to work". The Appellant stated that she has had asthma for many years and now has COPD. She stated that she has no stamina, her thinking skills are affected by panic, she takes a long time to complete tasks due to breathing difficulties and she has recently been diagnosed with arthritis in her spine, and she cannot lift, bend or reach. The Appellant stated that she has no idea when her employability screen was completed, but she was not interviewed. The Appellant reviewed the questions on the employability screen with the Panel. Her answers were as recorded by the Ministry.

The Ministry responded that they look at the legislative requirements for qualification for PPMB and a review is done every two years. The Ministry noted that the Appellant scored 12 on the employment screen and therefore had to meet the standard of being precluded from searching for, accepting or continuing in employment. The Ministry stated that the Ministry makes the decision as to whether an applicant meets the



legislative requirement about whether the medical condition is a barrier. In response to questions from the Appellant, the Ministry stated that her previous employment screens were not available for comparison. In response to questions from the Panel, the Ministry stated that more detail is needed about how the Appellant's conditions restrict her employability.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry decision that the Appellant is not eligible for qualification as a person with persistent multiple barriers to employment (PPMB) because she did not meet all of the criteria under Section 2 of the Employment and Assistance Regulation. In particular, section 2(4)(b) was not met because in the opinion of the minister, her medical condition other than an addiction is not a barrier that precludes the appellant from searching for, accepting or continuing in employment.

Legislation

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,

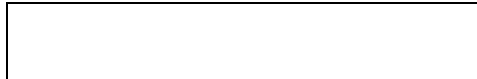
- (i) has continued for at least one year and is likely to continue for at least 2 more years, or
(ii) has occurred frequently in the past year and is likely to continue for at least 2 more years,
and

(b) in the opinion of the minister, is a barrier that precludes the person from searching for, accepting or continuing in employment.

Schedule E

Employability Screen

Number	Criteria	Category of Response	Score
1	What is the person's age?	(a) under 19 (b) 19 to 24 inclusive (c) 25 to 49 inclusive (d) 50 to 65 inclusive	0 1 0 0
2	Apart from the current application, how many times has the person been on Income or Social Assistance anywhere in Canada in the last 3 years?	(a) never (b) 1 to 3 times (c) more than 3 times	0 1 3
3	What is the total amount of time the person has spent on Income or Social Assistance in the last 3 years?	(a) less than 2 months (b) 2 to 12 months (c) more than 12 months	0 3 7
4	What is the highest level of education the person has completed?	(a) post-secondary program — degree or diploma (b) some post-secondary (c) high school/GED (d) grade 10 to grade 12 (e) less than grade 10 (f) trade certificate	1 0 1 3 0
5	What is the total amount of time the person has spent in paid employment over the last 3 years?	(a) more than 12 months (b) from 3 to 12 months (c) under 3 months (d) none or very limited work experience (e) volunteer work only	0 1 2 4 3
6	What is the person's English speaking ability or literacy level?	(a) good working knowledge of English (b) English as a second language (ESL) or in need	0 3



		of English skills training	
TOTAL			

The Appellant’s position is that she has met the requirements for qualification as PPMB for the past six years and her condition has become worse, therefore she must meet the criteria now. The Appellant argued that her employability screen score must have been higher in the past.

The Ministry position is that the Appellant’s physician has not described the Appellant’s restrictions to employment as a result of her medical conditions that preclude her from searching for, accepting or continuing in employment. As a result, the Ministry found that the Appellant does not meet the legislative criteria for qualification as PPMB.

The Appellant scored less than 15 on the employability screen, which she challenged, although her answers on reviewing the questions on the screen resulted in a score of 12 or 13. The Ministry therefore applied the criteria in s. 2(4) EAR, which requires that in the opinion of the minister the person’s medical condition be a barrier that precludes the person from searching for, accepting or continuing in employment. The Appellant argued that she is unable to work because of breathing difficulties, medications that cause sedation, PTSD and anxiety and arthritis. The panel 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.

In the Medical Report – PPMB dated December 23, 2015, the Appellant’s physician wrote “No physical restrictions” in the space provided for restrictions, and a note “Also has COPD”. In a note dated February 23, 2016, the physician wrote that the Appellant has no required [sic] physical limits due to her medical conditions but she is limited by pain and shortness of breath in her daily activities, giving an example of shortness of breath in walking a block and wrote that her level of anxiety can also limit her – she has to avoid situations that make it worse. The physician wrote “In my opinion she is disabled and unable to work”.

The Panel notes that it is the minister who makes the determination of whether a person’s medical condition is a barrier that precludes them from searching for, accepting or continuing in employment. The information provided by the Appellant’s physician does not address employment restrictions, and is somewhat contradictory in specifying “no physical restrictions” in both the original medical report and the subsequent note to the Ministry. Although the physician does state that in her opinion the Appellant is unable to work, she has not specified the employment restrictions that led to this conclusion or that would allow the Ministry to come to that conclusion.

As the determination of whether the Appellant’s medical condition meets the requirements of s. 2(4) EAR lies with the Ministry, the Panel finds that based on the evidence, the Ministry reasonably denied the Appellant’s application for qualification as a person with persistent multiple barriers to employment. The panel finds that the ministry reasonably relied on the information provided by the medical practitioner in the Medical Report dated December 23, 2015 and the additional letter dated February 23, 2016 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.

The Panel confirms the Ministry decision.