

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“the ministry”) reconsideration decision dated February 1, 2016 in which the ministry denied the appellant the Persons with Persistent Multiple Barriers to employment (“PPMB”) qualification because a physician did not confirm that the appellant’s medical condition is expected to last at least another two years and, in the ministry’s opinion, his medical condition does not preclude him from searching for, accepting, or continuing in employment, as required by section 2(4) of the Employment and Assistance Regulation (“EAR”).

PART D - Legislation

Employment and Assistance Regulation - EAR - section 2

PART E – Summary of Facts

The evidence before the ministry at the reconsideration included the following documents:

1. A Request for Reconsideration (“RFR”) signed by the appellant on January 21, 2016 with attached submission in which he stated that he had his previous doctor (“Dr. D.”) for ten years but she retired and he had to see another doctor (“Dr. K.”). Dr. K. has prescribed medication, but does not talk to the appellant about his anxiety. The appellant stated that Dr. K. has referred him to the psychiatrist who previously filled out the PPMB medical report (“the psychiatrist”). The appellant described having anxiety since he was a little kid, which became unbearable in his late teens. He was in and out of the hospital and found it hard to leave his home. He struggles with day to day activities including taking transit and being around a lot of people he doesn’t know. He does not sleep at night so a morning job is very hard for him. He had a job in the spring for a few months (in the afternoons) and he got a ride there and back. It was a short term job and has ended. The appellant provided a list of supports and treatments he has tried for his anxiety including counselling, medications, and exercise. He also provided argument that the panel will address in *Part F – Reasons*.

2. A letter to Dr. D. from a registered clinical counsellor dated October 8, 2006. The counsellor stated the appellant suffers from an anxiety disorder that is affecting his ability to work. He has suffered a low level of anxiety all his life and is genetically predisposed as well. The counsellor asked Dr. D. to pursue medication with the appellant so that his day to day functioning could improve.

3. Three PPMB medical reports from physicians who have been the appellant’s medical practitioner for over six months:

(a) Signed by Dr. D. on September 30, 2011 (submitted with the appellant’s RFR):

- Primary medical condition: General chronic anxiety disorder, date of onset, 1992.
- Secondary medical condition: None.
- Treatment: Medications (listed) and clinical counsellor. Outcome: left blank.
- The condition has existed for 18 years, the expected duration is 2 years or more, and the condition is not episodic in nature.
- Additional comments: Left blank.
- Restrictions specific to the medical condition: “Unable to use public transit, unable to work in small spaces, unable to work in groups, unable to work in AM.”
- Additional information/reports: “Enclosed.”

(b) Signed by the psychiatrist on November 19, 2013 (submitted with the appellant’s RFR):

- Primary medical condition: Chronic anxiety disorder, date of onset, “lifelong.” The condition is not episodic in nature.
- Secondary medical condition: Nil.
- Treatment: Ongoing psychotherapy: Outcome, “some stabilization” and medication (name), Outcome: “less anxiety.”
- The condition has existed for 20 years, the expected duration is 2 years or more, and the condition is not episodic in nature.
- Additional comments: Left blank.
- Restrictions specific to the medical condition: “Panic disorder, associated crowded malls, crowds, public transport: all problems.”

[]

(c) Signed by Dr. K. on October 15, 2015 (for the appellant's PPMB renewal application):

- Primary medical condition: Anxiety disorder, date of onset, 2005.
- Secondary medical condition: Left blank.
- Treatment: Medication (listed). Outcome: Left blank.
- The condition has existed for 10 years and the expected duration is less than 2 years. The condition is not episodic in nature.
- Additional Comments: "Anxiety disorder life long."
- Restrictions specific to the medical condition: "transit, public places."

4. A fax cover sheet to the ministry dated January 13, 2016, from the appellant's relative who acted as his advocate ("the advocate"). She requested a PPMB medical report form for the appellant, stating that Dr. K. will fill out a new form for the reconsideration.

5. The ministry's PPMB denial letter of December 17, 2015, informing the appellant that he no longer qualifies for the PPMB category and the reduction in his income assistance will take effect at the end of March. The appellant will be expected to find work and the ministry will work with him to develop an Employment Plan.

6. The appellant's Employability Screen, indicating a total score of 9. Points were awarded for being on income assistance for more than 12 months in the last 3 years, having a Grade 10 to 12 education, and having spent 3-12 months in paid employment over the last 3 years.

7. The appellant's Record of Employment ("ROE") dated October 28, 2015, showing that the appellant worked from May 26 to September 13, 2015 and indicating the appellant is not returning to the job for reason code "M – Dismissal."

8. A ministry monthly report form for the appellant dated December 17, 2015 in which he indicates he is looking for work, is still in need of income assistance, and has no employment income or other monies for the reporting period.

9. Information from the ministry's reconsideration record indicating the appellant has been in receipt of income assistance since 2010 and PPMB since 2012. His PPMB was approved at review in 2014 but denied at the next 2-year review in December 2015. On October 19, 2015, the ministry contacted Dr. K. for clarification regarding the duration of the appellant's condition. The ministry stated that Dr. K. reported he "did not believe he wrote life-long on the report and believes (the appellant's) condition will last less than 2 years." The ministry noted that the appellant was employed from May 26 to September 13, 2015. His last employment was in 2009 prior to his income assistance application in 2010.

Additional submissions

With the consent of both parties, the appeal proceeded by way of a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*. In an e-mail to the Tribunal, the ministry indicated its submission for the appeal will be the reconsideration summary.

In his Notice of Appeal dated February 9, 2016, the appellant stated his argument and attached his RFR submission, the PPMB medical reports from Dr. D. and the psychiatrist, and the letter from the counsellor. All of these documents were before the ministry at the reconsideration.

The appellant also attached a submission to the tribunal from his advocate, faxed on February 29, 2016. She described the history of the appellant's symptoms and how they affected his schooling and extra-curricular activities. By late adolescence he was having panic attacks while trying to hold a job and participate in the community. She stated that he took different types of medications over the years, was seen at the hospital emergency for panic attacks, and was followed by Dr. D. until she retired. As he did not know where to go for continuing care, he began seeing Dr. K. at a walk-in clinic, only a few times and mainly for prescriptions. Dr. K. referred the appellant to the psychiatrist at the appellant's request.

The advocate explained that they questioned Dr. K.'s information on the PPMB medical report that indicated the appellant's symptoms will not last for more than two years. They asked for a letter stating that the appellant will need more than two years to be mentally healthy. Dr. K. said he would "change the less than two years" but they received no letter. When the advocate called Dr. K.'s office, the office said the appellant would need to come in for another appointment. At that appointment, Dr. K. said "something along the fact that (the appellant) was not intelligent and he did not bring the form for him to fill out." The appellant explained that he needed a letter as he had already sent in his Notice of Appeal to the tribunal and could not get another medical form. The advocate reported that Dr. K. "just told him to leave" and "basically he told (the appellant) to get a job and that he doesn't or shouldn't have a problem." The advocate reported that the appellant has great difficulty sleeping and this is when his anxiety is at its worst. She further provided argument for the appeal regarding the appellant's every day struggle to obtain and keep a job.

Also submitted with the Notice of Appeal is an information article on Generalized Anxiety Disorder.

The panel finds that the advocate's submission substantiates the appellant's RFR in describing the history of his medical condition and effects on his life. The panel further finds that the article on Generalized Anxiety Disorder provides information about his diagnosis. The panel admits both documents under section 22(4)(b) of the *Employment and Assistance Act* as submissions in support of the information and records that were before the minister at the time the decision being appealed was made.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reconsideration decision of February 1, 2016 in which the ministry denied the appellant the PPMB qualification pursuant to section 2 of the EAR was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. The ministry found that a physician did not confirm that the appellant's medical condition is expected to last at least another two years and that, in the ministry's opinion, the appellant's medical condition does not preclude him from searching for, accepting, or continuing in employment.

The following sections of the legislation are relevant to the issue on appeal:

Employment and Assistance Regulation, section 2

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*, or
- (d) disability assistance or hardship assistance under the *Employment and Assistance for Persons with Disabilities Act*.

(3) The following requirements apply

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.

Subsection 2(2)

In order to be eligible for the PPMB qualification, the criteria in EAR subsection 2(2) must be satisfied. The ministry accepted that the criteria in subsection 2(2) were met, noting that the appellant has been on income assistance for at least twelve of the immediately preceding fifteen calendar months.

Subsection 2(3)

In addition to meeting subsection 2(2), the client must meet the requirements set out in subsection 2(3) **or** 2(4) depending on the Employability Screen score. The ministry determined that the appellant's Screen score is 9, and therefore found that the applicable section for assessment of the PPMB application is subsection 2(4) [rather than 2(3) which requires the score to be at least 15]. The appellant does not dispute his score of 9 and the panel finds the ministry reasonably determined that the applicable section for assessment of his PPMB application is EAR subsection 2(4).

Subsection 2(4)

The ministry's position is that the criteria in EAR subsections 2(4)(a)(i) and 2(4)(b) were not met.

Subsection 2(4)(a)(i)

The ministry argued that the criterion for duration of medical condition in subsection 2(4)(a)(i) was not met because Dr. K. indicated to the ministry that he does not expect the appellant's medical condition to continue for at least two more years.

The appellant's position is that Dr. K.'s medical report does not contain accurate information about his anxiety disorder. He argued that Dr. K. was "flippant in his assessment" when he checked the box indicating the expected duration of the condition is less than 2 years. The appellant noted that the other medical professionals, his long-time physician, Dr. D. who has retired and a psychiatrist, Dr. P., indicated his condition is life-long.

In the appeal submission, the appellant submits that the ministry's decision is "unfairly based on Dr. K.'s report of less than 2 years." The advocate notes that she questioned Dr. K.'s information by presenting him with the previous medical reports and asking why he disagreed with all the other doctors and why he felt the appellant should rely only on medication and be so quickly cured. She notes that neither she nor the appellant received an answer and they did not receive the letter Dr. K. agreed to provide.

Panel's decision

The panel notes that subsection 2(4)(a)(i) of the EAR requires two criteria to be met. The first requirement is for a medical practitioner to confirm that the person's condition has continued for at least one year. Dr. K. reported that the appellant's anxiety disorder has existed for 10 years and the ministry did not question that information. The second requirement in subsection 2(4)(a)(i) is for the

medical practitioner to confirm that the condition is likely to continue for at least 2 more years (where the condition is not episodic). Dr. K. indicated that the appellant's condition is not episodic in nature.

Regarding Dr. K.'s opinion on whether the condition is likely to continue for at least 2 more years, the panel notes a contradiction in the information in the PPMB medical report. While Dr. K. check marked "less than 2 years" for *Expected duration of medical condition*, he also noted under *Additional Comments*: "Anxiety disorder life long." The ministry's evidence is that when the ministry contacted Dr. K. for information, he reported that he did not believe he wrote "life-long" and he "believes the condition will last less than 2 years."

While the appellant argued that the previous PPMB medical reports confirm that his condition will continue for more than 2 years, the panel notes the ministry's information that PPMB is assessed every 2 years. Therefore, Dr. K.'s report was provided for the most recent assessment of PPMB eligibility and the panel finds that the ministry was reasonable to rely on Dr. K.'s report to determine whether the PPMB criteria are currently met.

However, the ministry also acknowledged the previous medical reports that indicated the appellant's anxiety condition is life-long. While the ministry contacted Dr. K. for more information, the panel is not satisfied that the ministry was reasonable in relying on the additional information from Dr. K. to find that the continuation criterion in subsection 2(4)(a)(i) was not met. The panel notes that the comment, "life-long" is in the same hand-writing as the rest of Dr. K.'s report and that the ministry did not provide any further explanation from Dr. K. on why in his report – as compared to the previous reports from Dr. D and the psychiatrist – he states that the appellant's condition will not persist beyond 2 years. The ministry's comment that Dr. K. "believes the condition will last less than 2 years" does not explain how or why the appellant's condition has improved or changed. The panel finds the ministry's determination that the appellant's condition will not continue for at least 2 more years was not reasonably supported by the evidence. The panel therefore finds that the ministry unreasonably determined that the duration criterion in EAR subsection 2(4)(a)(i) was not met.

Subsection 2(4)(b)

While the appellant argued that the ministry's denial of PPMB was unfairly based on the "less than 2 years" criterion in EAR subsection 2(4)(a)(i), the panel notes that the ministry also determined that subsection 2(4)(b) ["precludes" employment] was not met. The panel provides the following analysis for whether the ministry's determination was reasonable:

The ministry argued that the appellant managed 4 months of temporary employment and there is no evidence to support that he required only a modified or sheltered work environment to maintain his temporary employment. As a result, the ministry's opinion was that his medical condition no longer precludes employment.

While the appellant acknowledged that he did have a job in the spring of 2015 for a few months, he stated that his anxiety has "stopped him from having a normal life, and a normal job." He feels judged because of his illness when people think he is lazy but he would love to have a normal life and do things like other people. The advocate stated she has witnessed how hard it is for the appellant to attempt normal day activities and argues that his appeal "has nothing to do with the additional income

of 30 dollars a month that he would receive" but rather the ministry recognizing that the appellant's "panic attacks/anxiety are real in his every day struggle to obtain and keep a job and live a healthy life in time."

Panel's decision

EAR subsection 2(4)(b) requires the minister to have the opinion that the medical condition is a barrier that precludes the client from searching for, accepting or continuing in employment. The panel finds that the ministry reasonably determined that the appellant's medical condition does not preclude him from searching for, accepting, or continuing in employment. The ministry based its opinion on evidence that the appellant was working for several months. This is confirmed by the ROE that indicates he was working from May until September 2015. The evidence is that he re-applied for PPMB soon after he stopped working as the ministry indicates his application was initially denied in December 2015.

As noted by the ministry, there is no evidence that the appellant was able to work only in a modified or sheltered type of work environment to maintain his temporary employment. The appellant's evidence is that he had to work in the afternoons and get a ride as his anxiety is worse in the mornings and when taking public transit. There is no evidence that he was unable to continue in the position due to his anxiety condition.

While he reported that his job was short term and has ended, the ROE indicates he was dismissed from his employment. The panel notes that there is no indication he was dismissed for medical reasons. Furthermore, Dr. K. reported that the appellant's restrictions are transit and public places, and there is no evidence in this most recent PPMB medical report that these restrictions preclude him from searching for, accepting or continuing in employment. In fact, the ROE indicates the appellant is currently looking for work. Given the evidence that the appellant recently worked, did not stop working for documented medical reasons, and continues to look for work, the panel finds that the ministry reasonably determined that the appellant is not precluded from searching for, accepting or continuing in employment as required by EAR subsection 2(4)(b).

Conclusion

The panel finds that the ministry reasonably determined the criterion in subsection 2(4)(b) of the EAR has not been met, and therefore confirms the ministry's reconsideration decision as reasonably supported by the evidence pursuant to sections 24(1)(a) and 24(2)(a) of the *Employment and Assistance Act*.