

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated August 10, 2016 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 appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

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

- 1) Medical Report- Persons with Persistent Multiple Barriers (PPMB) dated March 23, 2016, in which the medical practitioner indicated, in part, that:
  - the appellant's primary medical condition is Major Depressive Disorder (MDD) with date of onset of "for over 5 years;"
  - there is no noted secondary medical condition;
  - the treatment described medications, which provide "limited response;"
  - this condition has existed for over 5 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 episodic in nature and the episodes are "recurrent" and are likely to recur "indefinitely."
  - when asked to describe the nature of any restrictions specific to the medical conditions, the physician wrote "this patient has difficulties in persisting with a job on a continual basis."
- 2) Employability Screen print-out for the appellant, noting a total score of "10." Points were awarded for being on income assistance for more than 12 months in the last 3 years and having a lower level of education;
- 3) PPMB Checklist dated June 7, 2016, noting a score on the employability screen of "14"; and,
- 4) Request for Reconsideration dated July 12, 2016, with attached letters from the appellant dated July 12 and 22, 2016.

In her Requests for Reconsideration, the appellant wrote that:

- She has an appointment with her psychiatrist [July 13, 2016] and she is being referred to some specialists with regard to her arthritis and knee problems (excessive swelling) and shoulder and hands.
- The company she has been working for has been up for sale. She is continuing her cleaning job there as well as at another cleaning company.
- She moved out on her own in April 2015 and she had to move again September 15, 2015.
- She looks after the house and yard when the landlord is away, 2 weeks on and 2 weeks off.
- When she gets stressed out, she cannot cope.
- Her psychiatrist insisted that she get a family doctor and not go to a walk-in clinic.
- She has now been accepted as a patient and the first appointment is July 29, 2016 and she expects referrals to other specialists.
- She would like the opportunity to submit new evidence to support her case.

### **Additional Information**

In her Notice of Appeal dated August 25, 2016, the appellant stated that she disagrees with the ministry's reconsideration decision and wrote that:

- She has an appointment on August 26, 2016 with her new family doctor for a full physical.
- She has been sent for X-Rays for both of her hands concerning her arthritis.
- There is a growth on her right hand impeding her movement.
- She had two rounds of blood tests and will receive the results tomorrow, as well as X-Rays for her right foot and both hands.

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- With regard to her knee and shoulder, her doctor will evaluate everything tomorrow.
  - The back of her knees swell and there is pain in her right shoulder. The pain is taking a toll on her body.

The ministry relied on its reconsideration decision, as summarized at the hearing. At the hearing, the ministry clarified that the reference in the PPMB Checklist to a score of “14” on the appellant’s employability screen is a typographical error and that the appellant’s score is “10.” The ministry also clarified that the definition in Section 2(4) of the Employment and Assistance Regulation for “precludes” employment is set out in the ministry policy, and a print out of this definition was provided.

***Admissibility of Additional Information***

The ministry did not object to the admissibility of the appellant’s information in her Notice of Appeal and the panel considered the information as corroborating the extent of the appellant’s impairment as referenced by the appellant in her Request for Reconsideration, which was 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 considered the ministry policy as part of the argument on behalf of the ministry.

## 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 10 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. At the hearing, the ministry referred to the policy that guides the ministry when determining if the nature of the employment is minimal or insignificant as to effectively "preclude" from employment to consider if: 1) the focus of the work is on socialization where the activities are highly supported or supervised, 2) the recipient is limited by the medical condition to very minimal hours on an infrequent basis (e.g. 1 to 2 hours of babysitting once or twice a month), 3) the recipient's involvement is very sporadic or casual (e.g. occasional lawn mowing or housekeeping; or delivering flyers once a month), or, 4) the work is more likely to be considered volunteering and compensation, if any, is minimal (e.g. covers the costs of volunteering).

The ministry argued that while it is accepted that the appellant has medical conditions that affect her employability, given the doctor's response to the questions regarding restrictions associated with her medical condition, that she "...has difficulties in persisting with a job on a continual basis", the ministry is not satisfied that the restrictions caused by her condition preclude her from searching for, accepting, or continuing all employment. The ministry wrote that the appellant continues to work for two employers and she does caretaking tasks in her landlord's absence and she has not provided any information to indicate that her employment is in a supported or sheltered-type work environment.

*Appellant's position*

The appellant's position is that her employment has been in a sheltered work environment since gardening allows her to sort through the issues on her mind and she does not have a lot of support

that she would if family was around. The appellant wrote that when she gets stressed out, she cannot cope. The appellant wrote in her Notice of Appeal that she has been sent for X-Rays for both of her hands concerning her arthritis, there is a growth on her right hand impeding her movement, the back of her knees swell, and there is pain in her right shoulder. The appellant wrote that the pain is taking a toll on her body.

#### *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 March 23, 2016 that the appellant is diagnosed with a primary medical condition other than an addiction, namely MDD, which she has had for over 5 years, and there is no secondary medical condition set out. Although the appellant wrote that she experiences pain from conditions other than her primary medical condition and that further reports will be forthcoming, there was no additional medical information provided on the appeal regarding her arthritis, the growth on her hand, or the swelling on the back of her knees. It is not disputed that the appellant's primary 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.

Regarding the ministry's assessment of the appellant's PPMB application under EAR subsection 2(3) as opposed to subsection 2(4), there was no evidence to show that the ministry made any error in calculating the Screen score of 10. The panel therefore finds that in the circumstances of the appellant, the ministry reasonably determined that an assessment of PPMB eligibility is to 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 in the PPMB Medical Report: "...this patient has difficulties in persisting with a job on a continual basis" and also that the medical condition is episodic in nature and is "recurrent." The appellant wrote that she cannot cope when she gets stressed out; however, she did not dispute the ministry's information that she had employment earnings in 10 of the last 11 months. The appellant argued that her employment has been in a sheltered work environment since gardening allows her to sort through the issues on her mind, and she does not have any family support. The ministry clarified at the hearing that a supported or sheltered-type work environment is where the nature of the employment is minimal or insignificant as to effectively "preclude" one from employment, and specific examples were provided from the ministry policy. The appellant wrote that she works in a cleaning job for a company and also looks after the house and yard when her landlord is away "two weeks on, two weeks off." The appellant did not provide information that she is supervised in her work, or that she works very minimal hours on an infrequent or sporadic basis, or that her compensation is minimal. 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*. The appellant's appeal, therefore, is not successful.