



### PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated August 9, 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).

Specifically, the ministry was not satisfied that the evidence establishes 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

EAR, Section 2

## PART E – Summary of Facts

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

1. Request for Reconsideration dated June 15, 2016, including the following documents:
  - Medical certificate (the certificate) signed by the appellant's physician and dated June 23, 2016 in support of the appellant's request for reconsideration. The certificate states that the appellant:
    - has been under the physician's medical care for more than 5 years;
    - has a long history of chronic fatigue syndrome and prolonged post traumatic stress disorder (PTSD) due to domestic abuse and dealing with a son with multiple mental health issues;
    - is primary care-giver to her granddaughter who has fetal alcohol syndrome;
    - has had very limited work experience since 2006 and has only completed up to grade 12;
    - has medical conditions that have continued for a few years and are likely to continue for at least 2 more years, and as a result has significant barriers to employment; and
    - is optimistic about the possibility of returning to work within the next few years;
  - Two page letter dated June 23, 2016 and signed by the appellant providing a detailed personal history and medical self-assessment and stating, in part, "I am looking forward to going back into upgrading and finding part time work. Eventually I may have the stamina to keep a full time position.";
  - Two consecutive elementary school final report cards, the most recent one dated June 29, 2016 with the following hand-written note beside the student's attendance record showing that the student was late for school 89 times that school year explaining that the appellant will make an effort to get the student to school on time next year, and the following hand written notation on attendance record section of the previous year's report card, dated June 25, 2015: "This is to show that I have a big struggle in the morning from fatigue just getting my granddaughter to school on time. An afternoon part time job is possible, but I fail to be able to manage the AM."; and,
  - One page undated article from an unidentified periodical with a section of the article entitled "How Stress Takes Its Toll" highlighted with a hand-written notation in the margin stating, in part, "This is exactly what happened to me...";
3. Ministry PPMB Medical Report form (the medical report) in the name of the appellant, completed by the appellant's physician and dated April 11, 2016 identifying the appellant's primary medical condition as chronic fatigue syndrome which is not episodic in nature with an onset of 20 years ago, and an expected duration of 2 years or more, with no secondary medical conditions identified. Treatment for the medical condition is identified as "multiple antidepressant trials" and "self regulated - can't tolerate exercise", with the section regarding "Restrictions" left blank;
4. Two page unsigned hand-written note completed by the appellant and dated April 20, 2016 stating that the chronic fatigue symptoms began when she was in her 20's and have got progressively worse over the years and that over the past few years she has been putting more effort into resolving her health issues. The note also provides a personal history of an abusive

relationship and identifies other medical conditions experienced by the appellant. It concludes with the statement that the appellant is determined to continue to do things that will bring wellness back into her life and that her goal is to be in a position to go back to school;

5. Employability Screen print-out for the appellant, noting a total score of "12." Points were awarded for being on income assistance for more than 12 months in the last 3 years, having a lower level of education and none or very limited paid employment over the past 3 years; and
6. PPMB Employment Checklist dated June 9, 2016, noting a score on the employability screen of "12".

In her Requests for Reconsideration, the appellant wrote that:

- She was currently beginning to "implement spurts of work" into her weekly routine because she needs the extra income. She had recently committed to \$200 per month payments for her granddaughter's orthodontic work which did not leave them enough money to eat; and
- If she was able to maintain her PPMB status it would give her time to "get 100% work ready" and provide a small amount of additional income to "get on top of the assistance (she) needed."

#### ***Additional Information***

In her Notice of Appeal (NOA) dated September 2, 2016, the appellant wrote a one page note dated September 7, 2016 stating that she disagrees with the ministry's reconsideration decision and that:

- When she attended her appointment with her physician to have the PPMB medical report completed her physician was not there and the person she spoke to in the doctor's office did not clearly explain the reason for the report to the appellant's physician;
- Although the appellant noticed that the form had not been thoroughly completed by her physician, the appellant decided to send the incomplete report to the ministry to ensure it was received before the deadline;
- The appellant's physician acknowledged that she had not included all of the relevant information about the appellant's medical condition in the report, and she would provide the additional information as soon as it was available;
- She had recently started taking the new medication in the hope that it might help with her pain and low energy levels and allow her to return to a "work ready place" so that she could get and maintain long-term part-time work; and
- Although there has been change and her progress is in the right direction, she is not 100% yet and there is no guarantee she ever will be.

Together with her NOA, the appellant provided:

- Lab requisition;
- Written note from the appellant's physician (the physician's note) with the words "chronic fatigue syndrome" and "fibromyalgia" and a margin note written by the appellant saying that the appellant's physician gave the note to the appellant for her information so that she could research it herself; and
- Prescription receipt.

A revised certificate was provided by the physician to the appellant on September 8, 2016 and faxed to the ministry on September 9, 2016. The addendum states “The (appellant) is being tried on a new medication which may help with her chronic fatigue symptoms. At present unable to sustain any employment.” In addition, the physician deleted the following from the original version of the certificate dated June 23, 2016, which had been submitted with the request for reconsideration: “Moreover (the appellant) has had very limited work experience since 2006 and has only completed up to grade 12. (The appellant) has medical conditions that have continued for a few years and is likely to continue for at least 2 more years and as a result, she has significant barriers to employment.”.

### *The Hearing*

At the hearing, the appellant introduced the following additional information:

- Ministry of Children and Family Development (MCFD) child care subsidy medical condition form dated September 9, 2009;
- Health Authority (HA) medical imaging report dated January 15, 2012;
- Medical imaging facility X imaging report dated March 3, 2011;
- Bone mineral density assessment date April 29, 2011;
- Bone mineral density assessment date January 25, 2005;
- Community X hospital medical imaging report dated January 24, 2008;
- Page 1 of a 5 page lacunar stroke Wikipedia entry dated September 26, 2016;
- ICBC accident report dated November 23, 2015;
- Prescription for motor vehicle (MV) related injuries dated October 16, 2012;
- Two page list of health barriers to employment dated September 26, 2016; and
- Psychological and vocational assessment of a person with the same first name and birth date as the appellant but a different surname, with the appellant’s surname written by hand and a hand-written notation “back to my maiden name” appearing beside the subject’s name, dated April 12, 1999.

The appellant’s stated that she has significant medical conditions in addition to her physician’s primary medical diagnosis of chronic fatigue syndrome, and that, whereas her physician has indicated that the date of onset for her primary medical condition was 20 years ago, the date of onset was actually 30 to 40 years ago.

The appellant stated that she has had a long history as a victim of domestic abuse which has made it more difficult for her to deal with her fatigue and anxiety. She looks after her 12 year old granddaughter with fetal alcohol syndrome and worries that she may not be able to give her granddaughter all of the support she needs. She often doesn’t have the stamina or energy to get her granddaughter to school on time.

Several years ago the appellant was let go from a job after suffering from a stroke because she could no longer cope. She lost a second job several years later after her son was convicted of a serious criminal offence. She feels that there is no way any doctor, counsellor or any medications can take away the effect that life events have had on her. She usually can’t handle the medications her doctor prescribes because they makes her feel worse,

In recent months the appellant has worked hard to get better and by living a healthier lifestyle. She hopes to be able to design a work plan. She feels she will soon be able to work again on a part-time

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basis as long as she can find a part-time job with afternoon shifts as she is too tired to work in the mornings and has to get her granddaughter to school. She started a paper route last summer to get some part-time work and exercise. Her granddaughter helps her sometimes. She has a certificate in the health field and wants to go back to school to brush up on her first aid in hopes of getting part-time work as a health care-giver.

The ministry relied on its reconsideration decision, as summarized at the hearing.

### ***Admissibility of Additional Information***

The panel accepts the appellant's statement in the NOA as argument.

The ministry did not object to the admissibility of the addendum to the original letter provided by the appellant's physician and provided to the ministry on September 9, 2016. The panel considered whether the physician's assessment as to the appellant's ability to work in the original certificate ("she has significant barriers to employment"), which was before the ministry at reconsideration, was corroborated by the same physician's assessment in the September 9, 2016 addendum ("(she is) at present unable to sustain any employment") and determined that an inability to sustain any employment reflects a much different assessment. Consequently the panel considers the physician's statement that the appellant is "at present unable to sustain any employment" to be new evidence that was not 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 ministry did not object to the admissibility of the lab requisition, the physician's note or the prescription receipt. The panel considers the lab requisition and the prescription receipt to be confirmation of blood work and medication to treat the appellant's medical condition as diagnosed by her physician and therefore to be in support of information and records before the ministry at reconsideration. With respect to the physician's note, the panel determines that, while the diagnosis of chronic fatigue syndrome was information before the ministry at reconsideration, the diagnosis of fibromyalgia was new and therefore was not in support of information and records that were before the ministry at the time of the reconsideration and is not admissible.

The panel did not admit the information from the appellant regarding her psychological and vocational assessment as this information was not in support of the information and records before the ministry at reconsideration with respect to the chronic fatigue syndrome or PTSD diagnoses.

The panel admitted the information from the appellant in the form of the MCFD child care subsidy medical condition form, the HA medical imaging report, the medical imaging facility X imaging report, both bone mineral density assessments, the Community X hospital medical imaging report, the Lacunar stroke Wikipedia entry, the ICBC accident report, the prescription for MV related injuries and the appellant's list of health barriers to employment, as they support information previously self-reported by the appellant. However, with the exception of the description of "chronic fatigue" in the health barriers to employment, the panel assigned no weight to any of the information contained in those documents as they did not relate to the medical condition of chronic fatigue syndrome diagnosed by the appellant's physician and representing the primary medical condition affecting the appellant or the diagnosis of PTSD.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry reasonably concluded that the appellant did not meet all of the applicable statutory requirements of Section 2 of the EAR to qualify as a 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.

### *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 12 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.

Ministry policy is 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.

The ministry argued that while the appellant's physician stated that the appellant's long history of chronic fatigue syndrome and possible PTSD, in combination with other stress factors, have resulted in significant barriers to employment, Section 2(4) of the EAR states that the minister must be of the opinion that the applicant's medical condition precludes the applicant from searching for, accepting, or continuing all employment. The ministry argued that when the appellant was previously approved for PPMB, the appellant's physician had indicated that the appellant was "unable to work". The absence of such a restriction in the appellant's current PPMB medical report indicates a change in the appellant's condition, and without any current information from the appellant's physician relating to the restrictions caused by her medical conditions, the ministry is not satisfied that the appellant is precluded from searching for, accepting or continuing all employment as required by Section 2(4) of the EAR.

### *Appellant's position*

The appellant's position is that her physician has not accurately described the scope and extent of her medical condition and that she has significant medical impairments in addition to her physician's primary medical diagnosis. In addition, her medical condition has restricted her ability return to work on a regular basis.

The appellant feels she is approaching the point where she will be able to return to school to update her credentials and then to pursue part-time work, but until then she is unable to take on even part-time work on a regular basis, and without PPMB status she will not be able to afford to pay for the cost of her granddaughter's necessary orthodontic work and other necessities of life.

### *Panel decision*

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.

Regarding the ministry's assessment of the appellant's PPMB application under EAR subsection 2(3), there was no evidence to show that the ministry made any error in calculating the Screen score of 12. The panel therefore 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.

The panel notes that it is not disputed that the appellant's physician has provided a medical opinion, in the medical report dated April 11, 2016, that the appellant is diagnosed with a primary medical condition other than an addiction, namely chronic fatigue syndrome. Additionally, the physician subsequently included a diagnosis of PTSD. It is also not disputed that the appellant's 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. Therefore the requirements set out in Section 2(4)(a)(i) and (ii) have been met.

Section 2(4)(b) of the EAR requires that, in the opinion of the minister, the medical condition referred to in Section 2(4) of the EAR must be a barrier that precludes the person from searching for, accepting or continuing in employment. The panel finds that the appellant's physician's statement in the certificate dated June 23, 2016, which says that the appellant "has significant barriers to employment" and which was before the ministry at reconsideration, falls short of *precluding* a person from searching for, accepting or continuing in employment (the requirement set out in Section 2(4)(b) of the EAR).

Additionally, the "Restrictions" section of the medical report dated April 13, 2016 and completed by the appellant's physician has been left blank. Therefore, either the appellant has no restrictions, or the appellant's physician has neglected to describe them. The ministry argues that as restrictions were identified in the medical report provided in support of the appellant's past application for PPMB status and none are identified in the current medical report, there has been a change in the appellant's condition. This conclusion is supported by the appellant's own information at reconsideration that she has had some improvement and that she has a paper route, which she confirmed in her written and oral appeal submissions. Based on the above analysis, 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 precludes her from searching for, accepting or continuing in employment in accordance with section 2(4)(b) of the EAR.

### *Conclusion*

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the appellant. The panel therefore confirms the ministry's decision pursuant to Sections 24(1)(a), 24(1)(b), and 24(2)(a) of the *Employment and Assistance Act*, and the appellant is not successful in her appeal.