

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development and Social Innovation (“the ministry”) dated March 15, 2017, which determined that the appellant is not eligible for persons with persistent multiple barriers (PPMB) designation renewal because she did not meet all required criteria under Section 2 of the Employment and Assistance Regulation (EAR). The ministry determined that neither Section 2(3) or 2(4) were met.

The ministry determined that the appellant met Section 2(2) as she has been a recipient of income assistance for at least 12 months of the preceding 15 calendar months. As well, the ministry determined that the appellant scored 12 on the employability screen in Schedule E, not meeting the required minimum of 15 under Section 2(3). As a result, the appellant was assessed under Section 2(4) of the EAR. The appellant has met Section 2(4)(a) as it has been established that, in the opinion of a medical practitioner, she has a medical condition that has continued for at least one year and is likely to continue for at least 2 more years. Section 2(4)(b) was not met because, in the opinion of the minister, the appellant’s medical condition is not a barrier that precludes the appellant from all types of employment.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 2.

PART E – Summary of Facts

The information before the ministry at reconsideration included the following:

1. Request for Reconsideration dated March 9, 2017.
2. A letter (undated) written by the appellant's advocate, which stated:
 - The ministry has erred in its February 10, 2017 letter.
 - The appellant's employability score should be 15 because she has been on income assistance for more than 3 years, and has needed income assistance more than 3 times in the past 3 years.
 - The appellant is consulting with her family doctor to confirm the severity of her condition.
3. A submission describing the appellant's condition(s) and the impact of the disability on her life, prepared and signed by the advocate and signed by the appellant to confirm its accuracy.
 - The submission indicates that the appellant suffers from major depression and dyslexia.
 - The submission indicates that the appellant's disability, which also includes crippling anxiety, adversely impact the appellant's ability to manage personal care, meal preparation, shopping, basic housecleaning, management of finances, use of public transportation, and social functioning.
2. PPMB renewal request letter dated August 3, 2016 from the ministry indicating that the appellant's PPMB status review was due by November 2016, with the completed PPMB Medical Report required by September 2, 2016.
3. PPMB renewal request reminder letter dated September 6, 2016 indicating that the ministry had not yet heard from the appellant and the completed PPMB Medical Report was required by October 7, 2016.
4. PPMB Expiring letter dated October 11, 2016 indicating that the appellant had not provided the PPMB Medical Report and ongoing eligibility could not be determined. The appellant's income assistance would be reduced in January 2017.
5. PPMB Medical Report, dated December 15, 2016, indicating that:
 - The physician is a general practitioner, locum for Dr. [name omitted], who has been the patient's medical practitioner for 6 months or less and has examined previous medical records.
 - The appellant suffers from Dyslexia (onset 1985).
 - Treatment includes GT hiring – reading assistance.
 - The condition has existed since birth and is expected to continue for 2 years or more.
 - The medical condition is not episodic in nature.
 - The restrictions specific to the medical condition are “needs information read to me.”
6. PPMB Employability Screen, indicating that the appellant's employability screen score is 12.
7. PPMB denial letter dated February 10, 2017, indicating that the appellant no longer meets the requirements for the PPMB category because the requirements of Section 2(3) and 2(4)(b) have not been met.
8. PPMB decision summary indicating:
 - Medical conditions of dyslexia.
 - Treatment: GT Hiring – reading assistance.
 - Outcome: none cited.
 - The condition has existed for more than one year.
 - The condition is expected to last 2+ years.
 - The condition is not episodic and has existed since birth.
 - The restriction listed by the physician is “needs information read to her.”
 - The appellant's employability screen score is 12.
 - The condition and restrictions may create some limitations in certain circumstances but do not preclude all forms of employment (such as part-time, no reading) or employment related activities (such as job programs, retraining).

- Not eligible for PPMB.

Notice of Appeal

In the Notice of Appeal, dated March 22, 2017, the appellant provided the following information:

- The ministry's determination that my conditions do not preclude me from employment is unreasonable.
- Supporting documents to follow.

Appellant Submission

Prior to the hearing the appellant submitted a letter from a medical doctor, which included the following information:

- The appellant suffers from severe dyslexia since childhood and has shown only minimal improvement. It is impossible to read and causes difficulty with verbal communication. She is precluded from seeking work through most means and effectively precluded from almost all forms of employment.
- The appellant has been diagnosed with depression and anxiety, causing further difficulty with seeking any and all employment. The combination of dyslexia and anxiety cause extreme stress in any work environment. She is only able to work for limited times under special circumstances.

At the Hearing

Appellant

The appellant and her advocate explained the difficulties that the appellant has had maintaining employment. The appellant's information is summarized here and the advocate's arguments are discussed in Part F (below).

The appellant stated that she has struggled with reading since school and as an adult she is trying to learn. The appellant explained that she moved around a lot when she was in school and did not ever get consistent support with reading. She also described having difficulty with florescent lights at school and needing to spend time in the first aid room. She is trying to improve her reading skills with her school age son and through the ministry jobs program. She explained that she was tested for Irlen Syndrome and has discussed this with her GP.

The appellant described her employment history as mostly involving fast food jobs. She has had difficulties sustaining employment in these positions because they require a person to be fast with customers and people cannot deal with how slow she is, so customers complain. The appellant stated that at one position, in which she was employed for about 6 months, it would take her an hour to count the cash box and this is a task that should take 10 minutes; she had her hours reduced at this position because of this difficulty. The appellant explained that handwriting is difficult for her because everyone writes differently and that she writes phonetically, so her writing is also difficult for others to read. The appellant stated that she hasn't had trouble getting jobs, but that she has had breakdowns at work and anxiety about people judging her and wouldn't be able to keep going back. The appellant explained that she also has difficulty with other activities, such as going to the grocery store and using the debit machine. She explained that she must sometimes leave the store and return later when it is less busy due to her anxiety.

The appellant explained that she has suffered from depression all her life. One of her parents committed suicide when she was very young. She had engaged in self-harm as a child and has suffered from two breakdowns as a teen and young adult, both of which caused her to lose significant

weight and pull out her hair. She doesn't know when her GP diagnosed her depression as she hid it for a long time. The appellant states that this condition is not being treated, she deals with it herself because she doesn't want to take pills due to medication allergies.

Ministry

At the hearing the ministry began by noting that the appeal is of the reconsideration decision and not the original decision. The ministry went on to say that the appellant's first PPMB application was approved by the adjudicator and not on reconsideration or appeal. The ministry explained that at renewal, the first application is usually looked at, and the application on renewal is very similar to that first application. The ministry stated that on the appellant's first application the employability score was also under 15 and her application was not assessed on that basis.

The ministry went on to say that while the appellant's depression and anxiety were known at reconsideration, part of the reason she was not successful was because there was no diagnosis presented. The ministry acknowledged that the letter in the Appellant Submission provides this diagnosis. The ministry stated that the combination of the information provided at appeal and at reconsideration is much stronger. The ministry described the importance of the information provided by the doctor, explaining that it relies heavily on the information and opinion provided by the doctor in making its assessment. The ministry suggested that if all the information had been available at reconsideration, the decision could or would have been different.

Admissibility of Additional Information

The ministry did not object to the information provided in the Appellant Submission or at the hearing.

The panel determined the information contained in the Appellant Submission is admissible under s. 22(4) of the *Employment and Assistance Act* as it was in support of the evidence before the minister at reconsideration. Specifically, the Appellant Submission consists of a letter from the appellant's GP, which confirms the diagnoses the appellant had asserted at reconsideration. The panel finds that the information provided by the appellant at the hearing is in support of the information and records before the ministry at reconsideration, as the information provided tends to go to the difficulties resulting from the appellant's medical conditions, which was raised at reconsideration. The panel therefore admits this information as evidence under section 22(4) of the *Employment and Assistance Act*.

The information provided by the appellant's advocate is accepted as argument.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the ministry's reconsideration decision, which held that the appellant does not qualify as a person with persistent multiple barriers to employment because she did not meet all required criteria under Section 2 of the Employment and Assistance Regulation. More specifically, the issue is whether the evidence reasonably supported the following determinations or whether they were a reasonable application of the legislation in the appellant's circumstances:

The ministry determined that the appellant had not demonstrated that:

- Section 2(4)(b) was met, because in the opinion of the minister, her medical condition is not a barrier that precludes the appellant from searching for, accepting or continuing in employment
- Section 2(3) was met because the appellant scored 12 on the employability screen in Schedule E, and did not meet the required 15 under Section 2(3)(a)(i).

The Regulation provides:

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.

Panel Decision

PPMB qualification requires that a person must satisfy EAR section 2(2) and either section 2(3) or 2(4). In this instance, the ministry determined that the appellant scored 12 on the employability screen in Schedule E and as such does not meet the requirements of section 2(3); therefore, the appellant's PPMB renewal must be assessed under Section 2(4).

At reconsideration the appellant's advocate argued that the appellant's employability score should be 15 rather than 12 because she had been in need over the past 3 years and longer. This argument was not successful at reconsideration. In the reconsideration decision, the ministry stated that the question at issue referred to the number of separate times a person has been in receipt of assistance, not including the current time, in the past three years and that the appellant had been in receipt of assistance continuously since her file had opened. There were no other separate occasions of receipt during this period. At reconsideration, the appellant's employability score was determined to be 12. The appellant did not contest this determination on appeal. As such, the employability screen score is not in issue and the panel need not make a determination on its reasonableness.

Section 2(4)(a) of the legislation requires that a person has a medical condition, confirmed by a medical practitioner, that in the opinion of a medical practitioner has continued for at least one year and is likely to continue for at least two more years. The panel notes that in the appellant's PPMB Medical Report dated December 15, 2016, appellant's primary medical condition is listed as dyslexia, and no secondary conditions are noted. This condition is reported as chronic, has persisted for since 1985 and is expected to continue for 2 years or more. The appellant's treatment is indicated as reading assistance. The panel further notes that the physician who completed the PPMB Medical Report was a locum for the appellant's GP. This physician indicated that he has been the appellant's medical practitioner for 6 months or less and indicates that an examination of previous medical records was conducted. The Appellant Submission on appeal consisted of a letter from her GP, indicating that the appellant has also been diagnosed with depression and anxiety. However, there is no information provided in this letter about how long these conditions have persisted or are likely to persist. As well, there is no information in the letter regarding treatment or chronicity. At the hearing, the appellant stated that she has suffered from depression since she was a child but that she doesn't know when her doctor became aware of the condition and it is not being treated. After reviewing the information provided, the panel finds that while the appellant had indicated at reconsideration that she suffers from depression and anxiety, a medical practitioner had not confirmed a diagnosis at the time of the reconsideration decision. The panel finds that the ministry's determination that these conditions and their resulting restrictions could not be included in the PPMB assessment was reasonable.

Section 2(4)(b) requires that, in the opinion of the minister, the medical condition(s) is a barrier that precludes the person from searching for, accepting or continuing in employment. The restriction noted in the PPMB Medical Report with respect to the diagnosed condition of dyslexia is that the appellant needs information read to her. At reconsideration, the ministry concluded that this restriction would not preclude the appellant from all forms of employment. The appellant's advocate argued that the ministry position is that there are some jobs the appellant can do, but that this is not true because all jobs require reading to some extent even if an employer is willing to accommodate the appellant. The appellant can get a job but then cannot keep going back due to emotional difficulties; this is something that repeatedly happens. The advocate also argued that the doctor's letter in the Appellant submission provides narrative about the impacts of dyslexia and anxiety on a day-to-day basis. The advocate also clarified that the letter was written by the appellant's regular GP, while a locum had completed the PPMB Medical Report. The panel notes that the Appellant Submission does contain a statement about the appellant being restricted from seeking work through most means due to

dyslexia; however, this information was not available at reconsideration, and the appellant herself stated that she doesn't have difficulty getting jobs. The Appellant Submission also states that the combination of anxiety and dyslexia cause the appellant to fail to return to work. However, this information was not before the ministry at reconsideration, and as the panel has concluded above, the ministry's determination that depression and anxiety and their resulting restrictions could not be included in the PPMB assessment was reasonable. The panel acknowledges that the appellant has had PPMB qualification for previous years; nevertheless, the panel finds that the ministry's determination that the restriction noted would not preclude the appellant from all types of employment is reasonable.

The panel notes the ministry's suggestion that the reconsideration decision could or would have been different if all of the information had been available; however, the panel's task is not to make a new decision based on information that was not before the reconsideration officer. Rather the panel's task is to assess the reasonableness of the reconsideration decision in accordance with section 24(1) of the *Employment and Assistance Act*. The panel notes that the ministry has the option to pursue a Consent to Dismiss prior to the appeal taking place. The panel further notes that considering the ministry's comments at the hearing the appellant may wish to put all of her information, including that provided in the Appellant Submission, before the ministry.

Conclusion

Having reviewed and considered all evidence and relevant legislation the panel concludes that the ministry's reconsideration decision, which held that the appellant does not qualify as a person with persistent multiple barriers to employment because she did not meet all required criteria under Section 2 of the EAR, is reasonably supported by the evidence and a reasonable application of the legislation in the appellant's circumstances. The panel confirms the ministry's reconsideration decision. The appellant is not successful in her appeal.