

## **PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) reconsideration decision dated March 30, 2017 which held that the appellant was not eligible for persons who have persistent multiple barriers to employment qualification (“PPMB”) because he did not meet the eligibility criteria set out in s.2(3) or s.2(4) of the Employment and Assistance Regulation (“EAR”). Specifically, the Ministry found that the appellant had an employability score (“ES”) of less than 15 and should therefore be reviewed pursuant to s.2(4) of the EAR instead of s.2(3) of the EAR. When reviewing pursuant to s.2(4) of the EAR the Ministry found that it was not the medical practitioner’s opinion that the appellant had a medical condition that continued for at least one year or occurred frequently in the past year, and that would be likely to continue for more than 2 years. The Ministry was not satisfied that the appellant’s medical condition was a barrier that precluded him from searching for, accepting, or continuing in employment.

## **PART D – RELEVANT LEGISLATION**

s.2 of the Employment and Assistance Regulation (“EAR”)

## PART E – SUMMARY OF FACTS

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the EAA.

The evidence before the Ministry at reconsideration was:

A medical report dated November 15, 2016 and completed by the appellant's medical practitioner ("MR"). The MR lists the primary medical condition as anxiety and the date of onset as "years ago". The secondary medical conditions listed are non-insulin dependent diabetes mellitus ("NIDDM") with a date of onset as November 2016 and alcohol abuse with a date of onset as "years ago". The MR indicates that the current treatments are Zoloft and Melform which the appellant just started so the outcomes remain unknown. The MR indicates that the NIDDM is a lifelong condition and that the anxiety will be controlled if the appellant complies with treatment. The MR indicates that the appellant may need time off work for several weeks or up to 1 month and if he complies with treatment he should be fit for unrestricted work after that. The MR indicates that the restrictions are a temporary absence from work and that there are no long term restrictions.

An employability screen ("ES") completed by the appellant (undated but scanned and batched January 31, 2017) indicates that the appellant has not been on employment insurance in the past three years, is between the ages of 25 and 49, was on social assistance anywhere in Canada in the last three years more than 3 times, has an education level of less than grade 10, and has spent little or limited time in the last three years as employed. The total score on the ES is 17.

The appellant's request for reconsideration dated March 7, 2017 states that the medical practitioner's treatments for the appellant's depression and anxiety have not been effective. The appellant states that his medical practitioner did not review the appellant's past records which would show a lifetime battle with alcohol, anxiety, and depression. The appellant states that he was referred to a psychologist by his mental health and addiction counsellor. He states that he will not be able to see that psychologist until May. He states that the process [of dealing with the Ministry] has been causing him additional stress and has had a negative impact on his health where he has to watch his blood pressure from spiking which would be very serious for his condition. He states that he is a single father who has dependents that count on him and that this process [of dealing with the Ministry] has caused additional anxiety and depression.

A letter from the Health District's Mental Health and Addictions Services dated March 21, 2017 which states that the appellant has been participating in mental health and addictions services since Feb, 2017.

Also before the Ministry at reconsideration was the original decision of the Ministry dated February 2, 2017, the PPMB decision summary dated February 2, 2017, and the client employability profile dated February 1, 2017. None of these documents were referred to by the Ministry or by the appellant.

The appellant states in his Notice of Appeal dated April 21, 2017 that "I have not been able to get proper treatment from my doctor and I have asked for a referral to a psychiatrist to help me with deeper issues that I feel I need from a specialist and to force someone who can't function in society to do classroom and job training is consider cruel. Also set me up to fail."

The panel determines that the additional evidence in the Notice of Appeal is admissible pursuant to s.22(4) of the EAA as it is in support of the records before the Ministry at reconsideration.

## PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry's decision to deny the appellant a PPMB qualification is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was it reasonable for the Ministry to determine that:

- 1) the appellant should not be assessed pursuant to s.2(3) of the EAR for failing to score at least 15 on the ES;
- 2) the appellant did not have, in the opinion of a medical practitioner, a medical condition which has continued for at least one year (or had occurred frequently in the past year) and is likely to continue for 2 or more years; and
- 3) the appellant's medical condition was not a barrier that precluded him from searching for, accepting, or continuing in employment.

The legislation 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.

[en. B.C. Reg. 368/2002.]

**Position of the ministry:**

The Ministry finds that in order for the appellant to meet the PPMB qualification, the appellant must meet the requirements set out in section 2(2) of the EAR and the requirements set out in either of section 2(3) or 2(4) of EAR. The Ministry finds the appellant has been a recipient of income assistance for at least 12 of the preceding 14 calendar months and therefore meets the requirement of s.2(2).

The Ministry argues that the appellant does not meet the requirements of s.2(3) of the EAR because the appellant incorrectly calculated his ES score and that his ES score is actually 14 instead of 17. In response to the question: apart from the current application how many times have you been on income or social assistance anywhere in Canada in the last three years? The appellant answered C – “more than three times”. The Ministry states that the correct answer was A – “never” and that the answer would bring his score from 17 to 14.

After finding that the appellant could not be considered under s.2(3) of the EAR, the Ministry reviewed the requirements of s.2(4) of the EAR. The Ministry finds that the appellant’s alcohol addiction is not considered a medical condition pursuant to s.2(4) of the EAR. With regard to the appellant’s NIDDm the Ministry finds that the condition has not existed for more than 1 year and therefore finds the NIDDm does not meet the requirement of s.4(a)(i) of the EAR. With regard to the appellant’s anxiety, the Ministry finds that the appellant’s anxiety is related to his addiction and that the appellant’s medical practitioner does not confirm that the anxiety will continue for more than 2 years.

The Ministry notes that the appellant’s medical practitioner does not refer to any restrictions that would indicate that this medical conditions preclude the appellant from searching for, accepting, or continuing employment and that the medical practitioner only notes that the appellant may need up to one month off work and that the appellant does not have any long term restrictions.

The Ministry finds that although the appellant has medical conditions, the appellant is not precluded from searching for, accepting or continuing employment.

**Position of the Appellant:**

The appellant argues that his medical practitioner did not properly treat him and that he should have been treated by a psychiatrist. He argues that forcing someone who cannot function in society to do classroom and job training is cruel and will set him up to fail. He argues that his doctor should have checked his past records which would show a lifetime battle with alcohol, anxiety and depression. The appellant states that his medical practitioner didn’t even know that he had NIDDm. The appellant doesn’t provide any evidence about the length of time he has had NIDDm or provide any evidence about the effects of his NIDDm on employment.

**Panel Decision:**

The evidence before the panel is that the appellant has been on social assistance continuously for a period of more than three years. Therefore, the panel finds the ministry’s determination that the appellant’s ES was 14 instead of 17 was reasonable and that it was reasonable for the Ministry to make the determination to assess the appellant pursuant to s.2(4) of the EAR instead of s.2(3) of the EAR.

The panel finds that there was no evidence from the medical practitioner that the appellant’s NIDDm has continued for at least one year or that it has occurred frequently in the past year. The only evidence with regard to the NIDDm was that its onset was November, 2016. The evidence in the MR is that the NIDDm will continue indefinitely. S.2(4)(a) is clear that the Ministry must be presented with the opinion of the medical practitioner that the condition has continued for at least one year or has occurred frequently in the past year. The medical practitioner in this case did not provide that opinion with regard to the appellant’s NIDDm.

The panel finds that there was no evidence from the medical practitioner that the appellant’s anxiety would continue for at least 2 more years. The only evidence with regard to the anxiety was that its onset was “years ago” but that it could be controlled if the appellant complies with treatment. The medical practitioner did not comment on the appellant’s ability to comply with treatment or give any opinion as to how likely it would be for the appellant to comply with treatment (thereby controlling his anxiety). Section 2(4)(a) of the EAR is clear that the Ministry must be presented with the opinion of the medical practitioner that the medical condition is likely to continue for at least 2 more years. The medical practitioner in this case did not provide that opinion with regard to the appellant’s anxiety.

There was no evidence from the appellant or the medical practitioner that the NIDDM would be a barrier to the appellant's employability. The panel finds that because the Ministry did not have any evidence before them about the effects of the NIDDM on the appellant's employability, it was reasonable for the Ministry to conclude that the NIDDM is not a barrier that precludes the appellant from searching for, accepting, or continuing employment.

The appellant argued that he cannot function in society and that requiring him to do classroom and job training would be setting him up to fail. There was no evidence from the medical practitioner that the appellant had any restrictions from the anxiety that would preclude him from searching for, accepting or continuing in employment. The evidence of the medical practitioner was that if the appellant complies with treatment he would be fit for unrestricted work and that there are "no long term restrictions" to the appellant's anxiety. The panel finds that it was reasonable for the Ministry to accept this evidence of the medical practitioner and make the determination that the appellant's anxiety was not a barrier that precludes the appellant from searching for, accepting, or continuing employment.

**Conclusion:**

The panel finds the Ministry's decision to deny the appellant a PPMB qualification was reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the Ministry's decision.