

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision by the Ministry of Social Development and Poverty Reduction (the ministry) dated April 26, 2018 which held that the appellant does not qualify as a person with persistent multiple barriers (PPMB) to employment because she did not meet all the criteria under Section 2 of the Employment and Assistance Regulation (EAR). In particular Section 2(4)(b) was not met because in the opinion of the minister, her medical condition other than an addiction is not a barrier that precludes the appellant from searching for, accepting or continuing in employment.

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. Also, the ministry determined that the appellant scored 11 on the employability screen as set out in Schedule E, not meeting the required 15 under Section 2(3) and was subsequently assessed under Section 2(4) of the EAR. The ministry found that the appellant has met Section 2(4)(a) as the appellant's physician has confirmed that the appellant's condition has continued for at least 1 year and is likely to continue for at least 2 more years.

PART D – RELEVANT LEGISLATION

Employment and Assistance Regulation (EAR), Section 2.

PART E – SUMMARY OF FACTS

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

- Two (2) Medical Reports – Employability, dated August 30, 2012 and April 3, 2013.
Both reports are completed by the appellant's physician who has known the appellant for over 6 months and reports her primary medical condition as Anxiety/Depression with an onset of February 2011. Under restrictions, it is noted that the appellant's teenage daughter has severe behavioural issues and that her son has ADHD.
- Four (4) Medical Reports - Persons With Persistent Multiple Barriers (PPMB) completed by the appellant's physician who has known the appellant for over 6 months and which are dated as follows:
 - 1) April 1, 2014, Primary medical condition - Anxiety
Secondary medical condition - PTSD
 - 2) January 5, 2016, Primary medical condition – PTSD
Secondary medical condition - Anxiety (social)
 - 3) December 20, 2017, Primary medical condition - Dental Abscess
Secondary medical condition - Anxiety Disorder/PTSD
 - 4) April 18, 2018, Primary medical condition - PTSD/Anxiety
Secondary medical condition - Dental Abscess

Date of Onset for medical conditions of PTSD and Anxiety are noted as “years”.

Under treatment/remedial approaches that have been tried to date or are expected in the future for Anxiety and/or PTSD medical conditions; the physician indicates counselling and for the dental abscess, the physician indicates dental extractions and antibiotics.

Under restrictions specific to all the reported medical conditions, the physician reports that the appellant's son has ADHD and of ongoing stresses with the appellant's teenage daughter.

- An undated Employability Screen with a Total Score of 11. These results correspond with Expected to Work (score 0-14) which are described as Immediately Employable/Employable with Short-Term Interventions.
- A Medical Report dated December 22, 2017 confirming a positive result of C Difficile (CD) for the appellant.
- A Prescription note dated April 18, 2018 from the appellant's physician indicating dental coverage for persons with persistent multiple barriers has been extremely stressful for the appellant. The physician reports that due to illness, the appellant was totally unemployable from November 15, 2017 until January 2018. The physician stresses a request for reinstatement of the appellant's coverage ASAP.
- The appellant's Request For Reconsideration dated April 18, 2018 in which she writes that her Primary Medical condition is PTSD not dental abscess and was indicated at the time as primary because she was acutely ill with an inflamed skull and on IV after which she got C Difficile.

In the Notice of Appeal, dated May 7, 2018, the appellant submitted that she was a previous recipient of PPMB and that her physician of 30 years completed the form and indicated by mistake that anxiety and PTSD were secondary medical conditions. The appellant states that she experiences PTSD and anxiety as her primary medical conditions.

Hearing

At the hearing the appellant testified that her long time doctor has corrected her last PPMB medical report and clarified that her primary conditions of PTSD and Anxiety have existed for over 10 years and that she was acutely ill in December 2017 due to a dental abscess and contracting C Difficile. The appellant stated that she was critically ill from C Difficile which is contagious and deadly and has additional stresses from the recent loss of her daughter. The appellant also asserts that the ministry speaks of medical conditions other than an addiction and that for the record she has never been addicted to drugs.

The ministry relied on the reconsideration decision.

PART F – REASONS FOR PANEL DECISION

The issue under 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 the criteria under Section 2 of the Employment and Assistance Regulation. In particular the appellant has not met Section 2(4)(b), because in the opinion of the minister, her medical condition other than an addiction is not a barrier that precludes the appellant from searching for, accepting or continuing in employment.

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. Also, the ministry determined that the appellant's score on the employability screen as set out in Schedule E, did not meet the required 15 under Section 2(3) and was subsequently assessed under Section 2(4) of the EAR. The ministry found that 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.

Relevant Legislation

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 (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. (B.C. Reg. 263/2002).

In accordance with the legislation to be designated as a PPMB the appellant must meet the all the criteria set out in Section 2, subsection (2) and subsection (3) or (4). The criteria in Section 2, subsection 2, and subsection (4)(a), have been met.

Ministry's Position

The ministry's position is that the information provided does not demonstrate that the appellant's medical conditions present a barrier that precludes the appellant from searching for, accepting or continuing in employment. In the Medical Report – PPMB dated December 20, 2017, the physician identifies the appellant's primary medical condition as "Dental Abscess/IV Antibiotics" with an onset of December 20, 2017 and her secondary medical conditions as "Anxiety Disorder/PTSD" with an onset of "years." In describing the nature of restrictions specific to the appellant's medical conditions, the physician writes: "Son has ADHD – [no] meds - going to school/Ongoing stress with her teenage daughter." The ministry notes that the restrictions described by the physician are in relation to the medical conditions of the appellant's son; although, childcare needs are not a consideration when establishing eligibility for PPMB. The ministry also notes the physician describes stress with the appellant's teenage daughter; however, gives no description of the nature of any restrictions specific to stress. Further, in this Medical Report, the physician does not describe the nature of any restrictions specific to the appellant's medical conditions. In making a determination of whether an appellant is precluded from all types of employment, the ministry relies on descriptions specific to their medical conditions. An explanation of restrictions is helpful in assessing why a client is unable to work and what type of work a client can or cannot do.

The ministry noted the appellant's previous Medical Reports (as listed under the Summary Of Facts) describe restrictions related to the medical condition of the appellant's son and stress caused by her daughter. It is acknowledged these restrictions are essentially identical to those described in the appellant's most recent Medical Report - PPMB dated December 20, 2017 and that the appellant was found previously eligible for PPMB. However, the ministry notes that approvals for PPMB do not set precedence for future approvals. Based on these types of restrictions alone (childcare needs, presence of stress), it cannot be established that the appellant is precluded from searching for, accepting or continuing in employment.

As noted, in the Medical Report – PPMB dated April 18, 2018 that the physician describes restrictions in relation to the medical conditions of the appellant's son and ongoing issues with her teenage daughter; however, the nature of any employment restrictions specific to issues with her daughter are not described. The ministry further notes that the physician reports that the appellant was totally unemployable in December 2017 but does not describe the specific nature of employment restrictions experienced in December 2017 nor is it stated that the appellant is currently restricted from employment. The ministry notes that the "Clostridium Difficile Toxin" Report does not speak to employment.

The ministry notes that a medical condition is considered to preclude the 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 for any length of time except in a supported or sheltered-type work environment.

As a result, the ministry determined that the appellant's application for renewal of her eligibility for the PPMB category does not meet the requirement set out in the EA Regulation, subsection 2(4)(b).

Appellant's Position

The appellant's position is that her medical conditions of PTSD and Anxiety have not changed for years, which has been confirmed by her physician and that she doesn't understand why her requalification for PPMB designation has been denied. Further, she stated that contracting C Difficile made her critically ill and the ministry did not give that medical condition any consideration in their decision.

The appellant's advocate argues that the appellant has had 3 previous PPMB applications approved, all with similar issues noted about the appellant's children as restrictions.

Panel's Decision

The panel notes that in the appellant's Medical Reports - PPMB, the primary medical conditions reported basically include PTSD and/or Anxiety. The panel also notes that the restrictions as reported by the appellant's physician are directly related to the medical issues of the appellant's son and the behavioural issues of the appellant's daughter. The panel finds that there is no information that explains how the appellant's children preclude her from searching for, accepting or continuing in employment. Also, the appellant's physician does not report any restrictions as a result of the appellant's personal medical conditions that confirm she is prevented from participating in any or all types of employment activities and cannot be employed or that she is unable to participate in any type of employment for any length of time except in a supported or sheltered-type work environment.

The panel acknowledges that while the appellant's physician indicated in a prescription note dated April 18, 2018 that due to illness, the appellant was totally unemployable from November 2017 until January 2018, the physician made no comment about after January 2018 as to any restriction(s) that preclude the appellant from searching for, accepting or continuing in employment. Additionally, the panel acknowledges that while the appellant states that her medical condition has not changed and that she is not able to work, the panel finds that the most recent medical information, specifically the above mentioned prescription note and the Medical Report also dated April, 18, 2018 do not support the appellant's statement or establish that she is prevented from participating in a program that would help support her to overcome the barriers for employability. The panel notes that the ministry has offered to work with the appellant to create an Employment Plan.

Based on the information provided and the relevant legislation, the panel finds that the ministry reasonably determined that the evidence does not establish that the appellant's medical condition(s) are a barrier that precludes her from searching for, accepting or continuing in employment and therefore the criterion under section 2(4)(b) of the EAR was not met and she does not qualify as a person with persistent multiple barriers to employment.

Conclusion

The panel finds that the ministry's decision to deny the appellant's request for renewal of her designation as a person with persistent multiple barriers to employment under Section 2 of the EAR was reasonably supported by the evidence and was a reasonable application of the applicable enactment. The ministry's reconsideration decision is confirmed and the appellant is not successful on appeal.

PART G – ORDER

THE PANEL DECISION IS: (Check one)

 UNANIMOUS BY MAJORITY

THE PANEL

 CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister
for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:*Employment and Assistance Act*Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b) **PART H – SIGNATURES**

PRINT NAME

Lynn Twardosky

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/July/31

PRINT NAME

Jim Jones

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/July/31

PRINT NAME

Keith Lacroix

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/July/31