

APPEAL NUMBER
2020-00032

PART C – DECISION UNDER APPEAL

This is an appeal from the ministry's reconsideration decision dated December 16, 2019 which held that the appellant did not meet the eligibility criteria from Person with Persistent Multiple Barriers ("PPMB") to employment. The ministry held that a health professional had not confirmed that the appellant's medical condition is expected to continue for 2 years or more.

PART D – RELEVANT LEGISLATION

Employment and Assistance Regulation ("EAR") section 2

PART E – SUMMARY OF FACTS

1. Evidence before the ministry at reconsideration.

The evidence before the minister at reconsideration may be summarized as follows:

- October 17, 2019 PPMB Medical Report from the appellant's doctor which:
 - a) confirmed that the appellant has a medical condition and PTSD which has existed for 1.5 years and which is expected to last for less than 2 years;
 - b) confirmed that the appellant had suffered a traumatic hospital admission in the spring of 2018; which has led to the appellant's PTSD; and
 - c) confirmed that the appellant's medical condition will require ongoing management and readmission to hospital for surgery.
- June 2018 letters from the relevant health authority which provides detail of the appellant's "recent medical crisis and subsequent hospitalization".
- Appellant's PPMB application October 21, 2019 which:
 - a) confirmed the medical condition; and
 - b) confirmed that the appellant has accessed emergency health, mental health, or addiction services multiple times in the last 12 months.
- October 22-23, 2018 fax exchange between the ministry and the appellant's doctor wherein the appellant's doctor confirmed that the duration of the appellant's condition was "as indicated on the application – less than 2 years".
- October 28, 2019 ministry decision denying the appellant's PPMB application as the appellant's health condition is not likely to continue for at least 2 more years as required by section 2 of the EAR.
- December 16, 2019 appellant personal statement and letter from a registered counsellor. In partial response to the question "is the (appellant's) condition likely to last for at least 2 more years", the registered counsellor answered "PTSD symptoms have gone unchanged for 18 months with little or no change."

2. Evidence not before the ministry at reconsideration:

On February 20, 2020, a submission was received from the appellant's representative (the "Submission"). This Submission attaches a follow-up letter from the appellant's doctor dated February 18, 2020 (the "Dr. Letter"). In the Dr. Letter the doctor references the doctor's previous participation in the appellant's PPMB application, and says:

"I reported that (the appellant's) PTSD was likely to be less than 2 years in duration, however I have since had a deeper understanding of (the appellant's) illness experience and would like to amend this qualification, based on reports both from (the appellant) as well as her case worker I now realize that the appellant is even more disabled than I had believed and that (the appellant's) PTSD is likely to persist longer than 2 years, despite adequate treatment. This is based both on the severity of (the appellant's) PTSD as well as a review of the chronic nature of this particular illness and it's propensity to be refractory to standard medical treatments."

At the hearing, the ministry advised that they did not have either a copy of the Submission or the Dr. Letter. The hearing was adjourned so that the ministry could review the Submission and the Dr. Letter. On recommencement of the hearing the ministry objected to admission of the Dr. Letter on the basis that it was late delivered, and was

not before the ministry at reconsideration. The panel reserved decision on admissibility of the Dr. Letter, and proceeded with the hearing.

Admissibility of the Dr. Letter

The panel considered the admissibility of the Dr. Letter. While acknowledging the late delivery of the Dr. Letter to the Ministry, the panel notes:

- that the Dr. Letter is brief, less than one page; and
- that the Dr. Letter speaks to the key issue for consideration in this appeal.

The panel concludes that the Dr. Letter is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The panel therefore admits the Dr. Letter in evidence in accordance with Section 22 (4) of the Employment and Assistance Act.

PART F – REASONS FOR PANEL DECISION

The issue to be determined is whether the ministry's finding that the appellant's condition is not expected to continue for at least 2 years or more is reasonably supported by the evidence.

Section 2 of the EAR reads as follows:

Persons who have persistent multiple barriers to employment

2 (1) In this section, "health professional" means a person who is

- (a) authorized under an enactment to practise the profession of
 - (i) chiropractor,
 - (ii) medical practitioner,
 - (iii) nurse practitioner,
 - (iv) occupational therapist,
 - (v) physical therapist,
 - (vi) registered nurse or registered psychiatric nurse,
 - (vii) registered psychologist, or
 - (viii) registered social worker,
- (b) a registered clinical counsellor in good standing with the BC Association of Clinical Counsellors, or
- (c) acting in the course of the person's employment as a school psychologist by
 - (i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or
 - (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*, if qualifications in psychology are a condition of such employment.

(2) A person qualifies as a person who has persistent multiple barriers to employment if the person

- (a) is a recipient of income assistance or hardship assistance,
- (b) has a health condition that is confirmed by a health professional and that,
 - (i) in the opinion of the health professional,
 - (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) faces one or more additional barriers described in subsection (3).

(3) For the purposes of subsection (2) (c), an additional barrier is any of the following:

- (a) any of the following circumstances if, in the opinion of the minister, the circumstance seriously impedes the ability to search for, accept or continue in employment:
 - (i) currently experiencing homelessness or having experienced homelessness in the past 12 months;
 - (ii) currently experiencing domestic violence or having experienced domestic violence in the past 6 months;
 - (iii) needing English language skills training;
 - (iv) not having basic skills for employment;
 - (v) having a criminal record;
 - (vi) having an education below grade 12;
 - (vii) having accessed emergency health, mental health or addiction services multiple times in the past 12 months;
 - (viii) being a Convention refugee as determined under the *Immigration and Refugee Protection Act* (Canada) or the *Immigration Act* (Canada), or having been such a refugee in the past 24 months, or being in the

process of having a claim for refugee protection, or application for protection, determined or decided under the *Immigration and Refugee Protection Act* (Canada);
(ix) being a person who was a child in care or received similar care under an enactment of another Canadian jurisdiction;

(b) a circumstance that the minister considers to be a circumstance that seriously impedes the person's ability to search for, accept or continue in employment.

(4) If a person qualified as a person who has persistent multiple barriers to employment on June 30, 2019, the person qualifies, subject to section 34, as a person who has persistent multiple barriers to employment.

While the December 2019 letter from the registered counsellor infers that the appellant's medical condition will be continuing past 2 years, it does not clearly state that. The appellant's doctor, both on October 17, 2019 and again on October 23, 2019, stated that the duration of the medical condition was expected to be less than 2 years.

However on further review of the appellant's conditions (and perhaps assisted with the further passage of 4 months time) the appellant's doctor on February 18, 2020 has clearly stated that the appellant's condition is now "likely to persist longer than 2 years".

After careful consideration, this panel accepts this reconsidered conclusion. It follows that the ministry decision is no longer reasonably supported by the evidence. The appellant is successful on this appeal, and the ministry's decision is rescinded.

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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

Chris McEwan

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/02/25

PRINT NAME

David Kendrick

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/02/25

PRINT NAME

William (Bill) Reid

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/02/25