

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated December 16, 2011 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). The ministry was satisfied that the evidence establishes that the appellant has a medical condition, other than an addiction, that is 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 was not satisfied 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

Employment and Assistance Regulation (EAR), Section 2

PART E – Summary of Facts

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

- 1) Letter dated November 8, 2011 from a physician in a sports medicine centre to the appellant's physician stating in part that the appellant has severe flexible pes planus of feet with right greater than left hallux valgus and bunion formation; also contribution from abnormal foot biomechanics contributing towards hip and knee pain and additional tightness in hamstrings and heel cords; management recommendations include that surgical treatment may become an option in the future but suggests a trial of conservative management first, including a prescription for custom-made semi-rigid orthotics with toes spacers for the hallux valgus deformity and shoes with more forefoot width and depth to accommodate the bunion. Also recommend exercises and a review of her progress in 2 months.
- 2) Medical Report- Persons with Persistent Multiple Barriers (PPMB) dated November 17, 2011, which states, in part, that: the appellant's primary medical condition is "severe pes planus, hallux valgus, hammer toes" with a date of onset of 2002. The secondary medical condition listed is "patellofemoral pain syndrome of knees" with a date of onset of 2009; the prognosis sets out that the expected duration of the medical condition(s) is 2 years or more and that it is not episodic in nature. In the section of the Report regarding restrictions, there is a note stating "...not restricted in movement as much as pain increases with movement and sometimes affected by shoe wear";
- 3) Employability Screen print out dated November 24, 2011, noting a total score of "8";
- 4) Letter from the ministry to the appellant dated November 24, 2011 denying her application for PPMB; and,
- 5) Request for Reconsideration- Reasons.

At the hearing, the appellant provided a number of additional documents, as follows:

- 1) Order form with a footwear supplier dated January 12, 2012 for custom orthotics indicating a total price of \$400, cash received of \$140 and a balance outstanding of \$260;;
- 2) Invoice from a footwear supplier dated January 20, 2012 indicating a cash deposit received of \$100; and,
- 3) Invoice from a footwear supplier dated January 20, 2012 for toe spacers for the sum of \$9.52.

The ministry did not object to the admissibility of these documents. The panel reviewed the documents and admitted them as being in support of the information and records before the ministry on its reconsideration, as set out in the appellant's Request for Reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act.

The ministry arrived at the hearing at the close of the appellant's evidence and apologized about a misunderstanding regarding the start time of the hearing, and the appellant and her friend agreed to restate their evidence.

The appellant's friend stated that he knows that the appellant needs orthotics to prevent surgery, as confirmed by the specialist, and he has seen how hard it is for her to function. The friend states that the appellant gets fatigued and her hips pop out of place and she has a hard time getting around. The friend states that he has witnessed the pain and difficulty that the appellant experiences without orthotics, and that it takes a toll on her. The friend explained that he loaned the appellant the funds to put a deposit towards the custom orthotics, as set out in the documents provided, for a total of \$240 so that they could get the process started and she can get the orthotics sooner. The friend stated that he has watched the appellant try to meet all the demands made by the ministry for looking for work and attending a job program, when she has so much pain in her legs, hips and back. The panel admitted the testimony of the appellant's friend as relating to the appellant's restrictions as a result of her medical conditions and, therefore, being in support of the information and records before the ministry on its reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act.

The appellant stated that she needs orthotics because the specialist doctor has given a report that this is a way to try to avoid surgery. The appellant stated that she found the scoring for the employability screen to be unfair because she needs to have less education and less time in employment or be ESL to get points and she did not pass. The appellant stated that she went out to UBC to meet with the specialist and he gave a report

but then the ministry said she needed to go back out to UBC to get the same information that she got the first time and she does not understand why this was needed. The appellant explained that her femur bone pops out of her hips on both sides and her knees lock up. She explained that her lower back hurts all the time, especially when she tries to do laundry. The appellant stated that she has been working as a cashier at a grocery store but she cannot even lift a bag of potatoes without her back hurting. The appellant stated that she has had problems with her work because she is supposed to be full-time and they are not giving her full-time hours and she will be taking this up with her employer and the union. The appellant states that she finds even after a 4-hour shift she is limping back home because her lower back hurts so much. The appellant stated that her feet are not properly structured and that orthotics will help her but she was shocked by how expensive they are. The appellant stated that she has abided by all the ministry's requirements for her job program to learn everything about finding a job, and she asked the service provider about orthotics but they told her to go to the ministry with her request. The appellant stated that she has been doing the exercises recommended by the specialist and that they have helped but she needs the orthotics for him to be able to see if they help too. The appellant stated that she takes analgesics for when the pain is severe, usually a few times each week.

In her Request for Reconsideration, the appellant states that she needs custom-made orthotics in order to continue her job search and be able to walk for employment. The appellant states that if she does not get the orthotics, she will not be able to prevent surgery for her feet because she has bunions, hammer toes, flat feet and other toes that are not straight at all. She explains that every day she walks, her pelvic bone and leg bones pop in and out, her knees lock up, her calves become excruciatingly sore, and she needs Tylenol 3's or extra strength. The appellant states that her lower back gives out. The appellant states that if she does not get the orthotics, she will be unable to walk and will be forced to stay in bed until she has surgery and will be crippled in a wheelchair for another few months to close to a year. In her Notice of Appeal, the appellant adds that she needs orthotics or her stability will get worse and she will end up in a wheelchair, that she needs them to prevent surgery.

The ministry's evidence includes that the appellant has been in receipt of income assistance for at least 12 of the immediately preceding 15 calendar months. The appellant's score on the employability screen is 8. In the Medical Report-PPMB dated November 17, 2011, the physician reports that the appellant's primary medical condition is "severe pes planus, hallux valgus, hammer toes" with a date of onset of 2002. The secondary medical condition listed is "patellofemoral pain syndrome of knees" with a date of onset of 2009. The physician indicates that the expected duration of the appellant's medical conditions is 2 years or more. In the Medical Report, the physician reports restrictions related to the appellant's medical conditions as "...not restricted in movement as much as pain increases with movement and sometimes affected by shoe wear."

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded 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); in particular, the ministry was not satisfied that the appellant's 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.

The criteria for being designated as a person with persistent multiple barriers to employment (PPMB) are set out in Section 2 of the EAR. 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 Section 2(3) applies. 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. 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.

The ministry's position is that although the appellant meets the requirements of Section 2(2) of the EAR, in that she has been the recipient of income assistance for at least 12 of the immediately preceding 15 calendar months, the evidence has not established that the appellant has met all the remaining applicable criteria. As the appellant scored 8 on the employability screen, she must meet the requirements of Section 2(4) of the EAR. The ministry acknowledges 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 argues 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. The ministry points out that the physician reports that the appellant is "...not restricted in movement as much as pain increases with movement and sometimes affected by shoe wear." The ministry's position is that while the appellant's medical conditions prevent her from maintaining physically challenging work where she is on her feet for any length of time, the appellant should be able to manage sedentary or light-duty employment and, therefore, her condition does not preclude her from all types of employment. The ministry clarified that a request for a supplement to cover the cost of orthotics is assessed by separate legislative criteria and that the issue on this appeal only deals with the appellant's application for PPMB.

The appellant argues that she consulted with a specialist at UBC to get the letter dated November 8, 2011 and that it confirms she has flat feet, bunions and hammertoes, diagnosed as a teenager, that causes pain in her knees, hips, and lower back. The appellant points out that she went back to the specialist to get the Medical Report completed and it also confirms the same information, that she has pain with increased movement. The appellant argues that if she does not get the orthotics, she will not be able to prevent surgery for her feet, and then she will be unable to walk and will be forced to stay in bed until she has surgery and will be crippled in a wheelchair for another few months to close to a year.

The panel finds that it is not disputed that the appellant's physician has provided a medical opinion, in the Medical Report dated November 17, 2011, that the appellant suffers from medical conditions other than an addiction, namely "severe pes planus, hallux valgus, hammer toes" with a date of onset of 2002 and "patellofemoral pain syndrome of knees" with a date of onset of 2009. It is also not disputed that the appellant's medical conditions have, in the opinion of the medical practitioner, continued for at least 1 year and are likely to continue for at least 2 more years. In terms of restrictions associated with the appellant's medical conditions, the physician has indicated in the letter dated November 8, 2011 that her medical conditions can create biomechanical abnormalities that will contribute to lower extremity pains in her knee, hip and lower

back. In the Medical Report, the physician notes restrictions as "...not restricted in movement as much as pain increases with movement and sometimes affected by shoe wear." Both the appellant and her friend provided testimony that the appellant has difficulty getting around, such as going out to UBC for the specialist reports, and the appellant stated that she takes analgesics for the pain a few times each week. However, the appellant also stated that she has been working as a cashier at a grocery store and that she is supposed to be full-time but has only been given part-time hours of up to 4 hours at a time and that she will be taking that up with her employer and union. Although the appellant states that she experiences pain lifting heavier items during her shift and that she is in considerable pain after the shift, the ministry has pointed out that she may be able to manage less physically demanding work that does not require standing for long periods or lifting heavy items. The panel finds that the evidence demonstrates that the appellant experiences pain as a result of her medical conditions, but given the evidence that she is currently employed and pursuing full-time hours it is difficult to determine that her medical conditions preclude, or prevent, her from searching for, accepting or continuing in employment, perhaps with modified or lighter duties. Therefore, the panel finds that the ministry's conclusion that the evidence does not demonstrate that the appellant's medical conditions are a barrier that precludes her from searching for, accepting or continuing in employment, pursuant to the requirement in Section 2(4)(b) of the EAR, was reasonable.

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(1)(a) and 24(2)(a) of the Employment and Assistance Act.