

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated January 31, 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 criteria set out in EAR section 2(2) has been met, as the appellant has been a recipient of income assistance for at least 12 of the proceeding 15 months. As the appellant did not meet the requirements set out in section 2(3) of EAR as her score on the Employability Screen was less than 15 her PPMB application was considered under section 2(4) of EAR. The ministry was satisfied that the appellant met the criteria set out in section 2(4)(a) of EAR as she has a medical condition, other than addiction, that is 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 two more years. However, the ministry was not satisfied that the appellant's medical condition is a barrier that precludes her from searching for, accepting, or continuing in employment pursuant to section 2(4)(b) of EAR.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) section 2

PART E – Summary of Facts

Evidence before the ministry at the time of reconsideration consisted of:

1. Ministry PPMB denial letter to the appellant dated December 20, 2011.
2. PPMB Checklist dated December 9, 2011.
3. PPMB Medical Report dated November 16, 2011.
4. Request for Reconsideration dated January 19, 2012

In the PPMB medical report the physician states that the appellant has been diagnosed with a primary condition of back pain and a secondary condition of chronic anxiety disorder. Treatment includes exercise, analgesics and activity classes for back pain and medication for treatment of her chronic anxiety disorder. The physician also states that the appellant is restricted from being on her feet for prolonged periods of time.

In part C of the appellant's Request for Reconsideration she provides a detailed description of her various medical conditions and presents arguments. She also mentions she can provide additional information from her doctor and her counselor from the wellness center however she did not include this information with her request for reconsideration.

On appeal, the appellant submitted a letter from the same physician who completed her PPMB Medical Report. In this letter the physician writes that the appellant's condition has not improved since she was granted benefits, and in fact, it has deteriorated. He writes that the appellant suffers from chronic back pain which is disabling to her and that she is unable to undertake physical labour. He further writes that, "She suffers pain when sitting, standing or walking for more than a short period of time," and that she takes narcotic analgesics regularly to alleviate her pain and that these have a somewhat sedating effect on her. In addition to these physical problems the physician writes that the appellant has chronic problems with depression and generalized anxiety, is chronically generally stressed, has cognitive problems organizing her thoughts, and has poor memory and concentration. The physician concludes by stating that he feels, "these problems preclude her from any type of employment."

The ministry had an opportunity to provide evidence and make a submission respecting the additional evidence submitted to the Tribunal by the appellant but declined to do so preferring to rely on the information provided in its Reconsideration Decision.

At the hearing the appellant summarized her physician's letter February 7, 2012 adding that as a result of being in pain she spends much of her time in bed or just sitting, and only goes out for a walk once a day. She emphasized the impact that her daily medications have on her ability to function both physically and mentally adding that she is also receiving assistance on a regular basis from her local mental health center.

The ministry stood by the information contained in the Appeal Record adding that the physician's letter February 7, 2012 was not available to them at the time of reconsideration. As a result the only medical evidence the ministry had to consider was the information contained in the PPMB Medical Report. The ministry asked the appellant why the information in the PPMB Medical Report had not been more complete, to which the appellant responded that she had not lived in her current location for too long and that it took some time for her physician to get all of her medical records.

The panel admitted the letter from the appellant's physician dated February 7, 2012 as evidence under section 22(4) of the Employment and Assistance Act as it was found to be in support of the information and records before the ministry at reconsideration. The ministry did not oppose.

The panel makes the following findings of fact from the evidence presented:

- The appellant has been in receipt of income assistance for at least 12 of the preceding 15 calendar months.
- The appellant's score on the Employability Screen is reported as 12.
- The appellant has been diagnosed with chronic back pain, chronic problems with depression, generalized anxiety, chronically generally stressed, cognitive problems organizing her thoughts, and as having poor memory and concentration.
- The appellant takes narcotic analgesics regularly to alleviate her pain which have a sedating effect on her. She also takes anti anxiety medication for her chronic anxiety disorder.
- The appellant suffers pain when sitting, standing or walking for more than a short period of time.

PART F – Reasons for Panel Decision

The issue in the appeal is whether the ministry reasonably determined that the appellant did not meet all of the applicable statutory requirements to qualify for PPMB; in particular the ministry was not satisfied that the appellant's medical condition is a barrier that precludes her from searching for, accepting, or continuing in employment. In arriving at its decision the ministry relied upon the following legislation:

- 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 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.

The panel finds that there was no dispute raised by either party regarding the following: The ministry determined that the appellant meets the requirements set out in section 2(2) of EAR as she has been in receipt of income assistance for at least 12 of the immediately preceding 15 calendar months. As the ministry determined that the appellant's score on the Employability Screen was less than 15 she did not meet the requirements set out under 2(3) of EAR and was therefore considered under section 2(4) of EAR. The panel notes that no supporting evidence was included in the Appeal Record to substantiate this, however, the Employment Screen score was not an issue in dispute and all parties accepted the reported score of 12 as being correct. The ministry acknowledges that the appellant has a medical condition, other than addiction, that is 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 two more years there by meeting the requirements set out in section 2(4)(a) of EAR.

However, what is in dispute is the ministry's position that the evidence does not establish that the appellant's medical condition is a barrier that precludes her from searching for, accepting, or continuing in employment pursuant to section 2(4)(b) of EAR.

The appellant's position is that she suffers from depression and anxiety which requires that she take several medications that make her drowsy etc. She also argues that as she has degenerative disc disease in her spine, has had major back surgery and has four titanium plates and eight titanium screws in her back she is unable to lift, stand, or undertake any type of repetitive movement. She is also unable to sit for any length of time and is on medication for back pain. The appellant also argues that she has additional information that her doctor and her counselor from the wellness center can supply however she did not include this information with her request for reconsideration. For these reasons the appellant argues that she meets the requirements set out in section 2(4)(b) of EAR and should be granted PPMB status.

The appellant argued that her physician writes in his letter dated February 7, 2012 that she suffers from chronic back pain which is disabling for her. He goes on to say that she suffers pain when sitting, standing or walking for more than a short period of time. The appellant takes narcotic analgesics regularly to alleviate her pain which have a sedating effect on her. The physician also writes that the appellant suffers chronic problems with depression and generalized anxiety, is chronically generally stressed, has cognitive problems organizing her thoughts, and has poor memory and concentration. The physician concludes his letter by stating that, "I feel these problems preclude her from any employment."

The ministry's position is that the only medical evidence it had to rely on at the time of reconsideration was the PPMB Medical Report and that much of the detailed information contained in the physician's letter of February 7, 2012 regarding the appellant's medical conditions and their impacts on her was

not available to the ministry at that time. The ministry further argued that the only restriction noted in Section 3 of the PPMB Medical Report by the appellant's physician was that she was restricted from being on her feet for prolonged periods of time. The ministry argued that as he did not indicate the duration or frequency of, "prolonged periods", and as this alone would not preclude the appellant from employment in sedentary fields, the ministry concluded that she did not meet the requirements set out in section 2(4)(b) of EAR. The ministry concluded by arguing that while the appellant stated in Part C of her Request for Reconsideration that she could provide additional information from her physician, none was submitted to the ministry prior to the date of the Reconsideration Decision.

The panel turned to the issues raised by the ministry in their Reconsideration Decision regarding its inability to determine the duration or frequency of time that the appellant is restricted from being on her feet and its decision that the appellant is not precluded her from searching for, accepting, or continuing in employment pursuant to section 2(4)(b) of EAR.

While the panel acknowledges that the ministry did not have the physician's letter of February 7, 2012 to review at the time of reconsideration, the panel finds that the ministry did have an opportunity to provide evidence and make a submission respecting the additional evidence submitted to the Tribunal by the appellant and declined to do so. Further the ministry raised no objection to the letter being admitted as evidence by the panel under section 22(4) of the Employment and Assistance Act as it was found to be in support of the information and records before the ministry at reconsideration.

In the physician's letter of February 7, 2012 he writes that the appellant suffers from chronic back pain which is disabling for her. He goes on to say that she suffers pain when sitting, standing or walking for more than a short period of time and takes narcotic analgesics regularly to alleviate her pain which have a sedating effect on her. This evidence supports the appellant's testimony at the hearing as she stated that as a result of pain she spent most of her time in bed or sitting as a result and only walked outside once in a day.

As to the ministry's position in their Reconsideration Decision that the appellant is able to undertake sedentary employment, the physician writes in his letter of February 7, 2012, in addition to the appellant's back problems she also suffers chronic problems with depression and generalized anxiety, is chronically generally stressed, has cognitive problems organizing her thoughts, and has poor memory and concentration. Again this evidence supports the appellant's testimony at the hearing which emphasized the impact that her daily medications have on her ability to function both physically and mentally.

The panel finds that based on the medical evidence provided in the physician's letter of February 7, 2012 the ministry did not reasonably determine that it was unable to establish the duration or frequency of time that the appellant is restricted from being on her feet or that the appellant is capable of searching for, accepting, or continuing in employment pursuant to section 2(4)(b) of EAR.

For these reasons the panel finds that the ministry's reconsideration decision was not reasonably supported by the evidence and rescinds the decision.