

APPEAL #

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision of April 3, 2012, denying the appellant's request to re-qualify as a Person with Persistent Multiple Barriers (PPMB) because the ministry determined that the appellant did not meet the condition in Section 2(3)(b)(ii) of the Employment and Assistance Regulation, in that in the opinion of the minister the appellant's medical condition is not a barrier that seriously impeded the appellant's ability to search for, accept or continue in employment.

PART D – Relevant Legislation

Section 2 of the Employment and Assistance Regulation

PART E – Summary of Facts

The panel notes that during the hearing the ministry representative was asked by the chair to present the ministry's position. She responded by indicating that she was not comfortable summarizing the ministry's decision as written in the record. She stated that in her opinion the evidence showed that the appellant's medical condition was a barrier that seriously impeded the appellant's ability to search for, accept or continue in employment.

The evidence before the minister at reconsideration includes:

- The ministry's reconsideration decision which includes the information that the appellant is 32 years old, has received income assistance since October, 2008 her score on the Employability Screen is 18.
- A letter from a ministry worker to the appellant dated December 5, 2011 asking the appellant to have her doctor fill out a Medical Report form. The letter includes the statement: List any medical conditions not included on the Medical Report. The following conditions are written in by hand: "1) Chronic abdominal pain on [illegible]. 2) [illegible] arthritis to hands and knees. – unable to stand for prolonged period – hand arthritis – painful to do household chores.
- A Medical Report – Persons with Persistent Multiple Barriers dated December 2011 from the appellant's doctor indicating that he has been the appellant's medical practitioner for over 6 months and that the appellant's primary medical condition is Crohn's colitis, date of onset 1997, and the secondary medical condition is depression. Under the heading "Treatment" the doctor indicates "medications" and a second word is written illegibly. The doctor indicates that the appellant's conditions are stable, the expected duration is 2 years or more, they have existed for 13 years and are episodic in nature. Section 3 of the report, "Restrictions," is not filled in but includes the abbreviation "SSC 18." It is not clear if this is the doctor's notation. (The ministry representative, the appellant and the appellant's advocate were unable able to clarify this at the hearing.). The ministry notes in the reconsideration decision that that it received this report February 21, 2012.
- A Client Employability Profile dated February 21, 2012 identifying the appellant's "severe lack of employment search and planning skills, poor reading, writing and numeracy skills, severe health condition, difficulty communicating and resolving conflicts." The "Comments" section includes the statement: "[Appellant's] primary medical condition is Crohn's Colitis, ... Secondary conditions Depression, Chronic Pain, Polyarthritis ... Low intellect, onset birth. An Appendix to the profile states that the appellant was tested for reading ability and it was determined she had a Grade 2 reading level which "won't improve with additional education."
- A note dated March 5, 2012, from another doctor, stating: "[the appellant] is unable to work due to respiratory infection and also regarding long term issues of Crohn's inflammatory bowel disease, chronic pain, anxiety and depression. She is also on medications that can suppress the immune system and would impact her ability to work in public situations." The panel notes that the PPMB and the PWD reports described in this decision were not written by this doctor but were all written by the appellant's family physician of 20 years.
- A letter from the appellant's friend and helper dated March 19 [2012]. She states that she helps the appellant out with daily with cooking, child care, making appointments, and housework, and she

indicates that the appellant needs help with such activities as following recipes, remembering she has something on the stove, staying on task and completing them.

- A letter from the appellant's advocate which was submitted as part of the appellant's request for reconsideration on March 23, 2010. The letter describes the appellant's physical and emotional difficulties, including arthritis, Crohn's disease, intellectual limitations, and ongoing issues with anxiety and depression.
- Section 3 of the Request for Reconsideration, dated March 23, 2012, filled out by someone other than the appellant but not signed. (At the hearing that the appellant's advocate acknowledged that she had completed Section 3.) The handwritten note states: "[The appellant] has had PPMB for a number of years. Her medical conditions (Crohn's colitis and depression) are made stable – they are more episodic in nature – they have been ongoing for 13 years. [The appellant] is having a very difficult time coping with her daily life. [She has] ongoing cognitive and intellectual challenges . . . She reads at a grade level that does not allow her to access reading matter - similarly her math skills/organizational skills, ability to remember are all compromised. I would argue that all these things when taken into consideration precludes her ability to search for and engage in employment."

The record includes two earlier Medical Reports – Persons with Persistent Multiple Barriers. Both reports are by the same doctor who filled out the report dated December 2011 described above.

- One report is stamped by the Ministry "January 4, 2010." The date it was signed by the physician is "Dec 31" but the year is illegible. The report indicates that the appellant's primary medical condition is "Crohn's" with the date of onset 1997. Under secondary medical condition the doctor indicates chronic pain, depression and another condition which is not legibly written. The treatments indicated are immunosuppressor, antidepressant and back brace. The expected duration of the medical conditions are 2 years or more and they are indicated as being not episodic in nature. Under restrictions the doctor writes: "Fatigue and abdominal pain limits ability to work." A second comment is not legibly written. The doctor has been the appellant's medical practitioner for over 6 months. (The evidence of the medical report for the appellant's application for PWD status shows that the doctor has been the appellant's family physician for 20 years.)
- The other report is neither date-stamped by the ministry nor legibly dated by the physician but signed by the appellant on November 16, 2007. Crohn's disease is indicated as the primary medical condition with the date of onset 1999. A secondary medical indication is indicated as polyarthritis, the date of onset 2004. Three treatments are indicated, all illegibly written. Expected duration is more than 2 years. Restrictions are indicated as "1) Fatigue [due] to Crohn's). 2. Arthritis likely due to Crohn's, especially hip, low back, waist, shoulders, knees.

The record also includes the appellant's Persons with Disabilities Designation application signed by the appellant on June 22, 2010 and the Physician's Report from that application, filled in by the appellant's doctor and signed July 14, 2010.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision of April 3, 2012, denying the appellant's request to re-qualify as a Person with Persistent Multiple Barriers (PPMB) was a reasonable application of the legislation in the circumstances of the appellant or was reasonably supported by the evidence. The ministry determined that the appellant did not meet the condition in Section 2(3)(b)(ii) of the Employment and Assistance Regulation, in that in the opinion of the minister the appellant's medical condition is not a barrier that seriously impeded the appellant's ability to search for, accept or continue in employment.

Employment and Assistance Regulation (EAR)**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 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.

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

The appellant's position is that because of Crohn's, arthritis and other conditions she is unable to continue in any kind of employment, as her doctor would know if he had seen her on a daily basis.

With respect to EAR section 2, in the reconsideration decision the ministry states that the appellant meets the criterion set out in section 2(2) a) in that the appellant has received income assistance since October, 2008. In regard to section 2(3)(a)(i) the ministry states that appellant had a score on the Employability Screen of 18. The ministry in its reconsideration decision does not specifically state that the appellant meets the conditions of section 2(3)(a)(ii). However, the panel notes that the only criterion that the ministry indicates the appellant has not met is section 2(3)(b)(ii). The ministry is satisfied that the appellant has met the criteria set out in section 2(3)(b)(i)(A). With respect to section 2(3)(c) the ministry states that it is satisfied the appellant has made demonstrated reasonable efforts to overcome her barriers and she has met the criteria under this section.

The ministry contends, however, that considering all the information provided including the PWD application completed in May 2008 and the submission from the appellant's advocate the appellant has not met the criteria under section 2(3)(b)(ii) because:

- (a) the appellant's doctor in his Medical Report – Persons with Persistent Multiple Barriers dated December 2011 does not indicate any restrictions specific to Crohn's colitis and depression, the two

conditions identified in the report.

- (b) the doctor who wrote a note on the appellant's condition (dated March 5, 2012) indicates that the appellant's medications impact her ability only to work in public situations, not in jobs that do not involve interaction with the public.

With respect to (b) the panel notes that the doctor does not state that the appellant is able to work in jobs that do not involve interaction with the public, only that her medications would impact her ability to work in public situations.

With respect to (a) the panel notes that while the appellant's physician did not fill in Section 3 of the Medical Report – Persons with Persistent Multiple Barriers, he did not specifically state that the appellant had no restrictions.

Also with respect to (a), as noted earlier, the record includes a form letter from a ministry worker to the appellant dated December 5, 2011 asking the appellant to have her doctor fill out a medical report. The letter includes the statement: "List any medical conditions not included on the medical report." The following conditions are written in by hand: "1) Chronic ab[dominal] pain on [illegible]. 2) [illegible] arthritis on hands and knees. – unable to stand for prolonged period – hand arthritis – painful to do household chores." At the hearing the appellant and the advocate indicated that they had not written these comments. The ministry representative stated that the comments in the letter, though not signed, are in the handwriting of the appellant's doctor and that it is common practice for an appellant's doctor to attach a copy of the form letter to his medical report, filling in the information requested. The panel finds that the comments were written by the appellant's family physician and comprise evidence of restrictions that could affect the appellant's ability to search for, accept, or continue in employment.

Furthermore, the panel notes that the appellant's doctor submitted medical reports when the appellant successfully reapplied for PPMB status in 2007 and again in 2010. (According to the ministry representative at the hearing, though the record included PPMB medical reports for 2007 and 2010, the ministry verified with the ministry representative before the hearing that the appellant had PPMB status for three successive 2-year terms before applying again in 2012.) Though not discussed by the ministry the panel finds that the information in the 2007 and 2010 reports in respect to the restrictions associated with Crohn's disease and with arthritis are currently applicable because Crohn's and arthritis are chronic illnesses. The 2007 report states restrictions as "1) Fatigue [due] to Crohn's]. 2. Arthritis likely due to Crohn's, especially hip, low back, waist, shoulder, knees." The 2010 report states restrictions as: "Fatigue and abdominal pain limits ability to work."

Moreover, with respect to depression, one of the conditions identified by the appellant's physician in the 2011 PPMB report, the ministry does not address the specific limitations identified by the appellant's friend and daily helper, and by her advocate. The friend/helper, who told the panel that she has been assisting the appellant for one year, notes that the appellant has problems following recipes and remembering that she has something cooking, that she has to be reminded to attend appointments and misses some and that she has problems staying on task and completing housework. The appellant's advocate indicates that because of anxiety she has problems "leaving the safety of the home unaccompanied," she has "little ability to control impulses," and is "often

confused.”

The ministry states in its reconsideration decision that it considered the appellant's PWD application completed in May 2008. The panel notes, however, that the ministry does not discuss the physician's report completed by the appellant's doctor for the PWD application from 2008. In his report, the doctor makes a diagnosis of "intellectually challenged" and "low intellect," which classifies as code 5.0 under the category of "mental disorder." Under Section F of the report "Additional Comments," her doctor states: [Appellant's] illness [Crohn's and arthritis] prevents her from doing physical work, her low intellectual functioning prevents her from doing non-physical work." The panel finds that although the medical report with the appellant's 2008 PWD application is not current, the conditions identified, including arthritis and low intellect are chronic and therefore relevant to this appeal.

In terms of the limitations associated with the diagnosis of low intellect, the panel notes the evidence provided by the appellant's friend and by her advocate, indicating the appellant's inability to complete tasks, to follow recipes, to keep appointments, to maintain her household, and to perform many other daily activities that are required in the workplace as well as at home. The panel notes that in its Client Employability Profile of February 21, 2012 the ministry checks "persistent disability severely impacts on employment options" and describes the appellant's "secondary medical conditions" as including "low intellect, onset birth" and reported the appellant as reading at a Grade 2 level with no possibility of improvement through education. Under "Recommendations for Employment Plan Activities," the ministry does not recommend specific employment options. It mentions that she attended group counseling and intends to join a bridging program. Then it states: "[Appellant] will proceed with PWD application again."

Given that the evidence shows that the appellant has been diagnosed with chronic medical conditions, including Crohn's, as well as arthritis linked to Crohn's and with low intellect, and given the evidence of the appellant's physician in the appellant's PWD application and of the ministry in its Client Employability Profile that these conditions are a barrier that seriously impedes the appellant's ability to search for, accept or continue in employment, the panel finds that the ministry's determination that the appellant did not meet the conditions of section 2(3)(b)(ii) is not reasonably supported by the evidence and therefore rescinds the ministry's decision. Therefore the ministry's decision is overturned in favor of the appellant.