

PART C – Decision under Appeal

The decision under appeal is the Minister's Reconsideration decision dated July 26, 2012 which held that the appellant did not meet the legislated criteria to qualify as a Person with Persistent Multiple Barriers to employment (PPMB) under section 2 of the Employment and Assistance Regulation. The ministry held that that the appellant's medical conditions did not preclude her from searching for, accepting or continuing in employment. The ministry determined she met the criteria of the EAR section 2(2) insofar as she had been in receipt of income assistance for at least 12 of the past 15 months. Because of her employability screen score of 11 her application was considered under the EAR section 2(4). The ministry was satisfied that the appellant's medical condition met the medical duration criteria of the EAR section 2(4)(a)(i), but under the EAR section 2(4)(b) was not satisfied that her medical condition precluded her from searching for, accepting or continuing employment in a more sedentary type of employment.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 2 and Schedule E

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration was comprised of :

1. Medical Report-PPMB dated and signed March 19, 2012. The Medical Report confirms the appellant's primary medical condition as Primary Biliary Cirrhosis and a secondary medical condition as Back and Knee Arthritis. Under treatment the appellant's doctor notes a medication and as an outcome of the treatment comments "stabilized". With respect to restrictions the doctor comments "can walk 2 blocks then needs to stop" and "pain bending and heavy lifting." A prescription note dated March 16, 2012 submitted with the Medical Report also indicates the primary medical condition noted above and adds that the appellant is at risk for fat soluble vitamin deficiencies and anemia. Condition is permanent. She requires a diet high in vitamins and iron.
2. The ministry's PPMB Employment Checklist form undated. The form lists the barriers to employment of the appellant that have been identified as the following:
 - Primary biliary cirrhosis, acid reflux requiring trips to ER at least 3x a year.
 - Suffers daily constipation and abdominal cramping, referred to specialist
 - Insomnia, takes pain pills to help her sleep.
 - Partial knee replacement in 2008, difficulty walking more than 2 blocks, standing and bending, will require full knee.
 - Unable to lift anything over 40lb, daily pain limits activities.

It also reports that a medical practitioner has confirmed a medical condition that has continued for at least one year and is likely to continue for at least two years, or has occurred frequently over the past year and is likely to continue on that basis for at least two years. Appendix 1 to this form indicates the appellant tried an employment program and notes the appellant appeared to achieve progress in Resume Update, Workskill Level and recommends the appellant continue with job search in the food and beverage industry using certificates obtained in her employment program. The form attaches an Employability Screen with a score of 11. It also attaches a Client Employability Profile dated June 25, 2012. In this profile, the ministry indicates the appellant has adequate shelter that has no employment limitations. The profile also indicates the appellant has been unemployed for 1-2 years, is unclear of employment search methods yet has a realistic idea of employment potential, has functional literacy ability, inadequate transportation arrangements and has some difficulty communicating and resolving conflicts which affect her employment options. The profile further indicates the appellant has a grade 0-9 education, a severe health condition and a persistent disability that severely impacts employment options. The profile provides a section for ministry comments. The comments notes the appellant's partial knee replacement that took place in 2008 is still very painful and that the appellant reports her doctor has indicated she will eventually need a full knee replacement. A section for ministry recommendations concerning employment plan activities was not completed.

3. June 18, 2012 the ministry denies the appellant her application for the PPMB category.
4. July 23, 2012 the appellant's Request for Reconsideration. The appellant reports a worsening of her pain and reduction in her mobility and that she has an additional diagnosis-sacroiliac arthritis

with trochanteric bursitis. The appellant reports that her left groin pain radiates around her hip to her back and is continuous even with pain medication. She further reports that she can walk only 1 city block without resting and must change her position every few minutes when sitting. Because of the pain she does not sleep well and is tired and irritable most of the time and cannot concentrate or stay focused on a task.

In her Notice of Appeal dated August 11, 2012 the appellant attached additional and new medical information from her doctor. A prescription note dated August 2, 2012 is submitted from her doctor that states "Unable to work for medical reasons. Patient has sacroiliitis and fibromyalgia." At the hearing, the Notice of Appeal and the prescription note was admitted into evidence under Section 22(4) of the Employment and Assistance Act as being in support of the original information and records before the ministry, at the time of its reconsideration decision. The new diagnosis of fibromyalgia relates to the overall condition of the appellant at reconsideration regarding her pain that has been worsening.

At the hearing, the appellant was represented by her advocate. The advocate outlined the medical diagnoses of the appellant which are degenerative and chronic. The combination of her conditions and medication create a major sleep disorder for the appellant. The advocate reports that new medical diagnoses are beginning to accumulate regarding the appellant, who is suffering from layers of pain. In response to a question from the panel the appellant described that she would find any sedentary work difficult as she can only sit for a maximum of 15 minutes and suffers from pain due to her partial knee replacement and in her lower back.

At the hearing, the ministry stood by the record. With regards to the new diagnosis submitted by the appellant on appeal, the ministry observes that it is deficient in that it does not outline any specific restrictions in regards to the medical condition and is not clear regarding its severity or duration.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the Appellant did not meet all the PPMB eligibility criteria in EAR Section 2, and specifically the requirement of the EAR section 2(4)(b) that the Appellant's medical condition is a barrier that precludes her from searching for, accepting or continuing in employment. The ministry held that the appellant's medical condition did not preclude her from searching for, accepting or continuing in employment maintaining all types of employment. The ministry determined she met the criteria of 2(2) insofar as she had been in receipt of income assistance for at least 12 of the past 15 months. Because of her employability screen score of 11 her application was considered under the EAR section 2(4). The ministry was satisfied that the appellant's medical condition met the medical duration criteria of the EAR section 2(4)(a), but under the EAR section 2(4)(b) was not satisfied that her medical condition precluded from searching for, accepting or continuing employment in a more sedentary type of employment.

The following provisions of Section 2 of the EAR apply in this appeal:

- 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.

The ministry's position is that the appellant scored 11 on the employability screen and, therefore, she must meet the requirements of the EAR section 2(4). The Ministry argues the appellant's doctor states the appellant's restrictions specific to her medical condition as "can walk 2 blocks then needs to stop" and "pain bending and heavy lifting. It submits that the appellant's medical condition results in some restrictions, but nothing is indicated that she cannot do some other work.

The appellant contends she has medical conditions that have accumulated since the ministry's reconsideration decision that pose a barrier and preclude her from holding employment.

The panel finds the information and evidence on the record regarding the appellant's diagnoses, employment background, education level and the severity of her medical conditions indicate she has employment limitations, but does not establish she is precluded from all forms of employment. The panel reviewed the more recent medical evidence of a prescription note that indicates a new diagnosis of fibromyalgia and confirms the diagnoses of sacroiliitis, but observes that the document does not speak to the specific impact on restrictions to employability regarding the appellant nor does it confirm that the condition has continued for at least 1 year and will continue for at least 2 years. The panel finds the overall evidence is insufficient and does not persuade the panel that the appellant is precluded from all types of employment.

The panel therefore finds that the ministry's determination that the appellant's medical condition is not a barrier that precludes her from searching for, accepting or continuing in employment, pursuant to the requirement in the EAR was reasonable.

APPEAL #

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and is a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the ministry's decision