

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry's reconsideration decision dated September 18, 2012 in which the ministry determined the appellant's medical conditions did not preclude her from searching for, accepting or continuing in employment as per section 2(4)(b) of the *Employment and Assistance Regulation*. Therefore the appellant did not meet all the criteria necessary to qualify as a Person with Persistent Multiple Barriers.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance Regulation (EAR),

Section 2, Persons who have persistent multiple barriers to employment (PPMB)

## PART E – SUMMARY OF FACTS

The hearing proceeded by written submissions with the consent of both parties.

The ministry informed the Tribunal via e-mail that it's submission in this matter is the reconsideration summary package.

The records before the ministry at the time of reconsideration included:

- A letter from the appellant dated September 14, 2012 self reporting the following medical conditions: high blood pressure, diabetes type 1, gastritis, thyroid problems and symptoms including: frequent headaches, nausea, dizziness, blurred vision, weakness, fatigue and shortness of breath as well as muscle pain, irregular bowel movement and leg numbness. The appellant also included a listing of prescription medications she is taking. Further, the appellant provides a brief description of the impact of her conditions on her daily living.
- A Ministry Medical Report form completed by a Doctor on August 10, 2012, setting out the appellant's primary condition as Right, Rotator Cuff Tendonitis with an date of onset listed as 2011 and secondary condition as Diabetes Mellitus with an onset date of 2012. Under the section of the report asking for a description of specific restrictions the Doctor lists the following: overhead activities, repetitive work and lifting should be avoided.
- A Ministry Medical Report form completed by a Doctor on May 1, 2010 which was not considered by the Ministry because it was determined to be out of date and a newer report was available. Diabetes, listed as a secondary condition was the only condition listed in both reports.
- A letter from the Ministry dated August 22, 2012 informing the appellant that her Employment Screen Score is less than 15 as required under EAR –Section 2(3)(a)(i).
- The Employability Screen Screening worksheet showing the appellant as scoring 14, within the category of those "immediately employable / employable with short term interventions".

The appellant submitted the following documents for the hearing:

- A letter dated October 10, 2012 from the same Doctor who completed the August 10, 2012 medical report setting out the following information:
  - The Doctor has been seeing the appellant for two years.
  - The appellant has multiple medical problems that include Diabetes Mellitus type 2, Hypertension, iron deficiency anemia, hearing loss, Gastroesophageal reflux disease that is causing persistent dry cough and irritable bowel syndrome.
  - Additionally, the appellant has bilateral osteoarthritis, trochanteric bursitis, chronic fatigue syndrome and recurrent episodes of urinary tract infections. Most of the appellant's muscular skeletal problems are chronic with high potential for frequent recurrences.
  - The appellant is being treated by medication for a number of issues, has had cortisone injected into her right shoulder and been referred to specialists.
  - The Doctor states the following: "I believe that (the appellant) will not be in the capacity to participate in a job search or maintain a gainful employment for at least six months to a year."

- A letter from the appellant dated October 18, 2012 stating that she suffers from a number of medical problems that impede her from carrying out normal day to day activities without fatigue and stress. The appellant also states both her dependents need extra care and attention due to psychological impediments or disabilities.
- A Psychoeducational Assessment Report completed in February 2009 on the appellant's then 9 year old child, recommending (among other things) that the child be identified as a student with a learning disability.
- A psychology Assessment Report from March 2010 on the appellant's then nearly 12 year old child finding (among other things) that the child's cognitive functioning is in the mild intellectual disability range and presents with significant levels of withdrawn and anxious behaviours.
- A Canada Revenue Agency disability tax credit certificate dated January 14, 2011 determining that one of the appellant's children is eligible for the disability tax credit for the 2010 to 2016 tax years.
- A Court Order registered in 2005, granting sole custody and guardianship of the younger child to the appellant.

The panel finds the Doctor's letter dated October 10, 2012 to be new evidence in support of the evidence before the minister at reconsideration panel. The panel finds the appellant's letter dated October 18, 2012 is in support of the information before the minister at reconsideration with respect to her self-described health issues. Therefore this information is admissible under Section 22(4) of the Employment and Assistance Act.

The information contained in the letter regarding the appellant's children is new evidence that does not support the evidence before the minister at reconsideration. The reports submitted regarding the appellant's children are not timely, nor in support of the records before the minister at reconsideration, nor are they relevant to this appeal. The CRA form and Court order are not in support of the records before the minister at reconsideration, nor are they relevant to the appellant's appeal to be recognized as a person with persistent multiple barriers to employment status. Therefore the panel has determined it cannot admit the information respecting the appellant's dependent children into evidence under Section 22(4) of the Employment and Assistance Act.

**PART F – REASONS FOR PANEL DECISION**

The issue under appeal is whether the ministry acted reasonably in determining the appellant's medical conditions did not preclude her from searching for, accepting or continuing in employment as per section 2(4)(b) of the *Employment and Assistance Regulation* and therefore did not meet all the criteria necessary to qualify as a Person with Persistent Multiple Barriers.

The relevant legislation is set out in the Employment and Assistance Regulation, Section 2, as follows:

**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*, 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. (B.C. Reg. 263/2002)

The ministry determined that, as the appellant's employability screen score was 14, section 2(3) EAR did not apply; this section only applies to persons who score at least 15 on the employability screen. The ministry then assessed the appellant's application on the basis of sections 2(2) and 2(4). The ministry found the appellant met the requirements of section 2(2)(a). The ministry then considered the appellant's circumstances under section 2(4). The ministry found that the appellant met the requirements under section 2(4)(a) as the medical practitioner confirmed the medical conditions have continued for at least 1 year and are likely to continue for at least 2 more years. However, the ministry found the appellant did not meet the criterion of section 2(4)(b): that the medical condition is a barrier that precludes the person from searching for, accepting or continuing in employment. The ministry considered the restrictions set out in the medical report dated August 10, 2012 which were overhead activities, repetitive work and lifting and found there were many jobs that do not include these activities.

The appellant argued that she suffers from many medical problems that impede her from carrying out normal and simple day to day activities without fatigue and stress. As a result, her health imposes barriers in her living conditions. Furthermore, she states her two dependent children need extra care and attention due to psychological impediments or disabilities.

The panel has considered the information provided including the additional evidence submitted in the letter dated October 10, 2012 confirming many of the appellant's self-reported medical conditions. In the October 10<sup>th</sup> letter, the appellant's doctor provides further information regarding the appellant's medical problems and confirms that she is working at getting these issues under control with medication, cortisone treatment and referrals to specialists. Further, that most of the muscular skeletal medical problems are chronic and very likely with high potential for frequent recurrence. The doctor does not provide further restrictions specific to the medical conditions but does express his opinion that the appellant will not be in the capacity to participate in a job search or maintain a gainful employment for at least six months to a year.

The legislation is clear in that to meet the criteria as a person with persistent multiple barriers to employment, it is the opinion of the minister and not that of a medical practitioner which must be met. However, given the additional medical evidence from the physician detailing the numerous medical problems, required treatments and consultations, the panel finds the ministry's decision that the restrictions which were limited to overhead activities, repetitive work and lifting was not reasonable. Therefore, the reconsideration decision is not reasonably supported by the evidence and the panel rescinds the decision.