

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated November 21, 2012 which denied the appellant's request for renewal of her qualification as a Person With Persistent Multiple Barriers (PPMB) pursuant to section 2, ss.(1), (2), (3) and (4) of the *Employment and Assistance Regulation (EAR)*. The ministry determined that a medical practitioner confirmed that the appellant has a condition other than addiction and that her medical condition has continued for at least one year and is likely expected to last 2 years or more. However, the ministry found that the information provided by the appellant's medical practitioner does not establish that her medical condition presents a barrier that precludes her from searching, accepting or continuing in any type of employment for any length of time as required by Section 2, subsection (4) 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 reconsideration included:

- A Medical Report for PPMB completed by a physician on August 22, 2012;
- The ministry's decision dated October 15, 2012 denying the appellant's request for the PPMB designation;
- A copy of the appellant's Employability Screen with a total score of 13;
- Request for reconsideration dated March 20, 2012.

The medical report – Persons with Persistent Multiple Barriers – completed by a physician on August 22, 2012. The physician stated that the primary medical condition of the appellant is varicose veins and the secondary medical conditions are plantar fasciitis and chronic lower back pain that have existed for 4 years and 9 months and are not episodic in nature. The physician confirmed that the appellant is restricted and unable to stand for prolonged periods (over 30 minutes) and unable to walk for more than 1 to 2 blocks. The physician recommended physiotherapy, weight loss and pressure stockings.

The appellant received 13 score on the Employability Screen. The appellant received 0 for her age as she is between 50 to 65 years of age. The appellant received 0 as apart from her current application she was never on income assistance. The appellant's score on section 4 is 7 as she has been on income assistance for more than 12 months in the past 3 years. The appellant's score is 1 for the highest level of education as she has grade 10 to 12, and her score is 2 on section 6 as she has under 3 months work experience working in paid employment over the last 3 years. The appellant's score is 3 for his ability to speak English.

The physician in a note dated August 8, 2012 requested that the appellant receive financial assistance in order to purchase pressure stockings for symptomatic varicose veins. The physician stated that the appellant would not be able to stand for prolong periods without the stockings and may not be able to work.

The same physician on a note dated October 24, 2012 stated that the appellant suffers from nonspecific lower back pain and plantar fasciitis. The physician stated that this condition will likely continue for at least 12 months and has been present for more than a year.

In the request for reconsideration, the appellant submitted that she has pain in her feet and back and also has varicose veins in her legs. The appellant submitted that she cannot stand or sit for a long time. She said that she is 56 years old and fat. The appellant said that her doctor has told her that she cannot work and she needs financial assistance because she is a single mother with a 12 year old girl and need to pay rent and buy food.

The appellant in the Notice of Appeal dated November 27, 2012 submitted that she has met all of the requirements except for section 2.(4)(b), "asking what type of employment does the ministry think I can apply for"? The appellant stated that with the medical conditions she has, she does not know on what bases the ministry is stating that she should be working.

The appellant's daughter submitted an undated letter. She says that she is 12 years old and she is writing the letter because her mother is unable to communicate in English. The appellant's daughter said that her mom is a single mom and has been sick for many years. She always lies in bed because of her back and legs and she goes to see her doctor a lot. The appellant's daughter is requesting an assistance as her mother is the only source of support and she does not want to live on the streets or starve.

At the hearing, the appellant said that she was diagnosed with her medical conditions 3 years ago. At the beginning her medical condition was very bad; she could not stand straight nor sit for more than 10 minutes. The appellant said that she is still suffering from back pain and pain in her legs and ankle. She is on pain medication and has seen a specialist. She will have a CT scan of her back. The appellant said that due to

her pain, she is unable to work at this time. The appellant said that a friend told her that the ministry has decided not to pay her assistance. She is a single mother with a 12 year old daughter; she has no resources and does not know how to live if the ministry stops her income assistance.

The ministry did not object to the letter of the appellant's daughter. The panel accepted the letter as being in support of the information before the ministry under Section 22(4) of the *Employment and Assistance Act (EAA)* and therefore admitted the letter into evidence.

The ministry relies on the reconsideration decision.

The panel finds that:

- The appellant was designated a PPMB;
- The appellant's employability screen score is less than 15;
- The appellant is diagnosed with varicose veins and plantar fasciitis that would be expected to last for more than 2 years;
- The appellant is suffering from chronic lower back pain;
- The appellant is unable to stand for more than 30 minutes and walk for more than 1-2 blocks.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's determination that the appellant is not eligible for PPMB designation was a reasonable application of the applicable enactment in the circumstances of the appellant or is reasonably supported by the evidence.

Section 2 of the EAR provides eligibility for PPMB and states:

- (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 ministry's position is that the appellant scored under 15 on the employability screen and that there is no indication that the medical condition described by the physician, constitutes a limitation or a barrier precluding the appellant from all type of employment including part-time employment.

The appellant argues that she is not able to work and is receiving treatment for lower back pain. She is a single mother and does not have any other resources.

Section 2 of the EAR provides that in order to be eligible for the PPMB status, a person who scores less than 15 on the employability screen must have a medical condition, confirmed by a physician, that has continued for at least 1 year and is likely to continue for at least 2 more years, and that precludes that person from searching, accepting or continuing in employment.

The appellant describes a number of medical conditions affecting her ability to work. The physician stated that he has been the appellant's medical practitioner for over 6 months and that he has examined the appellant's previous medical records and diagnosed the appellant with varicose veins, planter fasciitis and chronic lower back pain. The physician stated that the appellant is under his care and that the medical condition will not resolve with time and would be expected to last for more than 2 years. The physician in a note dated August 8, 2012 stated that without special pressure stockings, the appellant would not be able to stand for prolonged periods and might not be able work.

The panel accepts the evidence of the appellant that she is suffering from back pain, is taking pain medication and has been scheduled for a CT scan. The panel notes that the only issue in this appeal is the reasonableness of the ministry's decision of November 21, 2012 that concluded the appellant's medical condition does not preclude her from maintaining all types of employment. The panel finds that based on the Medical Report, although the appellant's medical condition meets the criteria of duration, there is insufficient information to determine that it also meets the criteria a barrier that precludes employment. The physician did not confirm that the appellant is unable to perform any type of employment. The panel finds that the ministry's decision that the appellant's diagnosed medical conditions do not preclude her from searching for, accepting or continuing in any type of employment was reasonable.

The panel finds that the ministry's reconsideration decision dated November 21, 2012 was a reasonable application of the applicable legislation in the circumstances of the appellant and confirms the reconsideration decision under section 24(2)(a) of the EAA. Accordingly, the panel confirms the ministry's decision.