

PART C – Decision under Appeal

This is an appeal of a decision of the Ministry of Social Development (“the ministry”) dated December 20, 2012. The ministry found that the appellant was not eligible for designation as a Person With Persistent Multiple Barriers to employment (PPMB). The ministry relied on sections 2(2) and (3) of the Employment and Assistance Regulation (EAR) finding that the appellant’s Employability Screen report met the required score of 15 and she has two medical conditions for at least one year and will last two or more. However, the ministry was not satisfied that her personal barriers seriously impede her ability to search for, accept or continue employment (under 2(3)(a)(ii)), nor that she has taken all steps the ministry considers reasonable to overcome barriers identified on the Employability Screen (under 2(3)(c)), nor that her medical conditions are a barrier which seriously impedes her ability to search for, accept or continue employment (under 3(b)(ii)).

PART D – Relevant Legislation

Employment and Assistance Regulation section 2

PART E – Summary of Facts

Evidence before the ministry at the time of its reconsideration:

- A medical report for PPMB pertaining to the appellant completed by Dr L, dated August 7, 2012. The report provides the following information:
 - As the primary medical condition Dr L listed 'Major depression.' As a secondary condition he listed 'low back pain mechanical.'
 - Dr L opined that the condition would last two years or more and had been in existence for one and half years.
 - The appellant's medication (Sertraline) had an outcome of 'Improving 50%.'
 - The appellant was separated from her husband, had low self-esteem, depressed mood, tired, lost weight, and a lost interest in doing things.
 - Her condition is chronic.
 - No restrictions were listed as a result of the appellant's condition.
- A ministry Employability Screen relating to the appellant, dated August 23, 2012. The appellant's score was 15.
- A Client Employability Profile date August 23, 2012 which lists the factors which 'Severely Limit Employment Options' as:
 - Unemployed for over three years
 - Severe health condition
 - Persistent disability, severely impacts on employment options
 - Ineffective interpersonal skills/unable to communicate with others in an effective manner as documented in file history.In the category 'Affects Employment Options' the following are listed:
 - Unclear of employment search methods yet has a realistic idea of employment potential.
 - Grade 11 education.
 - Poor reading, writing and numeracy skills.
- In the reconsideration decision, the ministry stated 'A review of your file shows that you were fired from a job in December 2011, therefore you were working within the past 3 years. Your English language skills are sufficient to discuss matters with ministry workers.'

Evidence presented at the hearing:

The appellant provided oral evidence that:

- She wants to work but has difficulty standing or sitting.
- She has had severe back pain since her epidural six years ago.
- Her medications help her but she needs more time to recover before working.

- Her father must help her with household tasks.
- She has two children, six and four years old.
- Her medications relieve her pain symptoms for a few hours but then they return.
- She takes medications for back pain, depression, stomach problems and to help her sleep. Under questioning she stated that:
 - Dr L did not include these medications in his report as she was instructed by the ministry that it wasn't necessary.
 - Her restrictions are that she must take medications, can't stand straight or sit. She must run around. She can sit after having a swim.
- The appellant's evidence did not address her employment and communication issues.

There was no new evidence by Ministry

Under section 22(4)(b) of the Act, the Panel admitted the new evidence as it is in support of information and records which were before the Ministry at the time of its decision.

PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry's decision dated December 20, 2012, which found that the appellant was not eligible for designation as a Person With Persistent Multiple Barriers to employment (PPMB) pursuant to section 2 of the EAR was reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

Section 2 of the EAR states:

- 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 one 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.

Appellant's argument

The appellant argued that her depression and the medications she takes impede her from all forms of employment. She also disputes the ministry's position that she is not taking the required steps to overcome the barriers identified by the Employability Screen, as she is following her doctor's instructions and taking the required medications. She asks for more time to make a recovery.

Ministry's argument

The ministry restated its position from the reconsideration decision.

Reasoning

Section 2(1) of the EAR requires that subsection (2) and subsection (3) or (4) be satisfied in order to qualify for PPMB.

In its decision, the ministry did not dispute these criteria in the EAR:

- Section 2(2), which requires that the appellant have been on some form of ministry assistance for 12 of the previous 15 months,
- Section 2(3)(a)(i), which states 'the minister ... has determined that the person scores at least 15 on the employability screen set out in Schedule E,' and
- Section 2(3)(b)(i)(A), which states 'in the opinion of the medical practitioner [the medical condition] has continued for at least one year and is likely to continue for at least 2 more years.'

As the appellant scored 15 on her Employability Screen, the appellant must meet all of the criteria set out in section 2(3). As noted above, the ministry determined that 2(3)(a)(i) and 2(3)(b)(i)(A) have been satisfied.

However, the ministry was not satisfied that, in accordance with 3(a)(ii), 'based on the result of that employability screen, [the minister] considers that the person has barriers that seriously impede the person's ability to search for, accept or continue in employment.' The ministry noted that she had worked within the last three years, had good language skills and that her depression had improved by 50% due to her medication.

The appellant argues that her lower back pain, depression and the medications she takes impede her ability to be employed.

At the hearing, the appellant stated that with her medications her symptoms are relieved for a few hours.

The panel notes that the Client Employability Profile states that the appellant has not worked within three years and has 'ineffective interpersonal skills/unable to communicate with others in an effective manner as documented in file history.' Yet in the reconsideration decision, the ministry stated that her file shows that she was fired in December 2011 (therefore has worked within three years) and has sufficient english skills to discuss her case with ministry staff.

The panel accepts the ministry's evidence (in the reconsideration decision) regarding her employment within three years as it was the result of information contained in its files, as opposed to from an intake questionnaire. Similarly, the ministry provided evidence regarding the appellant's ability to communicate well with ministry staff. Neither were challenged by the appellant in her written or oral evidence. As a result, the panel finds the ministry was reasonable in its conclusion as the appellant's employment history, language skills, the improvement of her condition, as well as the fact that she is relieved of her symptoms through the use of her medications, do not indicate 'barriers that seriously impede the person's ability to search for, accept, or continue in employment.'

Pursuant to section 2(3)(c) EAR, the ministry also determined that the appellant had not taken sufficient steps to overcome the barriers identified in the Employability Screen. The appellant argues she is following the advice of her physician and taking her medications. The panel finds the ministry reasonable in its conclusion as the barriers to employment (over which the appellant has some control) are laid out in the Employability Screen:

- Unclear of employment search methods yet has a realistic idea of employment potential.
- Grade 11 education.
- Poor reading, writing and numeracy skills.

There is no evidence of the appellant taking steps to address these issues.

Finally, pursuant to section 2(3)(b)(ii) EAR, the ministry concluded that the appellant's medical condition was not a barrier that seriously impedes the person's ability to search for, accept or continue in employment. The appellant argued that her depression, back pain and medications prevent her from doing this.

The panel also finds the ministry reasonable in this conclusion. The appellant has no restrictions listed by Dr L, she advised the panel that she is mobile although she has difficulty standing or sitting for lengthy periods, however, her medication provides her with relief of her back symptoms. As well, Dr L reported a 50% improvement in her depressive condition from her medication.

In conclusion, the panel confirms the ministry's decision, finding it was a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.