

PART C – Decision under Appeal

The decision under appeal is the Minister's Reconsideration decision dated October 30, 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 (EAR). The ministry determined the appellant 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 12 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 her from searching for, accepting or continuing in 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 :

- Medical Report-PPMB dated August 23, 2010. The Medical Report confirms a primary medical condition as fibromyalgia. With respect to restrictions specific to the medical condition the physician comments *"whole body stiffens, easy fatigue, no energy."*
- Medical Report-PPMB dated July 9, 2012 and an updated version of the Report dated October 22, 2012 and an Authority to Release Information completed by the appellant on this date. These Medical Reports confirm the appellant's primary medical condition as pain forearm pain and swelling and a secondary medical condition of fibromyalgia .The physician in these reports provided no information regarding restrictions specific to the appellant's medical conditions in either report.
- Employability Screen (undated) noting a total score of 12 with the following three scores constituting the total score: a score of 7 for total time on income assistance in last 3 years; a score of 1 for the highest level of education completed (Grade 10-12) and a score of 4 for the total amount of time spent in paid employment over the past 3 years.
- October 1, 2012 the ministry informs the appellant that her application for the PPMB designation is denied.
- October 22, 2012 the appellant's Request for Reconsideration. In outlining her reasons for the request the appellant states the following: *"pre-existing condition- fibromyalgia which disable me to seek a fulltime employment"; " During the existing condition, I've developed a swelling wrist preventing me to work at my part-time jobs since July 12, 2012"; "The doctor has filled out the new conditions but failed to include the pre-existing condition which I've been suffered in the past 18 years" and " The doctor is now included the additional medical conditions and history for your reconsideration."*

In her Notice of Appeal (NOA) dated November 11, 2012 the appellant states *"The doctor has failed to include the most important piece of information-medical restrictions."* The appellant further indicates that not only has her health not improved significantly, but has been complicated with a wrist swelling condition since July 2012 and is still recovering and that her doctor has now clarified her health issues and restrictions . The appellant contends that her employability screen score should have been 15 with a score of 3 added to her current score of 12 for her English speaking ability or literacy level. She argues she was awarded a zero score for having a good working knowledge of English when she should have been awarded a score of 3 because as she states *"I'm an ESL with working level in oral but I lack of proficiency in reading and writing. I required translator for most of my correspondences, filling out form, including this form."*

A prescription note dated November 7, 2012 from the appellant's doctor was included with the NOA . The doctor indicates the appellant has had fibromyalgia for 18 plus years and states *"is persistent restricted in all movements. During her wrist problem, she was on multiple meds and she forgot to remind me of her fibromyalgia. She is still restricted by her fibromyalgia. Her wrist is better."* Also included was a most recent update to the medical Report-PPMB of July 9, 2012 of November 19, 2012 wherein the appellant's doctor provides the identical description regarding the nature of any

restrictions specific to the appellant's medical conditions as that provided the Medical Report-PPMB of August 23, 2010. The appellant submits that her fibromyalgia conditions and the medical restrictions are current and there is no new evidence to suggest these conditions and restrictions have been improved or changed and, therefore, she should not be denied eligibility for PPMB designation.

The panel admitted the new evidence submitted with the NOA as evidence in support of the documents that were before the ministry at Reconsideration pursuant to Section 22(4) of the Employment and Assistance Act

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 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 12 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 her from searching for, accepting or continuing in 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 12 on the employability screen and, therefore, she must meet the requirements of the EAR section 2(4). The Ministry argues the appellant's medical conditions do not preclude her from maintaining all types of employment. It notes that her doctor reported no restrictions related to her medical conditions. As a result, it found that there is no indication as to the nature or degree of any restriction due to her fibromyalgia or wrist pain. The ministry reports that there are many sedentary or independent working jobs available that the appellant can participate in with no mitigating restrictions related to her physical abilities. Therefore, the ministry submits it cannot establish that the appellant is precluded from all types of employment. It submits that the appellant's medical condition and resultant restriction do not preclude her from searching for, accepting or continuing in employment.

The appellant contends that her doctor has clarified her restrictions related to her medical condition in his note dated November 7, 2012 and has also updated the Medical Report-PPMB as at November 19, 2012 regarding her restrictions related to her fibromyalgia. She further contends that there is no new evidence to suggest that her conditions and restrictions which have existed for sometime have been improved or changed and she should qualify for a PPMB designation. Finally she argues that her employability screen score should have been higher at 15 awarding her points for English speaking ability or literacy level as she needs a translator for her correspondence work.

The Medical Report-Persons With Persistent Multiple Barriers is specifically worded and designed to disclose medical information for the purpose of assisting the ministry to assess the appellant's employability. In the most updated medical report of November 19, 2012 in regard to the appellant's restrictions related to her fibromyalgia, the doctor states "*whole body stiffens, easy fatigue, no energy*". This description of restrictions is identical to that provided in a similar report dated August 23, 2012. Further, in a note dated November 7, 2012 the doctor indicates the appellant is restricted in all movements, but that her wrist is better.

The panel finds that the information provided by the ministry with respect to the appellant's employability screen concerning her age, education and employment background together with that submitted concerning her medical condition from her doctor establishes that the appellant has limitations in his employability. With regard to the appellant's argument that her English speaking ability or literacy level on her employability screen should have scored higher because she requires a translator for correspondence work, the panel finds that there is insufficient information in the record to establish that the appellant does not have a working knowledge of English. The panel further notes it is not clear that anyone other than the appellant completed the necessary application documents and that she in any corroborated fashion used the translation services of another person. The panel also finds that the more recent updated Medical Report-PPMB of November 19, 2012 and the doctor's note of November 7, 2012 fall short of establishing that the appellant is precluded from any form of employment such as that in a suitable environment doing sedentary less physically active work. The panel reviewed the more recent medical evidence that indicates a diagnosis of fibromyalgia and related restrictions as well as improvements in the wrist condition of the appellant, but observes that the documents do not speak to the specific impact on restrictions to employability regarding the appellant. The panel finds the overall evidence is insufficient and does not establish 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 section 2(4)(b) 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