

PART C – Decision under Appeal

The decision under appeal is the Minister's Reconsideration decision dated October 19, 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 maintaining all types of employment. 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 10 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 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 April 15, 2010. The Medical Report confirms a primary medical condition as depression and a secondary medical condition as “mild scoliosis thoracic and dd.” With respect to restrictions specific to the medical condition the physician comments “ has had rotator cuff tendonitis and multiple right shoulder(sic) pain.”
- Medical Report-PPMB dated April 27, 2012. The Medical Report confirms the appellant’s primary medical condition as “pain right(sic) shoulder” and notes onset 11-12 years ago with a flare up one year ago and a secondary medical condition of “calcium deposit”. The physician with regard to treatment approaches to date notes “stretching and exercise of shoulder joint” and comments with respect to outcome “stabilized at present”. The doctor with respect to a prognosis states “she will need regular exercise” and with regard to restrictions specific to the medical condition states “exercise stretching may aggravate the condition.”
- An Employability Screen (undated) noting a total score of 10 with two scores constituting the total score: a score of 7 for total time on income assistance of more than 12 months in the last 3 years and a score of 3 for the total amount of time spent in paid employment over the past 3 years (volunteer work only).
- July 31, 2012 the ministry informs the appellant that her application for the PPMB designation is denied.
- September 20, 2012 the appellant’s Request for Reconsideration. In a letter included and dated September 18, 2012 the appellant contends her barriers to employment are; Permanent Functional Impairment in her shoulders and upper arms and comments “ an old work injury causing below average strength and endurance”; Depression and comments “ first diagnosis at age 20, working is good therapy”; Home Address and indicates because it is emergency housing “ walls go up”; Financial Stress and comments: “ no earning power”. The appellant reports she walks 3 dogs for free to pretend she has dog walking business. Something she hopes to promote to get enough paying clients and get herself off welfare. Or alternatively be hired by a dog walking company.

In her Notice of Appeal dated November 5, 2012 the appellant states “The ministry decision is erroneous. Total focus on deny application. I disagree because I have struggled for years trying to fit into the workforce. My body and brain are getting worse every year. I am in constant (sic) pain. Have remembering issues, panic attacks, etc. I can only work a few hours before my body breaks down with pain.” In a letter dated November 3, 2012 included with the NOA the appellant indicates that her last flare up was more than 2 years ago and that she had an ultra sound about 1 year ago. The appellant reports that not exceeding her limitations offers stabilization of injury. She also reports that her condition is an old work injury that happened 10-12 years ago and that the damage is permanent. It has forced her to change how she works and how much she can do for how long and that her muscle power is short lived. Ligaments have torn from the bone and replaced with calcium deposits. Muscles in the upper arms are over stretched and weakened. The appellant considers her damage is permanent and limits her employability.

At the hearing, the Notice of Appeal and attached written testimony 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.

At the hearing, the ministry stood by the record.

At the hearing, the appellant observed that the more recent medical report on the record that indicates her restrictions about excessive stretching may aggravate her condition is not rational. The appellant felt no job could ask this of her and it was clarified by the ministry that the medical report, in this regard, was related to her medical condition which pointed out that excessive stretching may do her condition harm as opposed to treatment therapies of stretching and exercise. The appellant also described her condition that affects her rotator cuff and shoulders. A condition that causes her to lose strength in her arms which go numb if she attempts to do too much requiring strength lifting heavy objects. She outlined that she needs to minimize and pace herself in order to manage her pain and that when she gets flare ups she takes a standard pain killer. The appellant reports that she has short spurts of work at a time and her volunteer dog walking allows this. It also allows her to get out and do something, to socialize and to show people she can do something. Working and keeping busy helps her depression for which she takes no medication. The appellant when asked by the panel to describe her restriction regarding what she might be able to do regarding work replied that living in a shelter and being on welfare creates associations and perceptions that hinder her ability to work. She reports that if she can get past these barriers initially by showing the good job she can do people will not care about his. Her goal is to evolve off of welfare.

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 10 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 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 met the criterion under EAR section 2(2) and 2(4) (a). However, the appellant scored 10 on the employability screen and, therefore, she must meet the requirements of the EAR section 2(4) (b). The Ministry argues the appellant's medical conditions do not preclude her from maintaining all types of employment. It notes that her doctor reports restrictions related to her medical conditions as "excessive stretching may aggravate the condition" and that such a condition is manageable with limitation of the stretching motion. 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 submits that she also struggles with the pain in her arms and shoulders. She contends that she can only work a few hours before her pain weakens body breaks down in pain and she requires pain killers. The appellant also indicated that her depression is not treated with any medication and that keeping busy helps this condition.

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. The more recent medical report dated April 27, 2012, in regard to the appellant's employability states "excessive stretching may aggravate her condition" of shoulder pain and that the appellant treatments include stretching and exercise of shoulder joint. The panel finds that the information provided by the ministry with respect to the appellant's employment background, skills and education together with that submitted concerning her medical condition from her physician establishes that the appellant has limitations in her employability. However, the panel finds that the more recent medical report falls 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 also acknowledges that the appellant may require some accommodation in certain kinds of work undertaken, but the evidence and the appellant's own testimony does not establish she is precluded from all types of work. The appellant's argument that her place of residency and her identity as an income assistance recipient pose barriers to gaining employment are not medical conditions or issues contemplated under the legislation.

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 reasonable. The panel further 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.