

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development (Ministry) reconsideration decision dated February 8, 2013 which held the Appellant was not eligible to qualify as a person with persistent multiple barriers to employment (PPMB) because she did not meet all of the applicable statutory requirements of Section 2 of the Employment and Assistance Regulation (EAR). Specifically, the Ministry was not satisfied that the Appellant's medical condition is a barrier that precludes the Appellant from searching for, accepting, or continuing in employment, pursuant to Section 2(4) (b) 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 the time of the reconsideration decision consisted of the following:

- Appellant's PPMB Medical Report dated December 11, 2012.
- Appellant's Employability Screen documentation dated January 16, 2013.
- Letter, from the Ministry to the Appellant, dated January 16, 2013, denying the Appellant PPMB eligibility.
- Appellant's amended PPMB Medical Report, dated December 11, 2012 and initialed by physician, indicating that the expected duration of the Appellant's medical condition is two years or more. The physician's comment on the report states " [Appellant is] unable to mobilize effectively or stand for long periods of time."
- Appellant's Request for Reconsideration dated February 5, 2013 where she stated the following (quote):  
*"I have been diagnosed and severe arthritis in my knees, actually, I can not doing light domestic duties, also I am under care health program in health clinic. I need more medication and have difficulty moving and walking – my Doctor has stated that my condition is long term and it will take more than 2 years and there fore I need more support and assistant financially my family is under stres and we can not afford my medication my husband health is also not well he has not been working. I have 2 small children and it is hard to set be finantially. I attached the medical report that has changed my Doctor."*
- Outline of Appellant's Health Program action plan for activity modification, pain management, nutrition/weight management, mobility and exercise.
- Request for Reconsideration Decision dated February 8, 2013, denying the Appellant PPMB designation because, in the opinion of the Minister, the Appellant's medical conditions do not preclude [her] from maintaining all types of employment; therefore, [she] does not meet Section 2(4) (b) of the EAR.

In the Appellant's Notice of Appeal dated February 19, 2013 she stated the following [quote]:

"I am sorry because I can not all of my requests write in here, I continuation my request in a letter. I enclosed on the notice of appeal. I, [appellant] would like to appeal the decision of the ministry. When I took the form medical report persons with persistent multiple barriers to fill out for my family doctor, she was not there and it was the first time I saw [that] Doctor and she filld up the form medical report and she forget to write the all my problem and medication the docter mention about my depression. I take cipralex for depression. I take ibuperophen for my migraine, I take Tylenol and I use Diclofenas for my knees also I use patellar stabilizer for my knee. I have a problem in my shoulder and i am waiting for surgery breast, the regular pain medication does not help me to do my daily activity, in the February 4-2013, I saw Arthritis specialist she told me not remedial for Arthritis just do gentle exercises and do not going up and down stairs and use the toilet seat and other things. I have no time to see my family doctor in the 7 days for getting new medical report when I have more time I can do and send you. I have really problem in sitting and stand and walking. I can not walk more than 10 minutes, when I do house cleaning vacuuming, wash the dishes, cook also sitting in the class at school,

unfortunately I am not able to do. Once the pain comes nothing helps it, I rest quite regularly still the pain does not go away also in the employability screen the question number 7 [what is English speaking ability or literacy level] I don't know why checked number A my English is not good and I study at level 3 at elsa class and English is a second language for me. I would like to appeal the ministry decision based above reasons. Thank you for your thime and consideration , sincerely, [appellant].”

**At the hearing the Appellant provided evidence that:**

- She has very painful arthritis in her right leg which causes her difficulties in doing her daily work; and recently she suffers from extreme pain in her hands that she believes is related to her arthritis.
- She also suffers from migraine headaches that are very painful.
- She is currently medicated for depression on top of the medications that she received from the clinic for her arthritis. The medicine she requires now is very expensive and she is not able to purchase it.
- Often, her pain is so overwhelming that it makes it difficult for her to walk and work; and, she believes her leg pain has contributed to her depression as she cannot play with her children for any length of time. Her pain is worst at night and she gets minimal sleep because of it. The doctor has shown her pictures of the bones in her legs and has explained that her bones are thinning and that scares her because she can only hope her situation gets better.
- Her doctor has told her not to go up and down stairs, work or walk and she should not be lifting heavy weights. She tries to massage her legs and it gives her minor relief, but only temporarily.
- The doctor has ordered her to do exercises at home that do not involve standing or sitting; instead, they require her to put her hands on the wall to exercise.
- She is under the care of a nutritionist as well.
- She has pain in her shoulders, to which her doctor has arranged for her to have breast reduction surgery in hopes that the surgery will alleviate her shoulder discomfort.
- Her pain is such a big part of her daily life that, in each of her activities, she finds that she must constantly move and shift her body position to try and find comfort, whether she is doing errands, her chores or sitting in the classroom of the English course she attends.
- She states that she disagrees with the Employability Screen in her file because it states under number 7 that her English speaking/literacy level is at a good level. She states that she did not fill out this form, nor was she present when it was filled out. She says that it does not make sense that she has a 'good working knowledge' of English when she currently requires a translator to participate in this hearing.
- She attended English classes the first year she was in Canada, but had to quit to take care of her children. Then, she started English classes once again five months ago.
- Since she has been in Canada, she has made an effort to volunteer a few times at her children's school as well as the local food bank; but, she has not ever been employed for remuneration since her arrival in Canada a few years ago.
- Since her arrival here, she states that she is at a 'Level 3' English speaking ability out of a total six levels of proficiency.
- Her situation prevents her from seeking employment.

**At the hearing the Ministry provided evidence that:**

- For an individual to be designated as a Person with Persistent Multiple Barriers (PPMB), they must meet the criteria outlined in Section 2 of the EAR.
- The Appellant does meet the criteria of Section 2(2) as her she has been a recipient of income assistance for at least twelve of the immediately preceding fifteen months.
- The Appellant's employability screen score is less than 15 per Section 2(3).
- The PPMB Medical Report filled out by the Appellant's physician on December 11, 2012 states the Appellant's primary medical condition is osteoarthritis bilateral knees onset December 2011; and, her secondary medical condition is depression onset 2009. The Physician has amended the Medical Report to state that the Appellant's medical condition has an expected duration of 2 or more years.
- When the Ministry fills out the Employability Screen form, they do so by meeting with and discussing the form with clients.

**The Panel finds that:**

- In order for individuals to be eligible for PPMB, they must meet the outlined criteria of Section 2 of the EAR.
- The Appellant has an Employability Score of 12 on the Employability Screen documentation that was before the Ministry at the time of Reconsideration and it is this score the Ministry must take into consideration when determining eligibility.
- The Appellant, in her Notice of Appeal, brought up the issue of her Employability Screen being incorrect and not being a true representation of her lack of proficiency in English.
- The Appellant, prior to Appeal, did not bring up the issue of the Employability Screen score as it related to her eligibility; therefore, this particular information cannot be admitted under Section 22(4) of the EAA, as it was not in support of the information before the Ministry at the time of Reconsideration.
- The Appellant's condition will likely continue for 2 or more years.
- The amended version of the PPMB Medical Report, submitted by her doctor, only contains the following information with respect to the nature of her restrictions: pain knees - bilateral; unable to stand for long periods of time; migraines - episodic - limits functional ability.
- The Appellant has not presented new medical information or evidence that is different from the information before the Ministry at reconsideration.

## PART F – Reasons for Panel Decision

The issue on Appeal is whether the Ministry reasonably concluded that the Appellant did not meet all of the applicable statutory requirements of Section 2 of the Employment and Assistance Regulation (EAR) in order to qualify as a person with persistent multiple barriers to employment (PPMB); specifically, the Ministry was not satisfied that the Appellant's medical condition(s) is (are) a barrier that preclude the Appellant from searching for, accepting or continuing in employment as outlined in Section 2(4)(b) of the EAR.

For a person to qualify as a person with PPMB, the legislation provides the following:

### **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*;
- (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.

[en. B.C. Reg. 368/2002.]

The Appellant argues that she is prevented from looking for employment due to her health conditions and states that despite taking her pain medication, she feels pain most of the time which affects her mobility and causes depression.

At the hearing, the Ministry stated, in essence, that they are relying upon the reasons of the reconsideration decision as their position in this case. That is, in order for a person to be considered eligible for PPMB, a person must meet the criteria required and outlined in the legislation. The Ministry is satisfied the Appellant's medical condition is likely to continue for two or more years, and she meets the criteria in Section 2(4)(a). The Appellant has partially met the criteria for PPMB designation and not met it fully. The Ministry argued the Appellant has not met the requirements of Section 2 (4) (b) because there are medications available to ameliorate or improve the Appellant's condition and restrictions and therefore, her medical conditions do not preclude her from searching for, accepting or seeking all types of employment.

The amended version of the PPMB Medical Report provides minimal information, from the doctor, regarding the Appellant's medical condition. The doctor has indicated her primary medical condition is restricted to Osteoarthritis - bilateral knees; and, her secondary medical condition as depression and migraines. Other than the physician indicating the Appellant's prognosis has an expected duration of

2 years or more, that she has pain in her knees bi-lateral and she is unable to stand for long periods of time, there is no information available for the panel to consider as it relates to the Appellant not being able to work.

Based on the information before the Ministry at reconsideration, the Panel finds that the Ministry had reasonably concluded the Appellant's conditions did not preclude her from searching for, accepting or seeking all types of employment and that the requirements of Section 2(4)(6) of the EAR were not met. Therefore, the Panel finds the Ministry's decision was reasonably supported by the evidence and confirms the reconsideration decision of February 8, 2013.