

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development (the ministry) that denied the appellant requalification as a person with multiple barriers to employment (PPMB) under section 2 of the Employment and Assistance Regulation. The ministry held that the appellant did not meet the eligibility criteria set out in section 2(4)(b) of the Regulation that requires the person's medical condition to be, in the opinion of the Minister, a barrier that precludes the person from searching for, accepting or continuing an employment.

The ministry found that the appellant's medical condition, in the opinion of a medical practitioner, has continued for at least 1 year and is likely to continue for at least 2 more years, satisfying the requirements of section 2(4)(a) of the Regulation.

The ministry determined that the appellant's most recent score on the Employability Screen is 15.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 2.

PART E – Summary of Facts

With the consent of the parties, the appeal hearing was conducted in writing in accordance with section 22(3)(b) of the *Employment and Assistance Act*.

The evidence before the ministry at reconsideration consisted of the following:

- The appellant's Employability Screen, undated, showing a score of 15.
- A Medical Report – PPMB, dated 13 September 2012 completed by the appellant's general practitioner (GP) who has known the appellant for over 6 months. The GP reports the appellant's primary medical condition is mechanical low back pain, onset 2003. No secondary medical condition is shown. Treatment is "Rest when needed; exercise – elliptical." The GP reports the condition has lasted 9 years, with a prognosis that it will last 2 years or more. The condition is not episodic, with the GP reporting "Daily pain, aggravated by daily activities." The GP describes the restrictions specific to the medical condition as "Avoid heavy lifting & strenuous physical activity."
- In the space provided in a letter from the ministry, the appellant describes any medical conditions not reported in the Medical Report – PPMB as severe low back pain and bilateral shoulder pain with any mild activity. She describes her restrictions as not being able to carry any weight. She also reports that she has a severely disabled 9-year old child who is totally dependent on others.
- The appellant's Request for Reconsideration dated 31 January 2013. The appellant states that she suffers from severe back pain. Her pain first started in the lower area of her back then slowly diffused to her shoulder. At the beginning it was not so severe as to affect her daily activity, but in the last five years her pain increased after walking 20 min. or any mild daily activities. To decrease the pain she rests on her back for a while and this happens again and again several times during the day. Her first MRI showed some degenerative changes on her lower disc and she is about to have a second MRI see if there are any further changes. The appellant also states that she has a disabled son who is suffering from cerebral palsy who she has to look after.
- Attached to the Request for Reconsideration is a medical imaging report dated 08 February 2010. Findings are normal or unremarkable except there is some mild loss of the normal T2 signal in the L4-5 disc indicating early degenerative change. There is asymmetric circumferential annular bulge at this level.
- Also attached to the Request for Reconsideration is a note from her GP dated 31 January 2013 which states: "[The appellant] continues to have a daily low back pain and is not suitable for physical work." Another note of the same date from the GP states: "Her son has severe CP & needs her 24 hour supervision & she has a lumbar disc bulge."

In her Notice of Appeal dated 16 February 2013, the appellant stated that her condition is not getting any better and is even getting worse and her situation with having a disabled son has not changed.

In an email dated 14 March 2013, the ministry stated it is relying on the reconsideration decision.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry determination that denied the appellant requalification as PPMB because she did not meet the eligibility criterion set out in section 2(4)(b) of the EAR was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The applicable legislation is set out in the EAR:

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.

The position of the ministry is that, while acknowledging that the appellant has certain limitations as a result of her medical condition, the ministry notes that these restrictions do not appear to preclude her from employment all fields of work. Based on the information provided, the ministry was not satisfied that the appellant's medical condition is a barrier that precludes her from participating in any type of employment for any length of time including less stressful positions. The ministry therefore found that the appellant did not meet the eligibility criteria set out in section 2(4)(b) of the EAR.

The position of the appellant is that her medical condition is serious enough that it prevents her from working.

The panel notes that the ministry has determined that the appellant scores 15 on the employability screen. The legislation is clear that for a person who scores at least 15 on the employability screen, the applicable criteria are set out in subsection (3) of section 2 of the EAR, not subsection (4). The panel notes that the provision regarding medical conditions as a barrier set out in subsection (4) – “precludes the person from searching for, accepting or continuing in employment” – is different from, and arguably more stringent than, those in subsection (3) – “seriously impedes the person’s ability to search for, accept or continue in employment.” The panel finds that the ministry’s determination of the eligibility of the appellant under subsection (4) was not a reasonable application of the legislation in the circumstances of the appellant, given her score of 15 on the employability screen. The panel therefore rescinds the ministry’s decision in favour of the appellant.