

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the ministry) reconsideration decision dated May 1, 2013, which found that the appellant did not meet two of the statutory requirements of section 2 of the *Employment and Assistance Regulation* for designation as a person with persistent multiple barriers (PPMB). The ministry found that three criteria were met: the appellant has been a recipient of income assistance for at least 12 of the immediately preceding 15 calendar months per EAR section 2(2)(a); the appellant has barriers that seriously impede her ability to search for, accept or continue in employment per section 2(3)(a)(ii); and she has a medical condition that, in the opinion of a medical practitioner has continued for at least one year and is likely to continue for at least two more years, per section 2(3)(b)(i).

However, the ministry was not satisfied that:

- the appellant's medical condition is a barrier that seriously impedes her ability to search for, accept or continue in employment as required by EAR section 2(3)(b)(ii); and
- the appellant has taken all reasonable steps to overcome her barriers to employment as required by EAR section 2(3)(c).

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:

- 1) The appellant's Request for Reconsideration dated April 23, 2013 (RFR) stating that she is a full time stay at home mom who is suffering from multiple health conditions such as foot pain and swelling, back pain and type two diabetes. In the RFR, the appellant also states that in addition to her deteriorating health conditions, she is unable to work because she looks after her severely autistic son who needs 24 hour supervision seven days per week;
- 2) Letter from the Ministry to the appellant dated April 4, 2013 advising that the appellant was denied PPMB designation;
- 3) Medical Report – Persons with Persistent Multiple Barriers dated March 21, 2013 completed by the appellant's general practitioner indicating that the appellant has longstanding painful varicose veins, hypertension and diabetes and that prolonged standing exacerbates the pain in her veins;
- 4) Employability Screen indicating the appellant's score of 15 (income assistance recipient for more than 12 months in the last 3 years, grade 10 to 12 education, none or limited work experience in the last 3 years and English as a second language); and
- 5) Client Employability Profile indicating that the appellant has never worked, has severe lack of employment search and planning skills, is unable to speak, read or write English, has severe health conditions and persistent disability.

In her Notice of Appeal the appellant states that she has taken ESL classes and has completed a child development diploma at a college. She also states that she is unable to work due to her deteriorating health and because she is looking after her severely autistic son who needs 24 hour supervision. With her Notice of Appeal, the appellant included a letter from a government program and child care staff qualification certificate dated June 3, 2010 indicating that the appellant has met the requirements as a Child Development Assistant (the "Certificate").

Admissibility of New Information

The panel has admitted into evidence the Certificate and the information in the Notice of Appeal as they are in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the panel finds that the new evidence relates to the appellant's medical condition and her attempts to overcome her barriers to employment.

Neither the appellant nor the ministry attended the hearing. Having confirmed that the parties were notified of the hearing, the panel proceeded with the hearing pursuant to EAA section 86(b).

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision to deny the appellant designation as a Person with Persistent Multiple Barriers was reasonably supported by the evidence or was a reasonable application of the applicable legislation in the circumstances of the appellant. In particular, was the ministry reasonable in determining that:

- the appellant's medical condition is not a barrier that seriously impedes her ability to search for, accept or continue in employment as required by EAR section 2(3)(b)(ii); and
- the appellant has not taken all reasonable steps to overcome her barriers to employment as required by EAR section 2(3)(c)?

Section 2 of the EAR states as follows:

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 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.

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

EAR section 2(3)(b)(ii) – medical condition that seriously impedes ability

The ministry's position is that although the appellant is restricted from prolonged standing as it exacerbates the pain in her veins, the minister is not satisfied that the appellant's restriction establishes that she is seriously impeded from all types of employment by her medical condition. In particular, the ministry states that its definition of "seriously impedes" is as follows: "a medical condition is considered to seriously impede the recipient's ability to search for, accept or continue in employment, when, as a result of the medical condition, the recipient is unable to participate in any type of employment that would enable independence from income assistance".

The ministry's position is that there are many jobs that do not require prolonged standing and that there is a remedial measure in the form of support stockings that is available to ameliorate the appellant's condition and allow for better functionality.

The appellant's position, as set out in the RFR and Notice of Appeal, is that she is suffering from multiple health conditions including foot pain and swelling, back pain and diabetes and that her health is deteriorating. In addition, the appellant states that she cannot work because her autistic son requires 24 hour supervision.

Panel Decision

The appellant's general practitioner confirms that the appellant suffers from longstanding painful varicose veins, hypertension, and diabetes. In the Medical Report, the general practitioner reports that the condition is constant and that prolonged standing exacerbates pain in the veins. Although the appellant reports that her health is deteriorating, there is no medical evidence supporting this information. In addition, the general practitioner does not provide any other information to indicate that the appellant is unable to work in sedentary occupations.

The panel finds that the ministry's reconsideration decision, which found that the appellant's medical condition is not a barrier that seriously impacts her ability to search for, accept or continue in employment, as required by EAR section 3(b)(ii) was reasonable and was a reasonable application of the legislation in the appellant's circumstances.

EAR section 2(3)(c) – steps to overcome barriers

The ministry's position is that as the appellant has a score of 15 on the Employability Screen, she is required to demonstrate that she has taken all reasonable efforts to overcome her barriers to employment as identified on the Employability Screening tool. The ministry's position is that no information is present to demonstrate attendance at ESL classes that would improve the appellant's English language skills or job training courses to improve her employability. The ministry also states that wearing support stockings would be expected to improve the appellant's condition. The ministry further states that the Client Employability Profile indicates that she has reliable child care for her son and it is also unknown whether the appellant's child goes to special school during the day. The ministry's position is that the appellant has not demonstrated that she has taken all reasonable efforts to overcome her employment barriers; therefore, she has not met the criteria of EAR section 2(3)(c).

The appellant's position is that she has taken ESL classes and has completed a child development diploma but is unable to work because of her deteriorating health and because she has to look after her son who needs 24 hour supervision.

Panel Decision

The panel notes that the Client Employability Profile indicates that the appellant's barriers to employment are: work experience/job retention (never worked); employment search skills (severe lack of employment search and planning skills); literacy (unable to speak, read or write English); health (severe health condition); and disability (persistent disability).

The panel also notes that although the Client Employability Profile indicates that one of the appellant's barriers to employment is literacy as she is unable to speak, read or write English, the appellant states, in her Notice of Appeal, that she has taken ESL classes. In addition, the Certificate indicates that the appellant completed a course in child development in 2010. It is not clear to the panel whether the appellant completed the RFR and the Notice of Appeal or whether she had someone assist her with those forms. However, the panel accepts the appellant's evidence that she has taken some ESL classes and her educational achievement of obtaining the Certificate suggests some proficiency in English. Based on the evidence, it is not clear to the panel the degree to which the appellant's English language skills remain a barrier to her employment but the panel finds that the appellant has taken some steps to overcome the barrier of English as a second language. In addition, the Certificate is of limited assistance in assessing whether the appellant has taken steps to overcome her barriers to employment as the panel has no idea what, if any, barriers the appellant may have faced at the time she completed the Certificate.

The panel notes that although the appellant states that she cannot work because her son requires 24 hour supervision the Client Employability Profile indicates that the appellant has reliable child care. As the parties did not attend the hearing, the panel was unable to resolve the inconsistency between these facts and is unable to determine whether the appellant has reliable child care or not.

However, there is no evidence that the appellant has made any attempts to wear support stockings to ameliorate her condition or that she has attempted to obtain other sedentary employment. Accordingly, the panel finds that the ministry's reconsideration decision that the appellant has not taken all steps that the minister considers reasonable for the person to overcome her barriers to employment pursuant to Section 2(3)(c) was reasonably supported by the evidence and was a reasonable application of the legislation in the appellant's circumstances

Conclusion

The panel finds that the ministry's reconsideration decision that determined the appellant did not qualify for PPMB designation was reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the appellant. Therefore, the panel confirms the ministry's reconsideration decision.