

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development (the ministry) dated 25 March 2013 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(3)(b) of the Regulation that requires the person have 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.

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

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 2

PART E – Summary of Facts

The ministry did not appear at the hearing. After confirming that the ministry was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at reconsideration included the following:

1. The appellant's Client Employability Profile, undated. Regarding transportation, the profile indicates that vehicle/public transportation is available and accessible. "Not applicable" is shown against child care. As to disability, "Persistent disability, severely impacts on employment options" is marked. Other entries are consistent with the appellant's Employability Screen (see below). Recommendations for employment plan activities are: "Recommend PPMB to allow time for the New Doctor to complete tests and follow through with referrals to Specialists."
2. A medical Report – PPMB dated 08 January 2013 completed by a general practitioner (Dr. A) who had known the appellant for 6 months or less. Dr. A reports that the appellant's primary medical condition is substance abuse – ETOH and the secondary medical condition is neck, shoulder back pain – chronic, with onset 2009. Treatment is alcohol counseling and ibuprofen. Dr. A indicates the expected duration of the medical conditions are less than two years and the medical conditions are not episodic in nature. Dr. A describes the appellant's restrictions specific to her medical conditions as follows: "neck/back/shoulder pain with physical labor. Working hard on alcohol/tobacco."
3. A medical Report – PPMB dated 15 January 2013 completed by a general practitioner (Dr. B) who had known the appellant for 6 months or less. Dr. B reports that the appellant's primary medical condition is chronic liver disease and the secondary medical condition is unexplained superclavicular swelling. Dr. B notes under treatment: "new patient to our practice – needs further investigations & treatment plan." Dr. B states that the expected duration of the medical conditions is "unknown presently." Regarding restrictions, Dr. B writes: "Does not feel physically capable of working – trying to sort out situation."
4. The appellant's Request for Reconsideration dated 11 March 2013. Under Reasons, Dr. B writes:

"I am getting to know this patient a little better and suspect she meets criteria based on mental health criteria – I suspect low functioning IQ and overlying depression with anxiety, R/C ADHD, R/C significant learning disabilities. I'm trying to arrange neuro-psych assessment and request that you deferred judgment on this case until more information is collected. Thank you."
5. The appellant's Employability Screen completed 21 March 2013, showing a score of 15. The appellant's highest level of education is less than grade 10 and she has had none or very limited work experience over the past three years.

In her Notice of Appeal dated 08 April 2013, the appellant writes that there was a lack of communication between a Dr. C, Dr. A and herself. Dr. A was supposed to speak with Dr. C but when

she returned to get the form, the two doctors had not spoken. She writes that she did not appreciate Dr. A's attitude or what he wrote so the next week she changed doctors. She told a ministry worker about this and the worker faxed another form to be filled out by her new doctor. She does not understand why the ministry worker submitted both forms in the first place.

The appellant states that in the past she was usually sent a Medical Report – PPMB every 2 years in April, and asks why this time it was moved up 5 months.

She goes on to write about items that are incorrect in her Client Employability Profile. She does not have a car or driver's license and there is no public transportation in her area. She has difficulties with childcare as both her sons have behavior issues, with the younger one being diagnosed with mild retardation and has refused to go to school since October. The older one has been kicked out of school because of his behavior. She is taking a parenting course and learning how to communicate with her sons better. She cannot leave them alone for more than an hour or two.

At the hearing, the appellant, in her presentation and in response to questions, gave the following testimony:

- Dr. A was filling in for Dr. C, her former regular doctor. She had met Dr. A only a couple of times when he completed the first Medical Report – PPMB.
- She is glad she changed doctors, as the new one is following up in trying to find out what is causing her a sore and aching neck, arm and shoulder. She is also experiencing numbness in her hand. Her new doctor has referred her to a rheumatologist, but she has to wait until June for an appointment. This is in addition to a neuro-psychological assessment to be arranged by this doctor.
- At her PPMB review 2 years ago, one of the medical conditions was liver disease, but this is not causing her a problem now as she has quit drinking.
- Her sons are 13 and 16. Both are home all day every day, except for the younger one who goes to a learning centre once a week.

The panel finds the additional information provided by the appellant in her Notice of Appeal and at the hearing are in support of information that was before the ministry on reconsideration. The information regarding transportation and her child care challenges correct errors in her Client Employability Profile, and the referral to a rheumatologist elaborates on Dr. B's statement in her Medical Report - PPMB "trying to sort out situation." The panel therefore admits this new information as evidence 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 denied the appellant requalification as PPMB under section 2 of the EAR. Specifically, the issue is whether the following determinations were reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant:

- the appellant did not meet the eligibility criteria set out in section 2(3)(b) of the Regulation that requires the person have 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.

The relevant legislation is from 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).

(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).

The ministry determined that, as the appellant's score on the employability screen is 15, her application for PPMB requalification is considered under subsection 2(3) of the EAR. The ministry found that the barriers identified in her employability screen, particularly lack of education and limited work experience, seriously impede her ability to search for, accept or continue in employment and therefore that the criterion set out in paragraph (a) of subsection 2(3) has been met.

The panel will consider the positions of both parties with respect to the remaining criteria in subsection 2(3) at issue in this appeal.

Duration of medical condition – paragraph (b)(i) of section 3(2), EAR

The position of the ministry is that the information provided either by Dr. A or by Dr. B does not include confirmation by a medical practitioner that the appellant's medical conditions meet the duration criteria set out in the legislation.

The position of the appellant is that more time is required by Dr. B to determine the exact nature of her medical problems and their prognosis; this includes the time required to wait to see specialists, including a rheumatologist.

The legislation is clear that the person must have a medical condition, other than an addiction, that is confirmed by a medical practitioner and that in the opinion of a medical practitioner the medical condition has continued or occurred in the past year and is likely to continue for at least 2 more years. The evidence is that Dr. A has indicated that the appellant's medical conditions (including neck, shoulder, and back pain chronic) is expected to continue for less than 2 years. Dr B in her Medical Report PPMB has diagnosed chronic liver disease and unexplained supervascular swelling, but as the appellant is a new patient and more investigations are required, she has not given a duration prognosis. In the Request for Reconsideration, Dr. B states she suspects some mental health issues, but she is unable to provide a confirmed diagnosis or duration prognosis. Based on this evidence, the panel finds that the ministry reasonably determined that this criterion had not been met.

Whether the medical condition is a barrier that seriously impedes employability – paragraph (b)(ii) of section 3(2), EAR

The position of the ministry is that the information provided by the appellant's medical practitioners does not establish that her medical conditions are a barrier that seriously impedes her ability to search for, accept or continue in all types of the employment, particularly of a more sedentary nature that does not involve strenuous physical labour.

The position of the appellant is that her neck, shoulder and back pain make it difficult for her to do any kind of work.

The legislation requires that it be "in the opinion of the minister" that this criterion is met. The evidence from the medical practitioners is that Dr. A described restrictions specific to the appellant's medical condition as "neck/back/shoulder pain with physical labor," while Dr. B reported the opinion of the appellant that she "Does not feel physically capable of working – trying to sort out situation," without indicating whether she subscribed to that opinion. The panel finds that the medical reports fall short in establishing that the appellant is seriously impeded from any form of employment such as that of a sedentary nature not involving physically active work. The panel therefore finds the ministry reasonably determined that the appellant did not meet the second part of the test pursuant to the EAR section 2(3)(b), which requires the appellant's medical condition to be a barrier that seriously impedes her ability to search for, accept or continue in employment and therefore finds that the ministry reasonably determined that this criterion had not been met.

Whether the appellant has taken all reasonable steps to overcome the barriers identified in the employability screen -- paragraph (c) of section 3(2), EAR

The ministry did not make a determination regarding this criterion, as it acknowledged that it appears that the ministry had not informed the appellant of any available interventions that could be taken. Since the ministry did not make a determination on this matter, the panel cannot make a finding respecting this criterion.

Conclusion

Based on the foregoing, the panel finds that the ministry's determination that the appellant was not eligible for PPMB requalification because she did not meet all of the legislative criteria was reasonably supported by the evidence. The panel therefore confirms the ministry decision.