

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry's) reconsideration decision of July 19, 2013 in which the ministry determined that the appellant is not eligible for Persons with Persistent Multiple Barriers (PPMB) qualification because the appellant does not meet the requirements under Section 2(3) or Section 2(4) of the Employment and Assistance Regulation. The ministry determined that it was not confirmed by a medical practitioner that the appellant had a medical condition that has continued for at least one year; nor in the ministry's opinion did the appellant's medical condition seriously impede her from or preclude her from searching for, accepting or continuing in employment.

PART D – Relevant Legislation

Section 2, Employment and Assistance Regulation (EAR)

PART E – Summary of Facts

The evidence includes:

- An undated letter from the appellant describing her problems with her shoulder tendons and referring to her pending ultrasound appointment. She describes various treatments that do not help and the medications she takes to manage her pain. She states that the medications “do not really help,” and that as a result of taking them she vomits frequently. Because of her painful shoulder, she suffers from bleeding, tearing, swelling and cramping, severe, headaches, depression and inability to deal with everyday tasks. Bathing is difficult, as is using the bathroom, dressing, and sleeping. She states that in addition to her problems with her shoulder, she suffers from tendon problems in her thigh and has a growth under her ribs. She states that she also has a degenerate disk disease in the vertebrae of her neck.

- A Medical Report – Persons with Persistent Multiple Barriers – from the appellant’s doctor. The report, dated December 6, 2012, describes the appellant’s primary medical condition as shoulder tendonitis and restrictions as limited use of right shoulder. The doctor indicates that the expected duration of the medical condition is two years or more but does not indicate how long the appellant’s condition has existed, or how long he has been the appellant’s medical practitioner. The doctor indicates that the appellant’s condition is not episodic in nature.

- Three medical imaging requisition forms:

- an undated and unsigned form from a medical imaging clinic for an abdomen ultrasound, with the names of the patient and physician not indicated.

- a requisition for the appellant from a laboratory (not the medical imaging clinic above) signed by a physician (not the physician who filled out the medical report above). The year is illegible. An unsigned note in the appeal record indicates that the requisition is for an “ultrasound right shoulder and arm” and that the date scheduled for the ultrasound is June 13, 2013 and that results from the ultrasound will take up to 3 weeks.

- an undated form from a provincial health authority requesting an abdominal ultrasound for the appellant and signed by the physician who ordered the ultrasound from the laboratory above.

Regarding the medical imaging requisitions, the panel notes that the evidence does not include any medical reports of ultrasound results.

- An undated employability screen for the appellant with a total score of 12. The screen indicates that the appellant completed “grade 10 to 12.”

- The ministry’s reconsideration decision of July 19, 2013 stating that:

- the appellant is currently receiving income assistance and her file was reopened in December 2009

- the date of the employability screen, completed when the appellant applied for PPMB qualification, was April 19, 2013

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- the ministry was advised by the appellant that she had made an error on the employability screen; she had indicated that she had completed grade 10-12 but had actually only completed grade 9.

• The appellant's Notice of Appeal, dated July 29, 2013, in which the appellant states she cannot work or use her arm. She states that her physician will not sign forms or letters. She also states she wants a chance to have an arbitrator and "does not understand a lot of the process." The panel accepts the information as argument from the appellant.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that the appellant is not eligible for Persons with Persistent Multiple Barriers (PPMB) designation because the appellant does not meet the requirements under Section 2(3) or Section 2(4) of the Employment and Assistance Regulation was a reasonable application of the legislation in the circumstances of the appellant or was reasonably supported by the evidence. The ministry determined that it was not confirmed by a medical practitioner that the appellant had a medical condition that has continued for at least one year; nor in the ministry's opinion did the appellant's medical condition seriously impede her from or preclude her from searching for, accepting or continuing in employment.

Employment and Assistance Regulation, Section 2

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's position is that she suffers considerably from shoulder tendon pain and as a result is unable to sleep well, work, or carry out activities such as bathing and grooming. The medication she takes for the pain in her shoulder is not very effective and leads to nausea. She suffers from severe headaches related to her shoulder pain as well as depression. As stated by the ministry in its reconsideration decision, she advised a ministry worker that she had made an error in on the employability screen in indicating she had completed grade 10-12, as she had actually only completed grade 9. In her Reasons for Appeal she states that her doctor will not sign forms or letters.

The ministry acknowledged in its reconsideration decision that the appellant meets the eligibility requirements under Section 2(2) of the EAR. With respect to the appellant's statement that she only completed grade 9, the ministry's position is that it does not have any evidence to confirm her statement and as a result the ministry is unable to determine if her application should be assessed under Section 2(3) or 2(4) of the EAR. In its reconsideration decision, the ministry therefore addressed the appellant's request for reconsideration under both Section 2(3) and 2(4) of the EAR.

With respect to Section 2(3)(b)(i) the ministry's position is that appellant's doctor has not confirmed that the appellant has a medical condition that has continued for at least one year.

With respect to Section 2(3)(b)(ii) of the EAR the ministry's position is that the medical condition

confirmed by the appellant's medical practitioner (shoulder tendonitis causing limited use of the right shoulder) does not constitute a barrier that seriously impeded the appellant's ability to search for, accept or continue in employment.

With respect to Section 2(4)(a)(i) of the EAR the ministry's position is that, as above, the appellant's doctor has not confirmed that the appellant has a medical condition that has continued for at least one year.

With respect to Section 2(4)(b) of the EAR the ministry's position is that the medical condition confirmed by the appellant's medical practitioner (shoulder tendonitis causing limited use of the right shoulder) does not constitute a barrier that precludes the appellant's ability to search for, accept or continue in employment. The ministry's position is that a medical condition is considered to preclude a recipient from searching for, accepting or continuing in employment when as a result of the medical condition the recipient is unable to participate in any type of employment for any length of time, except in a supported or sheltered-type work environment.

With respect to Section 2(3)(b)(i)(A) of the EAR, the panel finds that the appellant's doctor does not indicate in the medical report that the appellant has a medical condition that has continued for at least 1 year. With respect to Section 2(3)(b)(i)(B) of the EAR, the expected duration of the appellant's medical condition is indicated as "2 years or more." The report, however, does not indicate that the appellant's condition has occurred frequently in the past year. Her medical condition is indicated as not being episodic in nature. With respect to Section 2(3)(b)(i)(A) of the EAR the panel therefore finds the ministry's decision reasonable.

With respect to Section 2(3)(b)(i)(B) of the EAR, the panel finds that the doctor's report does not indicate that the appellant has a medical condition that has occurred frequently in the past year. With respect to Section 2(3)(b)(i)(B) of the EAR, the panel therefore finds the ministry's decision reasonable.

With respect to Section 2(3)(b)(ii) of the EAR, the panel finds that the evidence of the appellant's doctor in his medical report is that the appellant's has shoulder tendonitis and the nature of the appellant's restriction is indicated as "limited use of the right shoulder." No further restrictions are indicated in the medical report. With respect to Section 2(3)(b)(ii) of the EAR, the panel therefore finds the ministry's decision reasonable.

As noted above, evidence shows that

- the doctor's report does not indicate that that the appellant has a medical condition that has continued for at least 1 year and
- the doctor's report does not indicate that that the appellant has a medical condition that has occurred frequently in the past year.

Therefore with respect to Section 2(4)(a)(i and ii) of the EAR, the panel finds the ministry's decision reasonable.

With respect to Section 2(4)(b) of the EAR, the panel finds, as above, that the evidence of the

appellant's doctor in his medical report is that the appellant has shoulder tendonitis and the nature of the appellant's restriction is indicated as "limited use of the right shoulder." No further restrictions are indicated in the medical report. With respect to Section 2(4)(b) of the EAR, the panel therefore finds the ministry's decision reasonable.

Since the panel finds reasonable the ministry's determinations with respect to Section 2(3) and 2(4) of the EAR, the panel finds that the ministry's decision that the appellant is not eligible for PPMB qualification is reasonable. The panel therefore finds the ministry's decision reasonable.