

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision of May 30th, 2013 wherein the ministry denied the appellant a Person with Persistent Multiple Barriers (PPMB) designation because the ministry determined the appellant did not meet all the requirements in section 2(1) Employment and Assistance Regulation (EAR) which requires a person to meet the requirements of section 2(2) EAR and section 2(3) or section 2(4) EAR. The ministry determined the appellant met the requirements of section 2(2) and section 2(4)(a) EAR but did not meet the requirements of section 2(4)(b) EAR; that the appellant, in the opinion of the minister, does have a medical condition that is a barrier that precludes the appellant from searching for, accepting or continuing in employment.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 2
Employment and Assistance Regulation (EAR), Schedule E

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Four pages of an application for Persons with Disabilities which is not dated and the author is unknown.
- Diagnostic Imaging report for the appellant dated March 11th, 2010 – The appellant had complained of back pain for the past 15 years. The examination provided the following results:
 - Thoracic Spine – There is minor degenerative change with minimal anterior osteophyte formation in the mid and lower thoracic regions. There is no significant disc space narrowing and no additional abnormality is noted.
 - Lumbar Spine – The lumbar spine is tilted to the left, presumably on a positional basis. There is no significant disc space narrowing. Minor facet joint sclerosis is seen at L5-S1 consistent with osteoarthritis.
- Employability Screen for the appellant indicating a score of 12.
- Persons with Persistent Multiple Barriers (PPMB) – medical report – completed by appellant's former family doctor (MP) and signed on October 15th, 2012.
- Letter dated April 11th, 2013 from ministry to appellant.
- Request for Reconsideration, with 3 page attachment, signed by appellant on May 13th, 2013.

On October 12th, 2012 the appellant applied for PPMB designation and on October 15th, 2012 the MP completed and signed a medical report on the appellant's application. The MP stated the appellant's primary medical condition, which has existed since the appellant was school age, is learning difficulties and her secondary medical condition is osteoarthritis of spine which was onset in 2000. The MP's prognosis is that these medical conditions will continue for 2 years or more and are not episodic in nature. In describing any treatment/remedial approaches the MP states "that the patient (appellant) is living away from her physician's office. Unable to find FP (family physician) in her community for proper referral for counseling, etc". The ministry is satisfied that the information from the MP confirms that the appellant has a medical condition that has lasted at least one year and is expected to last at least another 2 years. An Employability Screen for the appellant provided a score of 12. The appellant stated that she only completed one course in Grade 10 and barely completed Grade 9 which would make the score on the Employability Screen 14.

The appellant submitted portions of a PWD application with her application for PPMB. In the PWD the assessor commented "the patient has a learning disability. She also has severe problems with memory and concentration which are making her unfit for any gainful employment. Severe back pain precludes her ability to do physical work." Under the "Health History" of the PWD, the physician commented "the appellant experiences severe fear about dealing with people, answering questions or answering the phone. Usually getting panic attacks when dealing with the public. Having very low self-esteem and finds it very difficult to even go for an interview for a job. Severe mood swings, difficult to control, which are affecting her ability to work with people. Unable to concentrate and stay focused on any task, which does not allow her to complete tasks. Severe lower back pain, especially with physical activities. Was unable to do chamber maid job, which she tried once in past." In the PWD the physician indicated the appellant has not been prescribed any medication and/or treatment that would interfere with her daily living activities. The portions of the PWD submitted was not signed or dated by the physician or the assessor.

On May 16th, 2013 the ministry received the appellant's Request for Reconsideration. The appellant submits that she has numerous problems that prevent her from working: that she is barely able to walk 2+ blocks without stopping and resting; that her back gives her extreme pain at night and if she has to get up and stretch it out or the pain is "a killer"; that she believes she suffers from a panic disorder because she is paranoid to venture out of the home; that she suffers from a mood disorder because she feels "trapped and breaks down" when she is in a crowd and doesn't like trying anything new; that she has problems concentrating, with her memory and is easily distracted. The appellant stated that she has a learning disability and only completed one course in Grade 10 and barely completed Grade 9. The appellant submits that she believes it was her

former job and a motor vehicle accident that have contributed to her back problems. The appellant also submits that she suffered a bruised shoulder from a recent fall and the physiotherapist advised her that she has tendonitis in her shoulder and the shoulder would not completely mend.

The only written submission related to the appeal made by the appellant is found in the Notice of Appeal under Reasons for Appeal: on June 5th, 2013 she wrote "I do not feel my every issue was completely assessed fairly. I am in severe pain constantly not to mention my mental health issues. Please review all of my doctor's notes as well as my own letter. Thank you."

The panel finds the appellant's statement in the Notice of Appeal does not contain any new information that was not before the ministry at the time the reconsideration decision was made and therefore is not considered as new evidence.

The ministry relied on its reconsideration decision and submitted no new information.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision wherein the ministry denied the appellant a PPMB designation because, in the opinion of the ministry, the appellant does not have a medical condition that is a barrier that precludes her from searching for, accepting or continuing in employment as set out in section 2(4)(b) EAR.

The legislation considered: EAR

Section 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*, or
 - (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. (B.C. Reg 263/2002)

In accordance with the legislation to be designated as a PPMB the appellant must meet the all the criteria set out in section 2 and subsection (3) or (4). The criteria in section 2(2) has been met.

In reference to Section 2(3):

To be considered under subsection 3 the appellant must have an Employability Screen score of at least 15. In

the reconsideration decision the ministry stated the appellant's score is 12. The appellant argued her highest level of education is grade 9 which would adjust her score to 14 which the panel finds is still below the legislated requirement of 15 for the requirements of section 2(3) EAR.

Panel Decision

The panel finds the ministry's decision to determine the appellant did not meet the criteria set out in section 2(3) EAR was reasonable.

In reference to Section 2(4):

To be considered under subsection 4 the appellant must have a medical condition, other than an addiction, that, in the opinion of a medical practitioner, a) has continued for at least 1 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 appellant from searching for, accepting or continuing in employment.

The panel finds the evidence supports that the appellant has a medical condition, other than an addiction, that has continued for at least 1 year and is likely to continue for at least two more years – learning difficulties and osteoarthritis.

Barrier that precludes the appellant for searching for, accepting or continuing in employment:

The ministry's position is that the MP in the appellant's PPMB application confirmed the appellant's primary medical condition is learning difficulties and the secondary condition is osteoarthritis. The MP did not indicate the appellant has a restriction(s) because of these medical conditions. The ministry submits the other information from a portion of a PWD application submitted by the appellant indicates the appellant has been diagnosed with a learning disability and a mood and panic disorder in addition to the osteoarthritis. The ministry argued there is no indication when the PWD application was completed and there is also no prognosis whether these conditions will continue to last for another 2 years. The ministry argued the diagnostic imaging report states that in the thoracic spine there is minor degenerative change with minimal anterior osteophyte formation in the mid and lower regions; no significant disc space narrowing and no additional abnormality is noted. In the lumbar region the lumbar spine is tilted to the left, presumably on a positional basis. There is no significant disc space narrowing. Minor facet joint sclerosis is seen consistent with osteoarthritis.

The appellant's position is that she cannot work because she has severe back pain due to a previous job, a car accident and the osteoarthritis in her back. The appellant argued that her other problems which prevent her from working is a severe learning disability, poor memory, paranoia about going out and trying anything new, her panic and mood disorder which affects her when dealing with any new situation or new people. The appellant submits that her application is supported by the MP and by the physician and assessor comments from the PWD.

Panel Decision

The panel, in its finding, is relying on the comments from the MP in the PPMB application in making its decision because other medical conditions noted in the undated PWD application are not confirmed as more than two years. Under area C of the PPMB – Medical Assessment – the MP is advised that all questions must be answered completely in order for the ministry to determine how a recipient's medical condition(s) may affect their employability. The panel finds the MP did not provide any comments on the effect of the appellant's medical condition on her employability and the MP did not provide any evidence that those conditions would preclude the appellant from searching for, accepting and maintaining employment.

The panel also finds the ministry wrote to the appellant on April 11, 2013 advising her PPMB application had been denied and the reason for the denial – "In the opinion of the minister your medical conditions do not preclude you from all forms of employment as required under the Employment and Assistance Regulation –

Section 2(4)(b)".

The panel finds that, without further information from the MP to meet the ministry's request, that there is not sufficient evidence to establish that the appellant has a medical condition that precludes her from searching for, accepting or continuing in employment as set out in section 2(4)(b) EAR.

The panel finds the ministry reasonably determined that the appellant failed to meet the criteria in section 2(4)(b) EAR and therefore the ministry decision that the appellant's medical condition is not a barrier that precludes her from searching for, accepting or continuing in employment was reasonable.

The panel finds that the ministry's reconsideration decision is a reasonable application of the legislation in the circumstances of the appellant, and accordingly confirms the decision pursuant to section 24(1)(b) and 24(2)(a) of the Employment and Assistance Act.