

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (Ministry) reconsideration decision dated November 18, 2013 which held that the appellant is not eligible for Persons with Persistent Multiple Barriers (PPMB) designation pursuant to section 2 of the Employment and Assistance Regulation (EAR). The ministry found that the appellant has been in receipt of income assistance for at least 12 of the past 15 months as required by section 2 (2) (a), and that in the opinion of a medical practitioner the appellant has a medical condition other than an addiction that is likely to continue for at least two years as required by section 2 (4) (a). However, the ministry was not satisfied that:

- the evidence establishes that the appellant's medical condition other than an addiction presents a barrier that precludes her from searching or accepting or continuing in employment, as required by section 2 (4) (b) of the EAR.

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 reconsideration consists of:

- 1) Request for Reconsideration dated November 3, 2013 and signed by the appellant that states, that her doctor did not report her other multiple barriers which are, learning problems, asthma, chronic bronchitis, chronic depression, low immune system, and girds. The appellant also stated that she should be considered for Persons With Disabilities designation not PPMB, and that her “employability screen was filled”;
- 2) Medical report – persons with persistent multiple barriers, signed by the appellant’s physician and dated September 5, 2013, which states that:
 - section 1- medical condition, the appellant has a primary medical condition of Anxiety and Depression for which the treatment has been medications,
 - a secondary medical condition of Diabetes,
 - section 2-prognosis, that the condition(s) are expected to continue for 2 years or more, an indication that the medical condition(s) are not episodic in nature, and no further information in this section,
 - section 3-restrictions, the doctor stated “concentration and tiredness”;
- 3) Employability Screen (ES) with a score of 12.

At the hearing the appellant stated that the ES was completed incorrectly and was based on a “faulty judgment made” by the Ministry because it does not have all the information it needed to make an accurate representation of the appellant’s employability. The appellant stated that the employability screen was completed by Ministry representative and that the representative phoned to verify information for questions # 3 (How many times the appellant has been on Income or Social Assistance anywhere in Canada in the past 3 years?) and #4 (What was the total amount of time the appellant spent on Income or Social Assistance?) only. Since being denied PPMB, the appellant gained access to her ES record and takes issue with how the Ministry representative answered questions #6 (What is the total amount of time you have spent in paid employment over the past 3 years?) and #7 (What is your English speaking ability or literacy level?). The appellant stated that once she saw her completed ES, she called the Ministry representative who completed the form and explained her situation, at which time the Ministry representative apologized for incorrectly completing the ES.

The appellant stated that based on her work experience, the answer to question #6 on the ES should not be C (under 3 months, which is worth 2 points) but D (none or very limited work experience, which is worth 4 points). According to the appellant as a teenager she worked as a telemarketer for 4 days and worked as newspaper carrier delivering a bi-weekly newspaper (for a total of one month), but did not state how long ago or at what age she delivered newspapers. She stated that she left the telemarketing job due to a nervous breakdown caused by the pressures of the job and left the newspaper delivery job because she was sexually assaulted while on the job. She stated that if question #6 was answered correctly, she would gain 2 more points on her ES.

The appellant also stated that question #7 was answered incorrectly because English is her second language, and that she was raised in a French language speaking home and went to French immersion school until the beginning of high school. When she was placed into an English language school, she did not do well. According the appellant, she can speak, read and write in French but has “major problems” in reading and writing in English, and the English she speaks was learnt from movies and television. Due to her poor comprehension of English, she had a difficult time in the

English language school. She stated that proof of her lack of English language proficiency is evident from the multitude of spelling errors she made on the Request for Reconsideration form. The appellant pointed to the comment in the Request that her "employability screen was filled" and stated that this is evidence of her learning disability since she did not complete her thought in writing that the ES was filled out incorrectly. The appellant explained that when she was in the fourth grade, she received only 20-40 minutes of English per day at school and had some exposure to English on the weekends when she spent time with her father. The appellant also stated that she was told in high school that she has a learning disability but that getting documents from the school board proving a learning disability will take 5-8 weeks. The appellant stated that if question #7 was corrected to reflect that English is her second language her score would increase by 3 more points. By adding the corrected figures for questions # 6 and #7, the total score of her ES should be 17 not 12.

In terms of her medical report, the appellant stated that in the past her physician has only completed the first of two pages and that based on that information she has received PPMB benefits. She does not understand how, now with additional information on page two of the report, she has been denied. The appellant stated that her physician completed the form based on what he has treated her for recently and that more information regarding her medical conditions can be made available if the Ministry desires it. However, the appellant did not bring any new information to the hearing. The appellant stated that social skills and learning skills are area where the appellant does not do well and that she must rely on her father for help. She stated that she is uncomfortable in social situations or speaking until her medications begin to work. Since her sexual assault she has had difficulty sleeping at night. She further stated that her mental health issues (depression and anxiety) stem from her sexual assault and abandonment by her mother. Finally, the appellant added that because of her mental state she has difficulty getting work and that she is often discriminated against due to her hairan syndrome which is a side effect of her diabetes. However, the appellant did not provide documentation from a medical practitioner to verify that she has developed hairan syndrome as a complication of diabetes.

The Ministry relied on its reconsideration decision and added that following points:

- Typically anyone who can articulate him/herself at the level that the appellant demonstrates would be considered to have a good working knowledge of English and not be considered ESL. The Ministry further explained that the appellant did not need an interpreter to communicate or to sign any ministry documents. However given the appellant's oral testimony regarding her difficulties with reading and writing in English, she may be considered as needing English skills training;
- The ES is normally completed by a Ministry representative, and according to the information the Ministry has on file, and an interview with the client is not necessarily required. In this case, the appellant would have reported her work history or experience to the Ministry as a part of the requirements of Income Assistance and the ES is based on those reports;
- Since the ES score is only 12, the appellant's application is considered under section 2 (4) and the denial of PPMB based on section 2(4) (b) of the EAR because the medical reports does not establish that the appellant is precluded from searching for, accepting or continuing in employment. However, even if the appellant's ES was 15 points or greater, she would not qualify for PPMB under section 2 (3) (b) (ii) of the EAR because the medical reports do not establish that the appellant has a barrier that seriously impedes her from searching for, accepting or continuing in employment.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry decision to deny the appellant PPMB designation on the grounds that the information provided did not establish that the appellant's medical condition was a barrier that precluded her from seeking, accepting, or continuing employment as required by section 2 (4) (b) of the EAR, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 2 of the EAR sets out the eligibility requirements which are at issue on this appeal 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 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 Appellant's Position

The appellant's position is that the ES was completed incorrectly because the Ministry does not have accurate information, and that her depression and anxiety are barriers to employment. The appellant pointed to the comment in the Request that her "employability screen was filled" and argued that, as a result of her learning disability, she did not complete her thought in writing that the ES was filled out incorrectly.

The Ministry's Position

The Ministry's position is that the medical report does not establish that the appellant is precluded from all types of employment.

The Panel's Decision

The Employability Screen:

Although the appellant raised the ES as an issue in her Request for Reconsideration, she argued that she did not complete her thought in writing as a result of her learning disability and the panel notes that the ministry did not address the accuracy of the ES at reconsideration. The appellant argues that the ES is inaccurate because she has "none or very limited work experience", and the ministry explained that this is assessed based on the appellant's ongoing reporting of her employment which

is on file with the ministry. The ministry argued that the appellant articulated herself at a level which establishes that it is reasonable to conclude that she has a good working knowledge of English. The Ministry argues that the ES is based on the information the Ministry has in its records for the appellant and that even if the ES was scored differently allowing the appellant's application to be considered under section 2 (3) (b) (ii) of the EAR, she still would not have qualified as the medical report does not establish that she has a barrier that seriously impedes her from searching for, accepting or continuing in employment. The Panel acknowledges that the ES is completed based on the Ministry's records at that time and finds that the appellant did not produce sufficient evidence to establish that the ministry's scoring or tabulation on the ES was unreasonable.

The Medical Report:

At the hearing, the appellant provided further detail regarding the severity of her depression and anxiety, and stated that she also has a learning disability and hairan syndrome. However, this information cannot be verified as being in the opinion of a medical practitioner because the medical report does not mention a learning disability or hairan syndrome, nor did the appellant provide additional supporting documents from a physician regarding a diagnosis of learning disability or hairan syndrome, or any additional restrictions from her medical conditions. The medical report states that the appellant has had anxiety and depression since 2005 and also has diabetes, for which she is treated with medications, that the condition(s) will last 2 years or more and that they are not episodic in nature. The medical report lists decreased concentration and tiredness as the only restrictions specific to the appellant's medical conditions of anxiety, depression and diabetes.

The legislation requires that in order to qualify for the designation of a Person with Persistent Multiple Barriers an individual must meet specific requirements as outlined in the legislation. The Ministry concedes that the appellant meets the requirements of section 2 (2) (a) and (4) (a), but concluded that the appellant does not meet the requirements of section 2 (4) (b) of the EAR. The medical report establishes that the appellant has a medical condition but, in the opinion of the Panel, the ministry reasonably concluded that the evidence does not establish that the appellant's medical condition is a barrier that precludes her from searching for, accepting or continuing in employment as required by section 2 (4) (b) of the EAR. The Panel finds that the Ministry reasonably determined that the evidence of the restrictions from the appellant's medical condition does not preclude her from all types of employment including sedentary or part-time employment.

Conclusion

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a Person with Persistent Multiple Barriers qualification because the requirements of Section 2 (4) (b) of the EAR were not met, was reasonably supported by the evidence. The panel confirms the ministry's decision.