



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry's) reconsideration decision dated October 9, 2013 denying the appellant qualification as a Person with Persistent Multiple Barriers to employment (PPMB). The ministry determined that the appellant was not eligible for PPMB because it was not satisfied that her medical condition is expected to continue for at least 2 more years as required by section 2(4)(a) of the Employment and Assistance Regulation (EAR). The ministry further found that the appellant's medical conditions did not preclude her from searching for, 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 ministry did not introduce any new evidence for this appeal and relied on its reconsideration decision. The evidence before the ministry at the time of reconsideration consisted of:

- 1) Information from the ministry's records indicating that the appellant has been in receipt of assistance since April 2011;
- 2) The appellant's Request for Reconsideration dated October 4, 2013 which states that:
 - the requested missing information from the original (medical) form has been filled in by the appellant's doctor, signed and stamped at his office;
 - the appellant's condition has existed for longer than one year AND has occurred frequently in the past;
 - she has pain so great that it is difficult to even shower never mind walk to a bus stop to get to work or look for work; and
 - she currently has to get a ride anywhere she goes, and standing more than 10 minutes is extremely painful.
- 3) Medical report – Persons with Persistent Multiple Barriers, dated June 4, 2013 with supplemental notation on September 17, 2013, completed by the appellant's family physician indicating:
 - Primary medical condition: Weight-related muscle pain, with date of onset 2005 as noted in supplemental comment;
 - Secondary medical condition: Obesity
 - Treatment/remedial approaches: NSAIDS in 2010/2011; Outcome: Gastritis;
 - The condition has existed for 8 years;
 - Expected duration of medical condition(s) with check mark boxes for less than 2 years, or 2 years or more: neither box is checked, physician has written "last seen 05-June-2012 and July 6, 2011 and prior was seen by clinic 2003 – 2012";
 - Additional comments: medical condition is not episodic in nature;
 - Restrictions: "Cannot walk far (350 lbs)";
 - "Seen on walk-in basis twice in last 2 years".
- 3) Employability Screen (the Screen) indicating a total score of 11, with zero points for age between 25 to 49; zero points for never having been on social assistance anywhere in Canada in the last 3 years; 7 points for being on income or social assistance for more than 12 months in the last 3 years; zero points for high school/GED completion; 4 points for having no or very limited work experience in paid employment over the last 3 years; and 0 points for good working knowledge of English.

In her Notice of Appeal dated October 4, 2013, the appellant states that

- she confirmed that her medical issue existed for one year or occurred frequently in the past;
- she had the doctor correct the form to show that she has had her back problem for several years and the weight issue all her life;
- her doctor always seems rushed and doesn't take time to complete papers properly or really listen; and
- she has had the back issue for many years and it hasn't changed because the medications gave her IBS and ulcers in her stomach.

[REDACTED]

On this appeal, the appellant provided a written submission in which she states that she has been overweight all of her life, and has always had back aches on and off "but this is much different than just a sore back." She adds that she strained a muscle and it became inflamed. She has had this specific inflamed back muscle for over 3 years and it will not respond to medication. She also had 3 other inflamed muscles in the past which did not fully respond to medication, even with extra rounds of anti-inflammatories. The anti-inflammatories "cause havoc on my stomach resulting in an ulcer and IBS (Irritable Bowel Syndrome)." She has tried other medications to coat the stomach before taking the anti-inflammatory but these did not work and she was left with excruciating stomach pains from the medications, in addition to her back pain.

She states that her back pain initially led to more weight gain because of immobility and added stress from relying on the non-inflamed side of her back, causing more pain on that side. She can barely stand long enough to shower or make a quick meal, never mind walk to the bus stop to get to work or hold a job where she has to stand for any amount of time. She adds that she pretty much only leaves her house when she has to do errands such as grocery shopping where she can lean on a cart for support and has someone to drive her; this is maybe twice a month.

She adds that she has always been overweight and has always tried to lose weight with no real success. She continues to try and lose weight and to strengthen her back, but not much has changed in 3 years. She believes that surgery is her only remaining option for weight loss but it is out of her price range. She can't work out to lose weight when she can barely walk or stand.

She indicates that she made notes on the doctor's medical report to point out information that may have been overlooked or to clarify some of her doctor's handwriting. She notes on the report that her weight has not changed since 2005 except to go up, and the muscle pain has not changed in 3 years and most likely won't change in the next 3 years. She further notes on the report that she has had multiple rounds of anti-inflammatories, has ulcers and IBS caused by the medications, and cannot even walk half of a block.

With her written submission, the appellant includes a letter dated September 12, 2013 that was sent to her by the ministry to inform her of their original decision to not approve her PPMB application. On this letter, the appellant highlights the ministry's reason for refusal of PPMB: "Your physician has not confirmed that you have a medical condition that has existed for one year or occurred frequently in the past..." The appellant states that she was going to the doctor that day with her son, so she saw the doctor herself, and had the doctor add the date of onset for her medical condition that was missed when he originally filled out her medical report. She believes she has supplied the information that the ministry requested, with the doctor now showing that she has had her medical condition for a year "AND it has occurred frequently in the past."

The appellant states that she has had her specific injury/ condition for over 3 years and there is no doubt it will continue for at least 2 more years unless she has significant weight loss with or without surgery, and either approach would take at least that long. She adds that she was not able to get anyone to drive her to the doctor in the time allotted for her appeal submission to obtain more information; her doctor is always rushed; and she is not exactly sure what information is needed but she believes she has provided the information that the ministry asked for.

[REDACTED]

The panel admits all of the statements in the appellant's Notice of Appeal and written submission as testimony in support of information that was before the ministry at the time the decision being appealed was made, under section 22(4)(b) of the *Employment and Assistance Act*. The panel finds that the appellant's statements support the information that was before the ministry because they elaborate on the appellant's medical report and provide information on the duration of her medical conditions and resulting restrictions to her physical movement.

The panel makes the following findings of fact:

1. The appellant has been on income assistance for at least 12 of the immediately preceding 15 calendar months.
2. The appellant has a medical condition, other than an addiction that is confirmed by a medical practitioner and that in the opinion of the medical practitioner has lasted for at least one year.
3. The appellant has physical limitations that include being able to stand and walk for brief periods.



PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant was not eligible for PPMB under section 2(4)(a) of the EAR because there is no evidence from a medical practitioner confirming that her medical condition is likely to continue at least 2 more years, and in the opinion of the minister the condition is not a barrier that precludes the appellant from searching for, accepting or continuing in employment as required by section 2(4)(b).

The relevant sections of the legislation are as follows:

Employment and Assistance Regulation

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*, 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.

Ministry's Position

The position of the ministry, as set out in the reconsideration decision, is that the appellant does not qualify for PPMB because the minister is not satisfied that the appellant's medical condition is expected to last for at least another 2 years according to a medical practitioner under section 2(4)(a) of the EAR. Further, in the opinion of the minister, the appellant's medical conditions do not preclude her from searching for, accepting or continuing in employment as required by section 2(4)(b).

The ministry assessed the appellant's PPMB application under sections 2(2) and 2(4) of the EAR based on its determination that the appellant's Employability Screen score is 11. The ministry noted that the appellant was in receipt of income assistance since April 2011, and therefore meets the criterion under section 2(2) of the EAR which requires the applicant to have been on assistance for at least 12 of the past 15 months in order to qualify for PPMB. On the basis of the PPMB medical report, the ministry was also satisfied that the appellant meets the criterion under section 2(4)(a) which requires the appellant to have a medical condition, other than an addiction, that is confirmed by a medical practitioner and in the opinion of the medical practitioner has continued for at least one year or has occurred frequently in the past year.

However, the ministry notes that no expected duration for the appellant's medical conditions is identified by the physician. The appellant's doctor states that the date of onset is 2005, and comments that the appellant was last seen in June 2012 and July 2011 and was seen by the clinic from 2003-2012 and on a walk-in basis twice in the last 2 years. Because there is no information from the doctor indicating the duration of the medical conditions, the minister was not satisfied that the appellant's conditions were expected to last at least another 2 years as required by section 2(4)(a).

With respect to section 2(4)(b), the ministry's position is that the appellant's medical condition does not preclude her from maintaining all types of employment; therefore she does not meet the criteria in this section. The appellant's physician reported that the restrictions specific to the appellant's medical condition are "cannot walk far (350 lbs)." The ministry writes that "In the opinion of the minister, your medical condition and resultant restriction do not preclude you from searching for, accepting or continuing in all types of employment including sedentary work and/or an employment readiness program."

Appellant's Position

The appellant's position is that she does meet the legislative criteria in section 2(4)(a) because her doctor has confirmed that the onset of her medical conditions was 2005 and therefore she has had the conditions for at least one year and they have occurred frequently in the past year. She argues that because she has been overweight all her life, has had inflamed back muscles for over 3 years, has taken "multiple rounds of anti-inflammatories" without success, cannot engage in exercise workouts to lose weight when she can barely walk or stand and cannot afford weight loss surgery, her condition will no doubt continue for at least 2 more years. She states that even if she did have significant weight loss it would take that long. Also, her "muscle pain hasn't changed in 3 years and most likely won't change in the next 3."

Regarding barriers to employment, the appellant describes how her inflamed back muscles cause her difficulty with standing long enough to shower, make a quick meal, or walk to the bus stop to get to work or hold a job. She states that she is pretty much house bound and can't go out to do grocery shopping unless someone drives her and she has the cart to lean on. Her pain is so great that "it is difficult to even shower never mind walk to a bus stop to get to work or look for work. I currently have to get a ride anywhere I go and standing more than 10 minutes is extremely painful." The appellant further states that she cannot even walk half of a block.

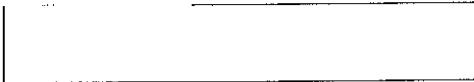
Panel's Decision

The panel accepts the appellant's evidence that she has had her physician confirm that her medical conditions have lasted at least one year and occurred frequently in the past year. The panel notes that this requirement under section 2(4)(a) of the EAR as well as the requirement for the appellant to have been on income assistance for 12 of the past 15 months under section 2(2) are met, and these are not disputed in this appeal.

However, section 2(4)(a) also requires the medical practitioner to confirm that the expected duration of the medical condition is at least 2 more years. Looking at the doctor's medical report: question 2. "Prognosis", item a. "Expected duration of medical condition(s)", the panel finds that the ministry was reasonable in not being satisfied that the appellant's conditions are expected to last at least another 2 years. The doctor has not provided any information about the duration of the conditions as he has not checked either the "Less than 2 years" box, or the "2 years or more" box or provided any notations regarding the duration of the appellant's conditions.

While the appellant argues that that she will likely be overweight for at least 2 more years and that her muscle pain will likely continue for at least 3 more years, section 2(4)(a) requires the duration of the conditions to be confirmed by a "medical practitioner" and not by the appellant. The appellant acknowledges in her written submission that a ministry worker told her over the phone that she needed a doctor to confirm that "I have a medical condition that has existed for one year or occurred frequently in the past **and is likely to continue for two years**". However, when she had her doctor revise the medical report to include a date of onset for her conditions, the boxes to indicate the expected duration of her condition (item 2 a.on the medical report) were still left blank. Without an endorsement by the physician in the box that says the condition has an expected duration of "2 years or more", the legislative criterion in section 2(4)(a) is not met.

With regards to the medical conditions being a barrier "that precludes the person from searching for, accepting, or continuing in employment "per section 2(4)(b) of the regulation, the panel finds that the ministry's opinion that the appellant's medical condition does not preclude her from employment was reasonable. The only information the ministry had from the appellant's doctor indicating any restrictions specific to her medical conditions was the doctor's brief comment "cannot walk far (350 lbs)", and the appellant's statement on her Request for Reconsideration that her pain is so great "that it is difficult to even shower never mind walk to a bus stop to get to work or look for work". In her written submission the appellant reiterates that she "Is barely able to stand long enough to shower or make a quick meal, never mind walk to the bus stop to get to work or hold a job where I have to stand for any amount of time."



Although the "cannot walk far..." restriction that was identified by the doctor is the only restriction that the ministry refers to in reaching its opinion that the appellant is not precluded from "searching for, accepting, or continuing in all types of employment including sedentary work and/or an employment readiness program", the panel finds it reasonable for the ministry to have reached its opinion based solely on the evidence of a medical professional. In any event, as explained in foregoing paragraphs, the appellant already did not qualify for PPMB because she does not satisfy all of the criteria in section 2(4)(a) of the regulation. The panel notes that both sections 2(2) and 2(4) must be met in order to qualify for the PPMB designation.

The panel therefore finds that the ministry's decision to deny the appellant qualification as a Person With Persistent Multiple Barriers (PPMB) was reasonably supported by the evidence. Accordingly, the panel confirms the ministry's decision.