

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated October 25, 2013, which found that the appellant did not meet the statutory requirements of section 2 of the *Employment and Assistance Regulation* for qualification as a person with persistent multiple barriers (PPMB).

The ministry was satisfied that the appellant has been a recipient of income assistance for at least 12 of the immediately preceding 15 calendar months as per EAR section 2(2), and that the appellant has a medical condition other than addiction that has continued for at least one year and is likely to continue for at least two more years as required by sections 2(4)(a)(i) and (ii).

However, the ministry was not satisfied that the appellant's medical condition is a barrier that precludes her from searching for, accepting or continuing in employment as required by EAR section 2(4)(b).

### 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 the reconsideration decision consisted of:

- 1) The appellant's Request for Reconsideration dated October 22, 2013 (RFR) stating that she has been in poor health since 2000 and has to take care of her son with quadriplegia 24 hours per day. The appellant states that in September 2013 her family doctor clearly described her condition in the medical report.
- 2) Medical Certificate from the appellant's family doctor dated October 16, 2013 stating that the appellant "has had recurrent osteoarthritis of neck and low back" and that she has "taken care of her adult quadriplegia 24 hours a day 7 days a week";
- 3) Letter from the Ministry to the appellant dated October 4, 2013 advising that the appellant that she no longer met the criteria for PPMB because her Employability Screen was less than 15 as required and that in the opinion of the Ministry, her medical conditions do not preclude her from all forms of employment;
- 4) Medical Report – Persons with Persistent Multiple Barriers ("Medical Report" ) dated September 13, 2013 completed by the appellant's general practitioner indicating that the appellant's primary medical condition is osteoarthritis of neck and lower back from an accident in 2000, and that her treatment includes medications. The Medical Report also indicates that the appellant's medical condition is episodic in nature with frequent episodes occurring more in cold temperatures. The general practitioner reports that the appellant can do light duty work; and
- 5) Employability Screen indicating the appellant's score of 14 (income assistance recipient for more than 12 months in the last 3 years, none or limited work experience in the last 3 years, and English as a second language).

In her Notice of Appeal the appellant states that she has severe osteoarthritis which effects her neck, shoulder, hands and lower back. She cannot sit or stand up more than 45 minutes at a time and that she attended for x-rays of her neck, shoulders and back to prove these conditions. The appellant states that the results won't be available until the end of this week and she will submit these documents when she receives them.

The panel notes that no further documents were received prior to the appeal.

### *Admissibility of New Evidence*

In the Notice of Appeal the appellant indicates that her severe osteoarthritis effects her hands, as well as her neck, shoulder and lower back. The information regarding her hands is new evidence that was not available at the time of reconsideration and there is no corresponding documentation from the appellant's physician to support this diagnosis. Accordingly, pursuant to section 22(4) of the *Employment and Assistance Act* the panel has not admitted this information into evidence as it is not in support of information and records that were before the ministry at the time of reconsideration.

With the consent of the parties the appeal proceeded by way of written hearing.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision to deny the appellant qualification as a Person with Persistent Multiple Barriers was reasonably supported by the evidence or was a reasonable application of the applicable legislation in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant's medical condition is not a barrier that precludes her from searching for, accepting or continuing in employment as required by EAR section 2(4)(b)?

Section 2 of the EAR states 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,
    - (B) has occurred

or

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.

[en. B.C. Reg. 368/2002.]

**EAR section 2(4)(b) – medical condition that precludes the person from search for, accepting or continuing in employment**

The ministry's position is that a medical condition is considered to preclude the recipient from searching for, accepting or continuing in employment when, as a result of a 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.

The ministry's notes that on the Medical Report the appellant's general practitioner reports that the appellant's medical condition is episodic, occurs "*frequently and it's worse in cold temperatures or weather*" and that the appellant "*can do light duty*". The ministry also notes that the appellant's doctor provided additional information on the Medical Certificate indicating that the appellant has had recurrent osteoarthritis of neck and lower back and that she has taken care of her adult quadriplegia (son) 24 hours a day 7 days a week. The ministry also notes that on the Medical Certificate stating when the appellant would be able to attend work or school, the physician reported "*N/A*", but did not provide any additional information to confirm the appellant's medical condition has deteriorated or changed since the Medical Report was completed. The ministry's position is that although it is unclear whether the physician still describes the nature of the appellant's restrictions specific to her impairment as "*can do light duty*", without further information, the ministry is not satisfied that the appellant's barriers seriously preclude her ability to search for, accept or continue in employment as required by EAR section 2(3)(a)(ii).

The appellant's position is that she has been in poor health since 2000 due to severe osteoarthritis which affects her neck, shoulder, hands and lower-back, that she cannot sit or stand more than 45 minutes at a time.

She also reports that she has to take care of her adult quadriplegia son 24 hours per day, seven days per week. The appellant's position is that the Medical Report and Medical Certificate sufficient demonstrate that she meets the criteria for PPMB designation.

#### *Panel Decision*

As set out in EAR section 2(1), to qualify as for PPMB designation, an applicant must satisfy the criteria of EAR section 2(2) and (3) or (4). If a person's Employability Screen score is at least 15 then section 2(2) and 2(3) apply but if the person's Employability Screen score is less than 15 then sections 2(2) and 2(4) would apply. In this case, as the appellant's Employability Screen score is 14, the applicable legislation is EAR sections 2(2) and 2(4). In this case, as the ministry was satisfied that all the other criteria were met, the only criterion that is at issue is 2(4)(b), namely whether the appellant's medical condition is a barrier that precludes her from searching for, accepting or continuing in employment.

The panel notes that in the reconsideration decision the ministry refers to the legislative criteria set out in EAR section 2(4) but in the third paragraph before the end of the RD states that the "...ministry is not satisfied that these barriers seriously preclude your ability to search for, accept or continue in employment and you have not met the criterion set out in Section 2(3)(a)(ii) of the Regulation". The panel notes that the wording of section 2(3)(a)(ii) and section 2(4)(b) are similar, although not exactly the same, and it appears that the ministry, in referring to section 2(3)(a)(ii) rather than 2(4)(b) made a typographical error regarding the relevant section, given that the remainder of the reconsideration decision clearly indicates that it is the criteria in section 2(4)(b) that is being addressed.

This is also supported by reference to the ministry's letter to the appellant dated October 4, 2013 in which the ministry indicates that the appellant no longer meets the criteria for the PPMB category because her Employability Screen Score is less than 15 as required by EAR section 2(3)(a)(i) and because in the minister's opinion, her medical conditions do not preclude her from all forms of employment as required under EAR section 2(4)(b).

The panel notes that the Medical Report indicates that the appellant is able to perform light duties and he has not provided any further information to indicate that the appellant's condition has changed or deteriorated such that she is no longer able to perform light duties. While the Medical Certificate states "N/A" in response to the question when the appellant will be able to attend school or work, the physician did not provide any further information to confirm whether the appellant's restrictions had changed. It is not clear whether the physician responded "N/A" because the appellant is at home caring for her adult quadriplegia son 24 hours per day, 7 days per week or because of the appellant's medical conditions.

As the appellant's physician reports that the appellant is able to perform light duty tasks and has not provided further information to indicate the severity of the appellant's medical condition, frequency of her episodic conditions or further information about the reason why he has indicated "N/A" in response to when the appellant could return to work or school, the panel finds that the ministry was reasonable in concluding that the appellant's medical condition is not a barrier that precludes her from searching for, accepting or continuing in employment.

In particular, although the appellant reports that her condition affects her neck, shoulder, hands and lower back, her physician only reports that her condition affects her neck and lower back. Although the appellant reports that she is unable to sit or stand for more than 45 minutes, there is no information to demonstrate that she is unable to perform light duties as reported by her physician. In addition, although her physician reports that her episodes occur "frequently", there is no further information provided to determine if that means her episodes occur daily, weekly, or monthly, or just with cold weather and varying temperatures.

Although the appellant states that she cannot work because she has to care for her adult quadriplegia son 24

hours per day, 7 days per week, and that information is confirmed by her physician, that is not a criterion used to determine the appellant's eligibility for PPMB qualification. The PPMB qualification is based on the appellant's personal medical condition, not other familial factors that may make it difficult for her to make work arrangements.

**Conclusion**

The panel finds that the ministry's reconsideration decision that determined the appellant did not meet the legislative criteria for PPMB qualification as her medical condition does not preclude her from searching for, accepting or continuing in employment as required by section 2(4)(b) of the EAR was reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the appellant. Therefore, the panel confirms the ministry's reconsideration decision.