

## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development and Social Innovation (“the ministry”) dated April 9, 2014 which held that the appellant does not qualify as a person with persistent multiple barriers (PPMB) to employment because she did not meet all the criteria under Section 2 of the Employment and Assistance Regulation (EAR). In particular Section 2(4)(b) was not met because in the opinion of the minister, her medical condition other than an addiction is not a barrier that precludes the appellant from searching for, accepting or continuing in employment.

The ministry determined that the appellant met Section 2 (2) as she has been a recipient of income assistance for at least 12 months of the preceding 15 calendar months. Also, the ministry determined that the appellant scored 12 on the employability screen as set out in Schedule E, not meeting the required 15 under Section 2(3) and was subsequently assessed under Section 2(4) of the EAR. The appellant has met Section 2(4)(a) as it has been established that in the opinion of a medical practitioner, she has a medical condition that has continued for at least one year and is likely to continue for at least 2 more years.

## PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 2.

## PART E – Summary of Facts

With the consent of the parties, the appeal hearing was conducted in writing in accordance with section 22(3)(b) of the Employment and Assistance Act.

The evidence before the ministry at the time of reconsideration included:

- a Medical Report - Persons With Persistent Multiple Barriers (PPMB) dated February 17, 2014 and completed by the appellant's physician;
- an Employability Screen;
- the appellant's Request For Reconsideration dated March 27, 2014 which included an advocate prepared letter dated March 28, 2014 which comprised 4 questions that are posed to the appellant's physician to assist in determining eligibility for PPMB.

In the Medical Report, the specialist who has known the appellant for 6 months or less and has examined previous medical records reported that the appellant's primary medical condition is chronic back/neck pain from the 1980's with a recent exacerbation in September 2013. No secondary medical condition is indicated. Under treatment, it is noted Physio and NSAIDS. Under outcome, it is noted "Recurrent problems with acute pain on chronic condition". The stated condition has existed for more than 20 years with the prognosis expected of duration at 2 years or more. Further noted is that the medical conditions are not episodic in nature and under restrictions specific to the reported medical conditions, the physician wrote no lifting and no prolonged weight bearing.

A copy of the Employability Screen indicated a total score of 12 with results that correspond with Expected to Work (score 0-14) which are described on the Employability Screen form as immediately employable/employable with short-term interventions.

The advocate prepared letter included the following 4 questions with responses written by the appellant's physician:

1. Does your patient have severe cervical and lower back pain?

Answer: Yes.

2. Has a radiologist recently found osteoarthritis in your patient's neck and back?

Answer: Yes.

3. How do your patient's conditions limit her ability to work? Please explain.

Answer: Inability to sit/walk/weight bear/lift for any prolonged period of time.

4. Are your patient's medical condition(s) severe enough to present a significant barrier to all employment for at least 2 years?

Answer: Yes.

On appeal, the appellant submitted a letter dated April 29, 2014 prepared by her advocate. The appellant states that the ministry's decision was not a reasonable application or interpretation of the PPMB legislation in her case.

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 which held that the appellant does not qualify as a person with persistent multiple barriers to employment because she did not meet all the criteria under Section 2 of the Employment and Assistance Regulation. In particular, the appellant has not met Section 2(4)(b), because in the opinion of the minister, her medical condition other than an addiction is not a barrier that precludes the appellant from searching for, accepting or continuing in employment.

The ministry determined that the appellant met Section 2 (2) as she has been a recipient of income assistance for at least 12 months of the preceding 15 calendar months. Also, the ministry determined that the appellant scored 12 on the employability screen as set out in Schedule E, not meeting the required 15 under Section 2(3) and was subsequently assessed under Section 2(4) of the EAR. The appellant has met Section 2(4)(a) as it has been established that in the opinion of a medical practitioner, she has a medical condition that has continued for at least one year and is likely to continue for at least 2 more years.

### Relevant Legislation

#### 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. (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, subsection (2) and subsection (3) or (4). The criteria in Section 2, subsection 2, and subsection (4)(a), have been met.

### Ministry's Position

The ministry's position is that a medical condition is considered to preclude the appellant from searching for, accepting or continuing in employment when, as a result of the medical condition, the appellant 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 argues that the appellant's medical condition does not preclude her from

maintaining all types of employment; therefore she does not meet section 2(4) (b). The ministry noted that the restrictions as reported by the physician that are specific to the appellant's medical condition are "no lifting/no prolonged weight bearing". Additional information from the appellant's physician reported severe cervical and lower back pain, osteoarthritis in neck and back and limitations to work including inability to sit/walk/weight bear/lift for any prolonged period of time and that the medical condition is severe enough to present significant barrier to employment for at least 2 years. The ministry determined that the appellant's restriction to employment is to prolonged lifting, sitting, walking and weight bearing and that many jobs do not require prolonged physical activity. Moreover, there are remedial measures for the appellant's medical condition including medication and physiotherapy. For these reasons, in the minister's opinion, the appellant's medical condition and resultant restrictions do not preclude her from searching for, accepting or continuing in all types of employment including part-time work.

### **Appellant's Position**

The appellant's position is that based on the facts of the case; specifically, the information on the record supplied by the doctor confirms that the appellant meets the medical portion of the test for PPMB and that the ministry was unreasonable to deny her the PPMB designation. The appellant finds it difficult to understand why the adjudicator cites remedial measures including medication and physiotherapy in the denial decision as if to imply that the appellant was not pursuing treatment when the doctor had indicated on the PPMB medical report that the appellant was already pursuing these treatments with an outcome such that there are "recurrent problems with acute pain on chronic condition." Further indicated is that the appellant pursued treatment despite the fact that she and her 3 year old daughter are living on basic income assistance and that the user fee for physio visits is not covered by the government and is usually a minimum of \$20 a visit. It is also argued that while the appellant's medical conditions limit her ability to work by causing inability to sit/walk/weight bear/lift for any prolonged period of time and are severe enough to present a significant barrier to all employment for at least 2 years; the ministry finds justice in dismissing the doctor's confirmation and insists that there are "many jobs that do not require prolonged physical activity."

### **Panel's Findings**

The panel notes that in the appellant's Medical Report - PPMB dated February 17, 2014; the primary medical condition is chronic back/neck pain. The appellant's restrictions specific to the reported medical conditions are no lifting and no prolonged weight bearing. In the advocate prepared letter, dated March 28, 2014, the appellant's physician added that the appellant has severe cervical and lower back pain and osteoarthritis in her neck and back. The appellant's conditions limit her ability to work by her inability to sit, walk, weight bear and lift for any prolonged period of time. The panel notes that the physician has not substantiated this opinion with any further explanation.

After reviewing both the PPMB Medical Report and the advocate prepared physician's letter, the panel finds that while the appellant's physician confirms that her patient's medical condition is severe enough to present a significant barrier to all employment for at least 2 years, this is quite different from the legislation which requires that in the opinion of the minister, the nature of the restrictions is a barrier that precludes the person from searching for, accepting or continuing in employment. The panel acknowledges that the appellant has pursued treatment; although, under outcome, the physician indicates that there are recurrent problems with acute pain on chronic condition but does not necessarily explain the actual result of the the two treatments identified, Physio and NSAIDS.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry reasonably determined that the evidence does not establish that the appellant's medical conditions are a barrier that precludes her from searching for, accepting or continuing in employment and therefore the criterion under section 2(4)(b) of the EAR was not established.

The panel finds that the appellant does not qualify as a person with persistent multiple barriers to employment and confirms the reconsideration decision.