

PART C – DECISION UNDER APPEAL

The Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated May 22, 2014 determined the appellant did not qualify as a person with persistent multiple barriers (PPMB) because the information provided did not establish her medical condition, other than addiction, presented a barrier that precluded her from searching or accepting or continuing employment and therefore she did not meet all the legislative requirements set in section 2(4) of the Employment and Assistance Regulation.

PART D – RELEVANT LEGISLATION

Employment and Assistance Regulation (EAR), section 2.

PART E – SUMMARY OF FACTS

The following evidence was before the ministry at the time of reconsideration:

- The appellant has been in receipt of assistance since February 28, 2005, hence for at least 12 of the last 15 months.
- A July 4, 2013 letter from the ministry confirming that the appellant had been previously approved for the PPMB category and that a review of this status was required;
- A medical report dated January 9, 2014 by the appellant's physician stating:
 - The appellant's primary medical condition is back pain, unspecified;
 - Secondary medical condition of hypothyroidism, anxiety, and asthma;
 - The appellant is treated through medication, which controls the conditions;
 - The condition has existed for years;
 - The expected duration of this condition is 2 years or more;
 - Additional comments regarding the duration were – unsure, chronic conditions;
 - The medical condition was described as episodic in nature – daily episodes;
 - The frequency of recurrence of episodes was described as not sure about time.
 - Restrictions attached to the appellant's medical condition are – unable to do physical, heavy work.
- An undated Employability Screen indicating the appellant scored a total of 12.
- In her request for reconsideration dated May 14, 2014, the appellant writes that she has had more damage in her back, her discs are disintegrating, she is experiencing a lot of anxiety, and she has been on PPMB for over 6 years so she is confused why she would now be denied when her back has gotten worse. She writes that her lower back has too much damage for her to be able to work.

The ministry received an updated medical report regarding employability from the appellant's physician on May 23, 2014 the day following the completion of the reconsideration decision on May 22, 2014.

The updated medical report, signed on May 23, 2014 by the appellant's physician, indicates:

- The appellant's primary medical condition is chronic back pain (**arthritis, spinal stenosis, 2014 onset**)
- Secondary medical condition: Hypothyroidism (**1993**), **gastric ulcer**;
- The overall medical condition was described as **moderate**;
- The expected duration of this condition is **3-6 months**;
- The medical condition was **not** episodic in nature;
- Restrictions attached to the appellant's medical condition were: **unable to lift heavy objects**.

In her notice of Appeal dated June 4, 2014, the appellant writes that there was new information that wasn't attached to the forms, and that in any event, she has arthritis in her spine, bad depression and anxiety, which has worsened due to the recent death of her mother.

The ministry acknowledged the new medical report and expressed no objections to its admission within the July 2, 2014 Written Submission for Appeal.

The panel determined that the additional evidence provided by the appellant in her Notice of Appeal was admissible under s.22(4) of the Employment and Assistance Act (EAA) as it was in support of the records before the ministry at reconsideration and provided some more details about her medical conditions and circumstances.

The panel determined that the additional evidence provided by the appellant's physician and received by the ministry on May 23, 2014, will be admissible in part under s.22(4). Section 22(4) provides the

panel authority and direction on what additional evidence is admissible; additional evidence must be in support of the information and records that were before the minister when the decision being appealed was made. The new diagnosis of gastric ulcer and the change in the expected duration of the medical condition to 3-6 months from 2 years or more are not in support of the information and records that were before the minister when the decision being appealed was made, and accordingly, this information is not admissible.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's decision that determined the appellant did not qualify as a person with persistent multiple barriers (PPMB) because the information provided that her medical condition, other than addiction, did not present a barrier that precluded her from searching or accepting or continuing employment and consequently not meeting all the required conditions set in section 2(4) of the EAR was either a reasonable application of the legislation or reasonably supported by the evidence.

Section 2 of the EAR states the conditions necessary to qualify as a PPMB:

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,...

(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.

The ministry argues that section 2(2) and 2(4) of the EAR apply in this matter. The ministry agrees that the appellant meets the requirements under subsection (2) as she has been a recipient of income assistance for at least 12 of the immediately preceding months, but not those of subsection (3)(a) as she has not scored 15 on the employability screen but only 12. Thus, the

ministry argues that subsection (4) applies. In the ministry's opinion the appellant's medical conditions and associated restrictions do not present a barrier that precludes her from searching or accepting or continuing employment as required in s.2(4)(b) of the EAR. In this regard, the panel will consider the ministry's written submission on the new May 23, 2014 medical report only where it refers to the admissible information, the restriction "no lifting of heavy objects".

The appellant argues that new information (May 23, 2014 medical report) was not included in the information considered at the reconsideration and should have been. She argues that the arthritis in her spine is also bad, and her depression and anxiety have worsened since the death of her mother on May 30, 2014.

The ministry determined that the appellant met the criteria set out in s.2(2) of the EAR. The appellant does not dispute the ministry decision determining that she did not meet s.2(3)(a)(i) of the EAR because she scored under 15 on the Employability Screen.

The medical report of January 9, 2014 described restrictions as a result of her medical condition as, "unable to do physical, heavy work". This was supported by the new medical report of May 23, 2014 which states the restriction as "no lifting of heavy objects." While the appellant argues the arthritis in her spine is also bad and her depression and anxiety have worsened, the panel accepts there are many jobs that do not require heavy physical work or lifting of heavy objects. Thus, the panel determines that the ministry's decision that the appellant did not qualify as a person who has persistent multiple barriers to employment as the appellant's medical condition is not a barrier precluding her from searching for, accepting or continuing employment under s.2(4)(b) of the EAR, was reasonably supported by the evidence.

Therefore the panel confirms the ministry's decision.