

PART C – Decision under Appeal

The Decision under Appeal is the Ministry Reconsideration Decision of July 28, 2014 in which the ministry determined the appellant was ineligible for the qualification of Persons With Persistent Multiple Barriers (PPMB) because she did not meet the requirements set out in Section 2 of the Employment and Assistance Regulation. The ministry found that because the appellant has been in receipt of income assistance for at least twelve (12) of the past fifteen (15) months prior to her application she met the requirements under Section 2 (2). The ministry found that as the appellant scored twelve (12) on the employability screen, her application did not meet the requirements to be assessed under Section 2 (3). The appellant's application was therefore considered under Section 2 (2) and (4) of the EAR. The appellant's physician confirmed that she has a medical condition that has lasted at least one (1) year and that the condition is expected to continue for two (2) years or more. However, in the opinion of the ministry, the appellant's medical condition and the resulting restrictions are not a barrier that precludes her from searching for, accepting, or continuing in all types of employment and therefore she does not qualify for PPMB.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) – Section 2, schedule E

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- A PPMB application form completed by the ministry in the name of the appellant dated May 13, 2014. The form indicated the appellant has been on assistance 12 of the last 15 months and that she scored 14 on the Employability Screen.
- A copy of the Employability screen completed in the name of the appellant giving her an overall score of 14.
- A medical history summary in the name of the appellant dated May 14, 2014. It reads that her current conditions are Hepatitis C and depression. It lists off the drugs she has been prescribed and states that she has had 3 separate discectomy surgeries in 1989, 1993, and 2013.
- A PPMB medical report completed by the appellant's physician dated May 14, 2014. The report states the appellant suffers from disc hernia and anxiety, the condition has existed more than 5 years, the duration of the condition is expected to be more than 2 years, the condition is not episodic in nature, and as a result of her conditions she has limited mobility and is unable to stand for more than 3-4 hours.
- A request for reconsideration form dated July 14, 2014 where the appellant writes that she misread one of the questions on the Employability Screen and as a result she answered question 3 incorrectly.

At the hearing the appellant told the panel that she has had 3 back operations since 1989 and she continues to suffer from weakness and pain in her back that prevents her from working more than 3-4 hours per day. She had her last operation in 2013 and she fears she will need another one to fuse her back in the near future. She added that her depression is manageable by keeping herself out of the house and occupied. She said she got a job in May 2014 at a general store/gas station where she performs various functions that don't require her to lift anything heavy. She works 4-5 days per week for 3-4 hours per shift. She told the panel that she has applied for PPMB not because she wants to avoid working but rather she wants PPMB designation because she is worried she may lose coverage of her medications without it. She and her husband have a very low income and she stated she couldn't afford the cost of medications on their income. The appellant said she was concerned that the reason her PPMB application was denied was due to her answering the question on the Employability Screen incorrectly.

At the hearing the ministry told the panel that the appellant completed the Employability Screen over the phone with the ministry. The ministry was aware of the error the appellant made on question 3 and made the correction internally on her score however when the answer to the question was changed it resulted in a lower score for the appellant of 12 versus the original 14. The legislation requires that scores less than 15 be considered under EAR section 2(4) which is how her application was considered prior to the change therefore the corrected answer had no impact on the outcome of the ministry's reconsideration decision.

The ministry addressed the appellant's concern that without the designation of PPMB she would lose her medication coverage. The ministry said that the designation of PPMB is intended for people that are unable to search for, accept, or continue any employment and since the appellant is maintaining a job and her condition is not episodic in nature there is likely a more suitable way to achieve coverage of her medications.

The minister found that based on the information provided by the appellant's physician, the appellant's medical condition does not preclude her from searching for, accepting, or continuing in any type of employment. The ministry added that the physician indicated her only restriction was her inability to stand more than 3-4 hours.

The panel finds as fact the following

- The appellant is restricted from standing more than 3-4 hours due to her back condition.
- The appellant is working at a general store 4-5 days per week for 3-4 hours per shift.
- The appellant requires prescription medication.
- The appellant's condition is not episodic in nature.
- The appellant scored 12 on the Employability Screen.

PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the ministry's decision that the appellant does not qualify as a person with persistent multiple barriers on the basis that she does not meet all of the legislative requirements. The ministry found that the appellant met the requirements of Section 2 (2) that she had been a recipient of income assistance for at least 12 of the immediately preceding 15 calendar months. The appellant's score on the employability screen is 12, therefore the ministry considered the application under section 2 (4) of the Employment and Assistance Regulation (EAR).

The EAR section 2 states;

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.

It is the ministry's position that the appellant's score on the Employability Screen is less than 15 and therefore must be considered under EAR section 2(4). The ministry argues that the appellant's medical condition does not preclude her from searching for, accepting or continuing in employment.

It is the position of the appellant that her medical condition creates a barrier to her searching for, accepting, or continuing in any more employment than she is currently working.

In relation to the appellant's score on the Employability Screen the panel finds that the ministry was reasonable to consider her application under EAR section 2(4) as her score was less than 15. The panel is satisfied that the decision to proceed under EAR section 2(4) would not have changed if the appellant's answer to question 3 had been captured differently.

Regarding the ministry's determination that the appellant has a medical condition confirmed by a

medical practitioner that is a barrier that precludes her from searching for, accepting or continuing in employment the panel reviewed the medical report as well as the appellant's testimony. The panel notes that the appellant is working 5 days per week, 3-4 hours per day. The appellant told the panel that she couldn't increase her hours due to her medical condition. The fact that the appellant is able to maintain employment confirms that she is able to perform paid employment that accommodates her limitations caused by her medical condition. The panel finds that the ministry was reasonable to find that the appellant's medical condition does not preclude her from searching for, accepting or continuing in employment.

The panel finds that the reconsideration decision was a reasonable application of the applicable legislation in the circumstances of the appellant and therefore the panel confirms the decision.